

NORFOLK



ISLAND

SENTENCING ACT 2007

[Consolidated as at 20 January 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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NORFOLK



ISLAND

SENTENCING ACT 2007

An Act relating to the sentencing of offenders and for related purposes
BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows —

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Sentencing Act 2007*.

Commencement

2. (1) Sections 1, 2, 3, and 164 commence on the day notice of assent is published in the Gazette.
(2) The remaining provisions commence on a day or days before then fixed by the Administrator by notice in the Gazette.

Interpretation

3. (1) In this Act, unless the contrary intention appears –
aggravated property offence means – an offence against section 91, 147, 165, 186, 188 or 189 of the *Criminal Code*;
approved project means a rehabilitation program or work, or both, approved by a community work advisory committee;
community service order means a community service order made under Division 4 of Part 3;
Criminal Code means the *Criminal Code 2007*;
court means the Court of Petty Sessions and the Supreme Court and includes the Federal Court on appeal from the Supreme Court;
Crown law officer means the principal law officer of the Administration and includes his or her deputy and includes a person authorised under a law of Norfolk Island or the principal law officer or the Minister to exercise a power or perform a function in the name of or on behalf of a Crown law officer and reference to **a Crown law officer** means the principal law officer or in his or her absence the deputy or a person acting in his or her stead;
custodial officer means a person appointed in accordance with section 77;
driver's licence means a licence to drive a motor vehicle granted under the *Road Traffic Act 1982*;
fine means the sum of money payable by an offender under an order of a court made on the offender being convicted or found guilty of an offence and includes costs but does not include money payable by way of restitution or compensation;
gaoler means a gaoler appointed in accordance with the *Administration Act 1936*;

home detention order means an order made under Subdivision 2 of Division 5 of Part 3;

hospital has the same meaning as in the *Norfolk Island Hospital Act 1985*;

indefinite sentence means a sentence of imprisonment for an indefinite term that –

- (a) is to be reviewed under Subdivision 5 of Division 5 of Part 3; and
- (b) is to continue until a court orders that the indefinite term of imprisonment is discharged;

instalment order means an order made under Division 3 of Part 3 that a fine be paid by 2 or more instalments and includes such an order as varied under that Division;

motor vehicle has the same meaning as in the *Road Traffic Act 1982*;

nominal sentence means a sentence specified in an order under section 102(5);

non-parole period, in relation to a sentence of imprisonment, means a period, fixed by or under Subdivision 4 of Division 5 of Part 3, during which an offender is not eligible to be released on parole;

operational period, in relation to a sentence of imprisonment suspended under section 39, means the period specified under section 42(6);

offender means a person found guilty of an offence, and includes a young offender;

officer in charge means the police officer in charge of the Norfolk Island Police;

police officer means a person who is a member of the police force for the purposes of the *Police Act 1931*.

prosecutor includes a Crown law officer;

registrar, in relation to a court, means the officer of the court prescribed by the rules of the court or by regulations for the purpose of the provision in which the term is used;

registrar means, as the case requires, a Registrar of the Supreme Court or a clerk of the Court of Petty Sessions;

sexual offence means an offence specified in Schedule 2;

supervisor means a supervisor appointed under subsection 27(1);

undertaking means a written undertaking in the prescribed form given by an offender to a court to conform to an order and to conditions of an order of the court;

violent offence means an offence specified in Schedule 1.

young offender means a person who—

- (a) has been convicted or found guilty of an offence by a court; and
- (b) was under 18 years old when the offence was committed.

(2) In this Act, a reference to a right of appeal includes a right to apply to obtain leave to appeal.

.....

PART 2 – GENERAL PRINCIPLES

Sentencing guidelines

- 5.** (1) The only purposes for which sentences may be imposed on an offender are –
- (a) to punish the offender to an extent or in a way that is just in all the circumstances;
 - (b) to provide conditions in the court's order that will help the offender to be rehabilitated;
 - (c) to discourage the offender or other persons from committing the same or a similar offence;
 - (d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;
 - (e) to protect the Norfolk Island community from the offender; or
 - (f) a combination of 2 or more of the purposes referred to in this subsection.
- (1A)** Despite subsection (1), in sentencing a young offender, a court—
- (a) must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes stated in subsection (1); and
 - (b) must have particular regard to the common law principle of individualised justice.
- (2)** In sentencing an offender, a court shall have regard to –
- (a) the maximum and any minimum penalty prescribed for the offence;
 - (b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim;
 - (c) if the offence is a sexual offence –
 - (i) whether the victim contracted a sexually transmissible medical condition as a result of the offence; and
 - (ii) whether the offender was aware at the time of the offence that he or she had a medical condition that could be sexually transmitted;
 - (d) the extent to which the offender is to blame for the offence;
 - (e) any damage, injury or loss caused by the offender;
 - (f) the offender's character, age and intellectual capacity;
 - (g) the presence of any aggravating or mitigating factor concerning the offender;
 - (h) the nature and extent of the offender's role and position in society and whether the offender took advantage or sought to take advantage of that role or position in the commission of the offence, in a defence presented during the proceedings, or in seeking to persuade the Court as to the appropriate punishment to impose;
 - (j) the prevalence of the offence;
 - (k) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;
 - (l) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

- (m) time spent in custody by the offender for the offence before being sentenced;
- (n) sentences imposed on, and served by, the offender in a State or another Territory of the Commonwealth for an offence committed at, or about the same time, as the offence with which the court is dealing;
- (o) sentences already imposed on the offender that have not been served;
- (p) sentences that the offender is liable to serve because of the revocation of orders made under this or any other Act for contraventions of conditions by the offender;
- (q) if the offender is the subject of a community service order, a home detention order, or a periodic detention order, the offender's compliance with the order;
- (r) anything else prescribed by this Act to which the court is required to have regard; and
- (s) any other relevant circumstance.
- (2A)** In sentencing a young offender, a court shall have also regard to –
 - (a) the young offender's culpability for the offence having regard to his or her maturity;
 - (b) the young offender's state of development; and
 - (c) the past and present family circumstances of the young offender.
- (2B)** If a court is sentencing a young offender to imprisonment –
 - (a) The sentence of imprisonment must be a last resort and for the shortest appropriate term;
 - (b) The court must consider making a combination sentence consisting of—
 - (i) the sentence of imprisonment; and
 - (ii) a good behaviour order with a supervision condition.
 - (c) The court must not sentence the young offender to imprisonment for life.
- (3)** For the purposes of subsection (2)(c) –
 - (a) a certificate by a medical practitioner that a person has (or had at a stated time) a sexually transmissible medical condition is evidence of the existence of that condition; and
 - (b) if –
 - (i) a certificate is tendered that the offender had at the relevant time a sexually transmissible medical condition; and
 - (ii) evidence is given that the victim contracted the medical condition at a time that is consistent with the medical condition being transmitted from the offender,

the contraction by the victim of the medical condition is to be taken to be a result of the offence.

Factors to be considered in determining offender's character

6. In determining the character of an offender, a court may consider, among other things –

- (a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender;
- (b) the general reputation of the offender; and
- (c) any significant contributions made by the offender to the community.

Young offenders – notice of orders to parents, etc

6A. Where a young offender is sentenced under this Act the court must ensure that a copy of any notice or order is also given to a parent of the young offender and anyone else who has parental responsibility for the young offender under the *Child Welfare Act 2009*.

PART 3 – SENTENCES*Division 1 – General***Sentencing and other orders**

7. Where a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and this Part, make one or more of the following sentencing orders:

- (a) without recording a conviction, order the dismissal of the charge for the offence;
- (b) without recording a conviction, order the release of the offender;
- (c) record a conviction and order the discharge of the offender;
- (d) record a conviction and order the release of the offender;
- (e) with or without recording a conviction, order the offender to pay a fine;
- (f) with or without recording a conviction, make a community service order in respect of the offender;
- (g) record a conviction and order that the offender serve a term of imprisonment that is suspended by it wholly or partly;
- (h) record a conviction and instead of ordering that the offender serve a term of imprisonment make a periodic detention order under subdivision 3 of division 5 of Part 3;
- (j) record a conviction and order that the offender serve a term of imprisonment that is suspended on the offender entering into a home detention order;
- (k) record a conviction and order that the offender serve a term of imprisonment;
- (l) impose any sentence or make any order authorised by this or any other Act.

Conviction or non-conviction

8. (1) In deciding whether or not to record a conviction, a court shall have regard to the circumstances of the case including –

- (a) the character, antecedents, age, health or mental condition of the offender;
- (b) the extent, if any, to which the offence is of a trivial nature; or
- (c) the extent, if any, to which the offence was committed under extenuating circumstances.

(2) Except as otherwise provided by this or any other Act, a finding of guilt without the recording of a conviction shall not be taken to be a conviction for any purpose.

- (3)** A finding of guilt without the recording of a conviction –
 - (a) does not prevent a court from making any other order that it is authorised to make in consequence of the finding by this or any other Act; and
 - (b) has the same effect as if one had been recorded for the purpose of –
 - (i) appeals against sentence;
 - (ii) proceedings for variation or breach of sentence;
 - (iii) proceedings against the offender for a subsequent offence; or
 - (iv) subsequent proceedings against the offender for the same offence.

Division 2 – Dismissals, Discharges and Bonds

Subdivision 1 – General

Purpose of orders under this Division

- 9.** An order may be made under this Division –
- (a) to provide for the rehabilitation of an offender by allowing the sentence to be served in the community;
 - (b) to take account of the trivial, technical or minor nature of the offence committed;
 - (c) to allow for circumstances in which it is inappropriate to record a conviction;
 - (d) to allow for circumstances in which it is inappropriate to inflict any punishment other than a nominal punishment; or
 - (e) to allow for the existence of other extenuating or exceptional circumstances that justify the court showing mercy to an offender.

Subdivision 2 – Release without Conviction

Unconditional dismissal

10. A court which finds a person guilty of an offence may, without recording a conviction, dismiss the charge.

Release on bond without conviction

11. (1) A court which finds a person guilty of an offence may, without recording a conviction, order that the person be released on his or her giving such security as the court thinks fit that the person will –

- (a) appear before the court if called on to do so during the period of the order, being a period not longer than 5 years as is specified in the order;
- (b) be of good behaviour for the period of the order; and
- (c) observe any conditions imposed by the court.

(2) Where a court makes an order under this section, the offender shall not leave the precincts of the court until he or she signs the order.

(3) A police officer may, without a warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).

(4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by –

- (a) order of the court; or
- (b) notice issued by the registrar.

(5) An application for an order under subsection (4)(a) may be made in the absence of the offender.

(6) An order or notice under subsection (4) shall be served on the offender not less than 4 days before the time specified in it for the appearance.

Subdivision 3 – Release on Conviction

Unconditional discharge

12. A court may discharge a person whom it has convicted of an offence.

Release on bond following conviction

13. (1) A court which finds a person guilty of an offence may record a conviction and order that the person be released on his or her giving such security as the court thinks fit that the person will –

- (a) appear before the court if called on to do so during the period of the order, being a period not longer than 5 years as is specified in the order;
- (b) be of good behaviour for the period of the order; and
- (c) observe any conditions imposed by the court.

(2) Where a court makes an order under this section, the offender shall not leave the precincts of the court until he or she signs the order.

(3) A police officer may, without a warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).

(4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by –

- (a) order of the court; or
- (b) notice issued by the registrar.

(5) An application for an order under subsection (4)(a) may be made in the absence of the offender.

(6) An order or notice under subsection (4) shall be served on the offender not less than 4 days before the time specified in it for the appearance.

*Subdivision 4 – Variation and Breach of Orders for Release on Bond***Variation of order for release on bond**

14. (1) A court which has made an order under section 11 or 13 may, on application under this subsection, if satisfied that –

- (a) circumstances, including those of the offender, have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or
- (b) the offender is no longer willing to comply with the conditions of the order, vary or cancel the order and, subject to subsection (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of an order made under section 11 or 13, the court shall take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under subsection (1) may be made at any time while the order is in force by –

- (a) the offender;
 - (b) a police officer or a Crown law officer.
- (4)** Notice of an application under subsection (1) shall be given to –
- (a) the offender; and
 - (b) where the sentencing court was –
 - (i) the Supreme Court – a Crown law officer; or
 - (ii) the Court of Petty Sessions – the complainant or informant.

(5) The court may order that a warrant to arrest the offender be issued if he or she does not attend before the court on the hearing of the application.

Breach of order for release on bond

15. (1) Where, it appears to a police officer or a Crown law officer, that an offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13, he or she may apply in the prescribed form to the court which made the order for the making of an order under this section.

- (2)** Where an application is made under subsection (1) –
- (a) notice of the application shall be given to the offender; or
 - (b) where a magistrate is satisfied that the offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13 and that the offender may not appear, the magistrate may issue a warrant for the arrest of the offender.

(3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.

(4) A police officer who suspects, on reasonable grounds, that an offender has failed to comply with a condition of an order made under section 11 or 13 may, without warrant, arrest the offender.

(5) Where a court is satisfied that an offender who is before the court has failed without reasonable excuse to comply with a condition of an order made by the court under section 11 or 13, the court may of its own motion make an order under this section.

(6) Where the Court of Petty Sessions is satisfied that an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Supreme Court under section 11 or 13, the Court of Petty Sessions may commit the offender to the Supreme Court to be dealt with by that Court under this section.

(7) Where, on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (5), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with a condition of the order, it may –

- (a) vary the order;
- (b) confirm the order originally made; or
- (c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to subsection (8), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.

(8) In determining how to deal with an offender under subsection (7)(c), a court shall take into account the extent to which the offender had complied with the order before its cancellation or expiration.

Division 3 – Fines

Power to fine

16. (1) Where a person is found guilty of an offence, the court may, subject to any specific provision relating to the offence, fine the offender.

- (2) The maximum fine that a court may impose is –
- (a) the maximum fine applicable to the offence under a provision of this or any other Act relating to the offence; or
 - (b) where there is no such maximum,
 - (i) in the case of the Supreme Court – 100 penalty units; or
 - (ii) in the case of the Court of Petty Sessions – 50 penalty units; or
 - (iii) in the case of a body corporate – double the penalty in (i) or (ii).

(3) Subsection (2) has effect subject to any specific provision of an Act relating to the offence.

Exercise of power to fine

17. (1) Where a court decides to fine an offender, it shall, in determining the amount of the fine, take into account, as far as practicable –

- (a) the financial circumstances of the offender; and
- (b) the nature of the burden that its payment will impose on the offender.

(2) A court is not prevented from fining an offender only because it has not been informed about the matters referred to in subsection (1).

(3) In considering the financial circumstances of an offender, a court shall take into account any other order that it or any other court has made or that it proposes to make –

- (a) providing for the confiscation of the proceeds of the crime; or
- (b) requiring the offender to make restitution or pay compensation.

(4) Where a court considers that –

- (a) it would be appropriate both to impose a fine and to make a restitution or compensation order; and
- (b) the offender has insufficient means to pay both,

the court shall give preference to restitution or compensation, though it may also impose a fine.

(5) A court, in fixing the amount of a fine, may have regard to, among other things –

- (a) the loss or destruction of or damage to property suffered by a person; and
- (b) the value of any benefit derived by the offender,

as a result of the offence.

Aggregate fines

18. Where a person is found guilty of 2 or more offences which are founded on the same facts or form or are part of a series of offences of the same or a similar character, the court may impose one fine in respect of those offences that does not exceed the sum of the maximum fines that could be imposed in respect of each of those offences.

Time for payment of fine

19. A fine imposed by a court is to be paid within 28 days after it is imposed unless the court allows a further time.

Application of fine, etc

20. The whole or any part of a fine, penalty or sum of money which by or under an Act is authorised or directed to be imposed on a person forms part of, and shall be paid into, the Public Account if no other way of appropriating or applying it is prescribed by law.

Court may order commitment in default

21. (1) If a court imposes a fine on an offender under section 16(1), the fine may be enforced under the *Court of Petty Sessions Act 1960* unless the court orders commitment in default under subsection (2).

(2) A court may order that if a fine is not paid within the time prescribed under section 19 the offender —

- (a) be imprisoned;
- (b) perform community service work not exceeding 50 hours;
- (c) receive home detention for a period not exceeding 3 months; or
- (d) receive periodic detention if the period calculated under paragraph (3)(a) would be at least 3 months,

until his or her liability to pay the fine is discharged.

(3) If a court makes an order under subsection (2) and the fine is not paid within the time fixed by the court, the court may—

(a) issue a warrant of commitment in respect of the offender specifying the period of imprisonment calculated on the basis of the amount of the fine as follows:

- (i) the period is to be one day for each 2 penalty units that comprises the fine;
- (ii) the period is not to be less than one day;
- (iii) the period is not to exceed 3 months; or
- (b) issue an order for periodic detention under Subdivision 3 of Division 5; or
- (c) order the offender to appear before the court in order to determine if it is appropriate to issue an order to perform community service or receive home detention.

(4) If an offender complies with a warrant or order made under subsection (3), the fine is taken to be satisfied.

(5) If an offender serves part of the period of imprisonment under a warrant under subsection (3), the fine is to be taken to be partially satisfied by the amount calculated at the rate provided in paragraph (a) for each day served but if the offender complies with only part of the terms of an order, the court shall determine the extent to which the fine is to be taken as partially satisfied.

(6) Unless otherwise ordered by the court, any period of imprisonment that an offender has to serve as a result of an order under subsection (2)(a) is to be served —

- (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the offender for the default of a payment of a fine or sum of money; and
- (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the offender other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

Division 4 – Community service orders

Interpretation for this Division

22. In this Division, unless the contrary intention appears —

community service order means an order made under subsection 23(1);

community service work means —

- (a) unpaid work; or
- (b) unpaid work of a class or description, approved in accordance with the Regulations;

conviction includes a finding of guilt;

service worker, in respect of a community service order, means the person in respect of whom that order is in force;

work includes any form of work or service.

Imposition of community service orders

23. (1) Where an offender is before a court for sentencing after being convicted of an offence punishable by imprisonment (whether or not it is also punishable by a fine either in addition to or in lieu of such imprisonment) that court may, instead of imposing a penalty of imprisonment and whether or not it imposes a fine, make an order requiring that person to perform community service work for a number of hours not exceeding the prescribed number of hours.

(2) For the purpose of subsection (1), the prescribed number of hours means, where the offence is punishable by a term of imprisonment —

- (a) not exceeding 6 months - 50 hours; or
- (b) exceeding 6 months but not exceeding 12 months - 100 hours; or
- (c) exceeding 12 months but not exceeding 2 years - 200 hours; or
- (d) exceeding 2 years - 400 hours.

(2A) For the purposes of subsection (1) in a community service order for a young offender the number of hours required to be performed—

- (a) must be at least 20 hours and not more than 200 hours; and
- (b) must not interfere with the young offender's access to appropriate education or training.

(3) The power of a court under subsection (1) may not be exercised except subject to and in accordance with this division.

(4) If a court makes a community service order in respect of a person convicted of an offence, it may, in addition, do any one or more of the following in respect of that offence:

- (a) make an order under section 126 or 127;
- (b) make an order under section 13;
- (c) impose a disqualification on the convicted person as authorised under a law;
- (d) order the forfeiture of any property as authorised under a law.

(5) A community service order may be made in respect of a person so as to be in force at the same time as another community service order in respect of that person is in force provided that the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 400 or for a young offender must not be more than 200.

(6) A community service order may be made in respect of a person who has been convicted of an offence before the date of commencement of this section but has not, before that date, been sentenced for the offence.

Court not to impose community service order in certain cases

24. A court shall not make a community service order in respect of a person convicted of an offence if in respect of that offence it —

- (a) sentences the convicted person to a term of imprisonment; or
- (b) makes an order under section 11.

Court may make community service order only with consent, etc

25. A court shall not make a community service order in respect of a person convicted of an offence unless —

- (a) that person consents; and
- (b) the court is satisfied that —
 - (i) the person is a suitable person to perform community service work under such an order; and
 - (ii) there exist satisfactory arrangements for the supervision of that person's performance of the work.

Court to specify period in which community service work is to be performed

26. (1) Where a court makes a community service order, it shall specify the period (not exceeding 2 years) within which the community service work is to be performed.

(2) Where, at any time, it is made to appear to the court that made a community service order that, for a sufficient cause, the whole or a part of the community service work to be performed under that order cannot or could not be performed within the period specified by it under subsection (1), the court may specify a further period within which the community service work or a part of it is to be performed.

(3) A court may specify that the hours of community service work to be performed by a service worker shall be performed —

- (a) concurrently with; or
- (b) additional to,

those specified in any other community service order made in respect of that person, so long as —

- (c) the number of hours to be or remaining to be performed, at any time, concurrently under the orders; or
- (d) the number of hours of work to be or remaining to be performed, at any time, otherwise than concurrently, under the orders,

does not exceed 400 hours.

Appointment, etc, of supervisors

27. (1) For the purpose of this Act the Minister may by notice in the Gazette appoint a person to be the supervisor for the purposes of this division.

(2) The supervisor may delegate his authority under this division to police officers, custodial officers or gaolers but not this power of delegation.

(3) If no supervisor is appointed under subsection (1) the officer in charge shall be the supervisor.

(4) Where the supervisor delegates his authority to more than one person under subsection (2), each of those persons is a supervisor.

(5) The Minister may make Regulations for the administration of community service orders and work to be performed under such orders including the establishment of community projects and work requirements appropriate for such orders.

Service worker to present to supervisor

28. Where a court makes a community service order, it shall specify in that order a period within which the service worker shall present himself to a supervisor.

Court may specify conditions in community service order to be complied with

29. A court may specify in a community service order it makes, conditions, not inconsistent with this Act, which must be complied with by the service worker during —

- (a) the period the order remains in force; or
- (b) such lesser period as the court may direct.

Court to explain community service order to convicted person

30. Where a court proposes to make a community service order it shall, before making the order, explain or cause to be explained to the person in respect of whom it is proposed to make the order, in language likely to be readily understood by him —

- (a) the purpose and effect of the proposed order;
- (b) the consequences that may follow if he fails to comply with —
 - (i) the proposed order; or
 - (ii) a requirement of this Act in respect of the proposed order;
- and
- (c) that the proposed order may be amended or revoked.

Copies of community service order to be served on certain persons

31. (1) Where a court makes a community service order the registrar shall, as soon as practicable after the order is made, cause the order to be reduced to writing in the prescribed form.

(2) The registrar shall cause a copy of the community service order to be served on —

- (a) the supervisor; and
- (b) the service worker.

(3) A community service order is not invalidated if the court officer fails to cause a copy of the order to be served on a person pursuant to subsection (2).

Work to be performed under community service order

32. (1) A service worker shall in addition to complying with the requirements of this Act in respect of a community service order —

- (a) perform, for the number of hours specified in that order, such community service work as the supervisor directs at such times as the supervisor directs;
- (b) perform that work in a satisfactory manner;
- (c) in respect of that work, comply with any reasonable direction of the supervisor; and
- (d) inform the supervisor of any change in his place of residence or business.

(2) A service worker shall not leave Norfolk Island without the leave of the Court of Petty Sessions.

(3) A police officer may arrest without warrant a person whom he reasonably suspects is attempting to leave Norfolk Island contrary to subsection (2).

(4) Where the performance of community service work under an order by a service worker is under the supervision of a supervisor the service worker is not to be regarded as an employee for the purposes of the *Employment Act 1988*.

Supervisor to have regard to certain matters

33. In giving directions to a service worker under section 32, a supervisor shall, so far as is practicable, avoid —

- (a) a conflict with the worker's religious beliefs (if any); and
- (b) interference with the times (if any) at which the worker normally works or attends a school or other educational establishment.

Period in respect of which community service order remains in force

34. A community service order remains in force until —

- (a) the service worker has, in accordance with the requirement of this Act in respect of that order, performed community service work for the number of hours specified in the order;
- (b) the expiration of the period specified by the court under subsection 26(1), but if any additional period has been specified under subsection 26(2), the expiration of that additional period; or
- (c) the order is revoked pursuant to section 35, 36 or 37,

whichever first occurs.

Revocation, etc, of community service orders

35. (1) Where on the application of —

- (a) a service worker; or
- (b) a supervisor,

it is made to appear to the court which made the relevant community service order that, having regard to circumstances that have arisen since the order was made, it would be in the interests of justice to do so, that court may —

- (c) revoke or vary the order; or
- (d) revoke the order and then, in respect of the offence in respect of which the community service order was made, deal with the convicted person in any manner in which it could have dealt with that person if it had not, instead, made that order.

(2) An application under this section shall be made in the prescribed form and shall if made by —

- (a) a service worker - be served on his supervisor; or
- (b) a supervisor - be served on the relevant service worker,

not later than 3 days prior to the date fixed for the hearing of the application.

(3) If —

- (a) an application is made by a supervisor under this section; and
- (b) the relevant service worker does not appear at the hearing of the application,

the court may issue a warrant for the arrest of that worker directing that he be brought before the court.

Further offences by service worker

- 36. (1)** Where a service worker appears before a court, being a court —
- (a) of equal jurisdiction to; or
 - (b) higher jurisdiction than,

the court that made the community service order in respect of that worker, for sentencing in respect of an offence punishable by imprisonment other than the offence in respect of which the order was made, that court may —

- (c) revoke or vary that order; or
- (d) revoke the order and then, in respect of the offence in respect of which the community service order was made, deal with the convicted person in any manner in which he could have been dealt with by the court that made the order if it had not, instead, made that order.

(2) The exercise by the court of its powers under paragraph (1)(c) or (1)(d) shall not in any way prejudice the power of the court in respect of the offence for which the community service worker is then before the court for sentencing.

Failure to comply with community service order

37. (1) If a service worker fails, without reasonable cause or excuse, to comply with —

- (a) the relevant community service order; or
 - (b) a provision of this Act or of the Regulations that is applicable to him,
- he shall be guilty of an offence.

(2) Proceedings for an offence under subsection (1) shall not be commenced later than 3 months after the relevant community service order ceased to be in force.

(3) Where a person is convicted of an offence under subsection (1), the court may —

- (a) without prejudice to the continuation in force of the community service order, impose on the person a fine not exceeding 5 penalty units;
- (b) where the order was made by the Court of Petty Sessions —
 - (i) revoke or vary the community service order; or
 - (ii) revoke the order and then, in respect of the offence in respect of which the community service order was made, deal with the convicted person in any manner in which he could have been dealt with for that offence by the court that made the order if it had not, instead, made that order;
- (c) where the order was made by the Supreme Court - commit the person to custody or release him on bail until he can appear before the Supreme Court whether or not that court is constituted by the same judge that made the order; or
- (d) take no action.

(4) Where a person is brought before the Supreme Court under paragraph (3)(c), the Supreme Court may —

- (a) without prejudice to the continuation in force of the community service order, impose on the person a fine not exceeding 10 penalty units;
- (b) revoke or vary the order;
- (c) revoke the order and then, in respect of the offence in respect of which the community service order was made, deal with the convicted person in any manner in which he could have been dealt with for that offence by the court that made the order if it had not, instead, made that order; or
- (d) take no action.

(5) In proceedings under subsection (1), a certificate signed, or purporting to be signed, by a court officer stating that a community service order of the court of which he is the court officer, in terms specified in or annexed to the certificate, was, at a time or during a period specified in the certificate, in force in respect of a person named in the certificate, is evidence of the matters so stated or specified.

Work under community service order to be taken into account, etc

38. (1) Where a person in respect of whom a community service order was made is subsequently dealt with by a court for the offence in respect of which the order was made, the court, in so dealing with the person, shall take into account —

- (a) that the order was made; and
- (b) anything done under that order.

(2) Subject to subsection (3), where a person in respect of whom a community service order was made is subsequently dealt with by a court for the offence in respect of which the order was made, that person shall have the same rights of appeal against the manner in which he is then dealt with as he would have had had he been so dealt with in the first instance.

(3) Where pursuant to paragraph 36(1)(b) the Supreme Court deals with a person for an offence in respect of which a community service order was previously made by the Court of Petty Sessions, that person shall, for the purposes of his right of appeal, be deemed to have been dealt with in respect of the offence upon consideration of the offence by the Supreme Court.

Division 5 – Custodial Orders

Subdivision 1 – Suspended Sentences of Imprisonment

Suspended sentence of imprisonment

39. (1) A court which sentences an offender to a term of imprisonment of not more than 5 years may make an order suspending the sentence if it is satisfied that it is desirable to do so in the circumstances.

(2) An order suspending a sentence of imprisonment may suspend the whole or a part of the sentence and the order may be subject to such conditions as the court thinks fit.

(3) A court shall not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate in the circumstances having regard to this Act.

(4) Where an offender is convicted of more than one offence in the same proceeding, a court may only make an order suspending a sentence of imprisonment imposed by it where the aggregate period of imprisonment imposed in respect of all the offences does not exceed 5 years.

(5) A wholly suspended sentence of imprisonment shall be taken to be a sentence of imprisonment for the purposes of all enactments except an enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits.

(6) A court shall specify in an order suspending a sentence of imprisonment a period of not more than 5 years from –

(a) if the whole of the sentence is suspended – the date of the order; or

(b) if a part of the sentence is suspended – the date specified in the order, during which the offender is not to commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 42.

(7) Where an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment under section 42, then, for the purposes of any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits, the offender shall be taken to have been sentenced to imprisonment on the day on which the order was made under that section.

(8) A partly suspended sentence of imprisonment shall be taken, for all purposes, to be a sentence of imprisonment for the whole term stated by the court.

(9) For the purposes of this section, a suspended sentence of imprisonment imposed on an offender on appeal shall be taken to have been imposed by the appellate court.

(10) Notwithstanding subsection (9), where a suspended sentence of imprisonment is imposed on an offender on appeal, an application under this subdivision that may be made to a court may be made to the court whose order was appealed against and that court may deal with the offender notwithstanding that the court is not the court that imposed the sentence.

Effect of suspended sentence

40. An offender in respect of whom a suspended sentence has been imposed under section 39 has to serve the sentence or part sentence held in suspense only if he or she is ordered to do so under section 42.

Variation of order conditionally suspending sentence

41. (1) A court which has made an order wholly or partially suspending a sentence of imprisonment on certain conditions may, on application under this subsection, if satisfied that –

(a) the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or

(b) the offender has failed or is no longer willing to comply with a condition of the order,

vary or cancel the order and, subject to subsection (2), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just convicted the offender of the offence or those offences.

(2) In determining how to deal with an offender following the cancellation of an order suspending a sentence of imprisonment, the court shall take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under subsection (1) may be made at any time by –
(a) the offender;

(b) a police officer or a Crown law officer.

(4) Notice of an application under subsection (1) shall be given to –

(a) the offender; and

(b) where the sentencing court was –

(i) the Supreme Court, a Crown law officer; or

(ii) the Court of Petty Sessions, the complainant or informant.

(5) A court may order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

Breach of order suspending sentence

42. (1) Where –

(a) while an order suspending a sentence of imprisonment under section 39 is in force; or

(b) within the period of 2 years after the expiry of the operational period of a suspended sentence,

it appears to a police officer or a Crown law officer that, during the operational period, the offender committed another offence against a law in force in Norfolk Island or elsewhere that is punishable by imprisonment, he or she may apply, in the prescribed form, to the court which sentenced the offender for an order under this section.

(2) Where it appears to a police officer or a Crown law officer, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject, he or she may apply, whether or not the order is still in force, in the prescribed form, to the court which sentenced the offender for an order under this section.

(3) Where an application is made under subsection (1) or (2) –

(a) notice of the application must be given to the offender; or

(b) where a magistrate is satisfied –

(i) in the case of an application under subsection (1) – that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in Norfolk Island or elsewhere that is punishable by imprisonment and that the offender may not appear; or

(ii) in the case of an application under subsection (2) – that the offender has breached a condition to which the order suspending the sentence is subject and that the offender may not appear,

the magistrate may issue a warrant for the arrest of the offender.

(4) The court may, on the hearing of an application under this section, order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

(5) A police officer who suspects, on reasonable grounds, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject may, without warrant, arrest the offender.

- (6) Where –
 - (a) an offender appears before a court –
 - (i) while an order made by the court suspending a sentence of imprisonment under section 39 is in force in respect of the offender; or
 - (ii) within the period of 2 years after the expiry of the operational period of a suspended sentence imposed by the court on the offender; and
 - (b) the court is satisfied that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in Norfolk Island or elsewhere that is punishable by imprisonment,

the court may of its own motion make an order under this section.

(7) Where a court is satisfied that an offender who is before the court has breached a condition to which an order made by the court suspending a sentence imposed on the offender is subject, the court may of its own motion make an order under this section.

(8) Where the Court of Petty Sessions is satisfied in respect of an offender who is before that court –

- (a) that, during the operational period of a suspended sentence imposed on the offender by the Supreme Court, the offender committed another offence against a law in force in Norfolk Island or elsewhere that is punishable by imprisonment; or
- (b) that the offender has breached a condition to which an order made by the Supreme Court suspending a sentence imposed on the offender is subject,

the Court of Petty Sessions may commit the offender to the Supreme Court to be dealt with by that court under this section.

(9) Where –

- (a) on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (6), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in Norfolk Island or elsewhere that is punishable by imprisonment; or
- (b) on the hearing of an application under subsection (2) or on the hearing of its own motion under subsection (7), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has breached a condition of the order,

the court may –

- (c) subject to subsection (11), restore the sentence or part sentence held in suspense and order the offender to serve it;
- (d) restore part of the sentence or part sentence held in suspense and order the offender to serve it;
- (e) in the case of a wholly suspended sentence, extend the operational period to a date after the date of the order suspending the sentence;

- (f) in the case of a partially suspended sentence – extend the operational period to a date after the date specified in the order suspending the sentence; or
- (g) make no order with respect to the suspended sentence.
- (10) Where a court orders an offender to serve a term of imprisonment that had been held in suspense, the term shall, unless the court otherwise orders, be served –
 - (a) immediately; and
 - (b) concurrently with any other term of imprisonment previously imposed on the offender by that or any other court.
- (11) A court shall make an order under subsection (9)(c) unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the facts of any subsequent offence and, if it is of that opinion, the court shall state its reasons.
- (12) Where a court makes no order with respect to a suspended sentence, the registrar shall record the fact in the records of the court.

Subdivision 2 – Home Detention Orders

Home detention order

- 43.** (1) A court which sentences an offender to a term of imprisonment may make an order suspending the sentence on the offender entering into a home detention order where it is satisfied that it is desirable to do so in the circumstances.
- (2) A court shall specify in the order the premises or place at which the offender is to reside or remain and the period, not exceeding 12 months, that the order is to remain in force.
- (3) A home detention order may be subject to such terms and conditions as the court thinks fit including, but not limited to, that the offender –
- (a) not leave the premises or place specified in the order except at the times and for the periods as prescribed or as otherwise permitted by a magistrate or a police officer;
 - (b) wear or have attached a monitoring device in accordance with the directions of the Chief Magistrate, and allow the placing, or installation in, and retrieval from, the premises or place specified in the order of such machine, equipment or device necessary for the efficient operation of the monitoring device; and
 - (c) obey the reasonable directions of a magistrate or police officer.
- (4) Where a court makes a home detention order the offender shall not leave the precincts of the court until he or she signs the order.
- (5) A police officer may, without warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).
- (6) Where a court makes a home detention order, it shall ensure that a copy of the order is –
- (a) given to the offender; and
 - (b) sent to the officer in charge and the registrar.

Circumstances in which home detention order may be made

- 44. (1)** A court may make a home detention order only if –
- (a) it receives a report from the officer in charge 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 order.
- (2)** For the purpose of subsection (1)(a), a court must order the officer in charge to prepare or cause to be prepared and provide to the court a report about the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (3)** In preparing a report for the purposes of subsection (1)(a), the officer in charge may take into account the views of those members of the community who, in the opinion of the officer in charge, may be affected by the making of the home detention order.

Where more than one home detention order made

- 45. (1)** Where a court makes a home detention order in respect of 2 or more offences, the aggregate period the order is to remain in force shall not exceed 12 months.
- (2)** Where a court makes a home detention order and there is or are in force in respect of the offender one or more other orders, the court shall not make a further order that results in the aggregate periods of the orders exceeding 12 months.

Review of home detention order

- 46. (1)** A court may, on the application of the officer in charge or the offender and having regard to circumstances which have arisen or become known since the home detention order was made –
- (a) discharge the order;
 - (b) revoke the order and –
 - (i) confirm the sentence of imprisonment imposed on the offender; or
 - (ii) order that the sentence of imprisonment 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
 - (c) vary the terms and conditions of the order including, subject to subsection (5), the period the order is to remain in force.
- (2)** Where the officer in charge makes an application under subsection (1), the court shall summons the offender to appear and, if the offender does not appear in answer to the summons, the court may issue a warrant for the offender's arrest.
- (3)** Where an offender makes an application for an order 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 officer in charge.

(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 officer in charge.

(5) An order under subsection (1)(c) shall not be made if the effect is that the period of the order, as varied, exceeds 12 months.

Breach of home detention order

47. (1) For the purposes of this subdivision, an offender breaches a home detention order if he or she –

- (a) fails to reside in or remain at the premises or place specified in the order;
- (b) fails to comply with a term or condition of the order;
- (c) 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;
- (d) fails to comply with a lawful request of a police officer to undergo a breath test, breath analysis or blood or urine test;
- (e) disturbs or interferes with any other person residing in the premises or at the place specified in the order;
- (f) assaults, threatens, insults or uses abusive language to a surveillance officer;
- (g) commits a breach of the Regulations; or
- (h) commits an offence against a law in force in Norfolk Island or elsewhere during the term of the order.

(2) If a magistrate is satisfied, on reasonable grounds by an information laid before him or her, that an offender in respect of whom a home detention order has been made has breached the order as specified in subsection (1), the magistrate 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 the offender should not be further dealt with under this section; or
- (b) where the information is on oath and the magistrate is satisfied that proceedings against the offender by summons might not be effective, issue a warrant for the arrest of the offender.

(3) If an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may, on proof of service of the summons, issue a warrant for the arrest of the offender.

(4) A police officer who suspects, on reasonable grounds, that an offender has breached a home detention order may, without warrant, arrest the offender and for that purpose may, by reasonable force if necessary, enter premises or a place.

(5) Where a court is satisfied that an offender has breached a home detention order, subject to subsection (8) –

- (a) if the order is still in force, the court must revoke the order; and
- (b) whether the order is revoked under paragraph (a) or is otherwise no longer in force, the offender must be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and despite any period that the offender may have served under the order.

(6) Where, after the expiration of the period of a home detention order, an offender in respect of whom the order was made is found guilty of an offence against a law in force in Norfolk Island or elsewhere committed during the period of the order, 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) 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 a court in a proceeding under this section, the matter contained in the records is, as far as it is applicable, evidence of the activities of the offender.

(8) Where –

- (a) the offender has breached a home detention order by virtue of subsection (1)(a), (b), (c), (d), (e), (f) or (g) and, having regard to the circumstances of the offender or the breach, the court is of the opinion that it is appropriate to do so; or
- (b) the offender has breached a home detention order by virtue of subsection (1)(h) and the offence committed is a regulatory offence or is not punishable by imprisonment,

despite subsection (5), the court may –

- (c) if the order is still in force – direct that the order continue in force and, in so doing, may vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force; or
- (d) if the order is no longer in force – subject to subsection (11), make another order under section 44(1) suspending the sentence on the offender entering into a home detention order.

(9) Where a court, in accordance with subsection (8), does not revoke a home detention order, it may, in directing that the order continue in force, vary the terms and conditions of the order, including, subject to subsection (10), the period the order is to remain in force.

(10) A variation of a home detention order shall not be made under subsection (9) if the effect of that variation is that the period of the order exceeds 12 months.

(11) A home detention order must not be made for the purpose of subsection (8)(d) if the aggregate of –

- (a) the period of the order made for the purpose of subsection (8)(d); and
- (b) so much of the period of the order that was breached as remained after the date of the breach,

exceeds 12 months.

(12) Where an offender has breached a home detention order by virtue of subsection (1)(c), the offender is liable to pay the costs of restoring or replacing a monitoring device, or associated machine, equipment or device, destroyed or damaged in the breach of the order and those costs may be recovered from the offender as a debt due and payable to the Administration.

(13) Where an offender has breached a home detention order by virtue of subsection (1)(h) or has been found guilty of an offence in circumstances referred to in subsection (6) and the offender is sentenced to a term of imprisonment for the offence, the term shall commence at the expiration of the term of imprisonment suspended on the making of the order.

Subdivision 3 - Periodic detention

Definitions

48. (1) In this subdivision, unless the contrary intention appears —
custodial officer means a police officer or a custodial officer as provided for by section 77;

detainee means an offender in respect of whom an order for periodic detention is in force;

detention centre means a place declared to be a detention centre under section 76;

detention period, in relation to a detainee, means a period that, subject to any order of the officer in charge under section 58 —

- (a) commences at 7.00 p.m. on the same day of the week as the date specified in the order of the court imposing the sentence as the day on which the sentence commences; and
- (b) ends at 4.30 p.m. on the second day after the day on which the period commences;

but does not include any such period which includes the whole or any part of Christmas Day, Good Friday or Easter Sunday;

medical practitioner means a registered medical practitioner within the meaning of the *Medical Practitioners Registration Act 1983*;

officer means a custodial officer or police officer;

periodic detention means periodic detention that is the subject of an order under section 49;

(2) A reference in this Act to an order for periodic detention shall, if the order has been varied, be read as a reference to the order as varied, unless the contrary intention appears.

Power to order periodic detention

49. (1) A court —
- (a) which convicts a person of an offence against a law of Norfolk Island; and
 - (b) which, but for the option of making an order under this section, would otherwise sentence the person to a term of imprisonment of not less than 3 months but not more than 24 months,

may, instead of sentencing the person to imprisonment, by order —

- (c) sentence the person to complete such number of detention periods at a detention centre, as the court specifies; and
- (d) direct that the person be released from custody subject to any order that may be made under subsection 54(2).

(2) The number of detention periods that a person may be required to serve under an order shall be calculated at the rate of 1 detention period for each week of the term of imprisonment to which the person would otherwise have been sentenced.

- (3) An order for periodic detention remains in force until —
 - (a) the relevant detention periods required to be served under the order, or any detention periods by which the order has been extended under section 65 have been served; or
 - (b) the order has been cancelled.

Core conditions

50. The following core conditions shall be included in an order for periodic detention —

- (a) that the offender report to an officer at the relevant detention centre on the date and at the time specified in the order;
- (b) that the offender notify an officer at the detention centre within 48 hours of being charged with an offence in Norfolk Island or elsewhere, while the order is in force;
- (c) that the offender not commit an offence punishable by imprisonment, while the order is in force;
- (d) that the offender notify an officer at the detention centre of any change in his or her address, while the order is in force, within 48 hours after the change;
- (e) that, while the order is in force, the offender obey all lawful instructions and directions of the officer in charge or an officer.

Circumstances in which periodic detention order may be made

- 51. (1)** A court shall not make an order under section 49 unless —
- (a) the court is satisfied that it is appropriate for the offender to undertake such an order; and
 - (b) the offender submits himself or herself to a medical examination by a medical practitioner, if so required by the court; and
 - (c) the court has received a pre-sentence report in respect of the offender; and
 - (d) the court has explained to the offender —
 - (i) the effect the proposed order would have; and
 - (ii) the consequences of non-compliance with the order and the circumstances in which the offender would be taken to have breached the order; and
 - (iii) that the court has the power under this Act to review the order on the application of the officer in charge or the offender; and
 - (e) the court is satisfied that the offender consents to undertaking such an order.
- (2)** For the purpose of paragraph (1)(a) the court may have regard to such matters as it considers appropriate, including —
- (a) the pre-sentence report referred to in paragraph (1)(c); and
 - (b) where a person has submitted to a medical examination by a medical practitioner, as required by the court - the report of that medical practitioner in respect of that examination; and
 - (c) a report by an officer, as required by the court.

Detainee taken to be in lawful custody

- 52.** A detainee shall —
- (a) while undertaking periodic detention at a detention centre; or
 - (b) while working or travelling outside a detention centre pursuant to an order under this Act,

be taken to be in lawful custody.

Periodic detention - concurrent and cumulative sentences

53. (1) An order for periodic detention may require that a sentence be served by way of periodic detention wholly or partly concurrently with, or cumulatively on, another sentence or other sentences required by the same or a different order to be served by way of periodic detention.

- (2)** A court shall not make an order unless, at all times, the sum of —
- (a) the number of detention periods remaining to be served concurrently under the order or orders; and
 - (b) the number of detention periods remaining to be served, otherwise than concurrently, under the order or orders, does not exceed 104.

Notice to detainee

54. (1) Where a periodic detention order has been made, an officer of the court shall forthwith serve, or cause to be served, on the detainee a copy of the order together with a notice specifying —

- (a) the date on which the detainee is first to report to the detention centre;
- (b) the day of the week on which the detainee is thereafter to report, during his or her sentence; and
- (c) the time and the place at which the detainee is to report on that date and on each such day.

(2) The court may order that a detainee who is in custody shall not be released until after he or she has been given a notice under subsection (1).

Commencement of sentence

55. A sentence of periodic detention commences on the date specified in the order of the court under section 49.

Service of sentence

56. (1) A detainee shall serve his or her sentence by way of periodic detention in accordance with this Act.

(2) A detainee shall first report on the date and at the time and place specified in the notice to the detainee under subsection 54(1) and thereafter during the term of the detainee's sentence on the day of the week specified in the notice as the day on which he or she is so to report and at the same time and place unless otherwise ordered in writing under this Act by the officer in charge, and if so ordered, then in accordance with the order made by the officer in charge.

(3) Subsection (2) ceases to apply in respect of a detainee if the order for periodic detention that was made in respect of the detainee is cancelled.

- (4) Where —
- (a) a detainee is required, by or under this Act, to report at a detention centre; and
- (b) the Regulations prescribe the manner in which a detainee is to report, the detainee complies with the requirement only if he or she reports in the manner so prescribed.

Work, etc

- 57.** (1) The officer in charge may, by order in writing, direct a detainee —
- (a) to participate in any activity, attend any class or group or undergo any instruction that the officer in charge considers conducive to the detainee's welfare or training; or
 - (b) to perform, between such hours as are specified in the order, any work in a detention centre specified in the order that the officer in charge considers suitable to the detainee's physical capacity; or
 - (c) to report to an officer specified in the order at a specified place other than a detention centre and to perform work that the officer in charge considers suitable to the detainee's physical capacity,

during any detention period.

- (2) For the purposes of paragraph (1)(c), the officer in charge may direct a detainee to perform work at —

- (a) a hospital or a charitable or educational institution; or
- (b) the home of an elderly person, an infirm person or a person with a disability; or
- (c) an institution for the elderly, the infirm or persons with disabilities.

(3) The officer in charge shall not direct a detainee to perform any work referred to in subsection (2) if, in performing the work, the detainee would take the place of any person who would otherwise be employed on that work as a regular employee.

(4) Where the officer in charge makes an order under paragraph (1)(c) and for any reason work is not available at the place specified in that order or it is impracticable for the detainee to perform work at that place, the detainee shall report at such other place nominated, and in accordance with such instructions as may be given to him or her, by an officer specified in the order.

Variation of days of attendance

58. (1) A detainee may make application in writing to the officer in charge requesting the officer in charge to make an order varying the day on which the detainee's detention period during the whole or part of the detainee's sentence is to commence.

(2) Where a detainee makes application under subsection (1), the officer in charge, may —

- (a) grant the application and order that the day in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

Variation of times of attendance

59. (1) A detainee may make application in writing to the officer in charge requesting the officer in charge to make an order varying —

- (a) the time at which he or she is required to report at a detention centre or place of work during the whole or part of the detainee's sentence; and
- (b) the time at which he or she may leave a detention centre or place of work during the whole or part of the detainee's sentence.

(2) Subject to subsection (3), where a detainee makes application under subsection (1), the officer in charge may —

- (a) grant the application and order that the times in respect of which the application is made be varied as requested in the application; or
- (b) refuse to grant the application.

(3) The officer in charge shall refuse to grant an application which has the effect of increasing or reducing the number of consecutive hours of periodic detention.

Officer in charge to give notice

60. Where the officer in charge makes an order under section 57, 58 or 59 he or she shall cause written notice of the order to be given to the detainee to whom the order relates.

Commencement of certain orders

61. An order under section 57, 58 or 59 takes effect on the day on which the order is made, or if the order provides for a later date of effect, as so provided.

Effect of complying with certain orders

62. For the purposes of this Act, a detainee shall be taken to be complying with an order for periodic detention if he or she serves his or her sentence in accordance with an order of the officer in charge made under section 57, 58 or 59 in respect of the detainee and while the detainee complies with such an order that is inconsistent with a provision of an earlier order of the court or the officer in charge in respect of the detainee, the earlier order shall, to the extent of the inconsistency, cease to have force or effect.

Detainee unfit for detention

63. (1) The officer in charge may refuse to admit a detainee to a centre where he or she believes on reasonable grounds that —

- (a) the detainee is unfit to serve a period of detention because the detainee's behaviour is unruly or is otherwise a threat to the good order or security of the centre; or
- (b) the detainee is unfit to serve a period of detention because the detainee's behaviour is affected by alcohol or a drug.

(2) Where under subsection (1) a detainee has been refused admission to a detention centre, the detainee shall be taken to have failed to report for periodic detention.

Leave of absence

64. (1) The officer in charge may grant leave of absence from a detention period to any detainee for health reasons or on compassionate grounds or for such other reasons as the officer in charge considers sufficient.

(2) Leave of absence may be granted in the prescribed manner either before or after the detention period to which it relates.

(3) The Court of Petty Sessions may, on the application of a detainee whose request for leave of absence for 1 or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

(4) An application under subsection (3) shall be made within 21 days after the date on which the request to which it relates was refused.

(5) Subject to any order of the court to the contrary, the making of an application does not stay the operation of section 65 with respect to any detention period to which the application relates.

(6) Leave of absence shall be taken to have been granted for each detention period in respect of which a direction under this section is made.

(7) A detainee who is granted leave of absence from a period of detention shall not be taken to be serving that period of detention for the purposes of his or her sentence.

Extension of detention

65. (1) Where a detainee fails to report as required for a detention period and has not been granted leave of absence in respect of that period, the detainee's sentence is extended by 1 detention period for each detention period for which the detainee has failed to report.

(2) The term of a sentence may not be extended under subsection (1) by more than 2 detention periods.

(3) Subsection (1) does not have effect until the detainee has been given written notice to the effect that —

- (a)** the detainee has failed to report, as required by or under this Act;
- (b)** that subsection operates to extend the term of the detainee's sentence as a result of the failure to report; and
- (c)** the detainee may apply to the officer in charge for leave of absence under section 64 with respect to any 1 or more of the detention periods concerned.

Variation of sentence on compassionate grounds

66. Where, on application by the officer in charge or a detainee, the court that made the order for periodic detention in respect of the detainee is satisfied that the detainee is unlikely to be able to serve the remainder of his or her sentence within a reasonable time having regard to —

- (a)** the health of the detainee; or
- (b)** any other compassionate grounds; or
- (c)** the number of detention periods remaining to be served by the detainee; or
- (d)** the length of time during which it appears that the detainee will be unable to serve periodic detention,

the court may vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

Directions

67. The officer in charge may, subject to any Regulations made for the purposes of this subsection, give directions (not inconsistent with a provision of this Act or a Regulation or an order in force under this Act) to any detainee for the purpose of securing the enforcement or observance of the provisions of this Act, a Regulation or rule or an order in force under this Act.

Detainee not an employee

68. Where a detainee is working pursuant to an order of the officer in charge under paragraph 57(1)(b) or (c), the detainee is not to be regarded as an employee for the purposes of the *Employment Act 1988*.

Cancellation on subsequent conviction

69. Where a detainee is convicted of an offence and sentenced on that conviction to a term of imprisonment, the court before which he or she is convicted may cancel the order for periodic detention that was made in respect of him or her.

Cancellation otherwise than on subsequent conviction

70. (1) Subject to this section, where an order for periodic detention is in force in respect of a detainee, the court that made the order may, on application by the detainee or the officer in charge, cancel the order if it appears to the court that there are good grounds for doing so.

(2) Without limiting the generality of subsection (1), the court may, on the application of the officer in charge, cancel the order if satisfied that the person is not serving his or her sentence in accordance with the order.

(3) Without limiting the generality of subsection (1), the court shall, on the application of the officer in charge, cancel the order if satisfied that —

- (a)** the person has, for 3 or more detention periods, whether consecutive or not, failed to report, as required by or under this Act; and
- (b)** the failures to report occurred otherwise than on leave of absence under section 64.

(4) Before hearing an application to cancel an order under this section the court shall —

- (a)** in the case of an application by the officer in charge —
 - (i)** cause the detainee to be served with a summons for his or her appearance together with a copy of the application; or
 - (ii)** where the court considers it necessary to secure the appearance of the detainee other than by way of summons - instead of issuing a summons, issue a warrant for the apprehension of the detainee; and
- (b)** in the case of an application by a detainee - cause the officer in charge to be served with a copy of the application.

(5) Notwithstanding the issue of a summons under subparagraph (4)(a)(i), the court may issue a warrant at any time before or after the time mentioned in the summons for the appearance of the detainee.

(6) The court may refuse to cancel the order under subsection (3) if satisfied that —

- (a) leave of absence should have been granted under section 64 with respect to 1 or more detention periods; and
- (b) the total number of detention periods for which the person has failed to report as referred to in subsection (3) would, had the leave of absence been granted with respect to those detention periods, be less than 3,

in which case it shall make a determination to that effect.

(7) Where the court makes a determination under subsection (6), leave of absence under section 64 shall be taken to have been granted in accordance with the terms of the determination.

(8) In proceedings on an application under this section, a certificate purporting to be signed by the officer in charge and certifying any of the following —

- (a) that a person is a detainee;
- (b) particulars of a periodic detention order;
- (c) particulars of any failure by a detainee to serve his or her sentence in accordance with the order,

is evidence of the matters certified.

(9) A certificate referred to in subsection (8) shall not be admitted in evidence, unless the court is satisfied that reasonable efforts have been made to serve a copy of the relevant certificate on the detainee concerned.

(10) The court shall not cancel an order under this section if satisfied that the grounds for cancellation of the order would constitute a sufficient reason for an order for variation of the sentence to be made under section 66 in which case the court shall vary the sentence by cancelling the remaining detention periods that were to be served by the detainee.

Certain effects of cancellation of order for periodic detention

71. (1) Where an order for periodic detention is cancelled under section 69 or 70 —

- (a) any order that was made under section 57, 58 or 59 in respect of the detainee, ceases to have effect; and
- (b) subject to subsection 72(1), any remaining periods of detention to which the order applied shall be served as a separate term of imprisonment imposed at the time of the cancellation.

(2) The term of imprisonment that a person is liable to serve for the purposes of this section shall be calculated at the rate of 1 week for each detention period that the person would otherwise have been required to serve under an order if it had not been cancelled.

Conditional release

72. (1) Where, pursuant to paragraph 71(1)(b), a person is required to serve a term of imprisonment, the court may, by order, direct that the person be released forthwith or after serving a specified part of the term of imprisonment upon his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court that —

- (a) he or she will be of good behaviour for such period as the court specifies in the order; and
- (b) he or she will during the period so specified, comply with such conditions (if any) as the court considers appropriate to specify in the order, which conditions may include —
 - (i) the condition that the person will, during the period so specified, be subject to the supervision on probation of a person, for the time being appointed in accordance with the order; and
 - (ii) the condition that the person will obey all reasonable directions of a person so appointed.

(2) A court shall not release a person under subsection (1) on condition that the person perform unpaid community work.

Escape from detention

73. Section 47 of the *Commonwealth Crimes Act 1914* applies in relation to a person serving a term of imprisonment as a result of the cancellation of a periodic detention order under section 69 or 70.

Offences

- 74. (1)** A detainee who —
- (a) contravenes —
 - (i) an order or direction given by the officer in charge; or
 - (ii) a direction given by an officer; or
 - (b) makes, conceals or has in his or her possession, without authority, a tool, weapon, knife, key or other implement or thing capable of being used, to effect the escape of the person or to cause harm to any person or property,

is guilty of an offence, punishable on conviction by a fine not exceeding 25 penalty units or imprisonment for 6 months, or both.

(2) It is a defence to a prosecution for an offence against paragraph (1)(a) if the detainee establishes that —

- (a) he or she has a reasonable excuse for the contravention; and
- (b) he or she had made known that excuse to the person who gave the order or direction within a reasonable time.

(3) It is a defence to a prosecution for an offence involving an order made under this Act if the detainee establishes that the terms of the order were not communicated to him or her in sufficient time to enable compliance with the order, but the terms of such an order shall be taken to have been communicated to a detainee upon whom a notice of the order was duly served.

(4) It is a defence to a prosecution for an offence involving a direction given under this Act if the detainee establishes that —

- (a) the direction was not communicated to him or her in sufficient time to enable compliance with the direction; or
- (b) the direction was inconsistent with another direction given to him or her under this Act and he or she was obeying that other direction.

(5) It is a defence to a prosecution for an offence against a provision of this Act, a regulation or an order made under this Act or a standing order concerning the good order, discipline and security of a detention centre if he or she was obeying a direction or an instruction given to him or her under this Act and that he or she could not, at the same time that he or she was obeying the direction or the instruction, as the case may be, comply with the provision, Regulation, order or standing order.

Delegation by officer in charge

75. The officer in charge may delegate in writing any of the officer in charge's powers under this Act to an officer.

Declaration of centres

76. The Minister may, by notice in the Gazette, declare a place to be a detention centre.

Custodial officers

77. The Minister may appoint custodial officers for the purposes of this Act.

Powers and duties of officers

78. (1) An officer —

- (a) shall not jeopardise —
 - (i) the good order, discipline and security of a detention centre; or
 - (ii) the welfare or discipline of detainees; and
- (b) shall report immediately to the officer in charge anything which might reasonably be thought to jeopardise such matters.

(2) An officer may give directions to a detainee concerning the manner in which the detainee is to comply with an order in force under this Act.

(3) A direction under subsection (2) shall not unreasonably interfere with work being done by a detainee, education being undertaken by a detainee or the practice by a detainee of a religion.

Entitlements of detainees

79. A detainee is entitled —

- (a) to wear his or her own clothing; and
- (b) to receive necessary health services.

Discipline

80. (1) Where the officer in charge believes on reasonable grounds that it is necessary to do so —

- (a) to maintain the good order, discipline or security of a detention centre; or
- (b) for the welfare or discipline of a detainee,

he or she may —

- (c) arrange for the detainee to be confined to sleeping quarters; or
- (d) direct the detainee to leave the centre, or other place at which the detainee has been directed to work, and inform the detainee that the detention period that was being served by the detainee is to be taken to be terminated and that the detainee's sentence is to be extended by a further detention period.

(2) Where a detainee has been directed to leave a detention centre, or other place, under paragraph (1)(d), the relevant detention period shall be taken to be terminated and the detainee's sentence is extended by a further detention period.

Clothing and body searches

81. (1) Subject to this section, where the officer in charge believes on reasonable grounds that it is necessary to do so —

- (a) to maintain the good order, discipline or security of a detention centre; or
- (b) for the welfare or discipline of a detainee,

he or she may carry out, or direct another officer to carry out, a search of a detainee, or of the clothing that is being worn by, or property in the apparent control of, the detainee.

(2) A body search —

- (a) shall be conducted in a private area;
- (b) subject to subsection (3), shall be conducted, by a custodial officer who is of the same sex as the detainee,
- (c) subject to subsection (4), shall not be conducted, in the presence or view of a person who is of the opposite sex to the detainee;
- (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
- (e) shall not involve a search of a person's body cavities.

(3) A body search may be conducted by a custodial officer of the opposite sex to the detainee if a custodial officer of the same sex as the detainee is not available within a reasonable time.

(4) A body search may be conducted in the presence of a medical practitioner or nurse of the opposite sex to the detainee if a medical practitioner or nurse of the same sex as the detainee is not available within a reasonable time.

(5) If any of the detainee's garments are seized as a result of a body search, the detainee shall be provided with adequate clothing.

(6) The Regulations may make provision in relation to the conduct of searches carried out under subsection (1).

(7) In this section —

body search means a search under subsection (1) that involves a detainee being required to remove —

- (a) all of his or her garments; or
- (b) some of his or her garments (not being an overcoat, a coat or jacket or any gloves, headwear or footwear), for the purposes of an examination of any part of the detainee's body (but not of the detainee's body cavities) and of those garments.

Use of force

82. (1) The officer in charge may use or direct the use of such force as is necessary and reasonable —

- (a) to maintain good order, discipline and security of a detention centre; or
- (b) for the welfare or discipline of detainees.

(2) A custodial officer may use such force as is necessary and reasonable to compel a detainee to obey a lawful direction, if the officer believes on reasonable grounds that it is necessary to do so to prevent —

- (a) the detainee or another person being killed or seriously injured; or
- (b) serious damage to property.

(3) If a custodial officer uses force to compel a detainee to obey a direction, he or she shall report the fact to the officer in charge as soon as possible.

Medical treatment

83. (1) The officer in charge may arrange for a medical practitioner to examine a detainee subject to the detainee consenting to such examination.

(2) Where a medical practitioner considers it necessary that a detainee be removed from a detention centre, or other place at which the detainee has been directed to work, to receive medical treatment in a hospital or from a medical practitioner, he or she shall notify the officer in charge in writing of the fact.

(3) Where, during a detention period, a detainee is removed under this section for the purposes of receiving medical treatment, the whole or part of that detention period during which the detainee is away for that purpose shall be taken to be served by the detainee as part of that sentence.

Inspection of centres

84. A Judge, magistrate or a member of the Legislative Assembly nominated by the Assembly may, at any time, inspect a detention centre or other places at which detainees have been directed to work.

Offences by persons other than detainees

85. A person shall not —

- (a) enter, or remain in, a detention centre without lawful excuse; or
- (b) unlawfully convey an article into or out of a detention centre or to or from a detainee.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

*Subdivision 4 – Imprisonment***Term of imprisonment where none prescribed**

86. Where a person is found guilty of an offence against a law in force in Norfolk Island punishable by imprisonment but the maximum term of imprisonment is not prescribed by law, then the maximum term which may be ordered is imprisonment for 2 years.

Imprisonment to be served concurrently unless otherwise ordered

87. Unless otherwise provided by this Act or the court imposing imprisonment otherwise orders, where an offender is –

- (a) serving, or has been sentenced to serve, a term of imprisonment for an offence; and
- (b) sentenced to serve another term of imprisonment for another offence, the term of imprisonment for the other offence is to be served concurrently with the first offence.

Cumulative orders of imprisonment

88. (1) If an offender is –

- (a) serving, or has been sentenced to serve, a term of imprisonment for an offence; and
- (b) sentenced to serve another term of imprisonment for another offence, the term of imprisonment for the other offence may be directed to start from the end of the term of imprisonment for the first offence or an earlier date.

(2) Subsection (1) applies whether the term of imprisonment for the first offence is being served concurrently with or cumulatively on the term of imprisonment for another offence.

Aggregate sentences of imprisonment

89. (1) Where an offender is found guilty of 2 or more offences joined in the same information, complaint or indictment, the court may impose one term of imprisonment in respect of both or all of those offences but the term of imprisonment shall not exceed the maximum term of imprisonment that could be imposed if a separate term were imposed in respect of each offence.

(2) A court shall not impose one term of imprisonment under subsection (1) where one of the offences in respect of which the term of imprisonment would be imposed is an offence against section 112 of the *Criminal Code*.

(3) Subsection (1) does not apply if one of the offences in the information, complaint or indictment is a violent offence or a sexual offence.

Imprisonment for life

90. (1) A person sentenced to imprisonment for life is, subject to subsection (2), to serve that sentence for the term of the person's natural life.

(2) Despite subsection (1) and any other law, if an offender is liable to imprisonment for life, a court may nevertheless impose a sentence of imprisonment for a stated term.

Non-parole periods for crime of murder

91. (1) Subject to this section, where a court (*the sentencing court*) sentences an offender to be imprisoned for life for the crime of murder, the court must fix under section 90(1) –

- (a) a standard non-parole period of 20 years; or
- (b) if any of the circumstances in subsection (3) apply – a non-parole period of 25 years.

(2) The standard non-parole period of 20 years referred to in subsection (1)(a) represents the non-parole period for an offence in the middle of the range of objective seriousness for offences to which the standard non-parole period applies.

(3) The circumstances referred to in subsection (1)(b) are any of the following:

- (a) the victim's occupation was police officer, emergency services worker, correctional services officer, judicial officer, health professional, teacher, community worker or other occupation involving the performance of a public function or the provision of a community service and the act or omission that caused the victim's death occurred while the victim was carrying out the duties of his or her occupation or for a reason otherwise connected with his or her occupation;
- (b) the act or omission that caused the victim's death was part of a course of conduct by the offender that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim;
- (c) the victim was under 18 years of age at the time of the act or omission that caused the victim's death;
- (d) if the offender is being sentenced for 2 or more convictions for unlawful homicide;
- (e) if the offender is being sentenced for one conviction for murder and one or more other unlawful homicides are being taken into account;
- (f) at the time the offender was convicted of the offence, the offender had one or more previous convictions for unlawful homicide.

(4) The sentencing court may fix a non-parole period that is longer than a non-parole period referred to in subsection (1)(a) or (b) if satisfied that, because of any objective or subjective factors affecting the relative seriousness of the offence, a longer non-parole period is warranted.

(5) The sentencing court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

(6) The sentencing court may fix a non-parole period that is shorter than the standard non-parole period of 20 years referred to in subsection (1)(a) if satisfied there are exceptional circumstances that justify fixing a shorter non-parole period.

(7) For there to be exceptional circumstances sufficient to justify fixing a shorter non-parole period under subsection (6), the sentencing court must be satisfied of the following matters and must not have regard to any other matters:

- (a) the offender is –
 - (i) otherwise a person of good character; and
 - (ii) unlikely to re-offend;
- (b) the victim's conduct, or conduct and condition, substantially mitigate the conduct of the offender.

(8) In considering whether the offender is unlikely to re-offend, the matters the sentencing court may have regard to include the following:

- (a) whether the offender has a significant record of previous convictions;
- (b) any expressions of remorse by the offender;
- (c) any other matters referred to in section 5(2) that are relevant.

(9) The sentencing court must give reasons for fixing, or refusing to fix, a non-parole period and must identify in those reasons each of the factors it took into account in making that decision.

(10) The failure of the sentencing court to comply with this section when fixing, or refusing to fix, a non-parole period does not invalidate the sentence imposed on the offender.

....

Commencement of sentences of imprisonment

100. (1) Subject to this Division, a sentence of imprisonment commences on the day it is imposed unless the offender is not then in custody in which case it commences on the day he or she is apprehended under a warrant of commitment issued in respect of the sentence.

(2) Where an offender to whom subsection (3) applies is, in the period during which service of the sentence is suspended under that subsection, imprisoned under another sentence, the unexpired portion of the suspended sentence takes effect –

- (a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or
- (b) in any other case, at the end of the period of suspension.

(3) Where an offender sentenced to a term of imprisonment and allowed to be or to go at large pending an appeal or the consideration of any question of law reserved or case stated is imprisoned under another sentence at the time when the appeal, question of law or case stated is finally determined, the first-mentioned sentence or the unexpired portion of it takes effect –

- (a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or
- (b) in any other case, on the day on which the appeal, question of law or case stated is finally determined.

(4) Subsection (3) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

Calculation of term of imprisonment

101. (1) Notwithstanding anything to the contrary in this or any other Act or in a rule of law or practice, a sentence of imprisonment shall be calculated exclusive of any time during which service of the sentence is suspended under section 100(2) or (3).

(2) Where an offender lawfully imprisoned under a sentence escapes or fails to return after an authorised absence, the period between then and the day on which the person surrenders or is apprehended does not count in calculating the term to be served, and service of the sentence is suspended during that period.

(3) Where an offender serving a sentence of imprisonment is –

(a) subject to an order made under Part 4 or 4A of the *Mental Health Act* 1996; or

(b) at a hospital outside the prison at which the sentence is being served, the time that the offender is subject to the order or at the hospital counts in calculating the term to be served.

(4) Except as expressly provided or expressly ordered, a sentence of imprisonment on conviction, takes effect from the day the court passes sentence on the offender and a sentence of imprisonment on summary conviction takes effect from the commencement of the offender's custody under the sentence.

(5) Where an offender has been in custody on account of his or her arrest for an offence and the offender is convicted of that offence and sentenced to imprisonment it may be ordered that such imprisonment shall be regarded as having commenced on the day on which the offender was arrested or on any other day between that day and the day on which the court passes sentence.

(6) A person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty, on recapture, shall undergo the punishment that the person was undergoing at the time of his or her escape for a term equal to that during which the person was absent from prison after his or her escape and before the expiration of the term of his or her original sentence and whether at the time of his or her recapture the term of that sentence has or has not expired.

....

Division 7 – Imprisonment for violent offences

Imprisonment for violent offences

118. (1) Where a court finds an offender guilty of a violent offence and the offender has one or more times before (whether prior to or after this section commencing) been found guilty of a violent offence, the court must record a conviction and must order that the offender serve –

(a) a term of actual imprisonment; or

(b) a term of imprisonment that is suspended by it partly or wholly.

(2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

*Division 8 – Imprisonment for sexual offences***Imprisonment for sexual offences**

119. (1) Where a court finds an offender guilty of a sexual offence, the court must record a conviction and must order that the offender serve –

- (a) a term of actual imprisonment; or
- (b) a term of imprisonment that is suspended by it partly or wholly.

(2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

PART 4 – ORDERS IN ADDITION TO SENTENCE*Division 1 – Restitution and Compensation Orders***Application of this Division**

120. A court may make an order under this Division whether or not it records a conviction and where the offender is acquitted on the ground of self-induced intoxication in the circumstances set out in Division 2.3.3 of the *Criminal Code*.

Orders for restitution and compensation

121. A court may order an offender –

- (a) to pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;
- (b) to make restitution of property taken in the course of or in connection with the commission of an offence; and/or
- (c) to pay compensation for the loss or destruction or damage to property that occurs in the course of or in connection with the commission of an offence.

Reimbursement of costs of restoring property, etc

122. (1) A court may order an offender to pay the reasonable costs incurred by the Administration arising out of the commission of the offence including the costs of removing, disposing, dispersing, destroying, rehabilitating and/or cleaning up a thing used in or associated with the commission of the offence.

(2) For the purposes of subsection (1), a thing includes real property.

Making of order

123. (1) An order under this Division is in addition to any other order to which an offender is liable.

(2) Where an offence is taken into account under section 143 in imposing sentence on an offender for another offence, the court may make an order under this Division.

(3) Where a court makes an order under this Division because of subsection (2), then, notwithstanding section 143, the offender has the same right of appeal as if the court had convicted the offender of the offence in relation to which the order was made.

(4) A court may make an order for restitution under this Division only where it is satisfied that there has been property loss and that the person claiming the loss is entitled to recover the property.

(5) A court shall not make an order under this Division where the person whose property was taken, lost, destroyed or damaged does not consent to the order being made.

124. Application for order

(1) An order under this Division may be made on the court's own motion or on the application of the prosecutor.

(2) Nothing in subsection (1) requires a prosecutor to make an application on behalf of a person.

Form of order

125. An order under this Division may specify –

- (a) the amount to be paid by way of restitution, compensation or costs;
- (b) the person to whom restitution is to be made or compensation is, or costs are, to be paid;
- (c) the time within which restitution is to be made or compensation is, or costs are, to be paid; and
- (d) the way in which restitution is to be made, compensation is, or costs are, to be paid.

Imprisonment for breach of order

126. (1) A court which makes an order under this Division may order that the offender be imprisoned if the offender fails to comply with the order.

(2) A term of imprisonment ordered to be served under subsection (1) shall not be longer than 12 months.

(3) In making an order under subsection (1), a court may give such directions as it thinks fit for the enforcement of the order including a direction that the offender appear before the court –

- (a) at a time and place stated in the direction; or
- (b) when called on by notice,

to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.

(4) Where an offender fails to appear as required by a direction under subsection (3), the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause in accordance with the direction.

(5) In addition to subsection (4), where it appears to a court that there are reasonable grounds for believing that an offender has failed to comply with an order made under this Division, the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.

Extension of time of order

127. (1) A court which makes an order under this Division, may extend the time stated in the order within which the restitution is to be made or the compensation is, or costs are, to be paid.

(2) A court which grants an extension of time under subsection (1) may vary the extended time.

Payment of compensation by instalment

128. Where compensation is ordered to be paid by instalments and an instalment is not paid, the same proceedings may be taken as if the original order had directed that the unpaid instalments be paid in a single amount and the amount had not been paid.

Application by person against whom order made

129. An offender ordered by a court to pay compensation under section 120 may apply to the registrar in the manner prescribed by the rules of the court for an order –

- (a) that time be allowed for the payment of the compensation;
- (b) that the compensation be paid by instalments; or
- (c) for the variation of an order providing for the compensation to be paid by instalments.

Orders not to affect other rights

130. Nothing in this Division affects the right of a person to bring and maintain a civil action except that anything done or paid under an order made under this Division shall be taken into account in any award of damages.

*Division 2 – Other Orders***Cancellation of driver's licence**

131. Where a person found guilty or convicted of an offence used a motor vehicle when committing or to facilitate the commission of the offence, the court may, if the offender –

- (a) holds a driver's licence, cancel the licence and, if the court thinks fit, disqualify the offender from obtaining one for such time as it thinks fit; or
- (b) does not hold a driver's licence, disqualify the offender from obtaining one for such time as it thinks fit.

Passport orders

132. (1) Where an offender is convicted of an offence, the court may, in addition to any other order it may make under this Act, order that the offender –

- (a) remain in Australia or Norfolk Island;
- (b) not apply for or obtain an Australian passport; and/or
- (c) surrender every passport, whether Australian or foreign, held by the offender.

(2) An offender who contravenes or fails to comply with an order made under subsection (1) is guilty of an offence.

Penalty: Imprisonment for 2 years.

(3) Where a court makes an order under subsection (1)(c) –

- (a) the passport or passports shall be given to the registrar;
- (b) the registrar shall cause the passport or passports to be kept in such custody as he or she thinks fit for such period, or on the occurrence of any contingency, as is specified by the court; and
- (c) the passport or passports shall, in accordance with the terms specified under paragraph (b), be returned to the offender unless the court orders otherwise.

(4) Where a court makes an order under subsection (1)(b) or (c), the registrar shall, as soon as is practicable after the order is made, give a copy of it to the Commonwealth Minister administering the *Passports Act 1938* of the Commonwealth.

(5) An order under subsection (1) remains in force for the duration of the sentence (whether or not the sentence is one that involves, in whole or part, a term of imprisonment).

(6) Where an order under subsection (1) requires the offender to surrender a passport –

(a) the passport shall be given to the registrar; and

(b) the registrar shall cause the passport to be kept in such custody as the registrar considers appropriate until –

(i) the passport is returned under subsection (7); or

(ii) the authority that issued the passport requests its return,

whichever happens first.

(7) Where a passport is still in the custody of the registrar when the order under subsection (1) finishes, the registrar shall cause it to be returned to the offender.

Forfeiture of property orders

133. Where a court imposes a term of imprisonment or a fine on an offender, the court may also order that property owned by the offender and used in the commission of the offence for which the offender is being sentenced is forfeited to the Administration.

PART 5 – MAKING OF SENTENCING AND OTHER ORDERS

Division 1 – Conditional Orders

Condition of order to undertake treatment program

134. Where a court may attach a condition to an order or require an offender to give an undertaking, the court may, as a condition of the order or as part of the undertaking, require an offender to undertake a prescribed treatment program.

Consent of offender to conditional order

135. A court shall not make an order which has attached to it conditions or which requires an offender to give an undertaking unless the conditions are explained to the offender in accordance with section 136 and the offender consents to –

(a) the order being made and to the conditions being attached; or

(b) the conditions being included in the undertaking,

as the case may be.

Explanation of orders

136. (1) Where a court proposes to make an order which has attached to it conditions to which an offender is required to consent or which requires an offender to give an undertaking, it shall, before making the order, explain or cause to be explained to the offender, in language likely to be readily understood by the offender –

- (a) the purpose and effect of the proposed order;
- (b) the consequences that may follow if the offender fails without reasonable excuse to comply with the proposed order;
- (c) where the proposed order requires the offender to undertake a program referred to in section 134, the benefits and detriments of the program, including the medical risks and benefits of any drugs used in the program; and
- (d) the manner in which the proposed order may be varied.

(2) Non-compliance with subsection (1) does not affect the validity of the order.

Division 2 – Information and Reports before Passing Sentence

Subdivision 1 – Information, Reports, etc

Assessment of offender before certain orders made

137. (1) A court shall, before imposing a sentence on an offender that requires the offender to be under the supervision of a supervisor, have regard to a report of a Crown law officer as to the suitability of the offender to be under supervision.

(2) A report under subsection (1) may be in writing or given orally to the court.

Information before passing sentence or making order

138. (1) A court may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence.

(2) A court may, before making an order for restitution or compensation under Division 1 of Part 4, receive such information as it thinks fit to enable it to make the proper order.

Court may order pre-sentence report

139. A court may, before passing sentence on an offender, order a pre-sentence report in respect of the offender and adjourn the proceedings to enable the report to be prepared and may admit the offender to bail or remand the offender in custody.

Contents of pre-sentence report

140. (1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her:

- (a) the age of the offender;
- (b) the social history and background of the offender;
- (c) the medical and psychiatric history of the offender;
- (d) the offender's educational background;
- (e) the offender's employment history;
- (f) the circumstances of other offences of which the offender has been found guilty and which are known to the court;

- (g) the extent to which the offender is complying with a sentence currently imposed on the offender;
- (h) the offender's financial circumstances;
- (j) any special needs of the offender;
- (k) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which the offender may benefit.

(2) The author of a pre-sentence report shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

Subdivision 2 – Victim Impact Statements and Victim Reports

Definitions

141. In this Subdivision –

harm includes –

- (a) physical injury;
- (b) psychological or emotional suffering, including grief;
- (c) contraction or fear of contraction of a sexually transmissible medical condition;
- (d) pregnancy; and
- (e) economic loss;

relative includes a relative according to contemporary social practice, a spouse and a de facto partner;

victim means –

- (a) a person who suffers harm arising from an indictable offence; or
- (b) where the person referred to in paragraph (a) dies as a result of the commission of the offence, a person who was a relative of, or who was financially or psychologically dependent on, the person;

victim impact statement means an oral or written statement prepared for the purposes of section 142(1) containing details of the harm suffered by a victim of an offence arising from the offence;

victim report means an oral or written statement, prepared by the prosecutor for the purposes of section 142(2), containing details of the harm suffered by a victim of an offence arising from the offence.

Victim impact statements and victim reports

142. (1) The prosecutor may present to the court, before it sentences an offender in relation to an offence, a victim impact statement where –

- (a) the victim consents to its presentation; or
- (b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – the report has been prepared by a person who, in the opinion of the court, has a sufficiently close relationship with the victim.

(2) The prosecutor shall present to the court, before it sentences an offender in relation to an offence, a victim report in relation to each victim of the offence where –

- (a) the victim has not consented to the presentation to the court of a victim impact statement in relation to him or her but has been informed of the contents of the victim report and does not object to its presentation;
- (b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the victim has been informed of the contents of the victim report and does not object to its presentation; or
- (c) the victim cannot, after reasonable attempts have been made by the prosecutor, be located,

and there are readily ascertainable details of the harm suffered by the victim arising from the offence that are not already before the court as evidence or as part of a pre-sentence report prepared under section 139 in relation to the offender.

(3) With the permission of the court, a person other than the prosecutor may present a victim impact statement.

(4) Subject to subsections (8) and (9), the court shall consider each victim impact statement and each victim report, if any, in relation to an offence before determining the sentence to be imposed in relation to the offence.

(5) A victim impact statement or a victim report may contain details of the harm caused to the victim of the offence to which the statement or report relates arising from another offence –

- (a) for which the offender has already been sentenced, or will be sentenced in the proceedings then before the court; or
- (b) which, under section 143, has already been taken into account in a sentence or which may be taken into account under that section in the proceedings then before the court.

(6) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the offence referred to in the statement or the report.

(7) A court shall not draw an inference in favour of an offender or against a victim because a victim impact statement or victim report is not presented to the court.

(8) A court shall not take into account a written victim impact statement unless it has been signed.

(9) A court shall not take into account a victim impact statement or a victim report, where the statement or report –

- (a) is in writing, unless a copy of the statement or report is provided to the offender; or
- (b) is to be presented to the court orally, unless a written or oral summary of the contents of the statement or report is provided to the offender.

(10) A legal practitioner representing the offender or, with the leave of the court, the offender –

- (a) where a victim impact statement is in writing, may cross-examine the person who signed the statement; or
- (b) where a victim impact statement is presented to the court orally, may cross-examine the person, not being the prosecutor, presenting the statement,

about its contents.

Division 3 – Taking Other Charges into Account

Disposal of other pending charges

143. (1) Where a court finds a person guilty of an offence or offences, not being or including treason or murder, and the court is satisfied that –

- (a) there has been filed in court a document, in the prescribed form, containing a list of other offences, whether indictable or summary, not being or including treason or murder, in respect of which the offender has been charged or committed for trial;
- (b) a copy of the document has been provided to the offender; and
- (c) in all the circumstances it is proper to do so,

the court may, with the consent of the prosecution, before passing sentence ask the offender whether the offender admits having committed all or any of the listed offences and wishes them to be taken into account by the court when passing sentence for the offence or offences of which the offender has been found guilty.

(2) A document referred to in subsection (1) shall be signed by –

- (a) a police officer or the prosecutor; and
- (b) the offender.

(3) Where an offender admits having committed all or any of the offences listed in a document under subsection (1) and wishes them to be taken into account, the court may, if it thinks fit, do so but shall not impose a sentence in respect of an offence of which the offender has been found guilty in excess of the maximum sentence that might have been imposed if no listed offence had been taken into account.

(4) Where an offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 4 if the offender had been convicted before the court of the offence but shall not otherwise impose any separate punishment for the offence.

(5) An order made under subsection (4) in respect of an offence taken into account may be appealed against as if it had been made on the conviction of the offender for that offence.

(6) Notwithstanding anything in subsection (3), a court shall not take into account a charge of an offence which it would not have jurisdiction to try even with the consent of the person charged with it.

(7) The court shall certify on the document filed in court any listed offences that have been so taken into account and the convictions in respect of which this has been done.

(8) Proceedings shall not be taken or continued in respect of any listed offence certified under subsection (7) unless each conviction in respect of which it has been taken into account has been quashed or set aside.

(9) An admission made under and for the purposes of this section is not admissible in evidence in any proceeding taken or continued in respect of the offence to which it relates.

(10) A person shall not, for any purpose, be taken to have been convicted of an offence taken into account under and in accordance with this section only because it was so taken into account.

(11) Whenever, in or in relation to any criminal proceeding, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a person was convicted of a crime, reference may likewise be made to, or evidence may likewise be given of, the taking into account under this section of any other offence or offences when sentence was imposed in respect of that conviction.

(12) The fact that an offence was taken into account under this section may be proved in the same manner as the conviction or convictions in respect of which it was taken into account may be proved.

Division 4 – Passing of Sentence

Time and place of sentence

144. (1) The sentence for an offence may be imposed in open court at any time and place in Norfolk Island.

(2) A court at a trial of an offence or receiving a plea of guilty to an offence may, when it thinks it desirable in the interests of justice so to do and from time to time if necessary –

- (a) fix, or indicate by reference to a fact or event, the time; and
- (b) fix the place,

at which the sentence is to be imposed.

(3) A court which is to impose sentence for an offence may –

- (a) admit the person to bail; or
- (b) make an order or orders for the removal in custody of the person from one place in Norfolk Island to another place under the *Removal of Prisoners Act 2004*.

(4) A person to be sentenced for an offence shall, while in custody pending sentencing, be taken to be in the lawful custody of the officer in charge.

(5) This section does not take away from any power of a court under statute or at common law.

Sentence by another Judge or Magistrate

145. (1) Subsection (2) applies where, on the trial of an offence –

- (a) a verdict of guilty has been found or a plea of guilty has been received but no judgment or sentence has been given or passed on it; and
- (b) the judge or magistrate who presided at the trial or received the plea (as the case requires) goes out of office or it appears to be probable that because of incapacitating illness or other serious cause he or she will be unable to give judgment or pass sentence within a reasonable time.

(2) Where this subsection applies, any other judge or magistrate (as the case requires) may in open court take (if necessary) all steps preliminary to the giving of judgment or the passing of sentence and may give judgment or pass sentence.

(3) In all cases where it is possible so to do, the judge or magistrate referred to in subsection (1)(b) shall be consulted before judgment is given or sentence is passed under subsection (2).

(4) Non-compliance with subsection (3) does not affect the validity of the judgment or sentence.

(5) The question whether it appears probable that a judge or magistrate will be unable for the reasons referred to in subsection (1)(b) to give judgment or pass sentence within a reasonable time shall be decided by the Chief Justice or the Chief Magistrate (as the case requires) and his or her decision is not liable to be challenged on any ground whatsoever.

(6) Where, on the trial of an offence –

(a) a verdict of guilty has been found or a plea of guilty has been received; and

(b) all steps preliminary to the giving of judgment or the passing of sentence have been taken but no judgment or sentence has been given or passed,

any other judge or magistrate (as the case requires) may give the judgment or pass the sentence determined by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(7) A judgment given or sentence passed under subsection (2) or (6) has for all purposes the same effects and consequences as if it had been given or passed by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(8) This section does not take away from any power of a judge or magistrate under statute or at common law.

Sentences not invalidated by failure to comply with procedural requirements

146. (1) The failure of a court to give reasons or to comply with any other procedural requirement contained in this Act in sentencing an offender does not invalidate any sentence imposed by it.

(2) Nothing in subsection (1) prevents a court on an appeal against sentence from reviewing a sentence imposed by a court in circumstances where there has been a failure that is referred to in that subsection.

PART 6 - PAROLE

Definitions

147. (1) In this Part—

corresponding law means a law of a State or another Territory relating to the transfer of parole orders declared by the Minister, by notice published in the Gazette, to be a corresponding law for the purposes of this Act;

designated authority means, in relation to a State or another Territory, the person or body with powers under the corresponding law of that State or Territory that correspond to those of the executive member under section 156;

Parole Board or **Board** means the Parole Board or Parole Authority of a State or another Territory in which a person is serving a sentence of imprisonment under an order of a court and in accordance with the *Removal of Prisoners Act 2004* or another Act;

parole order means a parole order in force under this Act or under a law of a State or another Territory relating to parole, and includes—

- (a) an authority given under a law of Norfolk Island or a law of a State or another Territory for the release of a person of or over the age of 18 years from imprisonment or lawful detention, being an authority that has the effect of or is deemed to be an order for the release of a person upon parole; and
- (b) such a parole order or authority as varied from time to time;

parole period means a period beginning on the day on which a person is released from prison on parole and ending at the end of the person's prison sentence;

prison sentence in relation to a person means the total of the following sentences or non-parole periods which have been imposed or determined in relation to the person, reduced as provided for under this or any other Act—

- (a) if a non-parole period has not been fixed in relation to a sentence of imprisonment—the sentence of imprisonment;
- (b) if a non-parole period has been fixed in relation to a sentence of imprisonment and the prisoner has not served the non-parole period—the non-parole period;
- (c) if a non-parole period has been fixed in relation to a sentence of imprisonment and the prisoner has served the non-parole period and is not on parole—so much of the sentence as the board determines for the purposes of this definition.

Registrar means the Registrar of the Supreme Court;

sentence of imprisonment includes an order, direction, declaration or other authority under which a person may be lawfully detained in a prison.

- (2) Unless otherwise provided by Regulation—
 - (a) the powers and duties of a Board under this Part may, where a parole order is made in respect of a person sentenced to a term of imprisonment under this Act or another enactment of Norfolk Island, be exercised by the Parole Authority of New South Wales established by the *Crimes (Administration of Sentences) Act 1999* and the practices and procedures (including prescribed forms of order or warrant) of that Authority as are not inconsistent with the provisions of this Part may be exercised or applied by that Authority in exercise of its powers under this Part;
 - (b) the Parole Authority of New South Wales is a *designated authority*.

Evidentiary

148. (1) All Courts must take judicial notice of the signature on a document of the Secretary of a Board or a member of a Board if the document is required or authorised to be signed by the Secretary or member, and must presume that the document was duly signed.

(2) A certificate signed by the Secretary of a Board which purports to set out the Board's decision or determination on a matter is evidence of the making of that decision or determination by the Board.

Functions of Board

149. (1) A Board has the functions conferred on it by this Act and the Regulations.

(2) In exercising its functions, a Board is not bound by the rules of natural justice.

(3) A member of a Board is not personally liable for anything done or omitted to be done in good faith—

- (a) in relation to any function referred to in subsection (1), or in exercising any power in relation to such a function; or
- (b) in the reasonable belief that the act or omission related to the function, or was in the exercise of the power.

Reports

150. (1) Before 30 September in each year a Board must if any persons have been imprisoned by order of a court in the State or Territory in which the Board exercises jurisdiction, give to the Minister a report relating to the 12 months ending on 30 June in that year and concerning—

- (a) the number of persons released on parole during that period; and
- (b) the number of persons returned to prison during that period on cancellation of parole; and

(2) The Minister must cause a Board's annual report to be laid before the Legislative Assembly before the end of the second sitting day of Legislative Assembly after the annual report has been received by the Minister.

Release on parole after service of non-parole period

151. (1) A Board may by instrument order that a prisoner serving a prison sentence in respect of which a non-parole period was fixed be released on parole at the time stated in the order (not being before the end of the non-parole period) and, unless the Board revokes the order before the time for release stated in the order, the prisoner must be released at that time.

(2) A Board may revoke a parole order before the prisoner is released under the order.

(3) If before a prisoner is released under a parole order a Board determines that the prisoner should be released at a different time than the time stated in the order, the prisoner must be released at that other time (not being before the end of the non-parole period).

(4) Subject to subsection (5) the terms and conditions of a parole order are those set out in the Regulations.

(5) A Board may vary the terms and conditions to which a parole order is subject and may include in a parole order any one or more of the conditions to which a pre-release permit is made subject by the Regulations or to which, before the repeal of Division 6, such a permit was so made subject.

(6) If the terms and conditions of a parole order require a prisoner to be under supervision, the Secretary must assign a supervisor to supervise the prisoner and may from time to time assign another supervisor to supervise the prisoner in place of the supervisor first assigned.

(7) A prisoner released on parole must during the parole period comply with the terms and conditions of the parole order.

(8) As soon as possible after making a determination revoking or cancelling a parole order the Board must give a copy of the determination to the prisoner including the reasons for the determination.

(9) A Board may make a parole order for a person who is detained in custody under an order made in accordance with Part 2 of the *Criminal Procedure Act 2007* but the parole order does not take effect until the person is discharged under the *Mental Health Act 1996*.

(10) A Board in making an order under this section must, unless provision is made in this Act to the contrary, exercise its duties under this Act in accordance with the legislation, rules and procedures applicable to the Board in the State or Territory in which it has jurisdiction.

Persons on parole deemed still under sentence

152. If in relation to a prisoner the parole period elapses without the making by a Board of an order cancelling the parole or the commission by the prisoner, whether in Norfolk Island or elsewhere, of an offence for which the prisoner is sentenced to imprisonment for more than three months (whether during or after the parole period), the prisoner is to be regarded as having served a prison sentence and is to be wholly discharged from the sentence, but until the parole period so elapses or until the prisoner is otherwise discharged from the prison sentence the person released on parole is to be regarded as being still under sentence.

Cancellation of parole

153. (1) If a prisoner is released on parole a Board may at any time before the end of the parole period by order cancel the parole.

(2) If a Board has cancelled a prisoner's parole it may at any time by a further order revoke the cancellation.

(3) A parole order revives on the revocation of an order cancelling the parole.

(4) A Board must not make an order revoking an order cancelling a prisoner's parole if a warrant has been issued under this section unless the Board is satisfied that the warrant will not be executed.

(5) If the prisoner is sentenced to another prison sentence for more than 3 months in respect of one or more offences committed during the parole period, whether in Norfolk Island or elsewhere, a magistrate or a Board may by order cancel the prisoner's parole, although the parole period may already have elapsed.

(6) If a prisoner's parole is cancelled or deemed to have been cancelled, the Board making the order may —

- (a)** issue a warrant committing the offender to prison but such warrant is to be signed by a magistrate or judicial member of the Board and is sufficient authority—
 - (i)** for any police officer to arrest, or to have custody of, the offender named in the warrant, to convey the offender to the prison specified in the warrant and to deliver the offender into the custody of the person in control of that prison, and
 - (ii)** for the person in control of the prison specified in the warrant to have custody of the offender named in the warrant for the remainder of the sentence to which the warrant relates; or
- (b)** whether or not a warrant is issued under paragraph (a), authorise the making of an application to a magistrate for a warrant—
 - (i)** authorising any member of the police force to break, enter and search any place where the prisoner is reasonably believed to be and to arrest the prisoner and return the prisoner to prison; or
 - (ii)** authorising any other officer to arrest the prisoner and return the prisoner to prison.

- (7) If a prisoner's parole is cancelled or deemed to be cancelled—
 - (a) the original warrant to imprison or other authority for the person's imprisonment is to be regarded as again in force; and
 - (b) any period during which the parole order was in force is not to be regarded as time served in respect of the prison sentence unless subsection (8) applies.

(8) A Board may direct that some or all of the period during which a parole order that has been cancelled, or deemed to be cancelled, was in force is to be regarded as time served in respect of the prison sentence.

(9) A Board in determining whether to make vary or cancel a parole order, may arrange for the examination of the prisoner by a registered medical practitioner, psychiatrist or psychologist and may require the registered medical practitioner, psychiatrist, psychologist or any other person whom the Board believes may be able to do so, to give a report in writing to the Board.

Prisoners may be released on parole more than once

154. A Board may again release a prisoner on parole although the prisoner's parole has been cancelled on a previous occasion or on previous occasions in respect of the same prison sentence but if the prisoner has been sentenced to another prison sentence the Board must not release the prisoner on parole until the prisoner has served the non-parole period or, if no non-parole period is fixed, the prison sentence.

Board to inform Registrar of parole orders

155. (1) When a Board makes a parole order it must as soon as practicable send a copy of the order certified by the Secretary to the Registrar and the Registrar shall register that order.

(2) If a Board cancels or varies a parole order it must as soon as practicable send a copy of the order of cancellation or variation certified by the Secretary to the Registrar and the Registrar shall register that order.

Requests for registration of transferred parole orders

156. (1) The Minister may, at the request in writing of the designated authority for a State or another Territory, by instrument in writing, direct the Registrar to register under this Act a parole order that was in force at the time of the request under a law of that State or Territory.

(2) The Minister may, by instrument in writing addressed to the designated authority for a State or another Territory, request that a parole order that is in force under a law of Norfolk Island be registered under the corresponding law of that State or Territory.

Documents to accompany requests

157. (1) Where the Minister requests the designated authority for a State or another Territory under section 156(2) to register a parole order under the corresponding law of that State or Territory, the Minister shall cause to be sent to the designated authority—

- (a) the parole order to which the request relates together with any variations of the order;
- (b) the judgment, order, warrant or other instrument by virtue of which the person to whom the parole order relates became liable to undergo the imprisonment to which the parole order relates;
- (c) particulars in writing of the address of that person last known to the Minister; and
- (d) a report in writing relating to that person containing such information and accompanied by such documents as appear to be likely to be of assistance to any court, authority or officer in that State or Territory, including all documents that were before the body making the parole order, details of convictions, sentences of imprisonment, non-parole periods of imprisonment, periods of imprisonment served, class of prisoner, reductions of sentence earned and other grants of parole.

(2) A reference in sub-section (1) (other than a reference in paragraph (a) of sub-section (1)) to an order, judgment or other document is a reference to the original or to a copy certified as a true copy by a person purporting to be the person in whose custody the original is entrusted.

Regard for interests of parolee

158. (1) The Minister shall not direct under section 156(1) the registration under this Act of a parole order in force under a law of a State or another Territory unless—

- (a) he is satisfied, on consideration of relevant information and documents forwarded to him by the designated authority for that State or Territory, that, having regard to the interests of the person to whom the parole order relates, it is desirable that the parole order be so registered; and
- (b) either—
 - (i) that person has given his consent to, or has requested, the registration of the parole order under this Act; or
 - (ii) that person is residing in Norfolk Island as a permanent resident.

(2) The Minister shall not make a request under section 156(2) for the registration under the corresponding law of a State or another Territory, of a parole order in force under a law of Norfolk Island unless—

- (a) he is satisfied that, having regard to the interests of the person to whom the parole order relates, it is desirable that the parole order be so registered; and
- (b) either—
 - (i) that person has given his consent to, or has requested, the registration of the parole order under the corresponding law of that State or Territory; or
 - (ii) there are reasonable grounds for believing that that person is residing in that State or Territory.

Registration

159. When so directed under section 156(1), the Registrar shall register a parole order under this Act by—

- (a) endorsing on the parole order a memorandum signed by him to the effect that the parole order is, on the date of the endorsement, registered under this Act; and
- (b) keeping the endorsed parole order in a register together with the original or copy of the judgment, order, warrant or other instrument sent by the designated authority, being the judgment, order, warrant or other instrument by virtue of which the person to whom the parole order relates became liable to undergo the imprisonment to which the parole order relates.

Effect of registration

160. (1) Subject to this section, while a parole order (including a parole order that was, at any time, in force in Norfolk Island) is registered under this Act, the laws of Norfolk Island apply to and in relation to the parole order and the person to whom the parole order relates.

(2) If the parole order registered under this Act was made under a law of a State or another Territory, the laws of Norfolk Island apply under sub-section (1) as if—

- (a) each sentence of imprisonment to which the person to whom the parole order relates was subject immediately before the making of the parole order had been imposed by the appropriate court of Norfolk Island;
- (b) each period of imprisonment served by that person for the purpose of each such sentence had been served for the purpose of the sentence imposed by the appropriate court of Norfolk Island; and
- (c) the parole order had been made and were in force under a law of Norfolk Island.

(3) For the purposes of sub-section (2), the appropriate court of Norfolk Island in relation to a sentence of imprisonment imposed on a person other than an international prisoner, is the court that, under the Regulations, is the court corresponding to the court of the other State or the Territory by which the sentence of imprisonment was imposed.

(4) Where a parole order registered under this Act is revoked or is to be deemed to have been revoked under a law of Norfolk Island, the person to whom the parole order related shall be liable to serve a period of imprisonment equal to the period for which he was liable, on the date on which he was released on parole under the order, to be imprisoned.

Effect of transfer of parole order

161. (1) Upon the registration under a corresponding law of a parole order that, immediately before that registration, was in force under a law of Norfolk Island—

- (a) the parole order ceases to be in force in Norfolk Island;
- (b) in the case of a parole order that was registered under this Act, the parole order ceases to be so registered; and
- (c) each sentence of imprisonment to which the person to whom the parole order relates was subject immediately before the registration under the corresponding law ceases to have effect in Norfolk Island.

(2) Upon the subsequent registration under this Act of a parole order in relation to which sub-section (1) has, at any time, applied—

- (a) paragraphs (a) and (c) of that sub-section cease to apply in relation to the parole order; and
- (b) the force and effect that the parole order, and each sentence of imprisonment to which the person to whom the parole order relates was subject, had under a law of Norfolk Island immediately before the registration under the corresponding law revive and continue while the parole order is registered under this Act.

Evidence

162. (1) An instrument in writing that purports to be a copy of a memorandum endorsed on a parole order on a specified date under section 159(1) and to have been signed by the Registrar is prima facie evidence that the parole order was registered under this Act on that date.

(2) A parole order made under a law of a State or another Territory and registered under this Act may be received in evidence in any court without further proof by the production of a copy of the parole order certified as a true copy by the Registrar, and such a copy is prima facie evidence of the matters stated in the parole order.

PART 7 – CORRECTION OF SENTENCES

Correction of sentences by Supreme Court

- 163.** (1) Where –
- (a) a person has been sentenced (whether at first instance or on appeal) by a court (including the Supreme Court) for an offence; or
 - (b) the sentencing court was the Court of Petty Sessions, application is made to the Supreme Court for relief or remedy in the nature of certiorari to remove the proceeding into the Supreme Court,

and the Supreme Court determines that the sentence imposed was beyond the power of the sentencing court or its own power, if it was the sentencing court, it may, instead of quashing the sentence, amend the sentence by substituting for the sentence imposed a sentence which the sentencing court had power to impose.

(2) Unless the Supreme Court otherwise directs, a sentence of imprisonment imposed by it under subsection (1) commences on the day on which the sentence imposed in the earlier proceeding purported to take effect but in calculating the term to be served under the sentence any time during which the offender was at large (whether on bail or otherwise) shall be disregarded.

(3) Subsections (1) and (2) extend and apply, with necessary changes, to any order made on, but not forming part of, the sentence of an offender as if reference in those subsections to a sentence included a reference to such an order.

Court may reopen proceeding to correct sentencing errors

164. (1) Where a court has in, or in connection with, criminal proceedings (including a proceeding on appeal) –

- (a) imposed a sentence that is not in accordance with the law; or
- (b) failed to impose a sentence that the court legally should have imposed,

the court (whether or not differently constituted) may reopen the proceedings unless it considers the matter should more appropriately be dealt with by a proceeding on appeal.

- (2) Where a court reopens proceedings, it –
- (a) shall give the parties an opportunity to be heard;
 - (b) may impose a sentence that is in accordance with the law; and
 - (c) may amend any relevant conviction or order to the extent necessary

to take into account the sentence imposed under paragraph (b).

- (3) A court may reopen proceedings –
- (a) on its own initiative at any time; or
 - (b) on the application of a party to the proceedings made not later than –
 - (i) 28 days after the day the sentence was imposed; or
 - (ii) such further time as the court allows.

(4) An application for leave to make an application under subsection (3)(b)(ii) may be made at any time.

(5) Subject to subsection (6), this section does not affect any right of appeal.

(6) For the purposes of an appeal against a sentence imposed under subsection (3)(b), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (2)(b).

(7) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

PART 8 – APPEALS AGAINST SENTENCE IMPOSED ON VARIATION OR BREACH

Appeal against sentence imposed on variation or breach

165. A person sentenced by a court in a proceeding for variation or breach of a sentencing order has a right of appeal against sentence as if –

- (a) the court had immediately before imposing it found the person guilty, or convicted the person, of the offence in respect of which the sentencing order was originally made; and
- (b) the sentence was a sentence imposed on that finding of guilt or conviction.

PART 9 – MISCELLANEOUS

Offender to be present when sentence imposed

166. (1) A court shall not make an order under Part 3 unless the offender in respect of whom the order is to be made is before the court.

- (2)** Subsection (1) does not apply to –
- (a) an order imposing a fine under section 16; or
 - (b) an order made on the hearing of an appeal.

Fine in addition to or instead of imprisonment

167. An offence against an Act or an instrument of a legislative or administrative character that is punishable by a term of imprisonment (other than life) is, unless the contrary intention appears, punishable, in addition to or instead of imprisonment, by a maximum fine that is equal to the product obtained by multiplying 50 penalty units or, in the case of a body corporate, 250 penalty units by the term of imprisonment expressed in years or a fraction of a year, where the term of imprisonment is less than 12 months.

Lesser sentence may be imposed

168. Subject to anything to the contrary in this or any other Act, a court may, as it thinks fit in sentencing an offender, impose a shorter term of imprisonment or a lesser amount as a fine than that prescribed.

Effect of alterations in penalties

169. (1) Where an Act, including this Act, or an instrument of a legislative or administrative character increases the penalty or the maximum or minimum penalty for an offence, the increase applies only to an offence committed after the commencement of the provision effecting the increase.

(2) Where an Act, including this Act, or an instrument of a legislative or administrative character reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to an offence committed before the commencement of the provision effecting the reduction for which no penalty had been imposed at that commencement.

Jurisdiction of Court of Petty Sessions

170. (1) Where the Court of Petty Sessions has jurisdiction under an Act to hear and determine a crime in a summary manner, the court shall not impose on the person found guilty of the crime a sentence of imprisonment of more than 2 years or a fine greater than 1 000 penalty units.

(2) Subsection (1) applies despite any provision in the *Court of Petty Sessions Act 1960* or any other enactment to the contrary.

Old offences relevant in determining previous convictions

171. (1) A finding of guilt or conviction of an old offence counts as a finding of guilt or conviction of a new offence for the purpose of determining whether or not a person has previously been found guilty or convicted of the new offence.

(2) For the purposes of this section –

- (a)** an old offence is an offence under a repealed statutory provision which is constituted by the same acts, omissions, matters, circumstances or things as an offence (the new offence) under an Act or an instrument of a legislative or administrative character which substantially re-enacts (whether in the same language or not) the repealed statutory provision; and
- (b)** a repealed statutory provision is an Act or a provision of an Act that has been repealed or an instrument of a legislative or administrative character or a provision of such an instrument that has been repealed or revoked.

(3) This section applies even where the new offence differs from the old offence in –

- (a)** its penalty;
- (b)** the procedure applicable to its prosecution;
- (c)** its classification; or
- (d)** its name,

unless a contrary intention appears in the Act or the instrument of a legislative or administrative character that creates the new offence.

Abolition of common law bonds

172. A court does not have jurisdiction to release an offender on a recognisance or bond to be of good behaviour and to appear for sentence when called on.

Procedural rules and regulations

173. The power to make rules and regulations under the *Supreme Court Act 1960* and under the *Court of Petty Sessions Act 1960* extends to and applies in relation to the making of rules or regulations (as the case requires) for and with respect to the manner of making applications under this Act, court procedures and proceedings, the functions of a registrar and all other matters relating to the functions of a court under this Act.

Facilitation of proof

174. Where an offender is before a court to be dealt with for a breach of a sentencing order made under this Act –

- (a) an averment of the prosecutor that the offender is the person in respect of whom the 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 whether the person was convicted of the offence or offences in respect of which the order was made and, if the person admits the conviction or convictions, no further proof of the conviction or convictions is necessary.

Service of documents, etc

175. Subject to this Act, a document required to be given to or served on a person under this Act may be given to or served on the person –

- (a) by delivering it to the person; or
- (b) by leaving it at the person's last-known or most usual place of residence or business with some other person who is apparently over the age of 16 years and living or working there.

Regulations

176. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters –

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2)** The Regulations may –
- (a) be of general or limited application;
 - (b) confer a discretionary authority or impose a duty on a specified person or a specified class of person;
 - (c) prescribe the fees payable in respect of any matter under this Act; and/or
 - (d) prescribe penalties, not exceeding 20 penalty units, for offences against the Regulations.

Repeal

177. The Acts specified in Schedule 3 are repealed to the extent stated therein.

Savings and transitional

178. (1) This Act applies to a sentence imposed after the commencement of this section, irrespective of when the offence was committed.

(2) The Regulations may contain provisions of a savings or transitional nature consequent on the commencement of the various provisions of this Act.

(3) For the purposes of this section, an order made or imposed by an appellate court after the commencement of this section on setting aside an order made or a sentence imposed before that commencement shall be taken to have been made or imposed at the time the original order was made or the sentence imposed.

(4) A reference in any Act to, or to a provision of, a repealed Act, or part of a repealed Act, in Schedule 3 is reference to this Act or to the corresponding provision of this Act.

SCHEDULE 1

Section 3(1)

VIOLENT OFFENCES

1. An offence against section 73, 77, 79, 80, 81, 82, 83, 84, 86, 89, 95, or 97, of the *Criminal Code*.
2. An attempt to commit any of the offence referred to above.

SCHEDULE 2

Section 3(1)

SEXUAL OFFENCES

1. An offence against section 124 of the *Criminal Code*, where the offender is an individual.
2. An offence against section 109, 110, 112, 113, 115, 116, 117, 118, 119 or 120 of the *Criminal Code*.

SCHEDULE 3

Section 177

REPEAL

Community Services Orders Act 1983 – the whole

Periodic Detention Act 1996 - the whole

Court of Petty Sessions Act 1960 – sections 66, 67, 68, 69, Division 5 of Part 4.

NOTES

The *Sentencing Act 2007* as shown in this consolidation comprises Act No. 14 of 2007 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Sentencing Act 2007</i>	14, 2007	s. 1, 2, 3 and 164 comm 29.11.2007; remainder comm. 30.11.2007	
<i>Sentencing (Amendment) Act 2007</i>	1, 2008	4.1.2008	
[Previously consolidated as at 9 January 2008]			
<i>Justice Legislation (Miscellaneous Amendments) Act 2009</i>	14, 2009	11.09.2009	
[Previously consolidated as at 15 September 2009]			
<i>Sentencing (Amendment) Act 2012</i>	3, 2012	25.05.12	
[Previously consolidated as at 30 May 2012]			
<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	

Table of Amendments

ad = added inserted	or	am = amended	rep = repealed	rs = repealed and substituted
Provisions affected	How affected			
3		am	3, 2012	
4		rep	3, 2012	
5		am	3, 2012	
6A		ad	3, 2012	
23		am	3, 2012	
31(2)(a)		am	1, 2008	
90		rs	14, 2009	
92		rep	14, 2009	
93		rep	14, 2009	
94		rep	14, 2009	
95		rep	14, 2009	
96		rep	14, 2009	
97		rep	14, 2009	
98		rep	14, 2009	
99		rep	14, 2009	
Subdiv 5 of Division 5		rep	14, 2009	
Division 6 of Part 3		rep	14, 2009	
Schedule 3		am	1, 2008	

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