



New South Wales

Crimes (Administration of Sentences) Further Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Crimes (Administration of Sentences) Act 1999 (the Principal Act)* as follows:

- (a) to make it clear that inmates who engage in work for which they are paid by the Commissioner of Corrective Services (*the Commissioner*) are not employees for the purposes of any Act or other law,
- (b) to streamline procedures dealing with segregated and protective custody, in particular by providing for segregated and protective custody directions to continue in force until they are revoked, with regular review by the Commissioner, and by providing for the transfer from one correctional centre to another of an inmate held in segregated or protective custody,
- (c) to provide for the mandatory testing (both random and targeted) of correctional officers and other persons employed in the Department of Corrective Services for alcohol and prohibited drugs,

Explanatory note

- (d) to provide for the appointment of recognised interstate correctional officers, being correctional officers or police officers from another State or Territory or a member of the Australian Federal Police, and to confer on such recognised interstate correctional officers the functions and immunities of a correctional officer under the law of New South Wales,
- (e) to provide for a person employed in the Department of Corrective Services as a transitional centre officer or as a periodic detention field officer to be given functions of a correctional officer,
- (f) to provide for the Commissioner to dispose of unclaimed property within a correctional centre as the Commissioner may direct,
- (g) to make it clear that if a court imposes 2 or more community service orders on an offender, the maximum period of time for the offender to perform the community service work required by each order commences when the order is made,
- (h) to provide that the Commissioner may issue an evidentiary certificate that a specified person was in the custody of an officer, known as the *designated officer*, at a particular time,
- (i) to enable an Official Visitor to a correctional centre, periodic detention centre or correctional complex to interview non-custodial members of staff, as well as correctional officers,
- (j) to enable the Chief Executive Officer of the Corrections Health Service to delegate his or her functions (but not the Chief Executive Officer's right of unrestricted access to all parts of correctional centres, to medical records and to offenders held in custody),
- (k) to provide that a person who wants to undertake certain activities related to research in the correctional system must obtain the approval of the Commissioner,
- (l) to reform the voting procedures of the Parole Board and the Serious Offenders Review Council to remove the requirement that a judicial member form part of the majority, and to provide for the same voting procedures at a meeting of a Division of the Parole Board or of the Review Council,
- (m) to enable a judicial member of the Parole Board or the Serious Offenders Review Council to rule on a point of law when chairing a meeting of, or presiding over proceedings held before, the Board or the Review Council.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

Schedule 1 Amendments

Segregated and protective custody

Schedule 1 [3] omits Division 2 of Part 2 of the Principal Act and replaces it with a new Division 2 (sections 9–22) that streamlines procedures dealing with segregated and protective custody. Currently, a segregated or protective custody direction can be given for an initial period of 14 days, and subsequently extended for periods of up to 3 months at a time. There is no limit to the number of extensions.

Under the proposed Division, a segregated or protective custody direction, once given, will continue in force until it is revoked. The governor of a correctional centre where an inmate is held in segregated or protective custody must submit a report about the direction to the Commissioner within 14 days after the direction is given, and the Commissioner must review the direction and revoke, confirm or amend it within 7 days after receiving the report. Subsequently the governor must report to the Commissioner about the direction at intervals of 3 months after the direction was first given, and the Commissioner must review the direction within 7 days after each report and revoke, confirm or amend it.

The inmate may apply to the Serious Offenders Review Council for a review of the segregated or protective custody direction after 14 days of segregated or protective custody. The Review Council may confirm, amend or revoke the segregated or protective custody direction.

Currently, an inmate may apply to the Serious Offenders Review Council for a review, but the Review Council may reject the application if the application does not disclose substantial grounds for review or the Review Council has previously determined a review of the same direction and the application does not disclose substantially different grounds for review. Under the proposed Division, the Review

Council will not be able to refuse to review a segregated or protective custody direction if a period of more than 3 months has elapsed since the Review Council determined a review of the direction.

The proposed Division also provides for the transfer of an inmate held in segregated or protective custody from one correctional centre to another.

Currently, either the Commissioner or a governor of a correctional centre may make a segregated or protective custody direction. A direction made by the Commissioner applies to any correctional centre, while a direction made by a governor of a correctional centre does not apply to any other correctional centre.

The proposed amendments:

- (a) provide for a segregated or protective custody direction made by a governor of a correctional centre to continue to apply to the inmate during the transfer of the inmate to another correctional centre, and at the correctional centre to which the inmate is transferred, and
- (b) require the governor of the correctional centre to which the inmate is transferred to review the segregated or protective custody direction within 72 hours after the inmate arrives at the correctional centre, and to determine whether the direction should be confirmed, revoked or amended.

Under existing section 18 of the Principal Act, the Minister for Corrective Services may confirm, amend or revoke a direction by the Commissioner extending the period of a segregated custody direction or a protective custody direction. This power of the Minister is not included in the proposed Division.

Schedule 1 [8] and [11] make consequential amendments.

Community service orders

Schedule 1 [7] amends section 107 of the Principal Act, a section that defines certain terms used in provisions dealing with the performance of community service work under a community service order. The definition of *relevant maximum period* currently stipulates that an offender has 12 months in which to perform the required number of hours of community service work under a community service order, if the required number of hours is less than 300. If the required number of hours is 300 or more, the offender has 18 months in which to perform the required number of hours.

The proposed amendment makes it clear that the maximum period in which an offender may perform the required number of hours of community service work is calculated from the day on which the order is made. The effect of the amendment

is that if, for example, a court imposes 2 or more community service orders on an offender to perform 200 hours of community service work in respect of each order, the offender has 12 months from the time each order was made to perform the work required by the order.

Transitional centre officers and periodic detention field officers

Schedule 1 [12] inserts sections 235C and 235D, which enable the Commissioner to confer such of the functions of a correctional officer on a transitional centre officer or a periodic detention field officer as the Commissioner may determine. A *transitional centre officer* is a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre. A *periodic detention field officer* is a person who is employed for the purpose of supervising offenders subject to periodic detention orders while the offenders are outside a periodic detention centre.

Schedule 1 [1] inserts a definition of *transitional centre*. A *transitional centre* consists of premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody. **Schedule 1 [4]** makes a consequential amendment.

Testing of correctional staff for alcohol and prohibited drugs

Schedule 1 [14] inserts a new Division (sections 236E–236I) dealing with the testing of members of correctional staff (which includes correctional officers) on a random or targeted basis for alcohol or prohibited drugs. The proposed Division is derived from section 211A (Testing of police officers for alcohol and prohibited drugs) of the *Police Act 1990*.

A member of correctional staff may be required to undergo a breath test or breath analysis, or to provide a sample of urine or hair. A member of correctional staff may also be required to undergo such a test or give such a sample if the member of staff is involved in an incident in which a person dies or is injured while in the custody of the member of staff, or as the result of a discharge of a firearm by the member of staff. If a member of correctional staff attends or is admitted to a hospital for examination or treatment because of such an incident, the member of staff may be required to provide a sample of his or her blood, urine or hair. Regulations in connection with testing for alcohol or prohibited drugs may be made with respect to the matters specified in proposed section 236I.

Recognised interstate correctional officers

Schedule 1 [15] inserts a new Division (sections 236J and 236K) providing for the appointment of recognised interstate correctional officers. Proposed section 236J enables the Commissioner to appoint any of the following persons as a recognised interstate correctional officer:

- (a) any person who is employed as a correctional officer in the public service of another State or Territory (other than a probationary correctional officer),
- (b) any member of the police force of another State or Territory (other than a probationary constable),
- (c) any member of the Australian Federal Police.

A recognised interstate correctional officer has all the functions of a correctional officer under the Principal Act or any other Act, subject to the conditions of appointment of the recognised interstate correctional officer (proposed section 236K).

Research

Schedule 1 [18] replaces section 267 of the Principal Act, a section enabling the Commissioner to supply records and information to persons undertaking research in connection with the administration of correctional centres or other specified matters. The proposed section:

- (a) requires the person to obtain the Commissioner's approval to obtain access to certain information or facilities, to persons held in custody and to persons employed by the Department of Corrective Services or a management company (a company that manages a correctional centre), and
- (b) expressly enables the Commissioner to have regard to any recommendations of an ethics committee about the proposed research, and
- (c) revises the list of specified research matters.

Parole Board

Schedule 1 [19] enables the Parole Board to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by the other members present and by the public (if the meeting is open to the public).

Currently, clause 16 of Schedule 1 to the Principal Act provides that if the Chairperson of the Parole Board and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Parole Board, only the Chairperson is entitled to vote with respect to any decision. **Schedule 1 [20]** amends

clause 16 to enable the Chairperson, the Alternate Chairperson and the Deputy Chairperson to vote at a meeting, but only if it is a meeting that all the community members of the Parole Board are entitled to attend. (Usually no more than 4 community members of the Parole Board may attend a meeting of the Parole Board for the purposes of constituting the Parole Board, however, the Chairperson may convene up to 6 meetings a year of the Parole Board at which all community members may attend.)

Schedule 1 [21] replaces clause 17 of Schedule 1 to the Principal Act in order to:

- (a) provide that a decision of the Parole Board is made by a majority of members of the Parole Board, whether or not a judicial member forms part of the majority, and
- (b) provide that a decision of a Division of the Parole Board is made by a majority of members of the Division, rather than by the judicial member supported by at least one non-judicial member of the Division.

Currently, clause 17 (1) requires that a judicial member forms part of the majority of a Parole Board for the purposes of a decision of the Parole Board. Clause 17 (3) provides that at a meeting of a Division of the Parole Board, a decision supported by the votes cast by the judicial member and at least one non-judicial member is the decision of the Division. The effect of this provision is that a minority vote at a meeting of a Division may in some circumstances be the decision of the Division. The proposed amendment removes this possibility.

Schedule 1 [22] inserts a new clause in Schedule 1 to the Principal Act to provide that at a meeting of the Parole Board, a question of law or of mixed law and fact, or a question as to whether a question is a question of law or of mixed law and fact, is to be decided by the person presiding at the meeting alone.

Serious Offenders Review Council

Schedule 1 [9] amends section 197 of the Principal Act, a section setting the functions of the Serious Offenders Review Council. Currently, section 197 (3) enables the Review Council to delegate any function that it has relating to segregated and protective custody directions to the Chairperson or to a judicial member of the Review Council. The proposed amendment provides that the judicial member to which a function is delegated is to be nominated by the Chairperson.

Schedule 1 [23] enables the Review Council to hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if all the members can be heard by the other members present and by the public (if the meeting is open to the public).

Schedule 1 [24]–[27] amend clause 11A of Schedule 2 to the Principal Act. Clause 11A deals with the conduct of proceedings before the Review Council by the use of audio visual links. The proposed amendments make minor changes to references to the term *party* in the clause, to accommodate the fact that some persons involved in proceedings before the Review Council may not strictly speaking be parties to the proceedings.

Schedule 1 [28]–[30] make changes to the voting procedures of the Review Council and the determination of questions of law that reflect the amendments made in respect of the Parole Board by Schedule 1 [19]–[22].

Other amendments

Schedule 1 [2] inserts a provision into the Principal Act that makes it clear that an inmate who receives money from the Commissioner for any work done by the inmate is not an employee of the Crown, or of any other person.

Schedule 1 [6] amends section 76 of the Principal Act, a section dealing with the sale of unclaimed property found within a correctional centre. Currently the section provides for such property to be sold. The proposed amendment enables the Commissioner to also dispose of the property as the Commissioner may direct. The amendment is consistent with section 75 of the Principal Act, which allows the Commissioner to dispose of property that is unlawfully in the possession of an inmate as the Commissioner may direct.

Schedule 1 [10] amends section 228 of the Principal Act, which deals with the functions of Official Visitors to correctional centres. Currently section 228 provides for an Official Visitor to visit a correctional centre, correctional complex or periodic detention centre for the purpose of giving interviews to correctional officers and offenders. The proposed amendment provides for Official Visitors also to give interviews to other members of staff employed within the Department of Corrective Services at the complex or centre visited by the Official Visitor.

Schedule 1 [13] inserts a new section 236D that enables the Chief Executive Officer of the Corrections Health Service to delegate his or her functions, other than the power to delegate. Proposed section 236D (2) makes it clear that the Chief Executive Officer cannot delegate the Chief Executive Officer's right of free and unfettered access to correctional centres, medical records and offenders held in custody.

Schedule 1 [17] amends section 260 of the Principal Act, a section that enables the Commissioner or other prescribed persons to issue certificates about certain matters. Such a certificate is admissible in any legal proceedings and is evidence of the facts stated in the certificate. The proposed amendment enables an evidentiary

certificate to be issued stating that on a date or during a period specified in the certificate, a specified person was in the custody of the *designated officer* within the meaning of section 38 or 249. Those provisions deal with circumstances where an inmate or a person is held, or taken to be held, in custody. **Schedule 1 [5] and [16]** amend the definition of *designated officer* in sections 38 and 249 to describe more accurately the position of designated officer.

Savings and transitional provisions

Schedule 1 [31] enables regulations of a savings or transitional nature to be made by the Governor consequential on the enactment of the proposed Act. **Schedule 1 [32]** inserts savings and transitional provisions consequential on the enactment of the proposed Act into the Principal Act.

First print



New South Wales

Crimes (Administration of Sentences) Further Amendment Bill 2002

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	2
Schedule 1 Amendments	3



New South Wales

Crimes (Administration of Sentences) Further Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Crimes (Administration of Sentences) Act 1999* to make provision with respect to segregated and protective custody, the appointment of recognised interstate correctional officers and drug and alcohol testing of correctional staff; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Administration of Sentences) Further Amendment Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	8
The <i>Crimes (Administration of Sentences) Act 1999</i> is amended as set out in Schedule 1.	9 10

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Interpretation	3
	Insert in alphabetical order in section 3 (1):	4
	<i>transitional centre</i> means premises managed or approved by the Commissioner for the purpose of accommodating certain inmates prior to their release from custody.	5 6 7
[2]	Section 7 Payments to inmates	8
	Insert after section 7 (2):	9
	(3) The payment of an inmate by the Commissioner under this section for work done (whether or not at the direction of the Commissioner) does not constitute employment of, or a contract of service with, the inmate by the Crown or any other person, and accordingly an inmate who undertakes any such paid work is not:	10 11 12 13 14 15
	(a) a worker for the purposes of the <i>Workers Compensation Act 1987</i> , the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , the <i>Annual Holidays Act 1944</i> or the <i>Long Service Leave Act 1955</i> , or	16 17 18 19 20
	(b) an employee (however described) for the purposes of the <i>Industrial Relations Act 1996</i> or any Act or other law.	21 22 23
[3]	Part 2, Division 2	24
	Omit the Division. Insert instead:	25
Division 2	Segregated and protective custody	26
9	Definitions	27
	In this Division:	28
	<i>protective custody direction</i> means a direction referred to in section 11.	29 30

	<i>segregated custody direction</i> means a direction referred to in section 10.	1 2
	<i>suspension direction</i> means a direction referred to in section 20 (1) (a).	3 4
10	Segregated custody of inmates	5
	(1) The Commissioner may direct that an inmate be held in segregated custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to:	6 7 8 9
	(a) the personal safety of any other person, or	10
	(b) the security of a correctional centre, or	11
	(c) good order and discipline within a correctional centre.	12
	(2) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the segregated custody direction was given.	13 14 15 16 17
	(3) A segregated custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.	18 19 20
	(4) Subsection (3) is subject to section 15.	21
11	Protective custody of inmates	22
	(1) The Commissioner may direct that an inmate be held in protective custody if of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat to the personal safety of the inmate.	23 24 25 26
	(2) The Commissioner may also direct that an inmate be held in protective custody if the inmate requests the Commissioner in writing to do so.	27 28 29
	(3) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre and, on each occasion he or she does so, must notify the Commissioner of that fact and of the grounds on which the protective custody direction was given.	30 31 32 33 34

(4) A protective custody direction given by the governor of a correctional centre does not apply in relation to any other correctional centre.	1 2 3
(5) Subsection (4) is subject to section 15.	4
12 Effect of segregated or protective custody direction	5
(1) An inmate subject to a segregated or protective custody direction is to be detained:	6 7
(a) in isolation from all other inmates, or	8
(b) in association only with such other inmates as the Commissioner (or the governor of the correctional centre in the exercise of the Commissioner's functions under section 10 or 11) may determine.	9 10 11 12
(2) An inmate who is held in segregated or protective custody:	13
(a) is not to suffer any reduction of diet, and	14
(b) is not to be deprived of any rights or privileges other than those determined by the Commissioner (or the governor in the exercise of the Commissioner's functions under section 10 or 11), either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated or protective custody.	15 16 17 18 19 20 21
13 Form of direction	22
A segregated or protective custody direction must be in writing and must include the grounds on which it is given.	23 24
14 Information concerning review of segregated or protective custody direction	25 26
As soon as practicable after an inmate is directed:	27
(a) to be held in segregated custody under section 10, or	28
(b) to be held in protective custody under section 11 (other than at the inmate's request),	29 30
the governor of the correctional centre is to provide the inmate with information concerning the inmate's rights to a review of the segregated or protective custody direction.	31 32 33

15	Transfer of inmate held in segregated or protective custody	1
(1)	If an inmate held in segregated or protective custody under a segregated or protective custody direction given by the governor of a correctional centre is transferred to another correctional centre, the segregated or protective custody direction applies:	2
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(a)	in relation to the correctional centre to which the inmate is transferred (<i>the receiving correctional centre</i>), and	7
		8
(b)	in relation to the conveyance of the inmate to the receiving correctional centre, including custody of the inmate in any correctional centre in which the inmate is held during the course of being conveyed to the receiving correctional centre.	9
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(2)	Within 72 hours after the arrival of the inmate at the receiving correctional centre, the governor of the receiving correctional centre must review the segregated or protective custody direction, having regard to the grounds referred to in section 10 or 11, and give one of the following directions:	14
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(a)	a direction revoking the segregated or protective custody direction,	19
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(b)	a direction confirming the segregated or protective custody direction,	21
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(c)	a direction confirming the segregated or protective custody direction but amending its terms.	23
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(3)	A direction given under subsection (2) has effect according to its terms.	25
		26
(4)	A segregated or protective custody direction that is subject to a direction under subsection (2) (b) or (c) is, on and after the giving of that direction, taken to be a segregated or protective custody direction given by the governor of the receiving correctional centre.	27
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(5)	A direction by the governor of a receiving correctional centre revoking, confirming or amending a segregated or protective custody direction has effect even though it is given outside the period during which it is required to be given under this section.	32
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16	Review of segregated or protective custody direction by Commissioner	1
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(1)	The governor of a correctional centre where an inmate is held in segregated or protective custody must submit a report about the segregated or protective custody direction to the Commissioner within 14 days after the date on which the direction is given (<i>the relevant date</i>), regardless of whether the segregated or protective custody direction was given by the Commissioner or by the governor of a correctional centre.	3
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(2)	Within 7 days after receiving the report, the Commissioner must review the segregated or protective custody direction and give one of the following directions:	10
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		12
(a)	a direction revoking the segregated or protective custody direction,	13
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(b)	a direction confirming the segregated or protective custody direction,	15
		16
(c)	a direction confirming the segregated or protective custody direction but amending its terms.	17
		18
(3)	If the direction is confirmed, the governor of the correctional centre where the inmate is held in segregated or protective custody must submit a further report about the direction to the Commissioner within 3 months after the relevant date, and within each subsequent period of 3 months after that period.	19
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		23
(4)	Within 7 days after each occasion on which the Commissioner receives any such further report, the Commissioner must review the segregated or protective custody direction and give one of the directions referred to in subsection (2) (a)–(c).	24
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(5)	The confirmation of a segregated or protective custody direction by the governor of a correctional centre under section 15, or by the Review Council under section 22, does not affect the requirements for reporting about and reviewing a segregated or protective custody direction under this section.	28
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(6)	A direction by the Commissioner revoking, confirming or amending a segregated or protective custody direction has effect even though it is given outside the period during which it is required to be given under this section.	33
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(7) In this section:	1
<i>report</i> , in relation to a segregated or protective custody direction, means a report recommending whether or not the segregated or protective custody direction should be revoked, confirmed or amended.	2 3 4 5
17 Revocation of segregated or protective custody direction	6
(1) A segregated or protective custody direction remains in force until it is revoked.	7 8
(2) The Commissioner may, at any time, revoke a segregated or protective custody direction or amend its terms.	9 10
(3) The Commissioner must revoke a protective custody direction given at the request of an inmate if the inmate requests the Commissioner in writing to revoke it.	11 12 13
(4) The governor of a correctional centre may exercise the Commissioner's functions under this section in relation to the correctional centre.	14 15 16
18 Report to Minister on segregated or protective custody direction	17
(1) As soon as practicable after confirming a segregated or protective custody direction, the Commissioner must give written notice of that fact to the Minister, giving reasons for the confirmation direction, if:	18 19 20 21
(a) the confirmation direction will result in the inmate being subject to a total continuous period of segregated or protective custody exceeding 6 months, or	22 23 24
(b) the inmate has already been subject to a total continuous period of segregated or protective custody exceeding 6 months.	25 26 27
(2) This section does not apply to a direction confirming a protective custody direction that was given at the request of an inmate.	28 29 30

19	Review of segregated or protective custody direction by Review Council	1
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(1)	An inmate whose total continuous period of segregated or protective custody exceeds 14 days may apply to the Review Council for a review of the segregated or protective custody direction under which the inmate is held in segregated or protective custody.	3
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(2)	The application is to be in writing and is to include the inmate's reasons for making the application.	8
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(3)	The Review Council must review the direction unless subsection (4) applies.	10
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(4)	The Review Council may refuse to review the direction if:	12
(a)	the application does not, in the opinion of the Review Council, disclose substantial grounds for a review, or	13
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(b)	the Review Council has previously determined a review of the same direction under this Division and the application does not, in the opinion of the Review Council, disclose substantially different grounds for review.	15
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(5)	The Review Council may not refuse to review a direction under subsection (4) if a period of more than 3 months has elapsed since the Review Council determined a review of the segregated or protective custody direction.	20
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(6)	This section applies regardless of whether the relevant segregated or protective custody direction was given by the Commissioner or by the governor of a correctional centre.	24
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20	Suspension directions by Review Council	27
(1)	The Chairperson of the Review Council may give a direction for:	28
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(a)	the suspension of an inmate's segregated or protective custody direction, or	30
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(b)	the transfer of an inmate to a different correctional centre.	32
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(2)	A suspension direction may be given at any time after an application for a review is made and before it is determined.	34
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(3)	While a suspension direction is in force, the inmate is not to be held in segregated or protective custody unless a new segregated or protective custody direction is given.	1 2 3
(4)	The Chairperson may at any time vary or revoke a suspension direction.	4 5
(5)	A suspension direction does not revoke a segregated or protective custody direction.	6 7
(6)	A direction for the transfer of an inmate to a different correctional centre may be given:	8 9
(a)	if the Chairperson considers that the inmate's removal would facilitate the review of the segregated or protective custody direction, or	10 11 12
(b)	for any other reason that the Chairperson thinks fit.	13
(7)	The determination of a review of a segregated or protective custody direction by the Review Council under section 22 revokes any suspension direction applying to the segregated or protective custody direction.	14 15 16 17
21	Procedure for review of segregated or protective custody direction by Review Council	18 19
(1)	In determining any matter relating to the segregated or protective custody of an inmate, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.	20 21 22 23
(2)	The Review Council must cause notice of any hearing in relation to a review to be given to the inmate who applied for the review.	24 25 26
(3)	If the inmate so wishes, the Review Council must allow the inmate to be present, and to be heard, at the hearing.	27 28
(4)	The inmate may be represented by a legal practitioner chosen by the inmate or, if the Review Council so approves, by some other person chosen by the inmate.	29 30 31
(5)	The Commissioner or the governor of a correctional centre (or both) may be represented by a legal practitioner or by some other person.	32 33 34
(6)	Division 2 of Part 9 applies to the conduct of a review by the Review Council under this Division.	35 36

22	Determination of review by Review Council	1
	(1) In reviewing a segregated or protective custody direction, the Review Council must take the following matters into account:	2
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	(a) whether the direction was given or reviewed in accordance with this Division,	4
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	(b) whether the direction was reasonable in the circumstances,	6
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	(c) whether the direction was necessary to secure the personal safety of the inmate or any other person,	8
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	(d) the security of, and the preservation of good order and discipline within, the relevant correctional centre,	10
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	(e) the interests of the public.	12
	(2) In determining an application for review, the Review Council may revoke, confirm or amend the segregated or protective custody direction to which the application relates.	13
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[4]	Section 26 Local leave permits	16
	Omit “(that is, premises managed or approved by the Commissioner for the purpose of accommodating inmates prior to their release from custody)” from section 26 (2) (j).	17
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[5]	Section 38 Absent inmates taken to be in custody	20
	Omit the definition of <i>designated officer</i> from section 38 (4).	21
	Insert instead:	22
	<i>designated officer</i> means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this section.	23
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[6]	Section 76 Sale of unclaimed property	26
	Insert “or otherwise disposed of as the Commissioner may direct” after “sold” in section 76 (1).	27
		28
[7]	Section 107 Definitions	29
	Insert “from the date on which the order was made” after “months” wherever occurring in the definition of <i>relevant maximum period</i> .	30
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[8] Section 197 Functions of Review Council	1
Omit section 197 (2) (d). Insert instead:	2
(d) to review segregated and protective custody directions under Division 2 of Part 2,	3 4
[9] Section 197 (3)	5
Insert “nominated by the Chairperson” after “judicial member”.	6
[10] Section 228 Official Visitors	7
Omit section 228 (4) (a) (i). Insert instead:	8
(i) for the purpose of giving interviews to correctional officers and other members of staff employed in the Department at the complex or centre, and	9 10 11 12
(ia) for the purpose of giving interviews to offenders held in custody at the complex or centre, and	13 14
[11] Section 232 Commissioner	15
Omit section 232 (4). Insert instead:	16
(4) Sections 10 (2), 11 (3), 12 and 17 (4) do not limit the power of the Commissioner to delegate functions under those sections.	17 18
[12] Sections 235C and 235D	19
Insert after section 235B:	20
235C Transitional centre officers	21
(1) In this section:	22
<i>transitional centre officer</i> means a person who is employed at a transitional centre for the purpose of supervising inmates residing at the transitional centre (including supervising such inmates while they are outside the transitional centre).	23 24 25 26
(2) The functions of transitional centre officers are to be as determined from time to time by the Commissioner.	27 28
(3) Those functions may include functions of a correctional officer.	29

(4)	To the extent that the functions of a transitional centre officer include the functions of a correctional officer, the transitional centre officer has all the immunities of a correctional officer.	1 2 3
(5)	A transitional centre officer may exercise a function of a correctional officer only in respect of an inmate who resides at the transitional centre where the transitional centre officer is employed.	4 5 6 7
(6)	Transitional centre officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.	8 9 10
235D	Functions of periodic detention field officers	11
(1)	In this section: <i>periodic detention field officer</i> means a person who is employed for the purpose of supervising offenders subject to periodic detention orders while the offenders are outside a periodic detention centre.	12 13 14 15 16
(2)	The functions of periodic detention field officers are to be as determined from time to time by the Commissioner.	17 18
(3)	Those functions may include functions of a correctional officer.	19
(4)	To the extent that the functions of a periodic detention field officer include the functions of a correctional officer, the periodic detention field officer has all the immunities of a correctional officer.	20 21 22 23
(5)	A periodic detention field officer may exercise a function of a correctional officer only:	24 25
	(a) in respect of an offender who is subject to a periodic detention order, and	26 27
	(b) during any detention period for that offender.	28
(6)	Periodic detention field officers must at all times exercise their functions in such manner as the Commissioner, having regard to current circumstances, may from time to time direct.	29 30 31

[13] Section 236D	1
Insert after section 236C:	2
236D Delegation of functions of CEO, Corrections Health Service	3
(1) The Chief Executive Officer, Corrections Health Service, may delegate to any person any of the Chief Executive Officer's functions under this Act, other than this power of delegation.	4 5 6
(2) Subsection (1) does not enable the Chief Executive Officer, Corrections Health Service to delegate the right of free and unfettered access conferred on the Chief Executive Officer by sections 236B and 244.	7 8 9 10
[14] Part 11, Division 5	11
Insert after Division 4 of Part 11:	12
Division 5 Testing of correctional staff for alcohol and prohibited drugs	13 14
236E Definitions	15
In this Part:	16
<i>authorised person</i> means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this Division and the regulations.	17 18 19
<i>breath analysing instrument</i> means any instrument approved by the Governor by order under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's blood.	20 21 22 23 24 25
<i>breath analysis</i> means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.	26 27 28 29
<i>breath test</i> means a test:	30
(a) that is designed to indicate the concentration of alcohol in a person's blood, or whether a particular	31 32

	concentration of alcohol is or may be present in a person's blood, and	1 2
(b)	that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	3 4 5 6 7
	<i>hospital</i> means a public or private hospital, and includes any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.	8 9 10
	<i>member of correctional staff</i> means a correctional officer or any other person who is employed in the Department.	11 12
	<i>prohibited drug</i> has the same meaning as in the <i>Drug Misuse and Trafficking Act 1985</i> .	13 14
236F	Testing of staff for alcohol and prohibited drugs	15
(1)	An authorised person may require any member of correctional staff who is on duty, or who is present at the staff member's place of work and about to go on duty:	16 17 18
(a)	to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or	19 20 21
(b)	to provide a sample of the staff member's urine or hair for the purpose of testing for the presence of prohibited drugs,	22 23 24
	in accordance with the directions of the authorised person and the regulations.	25 26
(2)	The selection of a member of correctional staff for testing under subsection (1) may be conducted on a random or targeted basis.	27 28 29
(3)	Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a member of correctional staff, or as the result of the discharge of a firearm by a member of correctional staff, an authorised person may require any member of correctional staff involved in the incident:	30 31 32 33 34 35

(a)	to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or	1 2 3
(b)	to provide a sample of the member of staff's urine or hair for the purpose of testing for the presence of prohibited drugs,	4 5 6
	in accordance with the directions of the authorised person and the regulations.	7 8
(4)	An authorised person may require the staff member to remain on the premises where the test is to be conducted until the test is completed.	9 10 11
(5)	A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident concerned.	12 13 14
236G	Testing where member of correctional staff attends hospital	15
(1)	If a member of correctional staff attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 236F (3), an authorised person may require the member of staff to provide a sample of the member of staff's blood, urine or hair in accordance with the directions of a medical practitioner who attends the member of staff at the hospital.	16 17 18 19 20 21 22
(2)	Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> instead.	23 24 25 26 27
(3)	If there is no medical practitioner present to attend the staff member at the hospital, the sample is to be taken by a registered nurse who is attending the staff member and who is accredited by a hospital to perform the sampling procedures.	28 29 30 31
(4)	Sections 21 and 22 of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> apply to any taking of a sample of blood, urine or hair under subsection (1) as if the sample were a sample of blood taken under Division 4 of Part 2 of that Act.	32 33 34 35

(5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.	1 2 3
(6) Nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	4 5 6
236H Protection from liability	7
(1) A medical practitioner does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner in the course of taking a sample of blood, urine or hair from a member of correctional staff for the purpose of its being used by an analyst to detect the presence of alcohol or any prohibited drug if the practitioner:	8 9 10 11 12 13
(a) believed on reasonable grounds that he or she was required under this Act to take the sample of blood, urine or hair from the person, or	14 15 16
(b) was informed by an authorised officer that the staff member was a person from whom the practitioner was required under this Act to take the sample of blood, urine or hair.	17 18 19 20
(2) Subsection (1) extends to a registered nurse, or any person acting under the supervision of the medical practitioner, who performs the functions of a medical practitioner under this Division in accordance with this Division or the regulations.	21 22 23 24
236I Regulations	25
The regulations may make provision for or with respect to the following:	26 27
(a) the appointment of authorised officers and the authorisation of persons:	28 29
(i) to administer breath tests, breath analyses or other tests for the purposes of detecting the presence or concentration of alcohol or prohibited drugs, and	30 31 32 33
(ii) to operate equipment for that purpose,	34
(b) the conduct of testing,	35
(c) the taking of samples of urine, hair or blood,	36

(d)	the taking of a sample of blood at the choice of a member of correctional staff for the staff member to retain or arrange to be analysed (or both),	1 2 3
(e)	the provision of a sample of the staff member's urine or hair for the purpose of testing for the presence of prohibited drugs,	4 5 6
(f)	the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,	7 8 9
(g)	the accreditation of persons conducting analyses for the presence of prohibited drugs,	10 11
(h)	the procedure for the handling and analysis of samples of urine, hair or blood,	12 13
(i)	offences relating to interference with test results or the testing procedure,	14 15
(j)	the consequences of refusing to comply with a requirement of or under this Division,	16 17
(k)	the consequences for members of correctional staff of testing positive for alcohol or prohibited drugs,	18 19
(l)	the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,	20 21
(m)	the confidentiality of test results.	22
[15]	Part 11, Division 6	23
	Insert at the end of Part 11:	24
	Division 6 Recognised interstate correctional officers	25
236J	Appointment of recognised interstate correctional officers	26
(1)	The Commissioner may, by instrument in writing, appoint any of the following persons, or each person in a group of such persons, as a recognised interstate correctional officer:	27 28 29
(a)	any person who is employed as a correctional officer (other than a probationary correctional officer) within the public service of another State or Territory,	30 31 32

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| (b) any member of the police force of another State or Territory (other than a probationary constable), | 1
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| (c) any member of the Australian Federal Police. | 3 |
| (2) The Commissioner may not appoint a person, or each person in a group of persons, as a recognised interstate correctional officer unless, in the Commissioner's opinion, the person or each person in the group of persons: | 4
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| (a) has undergone appropriate training in respect of the exercise of his or her functions as a recognised interstate correctional officer, and | 8
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| (b) is to be subject to an appropriate disciplinary system in respect of the exercise of those functions. | 11
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| (3) An appointment as a recognised interstate correctional officer may be made subject to conditions. The kinds of conditions to which an appointment may be subject include (but are not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised. | 13
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| (4) The Commissioner may, at any time, revoke the appointment of any person, or of each person in a group of persons, as a recognised interstate correctional officer and may, at any time, impose, vary or revoke any conditions of appointment. | 19
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| (5) A person who is a recognised interstate correctional officer because he or she is employed as a correctional officer in the public service of another State or Territory, or because he or she is a member of a police force, ceases to be a recognised interstate correctional officer on ceasing to be so employed as a correctional officer or on ceasing to be such a member. | 23
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| (6) Without limiting subsection (4), the Commissioner may at any time revoke the appointment of a person as a recognised interstate correctional officer if of the opinion that the person is not a suitable person to be a recognised interstate correctional officer. | 29
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| (7) In this section, a reference to a correctional officer or to the public service of another State or Territory means a correctional officer however described, or a public service however described. | 34
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236K	Recognised interstate correctional officer to have correctional officer functions	1
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	(1) A recognised interstate correctional officer has all the functions and immunities that a correctional officer has under this or any other Act.	3
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	(2) The conferral of functions by this section on a recognised interstate correctional officer is subject to any applicable conditions of the person's appointment as a recognised interstate correctional officer.	6
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	(3) The regulations may make provision for or with respect to identification requirements for, or the wearing of uniforms by, recognised interstate correctional officers.	10
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[16]	Section 249 Definitions	13
	Omit the definition of <i>designated officer</i> from the section.	14
	Insert instead:	15
	<i>designated officer</i> means the person for the time being holding or acting in the position within the Department designated by the Commissioner for the purposes of this Part.	16
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[17]	Section 260 Evidentiary certificates	19
	Insert after section 260 (a):	20
	(a1) a specified person was in the custody of the designated officer within the meaning of section 38 or 249.	21
		22
[18]	Section 267	23
	Omit the section. Insert instead:	24
267	Research	25
	(1) In this section:	26
	<i>research</i> means research in connection with:	27
	(a) the administration or management of correctional centres or any other facilities administered or managed by the Department or a management company, or	28
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		30
	(b) services provided to offenders by or on behalf of the Department or a management company, or	31
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- (c) the circumstances relating to offenders, or 1
 - (d) workplace or industrial relations matters relating to 2
correctional centres or any other facilities administered 3
or managed by the Department or a management 4
company, or 5
 - (e) some other aspect of penology. 6
 - (2) A person must apply to the Commissioner for approval to 7
conduct research that involves the person (or persons acting 8
under the direction of that person) obtaining access to: 9
 - (a) information held by the Department or a management 10
company, or 11
 - (b) facilities administered or managed by the Department or 12
a management company, or 13
 - (c) persons employed in, or engaged by contract to, the 14
Department or a management company, or 15
 - (d) persons in the custody of, or supervised by, the 16
Department or a management company. 17
 - (3) In determining such an application, the Commissioner may 18
have regard to any recommendations made by an ethics 19
committee established by the Commissioner in accordance with 20
the regulations. 21
 - (4) The Commissioner may approve an application subject to 22
conditions or unconditionally, and may give access to such 23
information, facilities or persons, or give access in such 24
manner, as the Commissioner considers appropriate. 25
 - (5) A person to whom any such access is given must not use any 26
information obtained in connection with that access, or created 27
as a result of that access, in a manner: 28
 - (a) that contravenes any conditions imposed by the 29
Commissioner as to its use, or 30
 - (b) that enables the identity of any person to whom the 31
information relates to be ascertained. 32
- Maximum penalty: 2 penalty units. 33

(6) The Department may, either alone or in conjunction with a university body or another person or organisation, undertake research in connection with matters referred to in subsection (1).	1 2 3 4
[19] Schedule 1 Parole Board	5
Insert after clause 11 (5):	6
(6) The Parole Board may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).	7 8 9 10 11 12
[20] Schedule 1, clause 16	13
Insert at the end of clause 16:	14
(2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Parole Board at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.	15 16 17 18 19
[21] Schedule 1, clause 17	20
Omit the clause. Insert instead:	21
17 Decisions	22
(1) A decision supported by a majority of the votes cast at a meeting of the Parole Board at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Parole Board.	23 24 25 26
(2) In the case of an equality of votes, the judicial member presiding at a meeting of the Parole Board is to have the casting vote.	27 28 29

[22] Schedule 1, clause 22A	1
Insert after clause 22:	2
22A Rulings on points of law	3
If either of the following questions arises at a meeting of the Parole Board, it is to be decided by the person presiding at the meeting alone:	4
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	6
(a) whether a question is a question of fact or law, or a question of mixed law and fact,	7
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(b) any question determined to be a question of law alone or a question of mixed law and fact.	9
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[23] Schedule 2 Serious Offenders Review Council	11
Insert after clause 11 (5):	12
(6) The Review Council may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and by members of the public (if the meeting is open to the public).	13
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[24] Schedule 2, clause 11A (4)	19
Omit “a party to the proceedings”.	20
Insert instead “involved in the proceedings”.	21
[25] Schedule 2, clause 11A (5) (c)	22
Omit “a party opposing the making of the direction that the direction would be unfair to the party”.	23
	24
Insert instead “a person opposing the making of the direction that the direction would be unfair to the person”.	25
	26
[26] Schedule 2, clause 11A (6)	27
Omit “a party to the proceedings”.	28
Insert instead “a person involved in the proceedings”.	29

[27] Schedule 2, clause 11A (7)	1
Omit “any party to the proceedings”.	2
Insert instead “any person involved in the proceedings”.	3
[28] Schedule 2, clause 15	4
Insert at the end of clause 15:	5
(2) Despite subclause (1), if the Chairperson and the Alternate Chairperson or Deputy Chairperson, or both, are present at a meeting of the Review Council at which all community members may attend, the Alternate Chairperson and Deputy Chairperson are each entitled to vote with respect to any decision.	6 7 8 9 10 11
[29] Schedule 2, clause 16	12
Omit the clause. Insert instead:	13
16 Decisions	14
(1) A decision supported by a majority of the votes cast at a meeting of the Review Council at which a quorum is present (being votes cast by persons entitled to vote at the meeting) is the decision of the Review Council.	15 16 17 18
(2) In the case of an equality of votes, the judicial member presiding at a meeting of the Review Council is to have the casting vote.	19 20 21
[30] Schedule 2, clause 20A	22
Insert after clause 20:	23
20A Rulings on points of law	24
If either of the following questions arises at a meeting of the Review Council, it is to be decided by the person presiding at the meeting alone:	25 26 27
(a) whether a question is a question of fact or law, or a question of mixed law and fact,	28 29
(b) any question determined to be a question of law alone or a question of mixed law and fact.	30 31

[31] Schedule 5 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Crimes (Administration of Sentences) Further Amendment Act 2002</i>	3
	4
[32] Schedule 5, Part 5	5
Insert after Part 4:	6
Part 5 Provisions consequent on enactment of Crimes (Administration of Sentences) Further Amendment Act 2002	7
	8
	9
64 Definition	10
In this Part:	11
<i>2002 amending Act</i> means the <i>Crimes (Administration of Sentences) Further Amendment Act 2002</i> .	12
	13
65 Segregated custody directions and protective custody directions	14
(1) In this clause:	15
<i>commencement date</i> means the date on which Division 2 of Part 2 (as substituted by the 2002 amending Act) commences.	16
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(2) A segregated or protective custody direction given under Division 2 of Part 2 before the commencement date is taken to be a segregated or protective custody direction given under Division 2 of Part 2 as substituted by the 2002 amending Act.	18
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(3) For the purposes of the application of section 16 (as substituted by the 2002 amending Act) to a segregated or protective custody direction given before the commencement date, the following provisions have effect:	22
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(a) if the segregated or protective custody direction was given less than 14 days before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody must submit a report about the direction to the Commissioner within 14 days after the	26
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	direction was given, and that report is taken to be a report under section 16 (1),	1 2
(b)	if the segregated or protective custody direction was given not less than 14 days before the commencement date and was extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section within 3 months after the direction was extended by the Commissioner, and that report is taken to be a report under section 16 (3),	3 4 5 6 7 8 9 10 11 12
(c)	if the segregated or protective custody direction was given not less than 14 days before the commencement date and was not extended by the Commissioner less than 3 months before the commencement date, the governor of the correctional centre where the inmate the subject of the direction is held in segregated or protective custody is to prepare a report referred to in that section as soon as possible after the commencement date, and that report is taken to be a report under section 16 (3).	13 14 15 16 17 18 19 20 21 22
66	Meetings of Parole Board and Review Council	23
(1)	Schedule 1, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Parole Board that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 1 as if it had not been so amended.	24 25 26 27 28 29
(2)	Schedule 2, as in force before its amendment by the 2002 amending Act, continues to apply to any proceedings before the Review Council that had been commenced but not concluded immediately before the commencement of that amendment, and such proceedings are to be determined in accordance with Schedule 2 as if it had not been so amended.	30 31 32 33 34 35