

Administration of Community Sentences and Orders Bill

Government Bill

As reported from the Law and Order
Committee

Commentary

Recommendation

The Law and Order Committee has examined the Administration of Community Sentences and Orders Bill, and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Bail Act 2000, the Bail Amendment Act 2011, the Sentencing Act 2002, and the Parole Act 2002, in order to remove barriers to managing offenders in the community safely and effectively. The bill seeks to refine practices that have resulted from the introduction of extended supervision orders and sentencing and parole reforms. It would make changes to home detention and community-based sentences by adding appropriate requirements in administering these sentences, and would align electronic monitoring conditions with the monitoring equipment currently used. The bill also seeks to specify who would have responsibility for preparing reports on suitability for residential restrictions, and to eliminate gaps in extended supervision order provisions.

On 14 August 2012, the Minister of Corrections wrote to inform us of proposed amendments to the bill agreed to by Cabinet. The draft supplementary order paper proposed three substantive and four technical amendments to the bill. The substantive proposals include provisions allowing community magistrates to alter or cancel a community-based sentence previously imposed by a community magistrate; allowing the chief executive of the Department of Corrections to approve changes of address for home or community detention; and allowing a probation officer, rather than the court, to direct that up to 20 per cent of a community work sentence of at least 80 hours be spent in training in basic work and living skills, to reduce barriers to training for offenders. The technical proposals include provisions clarifying that a court may not cancel or replace the first sentence if that sentence was imposed by a higher court, but may instead remit the matter to the court that imposed the first sentence; requiring a probation officer to review the suitability of the home detention residence or curfew address when the court defers the commencement of a second sentence of home or community detention for more than two months; for the purpose of determining when post-detention conditions commence, providing that any concurrent or cumulative home detention sentences be treated as a notional single sentence; and where an appeal against a home detention sentence is unsuccessful, requiring the registrar of the appeal to notify the controlling officer of the relevant probation area, and the offender if they are not in court, of the date on which the sentence resumes.

We considered these proposed amendments alongside the bill. We made an interim report to the House outlining these proposals, and invited further submissions from those who had previously submitted on aspects of the bill affected by the proposed changes.

This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Bail Act and Bail Amendment Act

We recommend deleting clauses 5, 6, and 7 of the bill and replacing them with new clauses 7A–7G to amend sections of the Bail Amendment Act 2011, rather than the Bail Act 2000. As introduced, the bill sought to amend sections 45–47, 70, and schedule 1 of the Bail Act. The Bail Amendment Act, which comes into force in October 2013

or earlier if by Order in Council, replaces parts 3 and 4 of the Bail Act, into which the provisions in clauses 5–7 of this bill would be inserted. If the Bail Amendment Act were to come into force after this bill, the provisions inserted by clauses 5–7 would cease to have legislative effect. New clauses 7A–7G would have similar effect to that of clauses 5–7.

An appellant could surrender himself or herself when released on bail from home detention and apply for the discharge of bail. In this situation, the court might order the resumption of home detention, which, as amended, would require the probation officer to review the suitability of the home detention residence. This might cause unnecessary delays in cases where bail was discharged shortly after being granted. We recommend inserting new clause 7G to require the court to consider a probation officer’s review only if the appellant has been on bail for longer than two months.

Sentencing Act

The integrity of community-based and home detention sentences

Under the Act, time continues to run on community-based or home detention sentences when an application to vary or cancel the sentence has been made because of failure to comply with conditions. Ideally, a period of compliance with sentence conditions would be considered time served, and non-compliance would not. However, it is unclear how to class periods in which an offender has complied with some conditions and not others. We recommend amending clauses 14, 16, 22, and 31 to allow a court to exercise discretion when considering periods of compliance since application in determining the amount of time served on the sentence.

Converting a proportion of community work sentences into training

We recommend replacing sections 66A and 66B with new section 66A in new clause 18A, to provide that a probation officer may direct that up to 20 per cent of a community work sentence of at least 80 hours be spent in training in basic work and living skills. Under the Act, only the court may make such an authorisation. This proposal is intended to make such conversions more efficient.

Change of home detention or curfew address

If a residence where an offender is serving a home or community detention sentence becomes unsuitable, his or her probation officer may temporarily approve an alternative address, provided an application to approve the change is made to the court within five working days of the decision to relocate the offender. This process can be an unnecessary use of a probation officer's and the court's time and resources when only a short period of the sentence remains. The uncertainty while awaiting the court's decision may hamper the offender's reintegration into the community. We therefore recommend repealing sections 69K and 80H of the Sentencing Act 2002 and replacing them with new sections 69JA and 80FA in new clauses 22A and 27A respectively, to empower the chief executive to vary a home detention residence or curfew address if he or she is satisfied that all the following conditions are fulfilled: the address specified by the court is no longer suitable; an alternative address is suitable; the relevant occupants of the alternative address have given their informed consent; the residence is in an area in which a home detention or community detention scheme is operated by the department; and the offender has provided his or her written consent to the change of address. If the offender did not provide written consent, the probation officer would need to apply to the court to vary or cancel the sentence.

We considered whether it might not be appropriate to reassign powers away from the judiciary to a member of the department in clauses 18A, 22A, and 27A. But we are satisfied that these provisions were drafted specifically enough to reduce any risk of misuse. These clauses are intended to improve the efficiency of the processes.

Registrar notification requirement

We recommend inserting new section 80MA in new clause 27C to require the appeal court registrar to notify the controlling officer of the probation area and the offender, if not in court, of the date on which the home detention sentence resumes after an unsuccessful appeal of that sentence. This would align the bill with legislation relating to community-based sentences.

Imposition of post-detention conditions

If a court imposes a home detention sentence cumulatively with an existing sentence, or a concurrent sentence that is longer than the first sentence, it can be unclear when the post-detention conditions imposed with the first home detention sentence should begin. We recommend inserting new subsection 80N(6) in clause 28 to provide for any concurrent or cumulative home detention sentences to be treated as a notional single sentence when determining the date on which the post-detention conditions begin.

Effect of appeal on resumption of home detention sentence

As introduced, the bill would require an offender on bail to report to a probation officer within 72 hours of being notified of the appeal's unsuccessful outcome, at which time the home detention sentence would resume. However, this might not leave enough time for the probation officer to find a suitable home detention residence if the offender's previous residence had become unsuitable while the offender was on bail. We recommend replacing subsections 80ZGD(2) and 80ZGD(3) with new subsections 80ZGD(1A) and 80ZGD(1B) in clause 32 to require the court to stipulate the date on which the offender would have to report to a probation officer to resume serving the sentence. This date would be no earlier than 10 working days after the court's decision.

Parole Act

Under the Parole Act 2002, an offender is subject only to the residential restrictions regarding the residence at which he or she was paroled. If an offender's residence becomes unsuitable, his or her probation officer can apply to the board to have the restriction apply to another address. However, in the period after application to the board but before receiving board approval, a probation officer's only legal option for most offenders is to have them recalled to prison, incurring additional costs and possibly hindering their reintegration into the community. We recommend inserting new clause 40A to empower the chief executive to approve an alternative residence for offenders subject to residential restrictions, provided an application to the board to vary the condition is made within five working days of the decision to relocate the prisoner.

Appendix

Committee process

The Administration of Community Sentences and Orders Bill was referred to the committee on 8 May 2012. The closing date for submissions was 22 June 2012. We received and considered five submissions from interested groups and individuals. We made an interim report to the House on 24 August 2012 and invited further submissions from a number of submitters. The closing date for further submissions was 7 September 2012. We received and considered one further submission. We received advice from the Department of Corrections and the Parliamentary Counsel Office.

Committee membership

Jacqui Dean (Chairperson)

David Clendon

Kris Faafoi

Hon Phil Goff

Ian McKelvie

Mark Mitchell

Richard Prosser

Jami-Lee Ross

Lindsay Tisch

Administration of Community Sentences
and Orders Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Anne Tolley

Administration of Community Sentences and Orders Bill

Government Bill

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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** 5
- (1) This Act, other than **Parts 1 and 1A, section 27C, section 32** so far as it relates to **section 80ZGD, and section 34(1)**, comes into force on the day that is 3 months after the date on which it receives the Royal assent.
- (2) **Part 1, section 27C, and section 32** so far as it relates to **section 80ZGD**, come into force immediately after section 15 of the Bail Amendment Act 2011 comes into force. 10
- (3) **Part 1A** comes into force on the day after the date it receives the Royal Assent.
- (4) **Section 34(1)** comes into force on a date appointed by the Governor-General by Order in Council. 15

Part 1
Amendments to Bail Act 2000

- 3 Principal Act amended**
This **Part** amends the Bail Act 2000. 20

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”.

5 New sections 45 to 47A substituted 5

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

“(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: 10

“(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— 15

“(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

“(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. 20

“(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. 25

“(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. 30 35

“(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 5
- “(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. 10
- “46 **Time on bail pending appeal not to be taken as time served** 15
- “(1) Section 95 of the Parole Act 2002 applies if an appellant in custody under a conviction is released on bail pending an appeal.
- “(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. 20
- “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 the appellant and for his or her committal to a prison for the unexpired term of the sentence originally imposed. 25
- “47A **Surrender of appellant released on bail from sentence of home detention** 30
- “(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 35

or Justice may order that the appellant resume serving the sentence of home detention.

- “(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— 5
- “(a) whether the home detention residence is still available and suitable; and
 - “(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. 10
- “(3) If an appellant applies for the discharge of bail under **subsection (1)**, the court may— 15
- “(a) adjourn the matter to enable a probation officer to obtain the information required under **subsection (2)**; and
 - “(b) either—
 - “(i) remand the appellant in custody; or
 - “(ii) grant the appellant bail for the period of the adjournment. 20
- “(4) If a District Court Judge or Justice orders that the appellant resume serving the sentence of home detention,—
- “(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 25
 - “(b) the sentence of home detention resumes when the appellant has arrived at the home detention residence under **paragraph (a)**.” 30

6 New section 70 substituted 30
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. 35

- “(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— 5
- “(a) in custody only under the conviction to which the appeal relates; or
- “(b) subject to a sentence of home detention only under the conviction to which the appeal relates. 10
- “(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.
- “(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. 15
- “(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. 20
- “(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. 25
- “(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.” 30 35

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”.
- (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”. 5

Part 1A
Amendments to Bail Amendment Act
2011 10

7A Principal Act amended

This Part amends the item relating to Parts 3 and 4 of the Bail Act 2000 in the Schedule of the Bail Amendment Act 2011.

7B New section 53 of Bail Act 2000 amended

- (1) The heading to new section 53 is amended by inserting “or on home detention” after “custody”. 15
- (2) New section 53 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if a person—
- “(a) is in custody under a conviction or is subject to a sentence of home detention; and
- “(b) is appealing the conviction or sentence, or both, to a District Court presided over by a District Court Judge.”
- (3) New section 53(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”. 25
- (4) New section 53(4) is amended by omitting “34” and substituting “35”.
- (5) New section 53 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) For the purposes of this section,— 30
- “(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 35

the appellant has not appealed against the conviction in respect of which that other sentence or term was imposed; and
“(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.”

7C New section 54 of Bail Act 2000 amended

- (1) The heading to new section 54 is amended by inserting “or on home detention” after “custody”.
- (2) New section 54 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if a person—
“(a) is in custody under a conviction or is subject to a sentence of home detention; and
“(b) is appealing the conviction or sentence, or both, to the High Court.”
- (3) New section 54(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
- (4) New section 54 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) **Section 53(6)** applies for the purposes of this section.”

7D New section 55 of Bail Act 2000 amended

- (1) The heading to new section 55 is amended by inserting “or on home detention” after “custody”.
- (2) New section 55 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies if a person—
“(a) is in custody under a conviction or is subject to a sentence of home detention; and
“(b) is appealing the conviction or sentence, or both, to the Court of Appeal or the Supreme Court.”

- (3) New section 55(2) is amended by inserting “, or is subject to a sentence of home detention,” after “custody”.
- (4) New section 55 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) **Section 53(6)** applies for the purposes of this section.” 5
- 7E** **New section 58 of Bail Act 2000 substituted**
New section 58 is repealed and the following section substituted:
- “**58** **Time on bail pending appeal not to be taken as time served**
- “(1) Section 95 of the Parole Act 2002 applies if an appellant is released on bail pending an appeal. 10
- “(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.”
- 7F** **New section 59 of Bail Act 2000 amended** 15
- (1) The heading to new section 59 is amended by inserting “**from sentence of imprisonment**” after “**bail**”.
- (2) New section 59(1) is amended by omitting “defendant” and substituting “appellant”.
- (3) New section 59(2) is amended by omitting “a defendant” and substituting “an appellant”. 20
- 7G** **New section 59A of Bail Act 2000 inserted**
The following section is inserted after new section 59:
- “**59A** **Surrender of appellant released on bail from sentence of home detention** 25
- “(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 for the discharge of bail, and the District Court Judge may order that the appellant resume serving the sentence of home detention. 30
- “(2) If an appellant applies for the discharge of bail under **subsection (1)**, the court may,—
- “(a) if the appellant has been on bail for longer than 2 months, adjourn the matter to enable a probation officer 35

- to obtain the information required under **subsection (3)**; and
- “(b) either—
- “(i) remand the appellant in custody; or
- “(ii) grant the appellant bail for the period of the adjournment. 5
- “(3) Before ordering that an appellant resume serving a sentence of home detention under **subsection (1)**, the District Court Judge must, if the appellant has been on bail for longer than 2 months, consider information from a probation officer on— 10
- “(a) whether the home detention residence is still available and suitable; and
- “(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. 15
- “(4) If a District Court Judge orders that the appellant resume serving the sentence of home detention,—
- “(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 20
- “(b) the sentence of home detention resumes when the appellant has arrived at the home detention residence under **paragraph (a)**.” 25

Part 2 Amendments to Sentencing Act 2002

- 8 Principal Act amended**
This **Part** amends the Sentencing Act 2002.
- 9 New section 20A inserted** 30
The following section is inserted after section 20:
- “20A Subsequent community-based sentence or sentence of home detention**
- “(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 35

or sentence of home detention (the **second sentence**) in respect of another offence.

- “(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 5
 - “(b) defer the commencement of the second sentence until the first sentence has been served; or
 - “(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 for which the sentence was imposed so that the sentences are a permitted combination of sentences under section 19. 10
- “(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. 15
- “(3A) A court— 20
- “(a) must not cancel a first sentence under **subsection (2)(c) or (d)** if that sentence has been imposed by a higher court; and
 - “(b) if it considers the first sentence should be cancelled, must refer the matter to the court that imposed the first sentence. 25
- “(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). 30
- “(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.
- “(6) If the second sentence is a sentence of home detention or community detention and the court defers, under **subsection (2)(b)**, the commencement of that sentence for more than 2 months, a probation officer must— 35

- “(a) review the suitability of the home detention residence or curfew address; and
- “(b) ensure every relevant occupant consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence or curfew address; and 5
- “(c) if necessary, apply to the court for a variation or cancellation of the sentence under section 69I or 80F or obtain from the chief executive of the Department of Corrections a variation of the curfew address or home detention residence under **section 69JA or 80FA**. 10
- “(7) In this section, **relevant occupant** has the meaning given to it by section 26A(4)(a).”

- 10 Effect of provisions concerning multiple sentences on powers of court** 15

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

- 11 Pre-sentence reports**

Section 26 is amended by repealing subsection (1) and substituting the following subsection: 20

“(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:

“(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”.
- (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.” 10

13 Standard conditions of supervision

Section 49(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.” 15 20

14 New section 54AA inserted

The following section is inserted after section 54:

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

- ~~“(1) 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.”~~ 25 30

“(1) For the purpose of calculating how much time an offender has served on a sentence of supervision,—

- “(a) time ceases to run on the sentence during any period between the date on which an application under section 35

- 54(1)(a) is lodged and the date on which the application is determined by the court; but
- “(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—
- “(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and
- “(ii) the amount of time (if any) that the offender has spent in custody.”

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

- “(a) 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:

- “
- For the purpose of calculating how much time the offender has served on a sentence of intensive supervision,—
- “(a) time ceases to run on the sentence during any period between the date on which an application under section

- 54K(1)(a) is lodged and the date on which the application is determined by the court; but
“(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account— 5
“(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and
“(ii) the amount of time (if any) that the offender has spent in custody.” 10
- 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”. 15
- 18A New section 66A substituted**
Sections 66A and 66B are repealed and the following section 20
is substituted:
- “66A Probation officer may direct hours of work to be converted to training**
- “(1) This section applies to sentences of community work of at least 80 hours. 25
- “(2) A probation officer may direct that a specified number of hours of work, not exceeding 20% of the total number of hours of work ordered by the court to be undertaken, be spent in training in basic work and living skills.
- “(3) In determining whether to give a direction under this section, the probation officer must take account of— 30
- “(a) the benefits of skill development to the offender for reducing the likelihood of reoffending; and
- “(b) the need to hold the offender accountable to the community by making compensation to it. 35

“(4) A probation officer must not give a direction under this section unless—

“(a) it is reasonably practicable for the offender to undertake training in basic work and living skills (having regard to the availability of that training in the place where the offender lives); and

“(b) the offender consents to undertake that training.

“(5) Any hours spent by the offender training in basic work and living skills under a direction given under this section must, for all legal purposes, be treated as hours of authorised community work undertaken by the offender under his or her sentence.

“(6) **Subsection (5)** is subject to section 66C.”

18B Consequences of failing without excuse to complete training

Section 66C is amended by omitting “section 66B” and substituting “**section 66A**”.

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:

“(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

“(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.”.

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

“(f) the offender must, if required to submit to the electronic monitoring of his or her sentence, remain during the curfew period within the area defined by the probation officer.” 5

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

“(3A) A probation officer must define the area within which an offender subject to electronic monitoring is required to remain at the curfew address during the curfew period and show that area to the offender and advise the relevant occupants (as defined in section 26A(4)(b)) of that area.” 10

21 Variation or cancellation of sentence of community detention 15

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 there is no suitable alternative curfew address available, the court may do either or both of the following things: 20

“(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.” 25

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: 30 35

“ For the purpose of calculating how much time an offender has served on a sentence of community detention,—
“(a) time ceases to run on the sentence during any period between the date on which an application under section 69I(1)(a) is lodged and the date on which the application is determined by the court; but 5
“(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account— 10
“(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and
“(ii) the amount of time (if any) that the offender has spent in custody.”

22A New section 69JA inserted 15

The following section is inserted after section 69J:

“69JA Chief executive of Department of Corrections may vary offender’s curfew address

“(1) The chief executive of the Department of Corrections may vary an offender’s curfew address if— 20

“(a) the curfew address is no longer available or suitable because of a change in circumstances; and

“(b) an alternative address is suitable; and

“(c) every relevant occupant (as defined in section 26A(4)(b)) at the alternative address has given their informed consent to the offender remaining at that address during the curfew period; and 25

“(d) the alternative address is in an area in which a community detention scheme is administered by the Department of Corrections; and 30

“(e) the offender has given written consent to the change in address.

“(2) A probation officer may, subject to **subsection (3)**, approve a provisional curfew address at which the offender must remain during the curfew period pending a decision by the chief executive under **subsection (1)**. 35

- “(3) If the chief executive does not vary a curfew address within 10 days after a provisional curfew address is approved under **subsection (2)**,—
- “(a) a probation officer must approve another provisional curfew address at which the offender must remain during the curfew period pending a decision by the chief executive under **subsection (1)**; or 5
- “(b) a probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity and the offender must, unless the probation officer directs otherwise, remain at the provisional curfew address approved under **subsection (2)** during the curfew period pending the decision of the court. 10
- “(4) If the chief executive does not vary a curfew address within 10 days after the probation officer has approved a provisional curfew address under **subsection 3(a)**,— 15
- “(a) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity; and
- “(b) the offender must, unless the probation officer directs otherwise, remain at the provisional curfew address approved under **subsection (3)(a)** during the curfew period pending the decision of the court.” 20

22B Section 69K repealed
Section 69K is repealed.

- 23** **Jurisdiction and procedure** 25
- (1) Section 72(1) is amended by repealing paragraph (c) and substituting the following paragraphs:
- “(c) to a District Court presided over by a Judge or Community Magistrate if the sentence was imposed by a Community Magistrate; or 30
- “(d) to a District Court presided over by any Judge, in any other case.”
- (2) 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 35

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.”

- 24 Commencement of community-based sentences** 5
- (1)** Section 75(2)(a) is amended by inserting “this section and” after “subject to”.
- 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)**— 10
- “(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~~ in respect of the first sentence, the community-based sentence commences on the date that the offender is no longer subject to those conditions.” 15
- 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.” 20
- 26 Detention conditions applying to offender sentenced to home detention**
- (1)** Section 80C(2) is amended by inserting the following paragraph after paragraph (d): 25
- “(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): 30
- “(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 of-

fender and advise the relevant occupants (as defined in section 26A(4)(a)) of that area.”

27 Application for variation or cancellation of sentence of home detention

Section 80F is amended by inserting the following subsection 5
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: 10
- “(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.”

27A New section 80FA inserted

The following section is inserted after section 80F: 15

“80FA Chief executive of Department of Corrections may vary offender’s home detention address

- “(1) The chief executive of the Department of Corrections may vary an offender’s home detention address if—
- “(a) the home detention address is no longer available or suitable because of a change in circumstances; and
 - “(b) an alternative address is suitable; and
 - “(c) every relevant occupant (as defined in section 26A(4)(a)) at the alternative address has given their informed consent to the offender remaining at that address while serving his or her home detention sentence; and
 - “(d) the alternative address is in an area in which a home detention scheme is administered by the Department of Corrections; and
 - “(e) the offender has given written consent to the change in address.
- “(2) A probation officer may, subject to **subsection (3)**, approve a provisional home detention address at which the offender must remain pending a decision by the chief executive under **subsection (1)**. 35

- “(3) If the chief executive does not vary a home detention address within 10 working days after a provisional home detention address is approved under **subsection (2)**,—
- “(a) the probation officer must approve another provisional home detention address at which the offender must remain pending a decision by the chief executive under **subsection (1)**; or 5
- “(b) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity and the offender must, unless the probation officer directs otherwise, remain at the provisional home detention address approved under **subsection (2)** pending the decision of the court. 10
- “(4) If the chief executive does not vary a home detention address within 10 days after the probation officer has approved a provisional home detention address under **subsection (3)(a)**,— 15
- “(a) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity; and
- “(b) the offender must, unless the probation officer directs otherwise, remain at the provisional home detention address approved under **subsection (3)(a)** pending the decision of the court.” 20

27B Section 80H repealed
Section 80H is repealed.

27C New section 80MA inserted 25
The following section is inserted after section 80M:

“80MA Registrar must notify controlling officer and offender of resumption of sentence

If the outcome of an offender’s appeal against a sentence of home detention is unsuccessful and the offender has been granted bail under **section 53, 54, or 55** of the Bail Act 2000, the Registrar of the appeal court must— 30

“(a) notify the controlling officer (within the meaning of section 27 of the Corrections Act 2004) of the probation area in which the sentence is to be served of the date on which the sentence is to resume; and 35

“(b) notify the offender of that date if he or she is not present in court at the time the appeal is disposed of.”

28 Imposition of post-detention conditions on offender

(1) Section 80N(2)(a) is amended by omitting “and 80U” and substituting “80U, and **80ZG**”. 5

(2) Section 80N is amended by adding the following subsection:

“(6) If the court imposes a home detention sentence cumulatively on an existing sentence or a concurrent sentence of home detention that is longer than the first sentence, any post-detention conditions imposed with the first home detention sentence commence only after the second sentence has been completed.” 10

29 Offence to breach detention conditions

Section 80S is amended by repealing paragraph (b) and substituting the following paragraphs: 15

“(b) fails to return to a home detention residence when required to do so under **section 80ZG(6)(b)**; or

“(c) fails to report when required to do so under **section 80ZGC(3)(a) or 80ZGD(2)**.”

30 Commencement of sentence of home detention 20

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

(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 25

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

Section 80ZB is repealed and the following section substituted:

“80ZB Time ceases to run in certain circumstances 30

For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served,—

“(a) time ceases to run on the sentence during any period between the date on which an application under section

- 80F(1)(a) is lodged and the date on which the application is determined by the court; but
- “(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—
- “(i) the extent (if any) to which the offender has complied with any detention conditions; and
- “(ii) the amount of time (if any) that the offender has spent in custody.”
- 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**
- “(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; or
- “(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—
- “(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.
- “(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.
- “(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—
- “(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
 - “(b) consents to taking the prescription medication.
- “(6) If the court suspends the sentence of home detention under **subsection (2)(b)**,—
- “(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
 - “(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
 - “(iii) if necessary, apply for a variation or cancellation of the sentence under section 80F or obtain from the chief executive of the Department of Corrections a variation of the home detention residence under **section 80FA**; 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); 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** 5

- “(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; or
 - “(c) 2 or more terms of imprisonment that are cumulative, ~~the total~~ each term of which is more than 12 months.
- “(2) If this section applies, the sentence of home detention is suspended. 15

“**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). 20

“**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: 25
 - “(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,— 30
 - “(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 35

- “(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. 5
- “(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.
- “**80ZGD Effect of appeal on resumption of sentence of home detention** 10
- “(1) This section applies ~~An offender must comply with **subsection (2)** if—~~
- “(a) ~~the~~ an offender has, on or after the commencement of this section, lodged an appeal against— 15
- “(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 20
- “(b) the offender has been granted bail under ~~section 45~~ section 53, 54, or 55 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 25
- “(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. 30
- “(1A) If this section applies,—
- “(a) the court to which the appeal is made must specify a date on which the offender must report to a probation officer and that date must be not earlier than 10 working days after the outcome of the appeal is determined and must fall on a working day; and 35
- “(b) the offender must report to a probation officer on that date; and

- “(c) the sentence of home detention resumes when the offender has reported to the probation officer on that date.
- “(1B) If the offender has been on bail for more than 2 months, the probation officer must, before the sentence of home detention resumes,— 5
- “(a) review the suitability of the home detention address; and
- “(b) ensure every relevant occupant consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence or curfew address; and 10
- “(c) if necessary, apply to the court for a variation or cancellation of the sentence under section 80F or obtain from the chief executive of the Department of Corrections a variation of the home detention residence under **section 80FA.** 15
- “(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).**~~ 20
- “(4) This section does not apply if the offender is detained under a sentence of imprisonment.”
- 33** ~~Sections 80ZG to 80ZGD~~ **80ZGC** apply to home detention sentence imposed on or after commencement date 25
Sections 80ZG to 80ZGD **80ZGC** 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.
- 34** **Imposition of conditions on release of offender sentenced to imprisonment for short term** 30
- (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 35

12 months but no less than 6 months after the sentence expiry date.”

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

“(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.” 5

Part 3

Amendments to Parole Act 2002

- 35 Principal Act amended** 10
This **Part** amends the Parole Act 2002.

36 Special conditions

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

“(3A) If the Board imposes on an offender special conditions relating to residential restrictions (specified under subsection (3)(ab)),— 15

“(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 20

“(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: 25

“(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).” 30

- 38 Release conditions applying to parole**
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** 5
Section 29B is amended by inserting the following subsection after subsection (6):
“(6A) Sections 63 and 65 to 66A apply, with any necessary modifications, in respect of an order made under subsection (5)(c) as if— 10
“(a) the order were an interim recall order made under section 62; and
“(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”. 15
(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. 20
“(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).” 25
(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—”.
(4) Section 34(4) is amended by omitting “the probation officer” 30
in each place where it appears and substituting in each case “the chief executive”.
- 40A New section 36 inserted**
The following section is inserted after section 35:

“36 Chief executive may approve alternative residence pending determination of application for variation of residential restrictions

“(1) This section applies if an offender who is subject to residential restrictions or a probation officer intends to apply or has applied to the Board under section 56 for a variation of residential restrictions. 5

“(2) If this section applies, the chief executive may approve an alternative residence at which the offender must stay at all times or at times specified by the Board, pending the determination of the application. 10

“(3) If the chief executive approves an alternative residence before the application has been made, a probation officer must apply to the Board under section 56 within 5 working days of the chief executive’s approval being given. 15

“(4) **Subsection (3) does not apply if an offender makes the application within the 5-day period specified in **subsection (3)**.**

“(5) If the chief executive considers there is no suitable alternative residence available,—

“(a) a probation officer must apply to the Board under section 56 at the earliest opportunity; or 20

“(b) the chief executive must make a recall application to the Board under section 60.

“(6) In **subsections (2) to (4), an **application** means application to the Parole Board under section 56 for a variation of residential restrictions.”** 25

41 Application for variation or discharge of conditions

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.” 30

42 Making recall application

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: 35

- “(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:
- “(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. 5
- “(5) When a recall application is made, the sentence to which the recall application relates continues to run as follows: 10
- “(a) for the period (if any) between the lodgement of the application and the date of its determination during which 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: 15
- “(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.” 20
- 43 Time ceases to run in certain circumstances**
Section 94 is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) for an offender on parole or compassionate release, as provided in **section 60(4)**.” 25
- 44 Commencement and expiry of extended supervision order**
Section 107L is amended by inserting the following subsection after subsection (1):
- “(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— 30
- “(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 35
- “(b) time does not begin to run on the order until the offender’s statutory release date.”

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- 5
activated in the circumstances described in subsection (2)(a), then—
- “(a) the extended supervision conditions and any special conditions (including any special conditions imposed under section 107IA) are reactivated on the offender’s 10
actual release date; but
- “(b) time does not begin to run on the order until the offender’s statutory release date.”

Part 4

Consequential amendments to other enactments 15

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 “in- 20
tensive supervision, or community detention”.

47 Amendment to Sentencing Amendment Act 2007

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

48 Amendment to Summary Proceedings Act 1957 25

- (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 “in-
tensive supervision, or community detention”.
- (2) Section 106E(9) is amended by omitting “Section 19 of the 30
Sentencing Act 2002 applies” and substituting “Sections 19
and 20A of the Sentencing Act 2002 apply”.

**Administration of Community Sentences
and Orders Bill**

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Committee
