

Administration of Community Sentences and Orders Bill

Government Bill

Explanatory note

General policy statement

Overall, current legislation continues to provide a sound framework for the operation of the corrections system. However, certain provisions have been identified as barriers to managing offenders in the community in a manner that is safe, secure, humane, effective, and efficient. The purpose of this Bill is to remove these barriers.

The Bill amends the Bail Act 2000, Parole Act 2002, and Sentencing Act 2002.

Administrative issues arising from sentencing and parole reforms

The Sentencing Act 2002, the Parole Act 2002, and, to a lesser extent, the Bail Act 2000 play a major role in governing those aspects of the corrections system that relate to the administration of sentences and orders in the community. The introduction of Extended Supervision Orders in 2004 and sentencing and parole reforms in late 2007 left some procedures for managing offenders in the community unclear, difficult to follow, or without direction. This Bill provides clarification in these areas, and thereby contributes to the effective and efficient administration of sentences and orders in the community.

Home detention and community-based sentences

Changes to the Bail Act 2000 will mean that a home detention sentence continues to run when an appeal is lodged, unless the offender is granted bail.

Changes to the Sentencing Act 2002 will—

- require pre-sentence reports before an offender is sentenced to home detention or community detention; and
- clarify the maximum number of hours an offender may be required to serve under sentences of community work; and
- clarify the effect of a subsequent sentence of imprisonment on a sentence of home detention; and
- clarify the situation where an offender who is serving a home detention or community-based sentence is subsequently sentenced to another home detention or community-based sentence; and
- enable court Registrars to issue arrest warrants in applications to review a non-custodial sentence; and
- provide that time ceases to run when an application is made to a court to vary or cancel the sentence when an offender is unable or fails to comply with a sentence of supervision, intensive supervision, or community detention.

Electronic monitoring

Changes to the Sentencing Act 2002 and the Parole Act 2002 will align electronic monitoring conditions with the range of the monitoring equipment currently used, thereby improving enforcement.

Parole and extended supervision orders

Changes to the Parole Act 2002 will—

- clarify the responsibility for preparing reports on suitability for residential restrictions; and
- eliminate gaps in extended supervision order provisions, which can result in short periods during which offenders are not subject to appropriate conditions.

Regulatory impact statement

The Department of Corrections produced a regulatory impact statement on 23 July 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.corrections.govt.nz/policy-and-legislation/regulatory-impact-statments/administration-of-community-sentences-and-orders-bill-2011>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill, other than *clause 34(1)*, comes into force on the day that is 3 months after the date on which it receives the Royal assent. *Clause 34(1)* (which repeals and substitutes *section 93(2A)* of the Sentencing Act 2002) comes into force on a date appointed by the Governor-General by Order in Council.

Part 1

Amendments to Bail Act 2000

Clause 3 states that the principal Act being amended in this Part is the Bail Act 2000.

Clause 4 amends *section 14(1)* (which relates to the exercise of discretion when considering bail pending appeal) so that this section applies to sentences of home detention as well as custodial sentences.

Clauses 5 and 6 repeal *sections 45 to 47 and 70* and substitute *new sections 45 to 47A and 70*. These sections relate to bail pending appeal of a conviction or a sentence. Current *sections 45 to 47 and 70* only apply if the person appealing a conviction or a sentence is in custody under a conviction. *New sections 45 to 47A and 70* extend the coverage of these provisions to include those sentenced to home detention. *New section 46(2)* also provides that a sentence of home detention continues to run when an appeal is lodged unless a court grants the offender bail.

Clause 7 amends Schedule 1 to include references to a sentence of home detention in the item relating to section 45.

Part 2

Amendments to Sentencing Act 2002

Clause 8 states that the principal Act being amended in this Part is the Sentencing Act 2002.

Clause 9 inserts *new section 20A*. This section deals with situations where an offender who is serving a community-based sentence or a sentence of home detention (including any post-detention conditions of a sentence of home detention) is subsequently sentenced to another community-based sentence or sentence of home detention. In these circumstances, the court may—

- impose a sentence that would be permitted in combination with the first sentence under section 19; or
- defer the commencement of the second sentence until the first sentence is served; or
- cancel the first sentence; or
- cancel the first sentence and substitute any other sentence that could have been imposed at the time the offender was convicted so that the sentences are a permitted combination of sentences.

The court must take into account the portion of the original first sentence that remains unserved. Provisions relating to variation or cancellation of community-based sentences and home detention do not apply to a cancellation under this provision.

Clause 10 consequentially amends section 21 (which relates to the effect of provisions concerning multiple sentences on the powers of the court) to include a cross-reference to *new section 20A*.

Clause 11 amends section 26. The amendment provides that this section, which gives the court the discretion to direct a probation officer to provide a pre-sentence report, does not apply if the court is considering imposing a sentence of community detention or home detention.

Clause 12 amends section 26A to provide that the court must direct a probation officer to prepare a pre-sentence report if the court is considering a sentence of community detention or home detention. The

pre-sentence report must be prepared in accordance with subsection (2).

Clause 13 amends section 49. This is a consequential amendment relating to *new section 20A(2)(b)* (which allows the court to defer, in relation to a subsequent community-based sentence or sentence of home detention, the commencement of the second sentence until the first sentence has been served). The amendment covers the situation where an offender's sentence of supervision has been deferred under *new section 20A(2)(b)*. In that case, the offender has to report to a probation officer not later than 72 hours after the start date of the deferred sentence.

Clause 14 inserts *new section 54AA*. *New section 54AA* provides that where an offender is unable or fails to comply with a sentence of supervision, time ceases to run when an application for variation or cancellation of the sentence is lodged. Time starts running again when the offender resumes his or her sentence in accordance with the conditions of the sentence.

Clause 15 amends section 54F. This is a consequential amendment relating to *new section 20A(2)(b)* (which allows the court to defer, in relation to a subsequent community-based sentence or sentence of home detention, the commencement of the second sentence until the first sentence has been served). The amendment covers the situation where an offender's sentence of intensive supervision has been deferred under *new section 20A(2)(b)*. In that case, the offender has to report to a probation officer not later than 72 hours after the start date of the deferred sentence.

Clause 16 inserts *new section 54KA*. *New section 54KA* provides that where an offender is unable or fails to comply with a sentence of intensive supervision, time ceases to run when an application for variation or cancellation of the sentence is lodged. Time starts running again when the offender resumes his or her sentence in accordance with the conditions of the sentence.

Clause 17 amends section 57 to clarify the total hours an offender can serve when a sentence of community work is imposed concurrently on the offender when he or she is already serving a sentence of community work. The offender cannot be required to serve a total term of more than 400 hours.

Clause 18 amends section 59 to provide that when the start date of a sentence of community work is deferred under *section 20A(2)(b)* or *57A*, the offender must report to a probation officer within 72 hours of the deferred start date.

Clause 19 amends section 69C. This change is consequential to the amendments to sections 26 and 26A, which require the court to direct a probation officer to prepare a pre-sentence report when the court is considering a sentence of community detention or home detention.

Clause 20 makes 3 amendments to section 69E. First, it makes a consequential amendment relating to *new section 20A(2)(b)* (which allows the court to defer, in relation to a subsequent community-based sentence or sentence of home detention, the commencement of the second sentence until the first sentence has been served). The amendment covers the situation where an offender's sentence of community detention has been deferred under *new section 20A(2)(b)*. In that case, the offender has to report to a probation officer not later than 24 hours after the start date of the deferred sentence unless the 24 hours elapses on a weekend or a public holiday, in which case the offender must report on the next working day. The second amendment requires offenders who are subject to electronic monitoring of a sentence of community detention to remain within the area defined by the probation officer. The third amendment provides that the offender must be shown the defined area and that any relevant occupants at the address must be advised of the defined area.

Clause 21 amends section 69I to clarify what a court may do when an application to vary or cancel a sentence of community detention is made under that section and there is no alternative residence available. In that case, the court may issue a warrant for the offender's arrest and bail the offender or remand the offender in custody if the application cannot be determined immediately.

Clause 22 inserts *new section 69IA*. *New section 69IA* provides that where an offender is unable or fails to comply with a sentence of community detention, time ceases to run when an application for variation or cancellation of the sentence is lodged. Time starts running again when the offender resumes his or her sentence in accordance with the conditions of the sentence.

Clause 23 amends section 72 (which empowers a court to issue a warrant to arrest an offender for the purpose of bringing the offender before the court when there is an application to vary or cancel a non-

custodial sentence). The amendment extends the power to issue a warrant to arrest an offender to court Registrars.

Clause 24 amends section 75 to provide that if the commencement date of a community-based sentence is deferred under *new section 20A(2)(b)* the subsequent sentence commences on the completion of the term of the first sentence.

Clause 25 amends section 80A. This change is consequential to the amendments to sections 26 and 26A, which require the court to direct a probation officer to prepare a pre-sentence report when the court is considering a sentence of community detention or home detention.

Clause 26 amends section 80C to require offenders who are subject to electronic monitoring of a sentence of home detention to remain within the area defined by the probation officer. The offender must be shown the defined area and any relevant occupants at the address must be advised of the defined area.

Clause 27 amends section 80F to clarify what a court may do when an application to vary or cancel a sentence of home detention is made under that section and there is no alternative residence available. In that case, the court may issue a warrant for the offender's arrest and bail the offender or remand the offender in custody if the application cannot be determined immediately.

Clause 28 amends section 80N to include a cross-reference to *new section 80ZG*. The effect of the amendment is to allow the court to vary standard post-detention conditions when an offender who is subject to a sentence of home detention is subsequently sentenced to a term of imprisonment.

Clause 29 amends section 80S. This is a consequential amendment relating to the repeal of section 80ZG and substitution of *new sections 80ZG to 80ZGD*. The amendment provides for offences of failing to return to a home detention residence when required to do so under *new section 80ZG(6)(b)* as well as failing to report to a probation officer under *new section 80ZGC(3)(a)* or *new section 80ZGD(2)*.

Clause 30 amends section 80X to insert a reference to *new section 20A(2)(b)*. This section provides for the commencement of a sentence of home detention when the start date of the sentence has been deferred under section 80W or *new section 20A(2)(b)*.

Clause 31 amends section 80ZB to correct a cross-reference. The cross-reference should be to section 80F(1)(a) and not section 80F.

Clause 32 repeals section 80ZG and substitutes *new sections 80ZG to 80ZGD*. Under current section 80ZG, if an offender who is serving a sentence of home detention is subsequently sentenced to imprisonment for other offending, the sentence of home detention is suspended. If the sentence of imprisonment is quashed on appeal, the sentence of home detention resumes. If the offender serves the prison sentence, the sentence of home detention is cancelled when the offender is released. The effect of this is that a short sentence of imprisonment may cancel a longer sentence of home detention. *New section 80ZG* remedies this situation by giving the court a discretion to order that a sentence of home detention resume when an offender is released from a term of imprisonment of 12 months or less. It also allows the court to remit, suspend, or vary any detention conditions or post-detention conditions, or impose additional detention conditions or post-detention conditions to fit changes in the offender's circumstances. The court may not, however, impose post-detention conditions if there were none imposed by the court when the offender was originally sentenced to home detention. Further, the court may not vary any existing condition or impose any new condition involving prescription medicine unless the requirements similar to those set out in section 78(4) are satisfied.

New section 80ZG also sets out the process that follows a court order that a sentence of home detention is to resume on an offender's release from serving a term of imprisonment of 12 months or less. Before the statutory release date, a probation officer must review the suitability of the home detention residence, ensure every relevant occupant consents to the offender resuming the sentence at the home detention residence and, if necessary, apply for a variation or cancellation of the sentence. On release from prison, the offender must go to and remain at the home detention residence unless the offender's absence is authorised under the principal Act. The sentence resumes when the offender arrives at the residence.

New section 80ZGA provides for the suspension of a sentence of home detention in the event that the offender is sentenced to a subsequent sentence of imprisonment of more than 12 months. *New section 80ZGB* provides that time ceases to run on the sentence of home detention during the period it is suspended. *New section 80ZGC* provides details on the resumption and cancellation of a sentence of

home detention where an offender has subsequently been sentenced to a sentence of imprisonment.

New section 80ZGD deals with the effect of an appeal on the resumption of a sentence of home detention where the offender has been granted bail under section 45 of the Bail Act 2000. If the appeal is dismissed, it is deemed to be dismissed under the rules of court, or if leave to appeal is refused, or neither the sentence nor the conviction on which it was made is set aside on the determination of the appeal, then the offender must report to a probation officer within 72 hours of being notified of the outcome of the appeal. The sentence resumes when the offender has reported in accordance with this section.

Clause 33 is a transitional provision relating to *new sections 80ZG to 80ZGD*. These new sections only apply in relation to a sentence of home detention imposed on or after the commencement of *clause 33*.

Clause 34 makes 2 amendments to section 93. The first amendment provides that the court may specify that any standard conditions or special conditions expire on a date that is a specified period. The specified period may be up to 12 months but must not be less than 6 months after the sentence expiry date. The second amendment provides that any special conditions imposed on an offender apply for as long as the standard conditions. The first amendment will come into force at a later date appointed by Order in Council (*clause 2*). The second amendment will come into force along with the majority of the provisions of the Bill (3 months after the date on which the Bill receives the Royal assent).

Part 3

Amendments to Parole Act 2002

Clause 35 states that the principal Act being amended in this Part is the Parole Act 2002.

Clause 36 amends section 15 to require offenders who are subject to electronic monitoring as a special condition of their release on parole to remain within the area defined by the probation officer. The offender must be shown the defined area and any relevant occupants at the address must be advised of the defined area.

Clause 37 amends section 18 to clarify that, if the court or Parole Board does not impose special conditions before an extended supervision order comes into force, the Parole Board may impose special

release conditions. These conditions apply for 3 months from the extended supervision order coming into force or until the Parole Board decides whether to impose special conditions.

Clause 38 amends section 29 to provide that standard conditions on indeterminate sentences apply for the rest of an offender's life unless they are varied or discharged by the Parole Board.

Clause 39 amends section 29B to provide that when the Parole Board makes an order under section 29B(5)(c) (an order that has the same effect as an interim recall order), the process to be followed is the same as that relating to determining a recall application.

Clause 40 amends section 34 to move the responsibility for preparing reports on the suitability of residential restrictions from probation officers to the chief executive of the Department of Corrections. Section 34 is further amended to enable the Department of Corrections to provide a report on the suitability of residential restrictions without a request from the Parole Board.

Clause 41 amends section 56 to provide that the probation officer's power to suspend conditions pending determination of an application for variation or discharge does not apply to applications to vary standard conditions imposed for life.

Clause 42 amends section 60 to clarify how to calculate time served on a sentence when an application for recall is lodged and declined.

Clause 43 makes a consequential amendment to section 94 to provide that time ceases to run for an offender on parole or compassionate release in accordance with *new section 60(4)*.

Clause 44 amends section 107L to provide that extended supervision order conditions come into force on the actual day of release from prison if an offender is released early because the offender's statutory release date is a non-release day.

Clause 45 amends section 107P to provide that extended supervision order conditions reactivate on the actual day of release from prison if an offender whose extended supervision order has been suspended while the offender is in prison is released early because his or her statutory release date is a non-release day.

Part 4

Consequential amendments

Clause 46 makes a consequential amendment to the Crimes Act 1961. It amends section 399 to remove the reference to home detention. This amendment relates to the amendments to the Bail Act 2000 in *clauses 4 to 6* of the Bill, which deal with the effect of appeals on a sentence of home detention.

Clause 47 makes a consequential amendment to the Sentencing Amendment Act 2007. Section 49(3), which has not come into force, is repealed as this amendment is now covered in *clause 34*.

Clause 48 makes a consequential amendment to the Summary Proceedings Act 1957. It amends section 124 to remove the reference to home detention. This amendment relates to the amendments to the Bail Act 2000 in *clauses 4 to 6* of the Bill, which deal with the effect of appeals on a sentence of home detention.

Hon Judith Collins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Administration of Community Sentences and Orders Act **2011**.

2 Commencement

- (1) This Act, other than **section 34(1)**, comes into force on the day that is 3 months after the date on which it receives the Royal assent. 5

- (2) **Section 34(1)** comes into force on a date appointed by the Governor-General by Order in Council.

Part 1
Amendments to Bail Act 2000

3	Principal Act amended This Part amends the Bail Act 2000.	5
4	Exercise of discretion when considering bail pending appeal Section 14(1) is amended by inserting “or subject to a sentence of home detention” after “is in custody”.	10
5	New sections 45 to 47A substituted Sections 45 to 47 are repealed and the following sections substituted:	
“45	Granting of bail to appellant who is in custody or subject to sentence of home detention	15
“(1)	This section applies if a person is in custody under a conviction or subject to a sentence of home detention and is appealing the conviction or sentence, or both.	
“(2)	If the appellant is in custody or subject to a sentence of home detention only under the conviction to which the appeal relates, the appellant is bailable at any time before the hearing of the appeal—	20
“(a)	at the discretion of the District Court Judge or Justice or Justices who presided over the District Court and whose determination is appealed against; or	25
“(b)	if that District Court Judge or the Justice or Justices are not available, at the discretion of some other District Court Judge or Justice.	
“(3)	If an appellant is granted bail under this section, sections 31 to 38 and 43 apply as if the appellant were a defendant remanded in custody who had been granted bail and the appellant must be released on condition that the appellant attend personally at the High Court on the day on which the appeal is to be heard and on any day to which the hearing may from time to time be adjourned.	30 35

- “(4) If an appellant is granted or refused bail under this section, or any order is made under section 34(1) in respect of any appellant, sections 41 and 42, as far as they are applicable and with all necessary modifications, apply as if the appellant were a defendant who had been granted or, as the case may be, refused bail. 5
- “(5) For the purposes of this section,—
- “(a) an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed; and 10 15
- “(b) an appellant is not deemed to be subject to a sentence of home detention only under the conviction to which the appeal relates if a direction has been given under section 80B of the Sentencing Act 2002 that another sentence of home detention is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence was imposed. 20
- “**46 Time on bail pending appeal not to be taken as time served**
- “(1) Section 95 of the Parole Act 2002 applies if an appellant in custody under a conviction is released on bail pending an appeal. 25
- “(2) Section 80ZB(b) of the Sentencing Act 2002 applies if an appellant who is subject to a sentence of home detention is released on bail pending an appeal. 30
- “**47 Surrender of appellant released on bail from custody**
- An appellant who has been released from custody on bail pending the hearing of an appeal may surrender himself or herself and apply to a District Court Judge or Justice for the discharge of bail, and the District Court Judge or Justice may then issue a warrant in the prescribed form for the arrest of 35

the appellant and for his or her committal to a prison for the unexpired term of the sentence originally imposed.

“47A Surrender of appellant released on bail from sentence of home detention

- “(1) An appellant who has been released from a sentence of home detention on bail pending the hearing of an appeal may surrender himself or herself and apply to a District Court Judge or Justice for the discharge of bail, and the District Court Judge or Justice may order that the appellant resume serving the sentence of home detention. 5
10
- “(2) Before ordering that an appellant resume serving a sentence of home detention under **subsection (1)**, the District Court Judge or Justice must consider information from a probation officer on—
- “**(a)** whether the home detention residence is still available and suitable; and 15
- “**(b)** whether every relevant occupant (as defined in section 26A(4)(a) of the Sentencing Act 2002) of the home detention residence consents, in accordance with section 26A(3) of the Sentencing Act 2002, to the appellant resuming the sentence at the home detention residence. 20
- “**(3)** If an appellant applies for the discharge of bail under **subsection (1)**, the court may—
- “**(a)** adjourn the matter to enable a probation officer to obtain the information required under **subsection (2)**; and 25
- “**(b)** either—
- “**(i)** remand the appellant in custody; or
- “**(ii)** grant the appellant bail for the period of the adjournment.
- “**(4)** If a District Court Judge or Justice orders that the appellant resume serving the sentence of home detention,— 30
- “**(a)** the appellant must go to and remain at the home detention residence unless absent in accordance with section 80C(3)(a) or (b) of the Sentencing Act 2002; and
- “**(b)** the sentence of home detention resumes when the appellant has arrived at the home detention residence under **paragraph (a)**.” 35

6 New section 70 substituted

Section 70 is repealed and the following section substituted:

“70 Granting of bail to appellant and custody pending appeal

“(1) This section applies if a person is in custody under a conviction or subject to a sentence of home detention and is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court. 5

“(2) The Court of Appeal or the Supreme Court (as the case may be) or the Judge who presided at the trial in the court below may, if the court or the Judge thinks fit, on the application of an appellant and on such terms and conditions as the court or Judge thinks fit, grant bail to the appellant pending the determination of the appeal, if the appellant is— 10

“(a) in custody only under the conviction to which the appeal relates; or 15

“(b) subject to a sentence of home detention only under the conviction to which the appeal relates.

“(3) Section 95 of the Parole Act 2002 (which provides that time on bail pending an appeal is not to be taken as time served) applies if an appellant in custody under a conviction is released on bail pending an appeal. 20

“(4) Section 80ZB(b) of the Sentencing Act 2002 (which provides that time ceases to run on a sentence of home detention during any period that the offender is on bail pending an appeal) applies if an appellant who is subject to a sentence of home detention is released on bail pending an appeal. 25

“(5) If a case is stated under Part 13 of the Crimes Act 1961, this section applies to any person in relation to whose conviction the case is stated as it applies to an appellant.

“(6) For the purposes of this section, an appellant is not deemed to be in custody only under the conviction to which the appeal relates if a direction has been given under section 83 of the Sentencing Act 2002 that another sentence or term of imprisonment is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed. 30 35

“(7) For the purposes of this section, an appellant is not deemed to be subject to a sentence of home detention only under the

conviction to which the appeal relates if a direction has been given under section 80B of the Sentencing Act 2002 that another sentence of home detention is to follow the sentence imposed on that conviction, and the appellant has not appealed against the conviction in respect of which that other sentence was imposed.” 5

7 Schedule 1 amended

- (1) Section 45(1) as modified in the item relating to section 45 in Schedule 1 is amended by inserting “or is subject to a sentence of home detention” after “under a conviction”. 10
- (2) Section 45(2) as modified in the item relating to section 45 in Schedule 1 is amended by inserting “or is subject to a sentence of home detention” after “custody”.

Part 2

Amendments to Sentencing Act 2002 15

8 Principal Act amended

This **Part** amends the Sentencing Act 2002.

9 New section 20A inserted

The following section is inserted after section 20:

“20A Subsequent community-based sentence or sentence of home detention 20

- “(1) This section applies to an offender who, while serving a community-based sentence or sentence of home detention (the **first sentence**), is sentenced to another community-based sentence or sentence of home detention (the **second sentence**) in respect of another offence. 25
- “(2) The court must, when imposing the second sentence,—
 - “(a) impose a sentence that would be permitted in combination with the first sentence under section 19; or
 - “(b) defer the commencement of the second sentence until the first sentence has been served; or 30
 - “(c) cancel the first sentence; or
 - “(d) cancel the first sentence and substitute any other sentence that could have been imposed on the offender at the time when the offender was convicted of the offence 35

for which the sentence was imposed so that the sentences are a permitted combination of sentences under section 19.

- “(3) When cancelling the first sentence under **subsection (2)(c) or (d)**, the court must, when imposing the second sentence or substituting the first sentence with another sentence, as the case may be, take into account the portion of the original first sentence that remains unserved. 5
- “(4) For the purposes of this section, an offender is to be treated as serving a sentence of home detention until the offender is no longer subject to any post-detention conditions imposed under section 80N (if any). 10
- “(5) Sections 54, 54K, 68, 69I, and 80F (which relate to the variation or cancellation of community-based sentences and a sentence of home detention) do not apply to a cancellation under this section.” 15

10 Effect of provisions concerning multiple sentences on powers of court

Section 21 is amended by omitting “sections 19 and 20” and substituting “sections 19, 20, and **20A**”. 20

11 Pre-sentence reports

Section 26 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Except as provided in section 26A, if an offender who is charged with an offence punishable by imprisonment is found guilty or pleads guilty, the court may direct a probation officer to prepare a report for the court in accordance with subsection (2).” 25

12 Additional requirements when considering sentence of community detention or home detention

- (1) The heading to section 26A is amended by omitting “**Additional requirements**” and substituting “**Pre-sentence reports**”. 30
- (2) Section 26A is amended by repealing subsection (1) and substituting the following subsections: 35

- “(1) If the court is considering a sentence of community detention or home detention, the court must direct a probation officer to prepare a pre-sentence report for the court in accordance with subsection (2).
- “(1A) If a probation officer intends to recommend to the court a sentence of community detention or home detention, the probation officer must prepare a pre-sentence report in accordance with subsection (2) and provide it to the court.” 5
- (3) Section 26A(2) is amended by omitting “subsection (1) applies” and substituting “**subsection (1) or (1A)** applies”. 10
- (4) Section 26A is amended by adding the following subsection:
- “(5) Section 26(3), (4), and (5) apply, with any necessary modifications, to a report prepared under this section.”

13 Standard conditions of supervision

Section 49(1) is amended by repealing paragraph (a) and substituting the following paragraph: 15

- “(a) the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable and not later than 72 hours after the sentence is imposed unless the start date of the sentence has been deferred under **section 20A(2)(b)**, in which case the offender must report not later than 72 hours after that date.” 20

14 New section 54AA inserted

The following section is inserted after section 54: 25

“54AA When time ceases to run on sentence of supervision

For the purposes of calculating how much time an offender who is subject to a sentence of supervision has served, time ceases to run on the sentence during any period between the date on which an application for variation or cancellation of the sentence on the ground specified in section 54(1)(a) is lodged and the date on which the offender resumes serving his or her sentence in accordance with his or her sentence conditions.” 30

15 Standard conditions of intensive supervision

Section 54F(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable and not later than 72 hours after the sentence is imposed unless the start date of the sentence has been deferred under **section 20A(2)(b)**, in which case the offender must report not later than 72 hours after that date.”.

16 New section 54KA inserted

The following section is inserted after section 54K:

“54KA When time ceases to run on sentence of intensive supervision

For the purposes of calculating how much time an offender who is subject to a sentence of intensive supervision has served, time ceases to run on the sentence during any period between the date on which an application for variation or cancellation of the sentence on the ground specified in section 54K(1)(a) is lodged and the date on which the offender resumes serving his or her sentence in accordance with his or her sentence conditions.”

17 Concurrent and cumulative sentences of community work

Section 57(2A) is amended by inserting “or concurrently” after “cumulatively”.

18 Offender must report to probation officer

Section 59(a) is amended by inserting “or, if the start date of the sentence has been deferred under **section 20A(2)(b)** or 57A, within 72 hours of the specified start date” after “imposed”.

19 Guidance on use of sentence of community detention

Section 69C is amended by adding the following subsection:

“(3) Before imposing a sentence of community detention on an offender, a court must consider the pre-sentence report prepared by a probation officer in accordance with section 26A.”

20 Conditions of community detention during sentence term

(1) Section 69E(1) is amended by repealing paragraph (b) and substituting the following paragraph: 5

“(b) the offender must report in person to a probation officer in the probation area in which the offender resides—

“(i) as soon as practicable and not later than 24 hours after the sentence is imposed unless the 24 hours elapses on a weekend or a public holiday, in which case the offender must report on the next working day; or 10

“(ii) not later than 24 hours after the start date of the sentence if the sentence has been deferred under **section 20A(2)(b)** unless the 24 hours elapses on a weekend or a public holiday, in which case the offender must report on the next working day.”. 15

(2) Section 69E(1) is amended by adding the following paragraph: 20

“(f) the offender must, if required to submit to the electronic monitoring of his or her sentence, remain within the area defined by the probation officer.”

(3) Section 69E is amended by inserting the following subsection after subsection (3): 25

“(3A) A probation officer must define the area within which an offender subject to electronic monitoring is required to remain at the curfew address and show that area to the offender and advise the relevant occupants (as defined in section 26A(4)(b)) of that area.” 30

21 Variation or cancellation of sentence of community detention

Section 69I is amended by inserting the following subsection after subsection (3):

“(3A) When an application is made under this section for variation of conditions on the ground specified in subsection (1)(b) and 35

there is no suitable alternative curfew address available, the court may do either or both of the following things:

- “(a) issue to a constable a warrant for the offender’s arrest:
- “(b) bail the offender or remand the offender in custody if the application cannot be determined immediately.”

5

22 New section 69IA inserted

The following section is inserted after section 69I:

“69IA When time ceases to run on sentence of community detention

For the purposes of calculating how much time an offender who is subject to a sentence of community detention has served, time ceases to run on the sentence during any period between the date on which an application for a variation or cancellation of the sentence under section 69I(1)(a) is lodged and the date on which the offender resumes serving his or her sentence in accordance with his or her sentence conditions.”

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23 Jurisdiction and procedure

Section 72 is amended by repealing subsection (3) and substituting the following subsection:

- “(3) If an application under section 54, 54K, 68, or 69I has been lodged in a court by a probation officer, a probation officer or a constable may, for the purpose of having the offender brought before the court dealing with the application, apply to a court or a Registrar for the issue of a warrant to arrest the offender and the court or Registrar may issue a warrant for arrest.”

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24 Commencement of community-based sentences

Section 75 is amended by adding the following subsection:

- “(3) If a community-based sentence is imposed as a second sentence and deferred under **section 20A(2)(b)**—
 - “(a) the community-based sentence commences on the date that the first sentence is completed; or
 - “(b) if the offender is subject to post-detention conditions imposed under the first sentence, the community-based sentence commences on the date that the offender is no longer subject to those conditions.”

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25 Sentence of home detention

Section 80A is amended by inserting the following subsection after subsection (2):

- “(2A) Before imposing a sentence of home detention on an offender, a court must consider the pre-sentence report prepared by a probation officer in accordance with section 26A.” 5

26 Detention conditions applying to offender sentenced to home detention

- (1) Section 80C(2) is amended by inserting the following paragraph after paragraph (d): 10

“(da) the offender must, if required to submit to the electronic monitoring of his or her sentence, remain within the area defined by the probation officer; and”.

- (2) Section 80C is amended by inserting the following subsection after subsection (5): 15

- “(5A) A probation officer must define the area within which an offender subject to electronic monitoring is required to remain at the home detention residence and show that area to the offender and advise the relevant occupants (as defined in section 26A(4)(a)) of that area.” 20

27 Application for variation or cancellation of sentence of home detention

Section 80F is amended by inserting the following subsection after subsection (4):

- “(4A) When an application is made under this section for variation of conditions on the ground specified in subsection (1)(c) and there is no suitable alternative residence available, the court may do either or both of the following things: 25

“(a) issue to a constable a warrant for the offender’s arrest:

“(b) bail the offender or remand the offender in custody if the application cannot be determined immediately.” 30

28 Imposition of post-detention conditions on offender

Section 80N(2)(a) is amended by omitting “and 80U” and substituting “80U, and **80ZG**”.

29 Offence to breach detention conditions

Section 80S is amended by repealing paragraph (b) and substituting the following paragraphs:

- “(b) fails to return to a home detention residence when required to do so under **section 80ZG(6)(b)**; or 5
- “(c) fails to report when required to do so under **section 80ZGC(3)(a) or 80ZGD(2)**.”

30 Commencement of sentence of home detention

- (1) Section 80X(1) is amended by omitting “section 80W” and substituting “**section 20A(2)(b)** or 80W”. 10
- (2) Section 80X(3) is amended by omitting “section 80W” and substituting “**section 20A(2)(b)** or 80W”.

31 Time ceases to run in certain circumstances

Section 80ZB(a) is amended by omitting “section 80F” and substituting “section 80F(1)(a)”. 15

32 New sections 80ZG to 80ZGD substituted

Section 80ZG is repealed and the following sections are substituted:

- “**80ZG Effect of subsequent sentence of imprisonment of not more than 12 months** 20
- “(1) This section applies if an offender who is subject to a sentence of home detention is subsequently sentenced to—
 - “(a) a term of imprisonment of not more than 12 months; or
 - “(b) 2 or more terms of imprisonment to be served concurrently, each term of which is not more than 12 months; 25or
 - “(c) 2 or more terms of imprisonment that are cumulative, the total term of which is not more than 12 months.
- “(2) If this section applies, the court must either— 30
- “(a) order that the sentence of home detention be suspended; or
 - “(b) order that the sentence of home detention be suspended for the duration of the period in which the offender is detained under the sentence or sentences of imprisonment. 35

- “(3) If the court suspends the sentence of home detention under **subsection (2)(b)**, it may, if it thinks fit and subject to **subsection (4)**, remit, suspend, or vary any detention or post-detention conditions of the sentence imposed by the court, or impose additional detention or post-detention conditions. 5
- “(4) The court may not impose post-detention conditions on an offender under **subsection (3)** unless the court that sentenced the offender to home detention imposed post-detention conditions.
- “(5) The court must not vary any existing detention or post-detention condition or impose any new detention or post-detention condition of a kind referred to in section 80D(4)(b) or 80P(2)(b) (which involve prescription medication) unless the offender— 10
- “(a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and 15
- “(b) consents to taking the prescription medication.
- “(6) If the court suspends the sentence of home detention under **subsection (2)(b)**,— 20
- “(a) a probation officer must, before the statutory release date of the sentence of imprisonment,—
- “(i) review the suitability of the home detention residence; and 25
- “(ii) ensure every relevant occupant (as defined in section 26A(4)(a)) of the home detention residence consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence; and 30
- “(iii) if necessary, apply for a variation or cancellation of the sentence under section 80F; and
- “(b) the offender must go to and remain at the home detention residence after being released from detention, unless absent in accordance with section 80C(3)(a) or (b); 35
- and
- “(c) the sentence of home detention resumes when the offender has arrived at the home detention residence under **paragraph (b)**.

- “(7) If, for the purpose of **subsection (6)(a)(iii)**, the probation officer makes an application for variation of the sentence under section 80F and approves an alternative residence pending determination of the application—
- “(a) the offender must go and remain at the alternative address until the application is decided; and
 - “(b) once the application is decided, **subsection (6)(b) and (c)** apply accordingly.
- “**80ZGA Effect of subsequent sentence of imprisonment of more than 12 months** 10
- “(1) **Subsection (2)** applies if an offender who is subject to a sentence of home detention is subsequently sentenced to—
- “(a) a term of imprisonment of more than 12 months; or
 - “(b) 2 or more terms of imprisonment to be served concurrently, the total term of which is more than 12 months; 15
- or
- “(c) 2 or more terms of imprisonment that are cumulative, the total term of which is more than 12 months.
- “(2) If this section applies, the sentence of home detention is suspended. 20
- “**80ZGB Period of suspension not counted towards sentence**
- No period during which a sentence of home detention is suspended under **section 80ZG(2) or 80ZGA(2)** is counted towards the period of home detention imposed under section 80A(3). 25
- “**80ZGC Resumption of sentence of home detention**
- “(1) This section applies to a sentence of home detention that is suspended under **section 80ZG(2) or 80ZGA(2)**.
- “(2) The sentence of home detention is suspended until the earlier of the following events: 30
- “(a) it resumes under **subsection (3)**; or
 - “(b) it resumes under **section 80ZG(6)(c)**; or
 - “(c) it is cancelled under **subsection (5)**.

- “(3) If the sentence or sentences of imprisonment are quashed and that results in the offender no longer being detained under a sentence of imprisonment,—
 - “(a) the offender must report to a probation officer as soon as practicable and not later than 72 hours after being released from detention; and 5
 - “(b) the sentence of home detention resumes when the offender has reported as required under **paragraph (a)**.
- “(4) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the chief executive of the Department of Corrections. 10
- “(5) If the sentence of home detention does not resume under **section 80ZG(6)(c) or subsection (3)**, it is cancelled when the offender ceases to be detained under the sentence or sentences of imprisonment. 15

“80ZGD Effect of appeal on resumption of sentence of home detention

- “(1) An offender must comply with **subsection (2)** if—
 - “(a) the offender has, on or after the commencement of this section, lodged an appeal against— 20
 - “(i) a sentence of home detention imposed before or after that commencement; or
 - “(ii) the conviction on which that sentence is based; or
 - “(iii) both; and 25
 - “(b) the offender has been granted bail under section 45 of the Bail Act 2000; and
 - “(c) the outcome of the appeal is that—
 - “(i) the appeal is dismissed; or
 - “(ii) the appeal is deemed pursuant to rules of court to be dismissed; or 30
 - “(iii) leave to appeal is refused; or
 - “(iv) neither the sentence of home detention nor the conviction on which it was made is set aside when the appeal is determined. 35
- “(2) The offender must report to a probation officer as soon as practicable and not later than 72 hours after being notified of the dismissal, refusal, or determination.

- “(3) The sentence of home detention resumes when the offender has reported as required under **subsection (2)**.
- “(4) This section does not apply if the offender is detained under a sentence of imprisonment.”

33 Sections 80ZG to 80ZGD apply to home detention sentence imposed on or after commencement date 5
Sections 80ZG to 80ZGD of the principal Act (as inserted by **section 32**) apply only in relation to a sentence of home detention imposed on or after the commencement of this section. 10

34 Imposition of conditions on release of offender sentenced to imprisonment for short term

- (1) Section 93 is amended by repealing subsection (2A) and substituting the following subsection:

“(2A) The court may specify that any standard conditions or special conditions expire on the date that is a specified period of up to 12 months but no less than 6 months after the sentence expiry date.” 15

- (2) Section 93 is amended by inserting the following subsection after subsection (2A): 20

“(2AB) If the court imposes special conditions on an offender, the special conditions may apply for as long as, but no longer than, the standard conditions apply to the offender.”

Part 3

Amendments to Parole Act 2002 25

35 Principal Act amended

This **Part** amends the Parole Act 2002.

36 Special conditions

Section 15 is amended by inserting the following subsection after subsection (3): 30

“(3A) If the Board imposes on an offender special conditions relating to residential restrictions (specified under subsection (3)(ab)),—

- “(a) the offender’s probation officer must define the area of the residence specified under section 33(2)(a) within which the offender must remain and show that area to the offender and advise every relevant occupant (as defined in section 34(4)) of the residence of that area; and 5
- “(b) the offender must remain within that area.”

37 Conditions applying to release at statutory release date

Section 18 is amended by repealing subsection (2A) and substituting the following subsection:

- “(2A) If an offender in respect of whom an extended supervision order is made is released at his or her statutory release date, or released early under section 52, the Board may impose special conditions, the duration of which are determined by section 107L(2A).” 10

38 Release conditions applying to parole 15

Section 29(3)(b) is amended by adding “, unless the release conditions are varied or discharged by the Board under section 58”.

39 Board may monitor compliance with conditions

Section 29B is amended by inserting the following subsection after subsection (6): 20

- “(6A) Sections 63 and 65 to 66A apply, with any necessary modifications, in respect of an order made under subsection (5)(c) as if—

“(a) the order were an interim recall order made under section 62; and 25

“(b) a recall application had been made.”

40 Prior report on suitability of residential restrictions

- (1) Section 34(1) is amended by omitting “a probation officer” and substituting “the chief executive”. 30

- (2) Section 34 is amended by inserting the following subsections after subsection (1):

- “(1A) Nothing in subsection (1) prevents the chief executive from providing a report on the matters specified in subsection (2) without receiving a request from the Board.
- “(1B) Despite subsection (1), if the chief executive provides a report on the matters specified in subsection (2) without a request from the Board, the Board must consider that report as if it were a report requested by the Board under subsection (1).” 5
- (3) Section 34(3) is amended by omitting “Before completing the report requested under subsection (1), the probation officer must—” and substituting “Before completing the report under this section, the chief executive must—”. 10
- (4) Section 34(4) is amended by omitting “the probation officer” in each place where it appears and substituting in each case “the chief executive”.
- 41 Application for variation or discharge of conditions** 15
Section 56 is amended by adding the following subsection:
- “(5) Subsection (4) does not apply to an application for variation or discharge of standard release conditions imposed on an offender who is subject to an indeterminate sentence.”
- 42 Making recall application** 20
Section 60 is amended by repealing subsection (4) and substituting the following subsections:
- “(4) When a recall application is made, the sentence to which the recall application relates ceases to run as follows:
- “(a) if a final recall order is made, for the period between the lodgement of the application and the making of the order during which the offender was at large: 25
- “(b) if an interim recall order is made but the Board does not make a final recall order, for the period between the making of the interim recall order and the date of the determination of the application during which the offender was at large. 30
- “(5) When a recall application is made, the sentence to which the recall application relates continues to run as follows:
- “(a) for the period (if any) between the lodgement of the application and the date of its determination during which 35

- the offender is under legal custody in accordance with the Corrections Act 2004:
- “(b) if an interim recall order is made, for the period between the lodgement of the application and the making of the interim recall order: 5
- “(c) if no interim or final recall order is made, for the period between the lodgement of the application and the date of its determination.”
- 43 Time ceases to run in certain circumstances**
Section 94 is amended by repealing paragraph (b) and substituting the following paragraph: 10
- “(b) for an offender on parole or compassionate release, as provided in **section 60(4)**.”
- 44 Commencement and expiry of extended supervision order**
Section 107L is amended by inserting the following subsection after subsection (1): 15
- “(1A) If an offender is released early under section 52 and the offender is subject to an extended supervision order made in the circumstances described in subsection (1)(a), then—
- “(a) the extended supervision conditions and any special conditions (including any special conditions imposed under section 107IA) come into force on the offender’s actual release date; but 20
- “(b) time does not begin to run on the order until the offender’s statutory release date.” 25
- 45 Suspension of conditions of extended supervision order**
Section 107P is amended by inserting the following subsection after subsection (2):
- “(2A) If an offender is released early under section 52 and the offender is subject to an extended supervision order that is re-activated in the circumstances described in subsection (2)(a), then— 30
- “(a) the extended supervision conditions and any special conditions (including any special conditions imposed

- under section 107IA) are reactivated on the offender’s actual release date; but
- “(b) time does not begin to run on the order until the offender’s statutory release date.”

Part 4 5
Consequential amendments to other enactments

46 Amendment to Crimes Act 1961

- (1) This section amends the Crimes Act 1961.
- (2) Section 399(3) is amended by omitting “intensive supervision, community detention, or home detention” and substituting “intensive supervision, or community detention”. 10

47 Amendment to Sentencing Amendment Act 2007

- (1) This section amends the Sentencing Amendment Act 2007.
- (2) Section 49(3) is repealed. 15

48 Amendment to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Section 124(3) is amended by omitting “intensive supervision, community detention, or home detention” and substituting “intensive supervision, or community detention”. 20