

# Crimes (Administration of Sentences) Bill 1999

## Explanatory note

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

This Bill is cognate with the *Crimes (Sentencing Procedure) Bill 1999*.

## Overview of Bill

This Bill, the *Crimes (Sentencing Procedure) Bill 1999* and the *Crimes Legislation Amendment (Sentencing) Bill 1999* comprise a package of cognate Bills that:

- (a) repeal and re-enact (in the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999*) the provisions of various Acts dealing with the sentencing of offenders and the administration of sentences imposed on offenders, and
- (b) transfer to the *Criminal Procedure Act 1986* the provisions of various Acts dealing with criminal procedure, and
- (c) transfer to the *Crimes Act 1900* and the *Summary Offences Act 1988* various offences created by the provisions of other Acts, and
- (d) abolish the distinction between offences that are felonies and offences that are misdemeanours, and
- (e) abolish the punishment of penal servitude and the punishment of imprisonment with hard or light labour.

The object of this Bill is to re-enact provisions of the following Acts in relation to the administration of sentences imposed on offenders:

- (a) the *Community Service Orders Act 1979*,
- (b) the *Correctional Centres Act 1952*,
- (c) the *Home Detention Act 1996*,
- (d) the *Periodic Detention of Prisoners Act 1981*,
- (e) the *Sentencing Act 1989*.

The re-enacted provisions are substantially the same as those they replace, except as follows:

- (a) the proposed Act extends the purposes for which the Commissioner of Corrective Services may grant leave of absence to inmates of correctional centres,
- (b) the proposed Act replaces the provisions of the *Community Service Orders Act 1979* that make contravention of a community service order a separate offence with provisions that make such a contravention punishable:
  - (i) by an administrative extension (by up to a maximum of 10 hours) of the number of hours of community service work to be carried out under the order, or
  - (ii) by revocation of the order,
- (c) the proposed Act provides for fixed 3-year terms for members of the Parole Board and members of the Serious Offenders Review Council,
- (d) the proposed Act increases, from 3 to 9, the number of community members of the Serious Offenders Review Council.

The Bill also deals with savings and transitional matters.

## Outline of provisions

## **Part 1 Preliminary**

The proposed Part contains the following formal provisions (**clauses 1–3**):

**Clause 1** specifies 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** defines certain words and expressions used in the proposed Act and provides that notes in the proposed Act do not form part of the proposed Act.

## **Part 2 Imprisonment by way of full-time detention**

### **Division 1 Preliminary**

The proposed Division (**clauses 4–8**) deals with various preliminary matters concerning full-time detention, and includes the following provisions:

**Clause 4** provides that proposed Part 2 will apply to all persons who are committed to a correctional centre to serve a sentence of imprisonment by way of full-time detention or on remand, but will not apply to persons detained under the *Intoxicated Persons Act 1979*.

**Clause 5** sets out the obligations of an inmate while serving a sentence of imprisonment by way of full-time detention.

**Clause 6** empowers the governor of a correctional centre to direct inmates to perform work.

**Clause 7** empowers the Commissioner for Corrective Services (the **Commissioner**) to pay inmates for the work they do, and for other purposes.

**Clause 8** specifies when an inmate's term of imprisonment ends and allows an inmate to be discharged from custody at any time during the 24 hours before the inmate becomes due for discharge.

### **Division 2 Segregated and protective custody**

The proposed Division (**clauses 9–22**) deals with the segregation of inmates and the placing of inmates in protective custody (in a similar way to current sections 22AA–22F of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 9** defines certain words and expressions used in the proposed Division.

**Clause 10** provides for an inmate to be held in segregated custody, for the protection of others.

**Clause 11** provides for an inmate to be held in protective custody, for the protection of the inmate.

**Clause 12** sets out the effect of a segregated or protective custody direction.

**Clause 13** prevents an inmate from being held in custody for more than 14 days at a time except on the direction of the Commissioner.

**Clause 14** enables the Commissioner to make a direction extending a segregated or protective custody direction for up to 3 months.

**Clause 15** requires a segregated or protective custody direction, or an extension direction, to be in writing, and to set out the grounds on which it is made.

**Clause 16** enables the Commissioner to revoke a segregated or protective custody direction.

**Clause 17** requires the Commissioner to notify the Minister on making an extension direction.

**Clause 18** empowers the Minister to review an extension direction.

**Clause 19** enables an inmate to seek a review of a segregated or protective custody direction from the Serious Offenders Review Council (the **Review Council**).

**Clause 20** empowers the Review Council to make a direction suspending the operation of a segregated or protective custody direction.

**Clause 21** deals with the procedure to be followed by the Review Council in reviewing a segregated or protective custody direction.

**Clause 22** prescribes the decisions that the Review Council may make in relation to its review of a segregated or protective custody direction.

### **Division 3 Transfer and leave of absence**

#### **Subdivision 1 Transfer and leave of absence within New South Wales**

The proposed Subdivision (**clauses 23–26**) deals with the transfer of inmates and the granting of leave of absence to inmates (in a similar way to current Division 1 of Part 5 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 23** empowers the Commissioner to transfer inmates from one correctional centre to another.

**Clause 24** empowers the Commissioner to order that an inmate be transferred to a hospital or other place for medical attention.

**Clause 25** empowers the Commissioner to give local leave orders requiring an inmate's absence from a correctional centre for certain purposes.

**Clause 26** empowers the Commissioner to give local leave permits authorising an inmate's absence from a correctional centre for certain purposes.

#### **Subdivision 2 Interstate leave of absence**

The proposed Subdivision (**clauses 27–37**) deals with the granting of interstate leave of absence to inmates (in a similar way to current Division 2 of Part 5 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 27** defines certain words and expressions used in the proposed Subdivision.

**Clause 28** enables the Governor to declare laws of other jurisdictions to be corresponding laws for the purposes of the proposed Subdivision.

**Clause 29** enables the Commissioner to issue interstate leave permits to let inmates travel interstate for specified purposes.

**Clause 30** provides that an interstate leave permit authorises its holder to be absent from a correctional centre for the purposes specified in the permit.

**Clause 31** enables the Commissioner to vary or revoke an interstate leave permit.

**Clause 32** makes it an offence for an inmate to contravene any of the conditions on which an interstate leave permit has been issued.

**Clause 33** requires the Commissioner to notify the jurisdictions to or through which an inmate is to travel under the authority of an interstate leave permit of the fact that the permit has been issued.

**Clause 34** authorises a police officer or correctional officer of another jurisdiction to retain custody, while in New South Wales, of a prisoner the subject of an interstate leave permit issued under a corresponding law of that jurisdiction.

**Clause 35** authorises a police officer or correctional officer of another jurisdiction to arrest an interstate prisoner who escapes from custody, while in New South Wales, if the prisoner is the subject of an interstate leave permit issued under a corresponding law of that jurisdiction.

**Clause 36** provides for the return of escaped interstate prisoners to their State of origin.

**Clause 37** renders the Crown liable for any damage caused in another jurisdiction by an inmate the subject of an interstate leave permit issued by the Commissioner.

#### **Subdivision 3 Miscellaneous**

The proposed Subdivision (**clauses 38–41**) deals with the custody of inmates while on leave of absence (in a similar way to current Division 3 of Part 5 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 38** provides that an inmate who is absent from a correctional centre in certain of the circumstances allowed by the proposed Act is taken to remain in custody despite the absence.

**Clause 39** enables the Commissioner to issue a warrant for the arrest of an inmate who contravenes a condition of a local leave permit or interstate leave permit, whose local leave permit or interstate leave permit is revoked or who fails to return to custody when a local leave permit or interstate leave permit expires.

**Clause 40** provides that a lawful absence from a correctional centre does not affect the length

of an inmate's sentence of imprisonment.

**Clause 41** provides that an inmate who is in the custody of the governor of a correctional centre does not cease to be in that custody while in transit through the Australian Capital Territory.

#### **Division 4 Prisoners received from Australian Capital Territory**

The proposed Division (**clauses 42–46**) deals with inmates who are received in this State from the Australian Capital Territory (in a similar way to current Part 9 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 42** defines certain words and expressions used in the proposed Division.

**Clause 43** excludes certain persons from the operation of the proposed Division.

**Clause 44** authorises an ACT constable to have custody of an ACT prisoner in New South Wales if an ACT warrant so provides.

**Clause 45** authorises the governor of a New South Wales correctional centre to give custody of an ACT prisoner to an ACT constable if an ACT warrant authorises the constable to have custody of the prisoner.

**Clause 46** is an evidentiary provision with respect to the proving of an ACT warrant.

#### **Division 5 Prisoners received from Norfolk Island**

The proposed Division (**clauses 47–50**) deals with inmates who are received in this State from Norfolk Island (in a similar way to current (uncommenced) Part 9A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 47** defines certain words and expressions used in the proposed Division.

**Clause 48** authorises a Commonwealth constable to have custody of a Norfolk Island prisoner in New South Wales if a Commonwealth warrant so provides.

**Clause 49** authorises the governor of a New South Wales correctional centre to give custody of a Norfolk Island prisoner to a Commonwealth constable if a Commonwealth warrant authorises the constable to have custody of the prisoner.

**Clause 50** is an evidentiary provision with respect to the proving of a Commonwealth warrant.

#### **Division 6 Correctional centre discipline**

The proposed Division (**clauses 51–65**) deals with correctional centre discipline (in a similar way to current Part 4 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 51** defines certain words and expressions used in the proposed Division.

**Clause 52** authorises the governor of a correctional centre to inquire into allegations that an inmate has committed a correctional centre offence.

**Clause 53** specifies the action that the governor of a correctional centre may take (including the penalties that may be imposed) on finding an inmate guilty of a correctional centre offence.

**Clause 54** enables the governor of a correctional centre to refer certain correctional centre offences to a Visiting Justice.

**Clause 55** applies the *Justices Act 1902* to proceedings before a Visiting Justice, and contains other provisions with respect to proceedings before a Visiting Justice in connection with a correctional centre offence.

**Clause 56** specifies the action that a Visiting Justice may take (including the penalties that may be imposed) on finding an inmate guilty of a correctional centre offence.

**Clause 57** enables a Visiting Justice to impose heavier penalties in the case of a correctional centre offence arising out of the results of a drug test or an inmate's refusal to participate in a drug test.

**Clause 58** requires a Visiting Justice who is dealing with a correctional centre offence to order the offence to be dealt with by means of criminal proceedings before a Local Court, and not as a correctional centre offence, if of the opinion that the offence should be dealt with in that manner.

**Clause 59** enables a Visiting Justice to order the payment of compensation for property damage

arising from the commission of a correctional centre offence.

**Clause 60** limits the punishment that may be imposed with respect to 2 or more correctional centre offences that are dealt with together to the maximum penalty that could be imposed if only one such offence were being dealt with.

**Clause 61** provides for the keeping of records with respect to penalties imposed on inmates for correctional centre offences.

**Clause 62** gives a right of appeal to the District Court against a decision of a Visiting Justice to extend an inmate's sentence of imprisonment by way of punishment for a correctional centre offence.

**Clause 63** prevents proceedings for a correctional centre offence from being taken against an inmate if criminal proceedings for the offence have been brought against the inmate in a court.

**Clause 64** creates an offence (punishable by a penalty of 5 penalty units) of giving false or misleading information in or in connection with any proceedings under the proposed Division.

**Clause 65** enables a correctional centre offence to be dealt with by the governor of any correctional centre, or by any Visiting Justice, regardless of where the offence is alleged to have been committed.

### **Division 7 Classification of serious offenders**

The proposed Division (**clauses 66–71**) deals with the procedures to be followed by the Review Council in relation to any proposal to recommend a change in a serious offender's classification that would make the serious offender eligible for unescorted leave of absence.

**Clause 66** applies the proposed Division to any such proposal.

**Clause 67** requires notice of any such proposal to be given to victims of the offender.

**Clause 68** allows victims to make written submissions to the Review Council in relation to any such proposal.

**Clause 69** requires the Review Council to consider any written submissions made by victims of the offender before accepting any such proposal.

**Clause 70** requires the Review Council to make a record in its minutes of its decision with respect to any such proposal.

**Clause 71** allows the State to make submissions to the Review Council with respect to any such proposal.

### **Division 8 Miscellaneous**

The proposed Division (**clauses 72–79**) deals with miscellaneous matters relating to the management of correctional centres (in a similar way to current provisions of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 72** provides that an inmate is taken to be in the custody of the governor of the correctional centre in which the inmate is held.

**Clause 73** enables a health practitioner to carry out emergency health treatment on an inmate without the need for the inmate's consent.

**Clause 74** requires the governor of a correctional centre to notify a coroner if an inmate dies while in the custody of the governor.

**Clause 75** authorises the governor of a correctional centre to confiscate property that is in the unlawful possession of an inmate.

**Clause 76** authorises the governor of a correctional centre to sell unclaimed property found within a correctional centre, and to deal with the proceeds of sale as unclaimed money.

**Clause 77** allows certain agencies to order the attendance of an inmate at proceedings before them, and authorises the governor of the correctional centre in which the inmate is held to produce the inmate in accordance with such an order.

**Clause 78** provides for the use of dogs in a correctional centre.

**Clause 79** specifies matters for which the regulations may provide for the purposes of the proposed Part.

## **Part 3 Imprisonment by way of periodic detention**

### **Division 1 Preliminary**

The proposed Division (**clauses 80–82**) deals with various preliminary matters concerning periodic detention, and includes the following provisions:

**Clause 80** defines certain words and expressions used in the proposed Part.

**Clause 81** sets out the obligations of an offender while serving a sentence of imprisonment by way of periodic detention.

**Clause 82** specifies the duration of a periodic detention order.

### **Division 2 Administration of periodic detention orders**

The proposed Division (**clauses 83–94**) deals with the administration of periodic detention orders (in a similar way to current Part 3 of the *Periodic Detention of Prisoners Act 1981*), and includes the following provisions:

**Clause 83** specifies when and how an offender is to report to a periodic detention centre.

**Clause 84** enables the Commissioner to direct an offender to participate in certain activities or to carry out community service work.

**Clause 85** provides for the way in which the day, time and place at which an offender must report for periodic detention may be varied.

**Clause 86** provides for the transfer of unruly offenders from a periodic detention centre to a correctional centre.

**Clause 87** enables the Commissioner to grant an offender leave of absence where the offender fails to report to a periodic detention centre.

**Clause 88** enables the Commissioner to grant an offender leave of absence where the offender reports late to a periodic detention centre.

**Clause 89** provides for the extension of an offender's term of imprisonment if the offender fails to report or reports late.

**Clause 90** authorises the Commissioner to grant exemptions from the operation of proposed section 89.

**Clause 91** enables the Commissioner to direct that an offender take leave of absence to protect the health or safety of the offender or any other person.

**Clause 92** authorises the Commissioner, for health reasons or on compassionate grounds, to order that future detention periods are taken to have been duly served if of the opinion that the offender is unlikely to be able to serve them within a reasonable time.

**Clause 93** enables an offender to appeal to a Local Court against the Commissioner's refusal to grant leave of absence under proposed section 87 or 88.

**Clause 94** enables an authorised officer to give directions to an offender.

### **Division 3 Offences**

The proposed Division (**clauses 95–97**) deals with offences relating to periodic detention (in a similar way to current sections 33 and 33B of the *Periodic Detention of Prisoners Act 1981*), and includes the following provisions:

**Clause 95** creates certain offences in relation to periodic detention.

**Clause 96** sets out various defences to proceedings for an offence in relation to periodic detention.

**Clause 97** allows certain offences in relation to periodic detention to be dealt with by way of penalty notice.

### **Division 4 Miscellaneous**

The proposed Division (**clauses 98–101**) deals with miscellaneous matters concerning periodic detention (in a similar way to current provisions of the *Periodic Detention of Prisoners Act 1981*), and includes the following provisions:

**Clause 98** enables the regulations to apply Part 2 of the proposed Act (dealing with full-time imprisonment) to imprisonment by way of periodic detention.

**Clause 99** provides that, while in custody, an offender is taken to be in the custody of the governor responsible for the periodic detention centre in which the offender is held.

**Clause 100** provides for the establishment of community committees to advise the Commissioner on matters relating to community service work and on other matters referred to them by the Commissioner.

**Clause 101** specifies matters for which the regulations may provide for the purposes of the proposed Part.

#### **Part 4 Imprisonment by way of home detention**

The proposed Part (**clauses 102–106**) deals with matters concerning home detention (in a similar way to current provisions of the *Home Detention Act 1996*), and includes the following provisions:

**Clause 102** defines certain words and expressions used in the proposed Part.

**Clause 103** deals with the conditions that may be imposed on a home detention order by the Parole Board and by the regulations, being conditions additional to any imposed by the sentencing court.

**Clause 104** sets out the obligations of an offender while serving a sentence of imprisonment by way of home detention.

**Clause 105** specifies the duration of a home detention order.

**Clause 106** specifies matters for which the regulations may provide for the purposes of the proposed Part.

#### **Part 5 Community service work**

##### **Division 1 Performance of community service work under community service orders**

###### **Subdivision 1 Preliminary**

The proposed Subdivision (**clauses 107–110**) deals with various preliminary matters concerning community service orders, and includes the following provisions:

**Clause 107** defines certain words and expressions used in the proposed Division.

**Clause 108** deals with the conditions that may be imposed on a community service order by the regulations, being conditions additional to any imposed by the sentencing court.

**Clause 109** sets out the obligations of an offender under a community service order.

**Clause 110** specifies the duration of a community service order.

###### **Subdivision 2 Administration of community service orders**

The proposed Subdivision (**clauses 111–113**) deals with the administration of community service orders (in a similar way to current provisions of the *Community Service Orders Act 1979*), and includes the following provisions:

**Clause 111** requires the Commissioner to assign a probation and parole officer, or some other person, to administer a community service order in respect of an offender.

**Clause 112** requires an offender to perform the community service work that the offender's assigned officer directs.

**Clause 113** allows the Commissioner, in circumstances to be set out in the regulations under the proposed Act, to increase the number of hours of community service work to be performed by an offender, up to a maximum of 10 hours.

###### **Subdivision 3 Miscellaneous**

The proposed Subdivision (**clauses 114–117**) deals with general matters concerning community service orders, and includes the following provisions:

**Clause 114** allows a sentencing court to extend the period of a community service order if the interests of justice so require.

**Clause 115** provides for the revocation of a community service order by the sentencing court, or by any other court of like jurisdiction, because of a contravention of the order by the offender or in the interests of justice, and allows the offender to be resentenced for the offence for which

the community service order was imposed.

**Clause 116** provides for the issue of arrest warrants by a court in connection with proceedings for the extension or revocation of a community service order.

**Clause 117** specifies matters for which the regulations may provide for the purposes of the proposed Division.

## **Division 2 General provisions concerning community service work**

The proposed Division (**clauses 118–124**) deals with general requirements in relation to the carrying out of community service work (in a similar way to current provisions of the *Correctional Centres Act 1952*, the *Periodic Detention of Prisoners Act 1981* and the *Community Service Orders Act 1979*), and includes the following provisions:

**Clause 118** defines certain words and expressions used in the proposed Division.

**Clause 119** imposes restrictions on the kinds of community service work that an offender may be ordered to perform, and the times at which an offender may be ordered to carry out such work.

**Clause 120** protects a person involved in community service work from civil liability towards third parties for acts and omissions of the offender performing the work, that liability being assumed instead by the Crown.

**Clause 121** protects a person involved in community service work from civil liability towards the offender performing that work for acts and omissions of the person so involved, that liability being assumed instead by the Crown.

**Clause 122** applies provisions of the *Workers Compensation Act 1987* to awards of damages made to offenders performing community service work, so restricting the amounts of those awards in the same way as that Act restricts the amounts of awards made to employees in connection with work-related injuries.

**Clause 123** requires an offender to disclose to the Commissioner any special medical, physical or mental condition to which the offender is subject.

**Clause 124** authorises the Commissioner to settle claims against the Crown that arise under the proposed Division.

## **Part 6 Parole**

### **Division 1 Release on parole**

The proposed Division (**clauses 125–133**) deals with general matters in relation to the granting of parole (in a similar way to current Divisions 1 and 4 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 125** applies the proposed Part to offenders serving terms of imprisonment by way of full-time detention, periodic detention or home detention.

**Clause 126** specifies an offender's basic eligibility for parole.

**Clause 127** provides that an offender is not to be released on parole except on the authority of a parole order.

**Clause 128** deals with the conditions that may be imposed on a parole order by the Parole Board and by the regulations, being conditions additional to any imposed by the sentencing court.

**Clause 129** sets out an offender's obligations while on release on parole.

**Clause 130** enables the Parole Board to revoke a parole order, for reasons to be prescribed by the regulations under the proposed Act, at any time before the order comes into effect.

**Clause 131** provides that a parole order is sufficient authority for an offender's release on parole.

**Clause 132** provides that an offender's sentence of imprisonment continues to run while the offender is on release on parole.

**Clause 133** provides that a parole order is not invalidated by any procedural defect in its making.



## **Division 2 Parole orders for sentences of more than 3 years**

### **Subdivision 1 General**

The proposed Subdivision (**clauses 134 and 135**) deals with the granting of parole in relation to sentences of more than 3 years (in a similar way to Subdivision 1 of Division 2 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 134** applies the proposed Division to parole orders for sentences of imprisonment that have a term of more than 3 years and have a non-parole period.

**Clause 135** sets out the principles on which the Parole Board is to make parole orders.

### **Subdivision 2 Offenders other than serious offenders**

The proposed Subdivision (**clauses 136–141**) deals with the granting of parole for offenders other than serious offenders (in a similar way to Subdivision 2 of Division 2 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 136** applies the proposed Subdivision to offenders who are not serious offenders.

**Clause 137** requires the Parole Board to consider the question of whether an offender should be released on parole at least 60 days before the day on which the offender becomes eligible for release on parole.

**Clause 138** requires the Parole Board, after making a decision on the question of whether an offender should be released on parole, to make the relevant parole order or notify the offender that parole is refused.

**Clause 139** sets out the manner and form in which the Parole Board is to notify an offender that parole is refused.

**Clause 140** requires the Parole Board to review its decision to refuse parole if the offender so requests.

**Clause 141** requires the Parole Board, after conducting such a review, to make the relevant parole order or confirm its refusal of parole.

### **Subdivision 3 Serious offenders**

The proposed Subdivision (**clauses 142–154**) deals with the granting of parole for serious offenders (in a similar way to Subdivision 3 of Division 2 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 142** applies the proposed Subdivision to serious offenders.

**Clause 143** requires the Parole Board to give preliminary consideration to the question of whether an offender should be released on parole at least 60 days before the day on which the offender becomes eligible for release on parole.

**Clause 144** requires the Parole Board, after its consideration of the question of whether an offender should be released on parole, to formulate an initial intention to make a parole order or to refuse parole.

**Clause 145** requires the Parole Board to give notice to victims of the offender of its initial intention to make a parole order, and gives victims of the offender an opportunity to object to the making of such an order and the offender an opportunity to answer any such objections.

**Clause 146** requires the Parole Board to give notice to an offender of its initial intention to refuse parole, and gives the offender an opportunity to object to the refusal of parole and victims of the offender an opportunity to answer any such objections.

**Clause 147** deals with the submissions that may be made to the Parole Board by offenders and by victims of offenders before the Parole Board makes a final decision with respect to an offender's parole.

**Clause 148** sets out the principles on which the Parole Board is to make its final decision with respect to an offender's parole.

**Clause 149** requires the Parole Board to make a final decision as to whether to release an offender on parole or to refuse parole where there have been submissions on its initial intentions.

**Clause 150** requires the Parole Board to confirm its initial intentions where there have been no submissions on those intentions.

**Clause 151** specifies the time when a person is to be released on parole under a parole order made under the proposed Subdivision.

**Clause 152** requires the Parole Board to record its reasons for not following the advice of the Serious Offenders Review Council with respect to parole.

**Clause 153** enables the State to make submissions to the Parole Board with respect to an offender's parole.

**Clause 154** specifies the matters to be taken into consideration in the case of an offender who is serving a sentence of imprisonment for life the subject of a non-parole period determination under Schedule 1 to the proposed *Crimes (Sentencing Procedure) Act 1999*.

#### **Subdivision 4 Applications to Court of Criminal Appeal**

The proposed Subdivision (**clauses 155–157**) deals with applications to the Court of Criminal Appeal from decisions of the Parole Board (in a similar way to Subdivision 4 of Division 2 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 155** enables an offender to appeal to the Court of Criminal Appeal against the Parole Board's decision on the offender's parole.

**Clause 156** enables the State to appeal to the Court of Criminal Appeal against the Parole Board's decision on an offender's parole.

**Clause 157** provides that an offender is not entitled to appear in person at proceedings on such an appeal except by leave of the Court of Criminal Appeal.

#### **Division 3 Parole orders for sentences of 3 years or less**

The proposed Division (**clauses 158 and 159**) deals with the granting of parole in relation to sentences of more than 3 years (in a similar way to Division 3 of Part 3 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 158** specifies the effect of a parole order made by a court under section 50 of the proposed *Crimes (Sentencing Procedure) Act 1999*.

**Clause 159** enables the Parole Board to make a parole order for an offender serving a term of imprisonment for less than 3 years if the sentencing court has failed to make such an order.

#### **Division 4 Parole orders in exceptional circumstances**

**Clause 160** allows the Parole Board to make a parole order in exceptional circumstances (in a similar way to Division 3A of Part 3 of the *Sentencing Act 1989*).

#### **Division 5 Miscellaneous**

**Clause 161** specifies matters for which the regulations may provide for the purposes of the proposed Part.

### **Part 7 Revocation by Parole Board of certain orders**

#### **Division 1 Periodic detention orders**

The proposed Division (**clauses 162–165**) deals with the power of the Parole Board to revoke periodic detention orders, and includes the following provisions:

**Clause 162** enables the Parole Board to conduct an inquiry into an offender's alleged failure to comply with the offender's obligations under a periodic detention order.

**Clause 163** empowers the Parole Board to revoke an offender's periodic detention order if satisfied (whether or not an inquiry has been held) that the offender has not complied with the offender's obligations under the order.

**Clause 164** prescribes the effect of a revocation order under the proposed Division.

**Clause 165** enables the Parole Board to make a home detention order to replace a periodic detention order.

#### **Division 2 Home detention orders**

The proposed Division (**clauses 166–168**) deals with the power of the Parole Board to revoke home detention orders, and includes the following provisions:

**Clause 166** enables the Parole Board to conduct an inquiry into an offender's alleged failure to comply with the offender's obligations under a home detention order.

**Clause 167** empowers the Parole Board to revoke an offender's home detention order if satisfied (whether or not an inquiry has been held) that the offender has not complied with the offender's obligations under the order.

**Clause 168** prescribes the effect of a revocation order under the proposed Division.

### **Division 3 Parole orders**

The proposed Division (**clauses 169–172**) deals with the power of the Parole Board to revoke parole orders, and includes the following provisions:

**Clause 169** enables the Parole Board to conduct an inquiry into an offender's alleged failure to comply with the offender's obligations under a parole order.

**Clause 170** empowers the Parole Board to revoke an offender's parole order if satisfied (whether or not an inquiry has been held) that the offender has not complied with the offender's obligations under the order.

**Clause 171** prescribes the effect of a revocation order under the proposed Division.

**Clause 172** allows the Attorney General and the Director of Public Prosecutions to request the Parole Board to exercise its powers under the proposed Division.

### **Division 4 Post-revocation procedures and rights of appeal**

The proposed Division (**clauses 173–175**) deals with post-revocation procedures and rights of appeal, and includes the following provisions:

**Clause 173** requires the Parole Board to give notice to an offender of its revocation of the offender's periodic detention order, home detention order or parole order.

**Clause 174** requires the Parole Board to review its decision to revoke an offender's periodic detention order, home detention order or parole order if so requested by the offender.

**Clause 175** requires the Parole Board to decide whether to rescind or confirm its decision to revoke an offender's periodic detention order, home detention order or parole order and, if it rescinds the revocation, revives any other periodic detention order, home detention order or parole order that has been consequentially revoked.

### **Division 5 Applications to Court of Criminal Appeal**

The proposed Division (**clauses 176–178**) deals with rights of appeal in connection with the Parole Board's decisions with respect to the revocation of an offender's periodic detention order, home detention order or parole order, and includes the following provisions:

**Clause 176** enables an offender to appeal to the Court of Criminal Appeal against the Parole Board's decision to revoke an offender's periodic detention order, home detention order or parole order.

**Clause 177** enables the State to appeal to the Court of Criminal Appeal against the Parole Board's decision not to revoke an offender's parole order.

**Clause 178** provides that an offender is not entitled to appear in person at proceedings on such an appeal except by leave of the Court of Criminal Appeal.

### **Division 6 Miscellaneous**

The proposed Division (**clauses 179–182**) deals with general matters with respect to the revocation of an offender's periodic detention order, home detention order or parole order, and includes the following provisions:

**Clause 179** authorises the Parole Board, in circumstances in which it has revoked an offender's periodic detention order, home detention order or parole order, to revoke any other periodic detention order, home detention order or parole order that is in force in relation to that offender.

**Clause 180** enables the Parole Board to call on an offender to appear before it and to issue an arrest warrant for an offender's attendance.

**Clause 181** authorises the Parole Board to issue a warrant committing an offender to a correctional centre on revoking the offender's periodic detention order, home detention order or

parole order.

**Clause 182** enables the Parole Board to exercise its functions under the proposed Part in relation to an offender's periodic detention order, home detention order or parole order even if the order has expired.

## **Part 8 The Parole Board**

### **Division 1 Constitution and functions**

The proposed Division (**clauses 183–185**) deals with the constitution and functions of the Parole Board (in a similar way to current Part 5 of the *Sentencing Act 1989*), and includes the following provisions:

**Clause 183** constitutes the Parole Board as a statutory body comprising between 10 and 22 members, of whom 3 are to be judicially qualified persons, 2 are to be official members, one is to be the Secretary of the Board and the remainder are to be community members.

**Clause 184** allows the Parole Board to be divided into Divisions.

**Clause 185** provides that the Parole Board is to have the functions conferred or imposed on it by or under the proposed Act or any other Act or law.

### **Division 2 Inquiries**

The proposed Division (**clauses 186–191**) deals with inquiries conducted by the Parole Board, and includes the following provisions:

**Clause 186** allows a judicial member of the Parole Board to summon witnesses and administer oaths to witnesses.

**Clause 187** allows a judicial member of the Parole Board to require a witness to answer questions on matters before the Parole Board.

**Clause 188** creates certain offences concerning the evidence given by witnesses at proceedings before the Parole Board.

**Clause 189** creates certain offences concerning the behaviour of witnesses at proceedings before the Parole Board.

**Clause 190** sets out the rights of persons who are entitled to make submissions to the Parole Board.

**Clause 191** enables the Minister administering the proposed Act to determine the expenses payable to a witness.

### **Division 3 Miscellaneous**

The proposed Division (**clauses 192–194**) deals with general matters relating to the Parole Board, and includes the following provisions:

**Clause 192** requires the Parole Board to submit annual reports to the Minister administering the proposed Act.

**Clause 193** gives members of the Parole Board free and unfettered access to offenders and correctional centres.

**Clause 194** allows an offender to be refused access to information that might prejudice the security, discipline or good order of a correctional centre or endanger the offender or any other person.

## **Part 9 The Serious Offenders Review Council**

### **Division 1 Constitution and functions**

The proposed Division (**clauses 195–199**) deals with the constitution and functions of the Serious Offenders Review Council (the *Review Council*) (in a similar way to current Part 10 of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 195** constitutes the Review Council as a statutory body comprising 14 members, of whom 3 are to be judicially qualified persons, 2 are to be official members and the remainder are to be community members.

**Clause 196** allows the Review Council to be divided into Divisions.

**Clause 197** provides that the Review Council is to have the functions conferred or imposed on

it by or under the proposed Act or any other Act or law, together with certain specified functions.

**Clause 198** requires the Review Council to consider certain matters when exercising its general advisory functions.

**Clause 199** requires the Review Council to consider certain matters when exercising its functions with respect to an offender who is serving an existing life sentence under Schedule 1 to the proposed *Crimes (Sentencing Procedure) Act 1999*.

### **Division 2 Inquiries**

The proposed Division (**clauses 200–205**) deals with inquiries conducted by the Review Council, and includes the following provisions:

**Clause 200** allows a judicial member of the Review Council to summon witnesses and administer oaths to witnesses.

**Clause 201** allows a judicial member of the Review Council to require a witness to answer questions on matters before the Review Council.

**Clause 202** creates certain offences concerning the evidence given by witnesses at proceedings before the Review Council.

**Clause 203** creates certain offences concerning the behaviour of witnesses at proceedings before the Review Council.

**Clause 204** sets out the rights of persons who are entitled to make submissions to the Review Council.

**Clause 205** enables the Minister administering the proposed Act to determine the expenses payable to a witness.

### **Division 3 Serious Offenders Management Committee**

The proposed Division (**clauses 206–208**) deals with the constitution and functions of the Serious Offenders Management Committee (the *Management Committee*), and includes the following provisions:

**Clause 206** provides for the establishment of the Management Committee.

**Clause 207** provides for the establishment of subcommittees of the Management Committee.

**Clause 208** provides for the delegation of certain of the Review Council's functions to the Management Committee.

### **Division 4 Miscellaneous**

**Clause 209** requires the Review Council to submit annual reports to the Minister administering the proposed Act.

## **Part 10 The Inspector-General**

### **Division 1 Appointment of Inspector-General and staff**

The proposed Division (**clauses 210 and 211**) deals with the appointment of an Inspector-General and ancillary staff (in a similar way to current Division 1 of Part 2A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 210** provides for the appointment of an independent Inspector-General.

**Clause 211** provides for the appointment of staff to assist the Inspector-General.

### **Division 2 Functions of Inspector-General**

The proposed Division (**clauses 212–216**) deals with functions of the Inspector-General (in a similar way to current Division 2 of Part 2A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 212** defines certain words and expressions used in the proposed Division.

**Clause 213** sets out the principal functions of the Inspector-General.

**Clause 214** imposes certain limitations on the exercise of the Inspector-General's functions.

**Clause 215** confers certain powers to enable the Inspector-General to exercise the functions conferred or imposed on the Inspector-General.

**Clause 216** gives the Inspector-General a discretion as to whether or not a complaint should be

investigated.

### **Division 3 Relationship of Inspector-General with other agencies**

The proposed Division (**clauses 217–219**) deals with the relationship between the Inspector-General and other agencies (in a similar way to current Division 3 of Part 2A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 217** deals with the Inspector-General's relationship with the Ombudsman.

**Clause 218** deals with the Inspector-General's relationship with the Independent Commission Against Corruption.

**Clause 219** deals with the functions of the Inspector-General under the *Protected Disclosures Act 1994*.

### **Division 4 Miscellaneous**

The proposed Division (**clauses 220–223**) deals with general matters relating to the Inspector-General (in a similar way to current Division 4 of Part 2A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 220** requires the Inspector-General to make annual reports to the Minister administering the proposed Act.

**Clause 221** creates offences in relation to the obstruction of the Inspector-General and Inspector-General's staff.

**Clause 222** requires a review of the proposed Part to be conducted as soon as possible after 12 June 2002.

**Clause 223** provides for the expiry of the position of Inspector-General on 1 October 2003.

## **Part 11 Administration**

### **Division 1 Correctional complexes, correctional centres and periodic detention centres**

The proposed Division (**clauses 224–226**) deals with the premises used in connection with the proposed Act, and includes the following provisions:

**Clause 224** provides for the establishment of correctional complexes (required for the purposes of Part 2).

**Clause 225** provides for the establishment of correctional centres (required for the purposes of Part 2).

**Clause 226** provides for the establishment of periodic detention centres (required for the purposes of Part 3).

### **Division 2 Supervision of correctional centres**

The proposed Division (**clauses 227–230**) deals with the supervision of correctional complexes and correctional centres, and includes the following provisions:

**Clause 227** provides for the appointment of Visiting Justices.

**Clause 228** provides for the appointment of Official Visitors.

**Clause 229** empowers Judges and Magistrates to visit and inspect any correctional complex, correctional centre or periodic detention centre.

**Clause 230** provides for the appointment of persons to conduct special inquiries, with specified powers of a royal commission under the *Royal Commissions Act 1923*.

### **Division 3 Staff**

The proposed Division (**clauses 231–236**) deals with the appointment of staff for the purposes of the proposed Act, and includes the following provisions:

**Clause 231** provides for the appointment of staff generally.

**Clause 232** provides for the appointment of the Commissioner.

**Clause 233** provides for the appointment of governors of correctional centres.

**Clause 234** provides for the classification of correctional officers as commissioned and non-commissioned officers.

**Clause 235** provides that the functions of correctional officers are to be as determined by the

Commissioner.

**Clause 236** requires correctional officers to take an oath of office before commencing duties.

## **Part 12 Engagement of contractors**

The proposed Part (**clauses 237–248**) deals with the use of private contractors to manage correctional centres (in a similar way to current Part 6A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 237** sets out the purposes for which a contractor may be engaged.

**Clause 238** enables the Commissioner to enter into a management agreement with a contractor.

**Clause 239** enables a management company to enter into a submanagement agreement with some other contractor.

**Clause 240** requires all staff employed at a managed correctional centre to be authorised in that behalf by the Commissioner.

**Clause 241** provides that a person employed to exercise the functions of governor of a managed correctional centre is taken to be the governor of the centre.

**Clause 242** provides for the appointment of monitors to assess and report on the management of managed correctional centres.

**Clause 243** provides for the establishment of community advisory councils to assist in the monitoring of managed correctional centres.

**Clause 244** gives the Chief Executive Officer of the Corrections Health Service free and unfettered access to a managed correctional centre and the offenders and records within the centre.

**Clause 245** applies the *Independent Commission Against Corruption Act 1988* to the management of managed correctional centres.

**Clause 246** enables the Ombudsman to consider complaints about the management of managed correctional centres under the *Ombudsman Act 1974*.

**Clause 247** applies the *Freedom of Information Act 1989* to the management of managed correctional centres.

**Clause 248** enables the Commissioner to prepare minimum standards for the management of a managed correctional centre and for the tabling in Parliament of the standards so set.

## **Part 13 Custody or persons during proceedings**

The proposed Part (**clauses 249–253**) deals with general matters relating to the operation of the proposed Act (in a similar way to current section 42A of the *Correctional Centres Act 1952*), and includes the following provisions:

**Clause 249** defines certain words and expressions used in the proposed Part.

**Clause 250** allows persons in custody to be given into the keeping of a correctional officer for conveyance or detention during the course of criminal proceedings.

**Clause 251** provides for the declaration of a designated officer who is to be responsible for any persons who is in the custody of a correctional officer under the proposed Part.

**Clause 252** allows a person in custody to be accommodated in a correctional centre, police station or court complex while in the custody of a correctional officer under the proposed Part.

**Clause 253** provides that the proposed Part is to be subject to the *Children (Detention Centres) Act 1987*.

## **Part 14 General**

The proposed Part (**clauses 254–273**) deals with general matters relating to the operation of the proposed Act, and includes the following provisions:

**Clause 254** provides that a person's sentence of imprisonment is to be extended if the person is unlawfully absent from custody during the term of the sentence.

**Clause 255** provides for the effect of an extension of sentence under the proposed Act.

**Clause 256** provides for the establishment of a Victims Register.

**Clause 257** prohibits the unauthorised disclosure of information obtained for the purposes of

the proposed Act.

**Clause 258** provides for the Supreme Court to review the custody of persons remanded in custody in correctional centres.

**Clause 259** provides for the service of notices for the purposes of the proposed Act.

**Clause 260** provides for the issue of evidentiary certificates with respect to various matters.

**Clause 261** deals with the way in which warrants of commitment may be addressed.

**Clause 262** gives effect to warrants issued by the Commissioner or the Parole Board.

**Clause 263** excludes certain persons from personal liability for acts and omissions occurring in connection with the administration or execution of the proposed Act.

**Clause 264** prohibits the unauthorised wearing of a correctional officer's uniform.

**Clause 265** prohibits the impersonation of a correctional officer.

**Clause 266** provides for offences against the proposed Act or the regulations under the proposed Act to be dealt with by a Local Court constituted by a Magistrate.

**Clause 267** enables the Commissioner to make certain records and information available for research purposes.

**Clause 268** allows the Minister to fund certain bodies and organisations giving assistance to discharged offenders.

**Clause 269** preserves the functions of the Sheriff.

**Clause 270** preserves the prerogative of mercy.

**Clause 271** enables the Governor to make regulations for the purposes of the proposed Act, including regulations creating offences punishable by penalties not exceeding 20 penalty units.

**Clause 272** is a formal provision giving effect to Schedule 5 (Savings, transitional and other provisions).

**Clause 273** requires the proposed Act to be reviewed as soon as possible after the end of 5 years after it is assented to.

## **Schedules**

**Schedule 1** contains provisions (similar to those of current Schedule 1 to the *Sentencing Act 1989*) relating to the constitution and procedure of the Parole Board.

**Schedule 2** contains provisions (similar to those of current Schedule 5 to the *Correctional Centres Act 1952*) relating to the constitution and procedure of the Serious Offenders Review Council.

**Schedule 3** contains provisions (similar to those of current Schedule 3 to the *Correctional Centres Act 1952*) relating to the Inspector-General.

**Schedule 4** contains provisions (similar to those of current Schedule 4A to the *Correctional Centres Act 1952*) relating to Official Visitors.

**Schedule 5** contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the enactment of the proposed *Crimes Legislation Amendment (Sentencing) Act 1999*.