



Australian Capital Territory

# Crimes (Restorative Justice) Act 2004

A2004-65

## Contents

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	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Dictionary	2
4	Notes	3
5	Offences against Act—application of Criminal Code etc	3
<b>Part 2</b>	<b>Underlying principles</b>	
6	Objects of Act	4
7	Application of restorative justice	5
8	When restorative justice is available	5
9	No obligation to participate	6
<b>Part 3</b>	<b>Key concepts</b>	
10	Definitions—restorative justice	7
11	Definitions— <i>child victim</i> , <i>parent</i> and <i>victim</i>	8

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## Contents

---

		Page
12	Definitions—offences and offenders	8
13	Definition— <i>sentence-related order</i>	10
<b>Part 4</b>	<b>Application of Act</b>	
14	Application of Act—young offenders and less serious offences	12
15	Application of Act—generally	13
16	Application of Act—domestic violence offences	14
<b>Part 5</b>	<b>Eligibility for restorative justice</b>	
17	Eligible victims	16
18	Eligible parents	17
19	Eligible offenders	18
20	Accepting responsibility for offences	18
<b>Part 6</b>	<b>Referral for restorative justice</b>	
<b>Division 6.1</b>	<b>Preliminary</b>	
21	Definitions—referral	20
<b>Division 6.2</b>	<b>General</b>	
22	Referring entities	20
23	Referral—procedure	23
24	Referral power	24
25	Explanation of restorative justice	25
26	Referral by DPP—domestic violence offences committed by young offenders	26
<b>Division 6.3</b>	<b>Referral by courts</b>	
27	Referral during court proceeding	27
28	Court referral orders—reports	29
<b>Part 7</b>	<b>Suitability for restorative justice</b>	
29	Meaning of <i>personal characteristics</i> for pt 7	31
30	Suitability—eligibility requirement	31
31	Finding of eligibility by referring entity	31
32	Suitability—decision	32
33	Suitability—general considerations	32

	Page
34	34
35	34
36	35
<b>Part 8</b>	<b>Restorative justice conferences and agreements</b>
<b>Division 8.1</b>	<b>General</b>
37	36
38	36
39	36
<b>Division 8.2</b>	<b>Convenors</b>
40	37
41	38
<b>Division 8.3</b>	<b>Conduct of conference</b>
42	39
43	39
44	39
45	41
46	42
47	43
48	43
<b>Division 8.4</b>	<b>Restorative justice agreements</b>
49	44
50	44
51	44
52	45
53	46
54	47
55	47
<b>Division 8.5</b>	<b>Monitoring compliance with restorative justice agreements</b>
56	49
57	49
58	50

	Page
<b>Division 8.6 Evidence of statements made at conferences</b>	
59 Evidence of offences	51
60 Evidence of future offences	52
<b>Part 9 Administration</b>	
<b>Division 9.1 General administration</b>	
61 Restorative justice guidelines	53
62 Police participation in restorative justice	54
63 Information sharing	54
64 Secrecy	54
65 Secrecy about information acquired under other Acts	56
66 Protection from liability	57
<b>Division 9.2 Reporting and records</b>	
67 Meaning of <i>referring entity</i> —div 9.2	57
68 Quarterly reporting by chief executive	57
69 Record-keeping by referring entities	59
70 Record-keeping by chief executive	59
71 Restorative justice database	60
<b>Part 10 Miscellaneous</b>	
72 Exercise of functions by chief executive	61
73 Approved forms	62
74 Regulation-making power	62
75 Ministerial reviews	63
76 Administrative Decisions (Judicial Review) Act 1989, schedule 1, new clause 9	64
77 Crimes Act 1900, section 342 (1) (u)	64
78 Crimes Act 1900, section 344 (1) (f)	64
79 Crimes Act 1900, section 364 (1) (k)	64
<b>Dictionary</b>	66



Australian Capital Territory

# Crimes (Restorative Justice) Act 2004

**A2004-65**

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An Act to provide a process of restorative justice for victims, offenders and the community, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 224B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Restorative Justice) Act 2004*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*adult offender*—see section 12’ means that the expression ‘adult offender’ is defined in this Act, s 12 and the definition applies to the entire Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Underlying principles

### 6 Objects of Act

The objects of this Act are as follows:

- (a) to enhance the rights of victims of offences by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offences;
- (b) to set up a system of restorative justice that brings together victims, offenders and their personal supporters in a carefully managed, safe environment;
- (c) to ensure that the interests of victims of offences are given high priority in the administration of restorative justice under this Act;
- (d) to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice;
- (e) to enable agencies that have a role in the criminal justice system to refer offences for restorative justice.

*Note* **Offence** includes an offence that is alleged to have been committed, but has not yet been tried in court, or proven (see s 12).

## 7 Application of restorative justice

- (1) In deciding how to deal with an offence, a referring entity may consider whether it is appropriate to refer the offence for restorative justice before considering other action.

*Note* **Referring entities** are listed at table 22. They represent the agencies responsible for the various stages of the criminal justice process in relation to an offence.

- (2) However, if an offence is referred for restorative justice, the referral is to have no effect on any other action or proposed action in relation to the offence or the offender by the referring entity.

### Example

Sian is arrested and charged with an offence. The chief police officer refers the offence for restorative justice. The referral of the offence does not prevent Sian being required to attend court to answer the charge.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 8 When restorative justice is available

Restorative justice is available for an offence if all of the following requirements are satisfied:

- (a) there is an eligible victim or eligible parent in relation to the offence;
- (b) the offender is an eligible offender;
- (c) the offence is referred for restorative justice by a referring entity;

(d) the chief executive decides that restorative justice is suitable for the offence.

*Note 1* Victims, parents and offenders are **eligible** for restorative justice if they qualify under part 5.

*Note 2* The chief executive may only decide that restorative justice is **suitable** for an offence according to the requirements of part 7 (see s 10, def).

*Note 3* The restorative justice process is provided for by this Act as follows:

- Pt 5 (Eligibility for restorative justice) deals with eligibility of victims (or their parents) and offenders for restorative justice
- Pt 6 (Referral for restorative justice) deals with the referral of offences for restorative justice
- Pt 7 (Suitability for restorative justice) deals with the suitability of restorative justice for an offence.
- Pt 8 (Restorative justice conferences and agreements) deals with the calling of restorative justice conferences and the making of restorative justice agreements for an offence

## 9 No obligation to participate

There is no obligation on a victim, a parent of a child victim or an offender—

- (a) to take part in restorative justice; or
- (b) to continue to take part in restorative justice after it has started.

*Note* Victims (or their parents) and offenders must be given clear explanations of the purpose and procedures involved in the restorative justice process before agreeing to take part. In addition, the legal status of the process and the legal effect of entering into a restorative justice agreement must be clearly explained to victims (or their parents) and offenders. See the following:

- s 25 (Explanation of restorative justice)
- s 45 (Explanation for participants)
- s 53 (Explanation of effect of agreement).

## Part 3 Key concepts

### 10 Definitions—restorative justice

In this Act:

*eligible offender*—see section 19.

*eligible parent*—see section 18.

*eligible victim*— see section 17.

*referred*, for restorative justice—an offence is *referred* for restorative justice if a referring entity proposes that consideration be given to whether restorative justice is suitable for the offence.

*referring entity*—

- (a) see section 22; but
- (b) for part 8 (Restorative justice conferences and agreements)—see section 38; and
- (c) for division 9.2 (Reporting and records)—see section 67.

*restorative justice* means the process of restorative justice provided under this Act, including a restorative justice conference under this Act.

*suitable*—restorative justice is *suitable* for an offence, or an eligible victim, parent or offender in relation to an offence, if the chief executive decides under part 7 that restorative justice is suitable for the offence, victim, parent or offender.

## 11 Definitions—*child victim, parent and victim*

In this Act:

***child victim***, of an offence, means a victim of an offence who is a child.

*Note* A ***child*** is an individual under 18 years old (see Legislation Act, dict, pt 1, def ***child***).

***parent***, of a child, means a person with parental responsibility for the child within the meaning of the *Children and Young People Act 1999*, part 2.3 (Parental responsibility).

***victim***—

- (a) has the meaning given by the *Victims of Crime Act 1994*, dictionary; and
- (b) includes a person who would be a victim if a reference in that Act to an ***offence*** included a reference to an offence that is alleged to have been committed.

## 12 Definitions—offences and offenders

In this Act:

***adult offender***, in relation to an offence, means an offender who was an adult when the offence was committed.

*Note* An ***adult*** is an individual who is at least 18 years old (see Legislation Act, dict, pt 1, def ***adult***).

***commission***, of an offence that is alleged to have been committed, includes the alleged commission of the offence.

*Note* ***Offence*** is defined to include an offence that is alleged to have committed. ***Offender*** is defined in similar terms. See definitions of ***offence*** and ***offender*** in this section.

***domestic violence offence*** means an offence mentioned in the *Protection Orders Act 2001*, section 9 (2) that is committed by an offender, if the offender directed the behaviour comprising the offence at a relevant person within the meaning of that Act, dictionary in relation to the offender.

*Note* Under the *Protection Orders Act 2001*, dict, a ***relevant person*** in relation to the offender would be any of the following people:

- a domestic partner of the offender (***domestic partner*** is defined in the Legislation Act, s 169 (1))
- a relative of the offender (***relative*** is defined in the *Protection Orders Act 2001*, dict)
- a child of a domestic partner of the offender
- someone who normally lives, or normally lived, in the same household as the offender (other than as a tenant or boarder).

***less serious offence*** means an offence other than a serious offence.

***offence***—

- (a) means an offence against a Territory law; and
- (b) includes an offence against a Territory law that is alleged to have been committed by a person, unless—
  - (i) a court has acquitted the person of the offence; or
  - (ii) a court has dismissed a proceeding against the person for the offence without finding the person guilty.

***offender***—

- (a) means a person who has been convicted or found guilty of an offence against a Territory law; and
- (b) includes a person who is alleged to have committed an offence against a Territory law, unless—
  - (i) a court has acquitted the person of the offence; or
  - (ii) a court has dismissed a proceeding against the person for the offence without finding the person guilty.

**serious offence** means an offence punishable by imprisonment for a term exceeding—

- (a) if the offence relates to money or other property—14 years; or
- (b) in any other case—10 years.

**young offender**, in relation to an offence, means an offender who was less than 18 years old, but at least 10 years old, when the offence was committed or allegedly committed.

### 13 Definition—*sentence-related order*

In this Act:

**sentence-related order**, for an offender who is found guilty of an offence, means—

- (a) for an adult offender, any of the following orders of the court:
  - (i) an order sentencing the offender;
  - (ii) an order under the *Crimes Act 1900*, section 402 (1) or section 403 (1), including an order dismissing the charge against the offender under section 402 (1);
- (b) for a young offender, any of the following orders under the *Children and Young People Act 1999*:
  - (i) an order under that Act, section 96 (Disposition of young offenders);
  - (ii) an order dismissing the charge under that Act, section 98 (2) (a) (Disposition without proceeding to conviction);
  - (iii) an order under that Act, section 98 (2) (b).

#### Examples for par (a) (i)

- 1 an order for a sentence of imprisonment
- 2 a home detention order under the *Rehabilitation of Offenders (Interim) Act 2002*
- 3 a periodic detention order under the *Periodic Detention Act 1995*

4 an order under the *Crimes Act 1900* for the offender to carry out community service work

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Part 4 Application of Act

### 14 Application of Act—young offenders and less serious offences

- (1) This Act applies to a less serious offence committed by a young offender.
- (2) This Act applies to a less serious offence committed by a young offender even if the offence was committed before the day this section commenced.
- (3) Despite subsections (1) and (2), this Act does not apply to a domestic violence offence, or a less serious sexual offence, before the phase 2 application day.
- (4) Subsections (2) to (6) (including this subsection) expire on the phase 2 application day.

*Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); **repeal** in s 85 includes expiry—see s 82).

- (5) Subsections (2) to (6) (including this subsection) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) In this section:

***less serious sexual offence*** means an offence against any of the following provisions of the *Crimes Act 1900*:

- (a) section 59 (Act of indecency in the third degree);
- (b) section 60 (Act of indecency without consent);
- (c) section 61 (2) (Acts of indecency with young people);
- (d) section 62 (3) (Incest and similar offences);
- (e) section 63 (Abduction).

*phase 2 application day*—see section 15 (4).

## **15 Application of Act—generally**

- (1) This Act applies to a less serious offence committed by an adult offender.
- (2) This Act applies to a serious offence (whether committed by a young offender or an adult offender) if—
  - (a) the offender is charged with the offence; and
  - (b) either—
    - (i) the offender pleads guilty to the offence; or
    - (ii) the offender is found guilty of the offence (whether or not the offender is convicted or sentenced for the offence).

- (3) This section does not apply to a domestic violence offence.

*Note* For the application of the Act to domestic violence offences, see s 16.

- (4) Subsections (1), (2) and (3) do not apply before a day (the *phase 2 application day*) declared by the Minister by written notice.
- (5) However, subsections (1) and (2) may apply to an offence even if the offence was committed before the phase 2 application day.
- (6) A declaration under subsection (4) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (7) To remove any doubt, the Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsections (1), (2) and (3).

*Note* If the Legislation Act, s 79 applied to subsection (1), (2) or (3), the subsection would automatically commence 6 months after the commencement of this Act (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 2 application day.

- (8) Subsections (4) to (9) (including this subsection) expire on the phase 2 application day.

*Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

- (9) Subsections (4) to (8), and this subsection, are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

## 16 Application of Act—domestic violence offences

- (1) This Act applies to a domestic violence offence committed by a young offender.
- (2) Subsection (1) applies whether or not the young offender is charged with the offence.

*Note 1* An offence may have been *committed* if it is alleged that the offence was committed (see s 12, def *commission*).

*Note 2* For the chief executive to decide that a domestic violence offence committed (or allegedly committed) by a young offender is suitable for restorative justice under pt 7, the chief executive must be satisfied that exceptional circumstances exist for the calling of a restorative justice conference (see s 33 (2)).

- (3) This Act applies to a domestic violence offence committed by an adult offender if—
- (a) the offender is charged with the offence; and
  - (b) either—
    - (i) the offender pleads guilty to the offence; or
    - (ii) the offender is found guilty of the offence (whether or not the offender is convicted or sentenced for the offence).
- (4) Subsections (1), (2) and (3) do not apply before the phase 2 application day.

- (5) However, subsections (1), (2) and (3) may apply to an offence even if the offence was committed before the phase 2 application day.
- (6) To remove any doubt, the Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsection (1), (2) or (3).

*Note* If the Legislation Act, s 79 applied to subsection (1), (2) or (3), the subsection would automatically commence 6 months after the commencement of this Act (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 2 application day.

- (7) Subsections (4) to (9) (including this subsection) expire on the phase 2 application day.

*Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

- (8) Subsections (4) to (9) (including this subsection) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (9) In this section:  
*phase 2 application day*—see section 15 (4).

## Part 5 Eligibility for restorative justice

### 17 Eligible victims

- (1) A victim of an offence is eligible for restorative justice in relation to the offence if—
  - (a) this Act applies to the offence and the offender under part 4; and
  - (b) the victim is at least 10 years old; and
  - (c) the victim is capable of agreeing to take part in restorative justice.
- (2) If a victim of an offence is younger than 10 years old, an immediate family member of the victim is eligible for restorative justice in relation to the offence if—
  - (a) this Act applies to the offence and the offender under part 4; and
  - (b) the immediate family member is at least 10 years old; and
  - (c) the immediate family member is capable of agreeing to take part in restorative justice.

*Note* Alternatively, a parent of a child victim of an offence may take part in restorative justice as an invited participant (see s 44).
- (3) For this Act, a victim of an offence, or an immediate family member of a victim of an offence, is an **eligible victim** in relation to the offence if the victim or immediate family member is eligible for restorative justice under this section.

(4) In this section:

*immediate family member*, in relation to a victim of an offence, means a person who was, at the time the offence was committed—

- (a) a parent of the victim; or
- (b) a sibling of the victim.

**Examples of siblings**

- 1 brother or sister
- 2 half-brother or half-sister
- 3 step-brother or step-sister
- 4 someone who has the same guardian or foster parent as the victim

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 18 Eligible parents

- (1) A parent of a child victim of an offence (no matter how old the child victim is) is eligible for restorative justice in relation to the offence if—
  - (a) this Act applies to the offence and the offender under part 4; and
  - (b) the child victim is incapable of adequately understanding or responding to the experience of the offence, or has died; and
  - (c) the parent is capable of agreeing to take part in restorative justice.
- (2) For this Act, a parent of a child victim of an offence is an *eligible parent* in relation to the offence if the parent is eligible for restorative justice under this section.

## 19 Eligible offenders

- (1) An offender who commits an offence is eligible for restorative justice if—
  - (a) this Act applies to the offence and the offender under part 4; and
  - (b) the offender—
    - (i) accepts responsibility for the commission of the offence; and
    - (ii) was at least 10 years old when the offence was committed, or was allegedly committed; and
    - (iii) is capable of agreeing to take part in restorative justice; and
    - (iv) agrees to take part in restorative justice.
- (2) For this Act an offender is an *eligible offender* in relation to the offence if the offender is eligible for restorative justice under this section.

## 20 Accepting responsibility for offences

- (1) If an offender accepts responsibility for the commission of an offence to take part in restorative justice, this Act does not prevent the offender from pleading not guilty for the offence.
- (2) The fact that a court knows that an offender has accepted responsibility for the commission of an offence to take part in restorative justice does not require a court to reduce the severity of any sentence it may make for the offender.

*Note 1* To be eligible take part in restorative justice, an offender must accept responsibility for the commission of the offence (see s 19).

*Note 2* The *Crimes Act 1900*, s 342 (1) (v) provides that in deciding the sentence to be imposed on a person for an offence, the matters to which a court must have regard include the fact (if true) that the person has

accepted responsibility for the commission of the offence to take part in restorative justice.

However, the *Crimes Act 1900*, s 344 (g) provides that a court must not increase the severity of the sentence that it would otherwise impose on a person for an offence because the offender has chosen not to take part, or to continue to take part, in restorative justice for the offence.

## Part 6 Referral for restorative justice

### Division 6.1 Preliminary

#### 21 Definitions—referral

In this Act:

*chief executive (children and young people)*—see section 22 (2).

*chief executive (corrections)*—see section 22 (2).

*chief executive (restorative justice)*—see section 22 (2).

*court referral order*—see section 27 (2) (Referral during court proceeding).

*Note* *Referred* is defined in s 10.

*referring entity*—see section 22.

*section 24 referral conditions*—see section 24 (Referral power).

### Division 6.2 General

#### 22 Referring entities

- (1) An entity mentioned in table 22, column 2 (a *referring entity*) may refer an offence for restorative justice at the stage of the criminal justice process described for the entity in column 3 in relation to the offence.

- (2) In table 22:

*chief executive (children and young people)* means the chief executive of the administrative unit responsible for the administration of the *Children and Young People Act 1999*, acting in that capacity.

***chief executive (corrections)***, in relation to an offender for whom a sentence-related order is made, means the chief executive of the administrative unit responsible for the administration of the order, acting in that capacity.

***chief executive (restorative justice)*** means the chief executive of the administrative unit responsible for the administration of this Act, acting in that capacity.

**Example (definitions of all chief executives)**

For this example, the administrative unit responsible for the administration of sentence-related orders (for both young and adult offenders) is also the administrative unit responsible for the administration of this Act and the *Children and Young People Act 1999*. The administrative unit has a single chief executive. That chief executive, in different capacities corresponding to those different responsibilities, may be differently described as follows:

- The chief executive is the ***chief executive (children and young people)*** while exercising a function in relation to an offence allegedly committed by a child who is the subject of a care and protection order under the *Children and Young People Act 1999*.
- The chief executive is the ***chief executive (corrections)*** while exercising a function in relation to a young or adult offender who is the subject of a sentence-related order.
- The chief executive is the ***chief executive (restorative justice)*** while exercising a function relating to the administration of this Act.

*Note 1* If this Act refers simply to ***the chief executive*** (without a tag) this is a reference to the chief executive of the administrative unit responsible for the administration of this Act (see Legislation Act, s 163).

*Note 2* A chief executive may delegate any powers given to the chief executive under this Act to a public sector officer under the *Public Sector Management Act 1994*, s 36.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***prosecution referral***, for an offender, means referral of the offender for prosecution by any of the following:

- (a) a voluntary agreement to attend court;

- (b) a court attendance notice;
- (c) a summons;
- (d) the arrest and charging of the offender.

**Table 22 Referring entities**

<b>column 1 item</b>	<b>column 2 referring entity</b>	<b>column 3 stage of criminal justice process</b>
1	chief police officer chief executive (restorative justice) chief executive (children and young people)	(a) after the offender is cautioned or apprehended; and (b) before a prosecution referral is made for the offender
2	director of public prosecutions	(a) after a prosecution referral is made for the offender; and (b) before a second mention hearing for the offence by a court has begun
3	Magistrates Court (including the Childrens Court) Supreme Court	unless, or until, the offender pleads guilty to the offence— (a) after a second mention hearing for the offence has begun; and (b) before the end of a case management hearing or case status inquiry for the offence

<b>column 1 item</b>	<b>column 2 referring entity</b>	<b>column 3 stage of criminal justice process</b>
4	Magistrates Court (including the Childrens Court)  Supreme Court	if the offender pleads guilty to, or is found guilty of, the offence—  (a) after the offender pleads guilty to, or is found guilty of, the offence (whether or not the offender has been convicted or sentenced); and  (b) before the end of the proceeding
5	chief executive (corrections)  chief executive (restorative justice)  sentence administration board	(a) after a court has made a sentence- related order in relation to the offender; and  (b) before the end of the term of the sentence-related order or the sentence (if any) of which it forms part (whichever is later)
6	referring entity prescribed under the regulations	stage of the criminal justice process prescribed under the regulations

## **23 Referral—procedure**

- (1) The referring entity must give a referral to the chief executive (restorative justice).

*Note* Section 72 deals with what happens if the referring entity is the same chief executive as the chief executive (restorative justice), but the referral is made by the chief executive as chief executive (corrections) or chief executive (children and young people).

That section provides that the chief executive must ensure that appropriate administrative arrangements are made for the referral to be given by a delegate of the chief executive as chief executive (corrections) or chief executive (children and young people) to a delegate of the chief executive as chief executive (restorative justice).

- (2) The referral—
- (a) must be in writing, stating the grounds for referral; and
  - (b) if the referring entity is a court—may be in the form of a court referral order or sentence-related order, or as a condition of a bail order.

*Note* If a form is approved under s 73 for this provision, the form must be used.

- (3) This section does not apply if the referring entity is the chief executive (restorative justice).

*Note* The referring entity may be the chief executive (restorative justice) under table 22, item 1 or 5.

## 24 Referral power

- (1) A referring entity may refer an offence for restorative justice if the entity is satisfied that all the following conditions (the ***section 24 referral conditions***) apply:
- (a) the offender is an eligible offender;
  - (b) there is an eligible victim or parent in relation to the offence;
  - (c) an explanation has been given under section 25 to all eligible victims and parents, and the eligible offender, before they agree to take part in restorative justice.

*Note* The conditions under which a victim, parent or offender may be eligible are set out in s 17, s 18 and s 19.

- (2) The restorative justice guidelines may prescribe procedures for making decisions about referrals under subsection (1).
- (3) This section is subject to the following sections:
- (a) section 26 (Referral by DPP—domestic violence offences by young offenders);
  - (b) section 27 (Referral during court proceeding).

## **25 Explanation of restorative justice**

Before an offence is referred for restorative justice, the referring entity must ensure that reasonable steps are taken to explain to each eligible victim and parent, and the offender (in language that the victim, parent or offender can readily understand)—

- (a) the purpose of restorative justice generally and for the particular offence; and
- (b) the nature of restorative justice, including the following:
  - (i) the nature of a restorative justice conference;
  - (ii) who may take part in a restorative justice conference;
  - (iii) the nature of a restorative justice agreement; and
- (c) that the person may seek independent legal advice about taking part in restorative justice; and
- (d) that no-one is under an obligation to take part in restorative justice, or to continue to take part in restorative justice after it has started; and
- (e) if the offender has not entered a plea for the offence—that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty for the offence; and
- (f) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
  - (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and

- (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

**26 Referral by DPP—domestic violence offences committed by young offenders**

- (1) This section applies if the director of public prosecutions is the referring entity for a domestic violence offence allegedly committed by a young offender.
- (2) The director of public prosecutions may refer the offence for restorative justice if—
  - (a) the section 24 referral conditions apply; and
  - (b) the director has consulted each person who could be an eligible victim or parent for the offence.

*Note* This Act does not apply to a domestic violence offence alleged to have been committed by an adult offender unless the offender pleads guilty to the offence, or is found guilty of the offence (see s 16).

- (3) Subsections (1) and (2) do not apply before the phase 2 application day.
- (4) However, subsections (1) and (2) may apply to an offence even if the offence was allegedly committed before the phase 2 application day.
- (5) To remove any doubt, the Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsection (1) or (2).

*Note* If the Legislation Act, s 79 applied to subsection (1) or (2), the subsection would automatically commence 6 months after the commencement of this Act (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 2 application day.

- (6) Subsections (3) to (8) (including this subsection) expire on the phase 2 application day.

*Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

- (7) Subsections (3) to (8) (including this subsection) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

- (8) In this section:

*phase 2 application day*—see section 15 (4).

## **Division 6.3 Referral by courts**

### **27 Referral during court proceeding**

- (1) This section applies if—
- (a) a court is the referring entity for an offence under table 22, item 3; and
  - (b) the prosecution and any lawyer representing the offender agree that the offence should be referred for restorative justice; and
  - (c) either—
    - (i) the court is satisfied that the section 24 referral conditions apply; or
    - (ii) the court considers that it is appropriate to refer the offence for restorative justice, and the court has ensured that explanations have been given as mentioned in section 25 to each person of whom the court is aware who is a victim, or a parent of a child victim, of the offence, and the offender.
- (2) The court may by order (a *court referral order*) adjourn the proceeding for a stated period, and refer the offence for restorative justice, on the application of the director of public prosecutions.

- (3) The court must ensure that a copy of the court referral order is given to—
- (a) each victim and parent mentioned in subsection (1) (c) (ii); and
  - (b) the offender; and
  - (c) the director of public prosecutions and any lawyer representing the offender; and
  - (d) the chief executive.
- (4) For the referral of a domestic violence offence alleged to have been committed by a young offender, the court may make a court referral order only if it considers that exceptional circumstances exist to justify the referral.

*Note* This Act does not apply to a domestic violence offence alleged to have been committed by an adult offender unless the offender pleads guilty to the offence, or is found guilty of the offence (see s 16).

- (5) Subsection (4) does not apply before the phase 2 application day.
- (6) However, subsection (4) may apply to an offence even if the offence was allegedly committed before the phase 2 application day.
- (7) To remove any doubt, the Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsection (4).

*Note* If the Legislation Act, s 79 applied to the subsection, it would automatically commence 6 months after the commencement of this Act (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 2 application day.

- (8) Subsections (5) to (10) (including this subsection) expire on the phase 2 application day.

*Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

- (9) Subsections (5) to (10) (including this subsection) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

(10) In this section:

*phase 2 application day*—see section 15 (4).

## **28 Court referral orders—reports**

- (1) This section applies if a court makes a court referral order for section 27 in relation to a proceeding for an offence.
- (2) The chief executive must give the court a written report about the outcome of restorative justice for the offence within the period for which the proceeding is adjourned under the order.
- (3) The report must include a statement of the following in relation to each victim and parent mentioned in section 27 (1) (c) (ii), and the offender:
  - (a) whether the victim, parent or offender is eligible for restorative justice;
  - (b) if the victim, parent or offender is eligible for restorative justice—whether restorative justice is suitable for the victim, parent or offender;
  - (c) whether a restorative justice conference was held;
  - (d) if a restorative justice conference was held—
    - (i) the extent to which the conference met the objects of this Act; and
    - (ii) whether a restorative justice agreement was reached at the conference.

*Note* If a form is approved under s 73 for this provision, the form must be used.
- (4) If a restorative justice agreement was reached at a restorative justice conference for the offence, the report must include a copy of the agreement.

- (5) The chief executive must give a copy of the report to—
- (a) each victim and parent mentioned in section 27 (1) (c) (ii); and
  - (b) the offender; and
  - (c) the director of public prosecutions and any lawyer representing the offender.



- (b) does not prevent the chief executive from being satisfied that a victim, parent or offender is not eligible for restorative justice.

### **32 Suitability—decision**

- (1) The chief executive is responsible for deciding whether restorative justice is suitable for an offence.
- (2) The chief executive may decide whether restorative justice is suitable for an offence only after considering the following:
  - (a) the general considerations mentioned in section 33;
  - (b) suitability for the eligible victim or parent under section 34 or section 35;
  - (c) suitability for the offender under section 36.
- (3) If the chief executive decides that restorative justice is suitable for an offence, the chief executive must ask the following for written consent for a restorative justice conference to be called for the offence:
  - (a) the eligible victim or parent, or both (if there is an eligible victim and an eligible parent);
  - (b) the eligible offender.

*Note* If a form is approved under s 73 for this provision, the form must be used.

### **33 Suitability—general considerations**

- (1) In deciding whether restorative justice is suitable for an offence, the chief executive must consider the following:
  - (a) any government or administrative policy relating to the treatment of offences of the relevant kind;
  - (b) the nature of the offence, including the level of harm caused by or violence involved in its commission or alleged commission;

- 
- (c) the appropriateness of restorative justice at the current stage of the criminal justice process in relation to the offence;
  - (d) any potential power imbalance between the people who are to take part in restorative justice for the offence;
  - (e) the physical and psychological safety of anyone who is to take part in restorative justice for the offence.
- (2) The chief executive may decide that restorative justice is suitable for a domestic violence offence committed by a young offender only if satisfied that exceptional circumstances exist to justify the calling of a restorative justice conference for the offence.
- (3) Subsection (2) does not apply before the phase 2 application day.
- (4) However, subsection (2) may apply to an offence even if the offence was committed before the phase 2 application day.
- (5) To remove any doubt, the Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsection (2).
- Note* If the Legislation Act, s 79 applied to the subsection, it would automatically commence 6 months after the commencement of this Act (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 2 application day.
- (6) Subsections (3) to (8) (including this subsection) expire on the phase 2 application day.
- Note* A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).
- (7) Subsections (3) to (8) (including this subsection) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (8) In this section:
- phase 2 application day*—see section 15 (4).

**34 Suitability—victims**

- (1) In deciding whether restorative justice is suitable for an eligible victim, the chief executive must consider the following:
  - (a) the victim’s personal characteristics;
  - (b) the victim’s motivation for taking part in restorative justice;
  - (c) the impact of the offence as perceived by the victim.
- (2) For this Act, an eligible victim is a *suitable victim* if the chief executive decides under section 32 that the victim is suitable for restorative justice.

**35 Suitability—eligible parents**

- (1) In deciding whether restorative justice is suitable for an eligible parent of a child victim, the chief executive must consider the following:
  - (a) the relationship between the parent and the child;
  - (b) the parent’s and the child victim’s personal characteristics;
  - (c) the parent’s and the child victim’s motivation for taking part in restorative justice;
  - (d) the impact of the offence as perceived by the parent and the child victim.
- (2) For this Act, an eligible parent is a *suitable parent* if the chief executive decides under section 32 that the parent is suitable for restorative justice.

**36 Suitability—offenders**

In deciding whether restorative justice is suitable for an offender, the chief executive must consider the following:

- (a) the extent (if any) of the offender's contrition or remorse for the offence;
- (b) the offender's personal characteristics;
- (c) the offender's motivation for taking part in restorative justice;
- (d) the impact of the offence as perceived by the offender.

## Part 8 Restorative justice conferences and agreements

### Division 8.1 General

#### 37 Definitions—pt 8

In this part:

*required participant*, in a restorative justice conference—see section 42.

*restorative justice agreement*—see section 50.

*substitute participant*—see section 43.

*suitable parent*—see section 35.

*suitable victim*—see section 34.

#### 38 Meaning of *referring entity*—pt 8

(1) In this part:

*referring entity*—see section 22.

(2) However, if an offence is referred for restorative justice by a court in making a sentence-related order, *referring entity* means the chief executive (corrections).

#### 39 Decision to call conference

(1) The chief executive may require a restorative justice conference to be called for an offence if—

(a) the chief executive decides, under section 32 (Suitability—decision) that restorative justice is suitable for the offence; and

- (b) the eligible victim or parent, and the eligible offender, gives consent under section 32 (3) for the conference to be called.
- (2) The chief executive must assign a convenor to a conference called under this section.

## **Division 8.2                      Convenors**

### **40                      Appointment of convenors**

- (1) The chief executive may appoint a person as a convenor for this part.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The chief executive may appoint a person as convenor only if—
  - (a) the person has the qualifications and experience prescribed under the regulations; and
  - (b) if the person is not a lawyer—the chief executive is satisfied that the convenor has received sufficient legal training—
    - (i) to advise those who take part in restorative justice of their rights and duties at law and under this Act; and
    - (ii) otherwise to perform the functions of a convenor for this Act.
- (3) Subsection (2) (b) does not prevent regulations being made requiring a convenor to be a lawyer.

## **41 What a convenor does**

- (1) The convenor of a restorative justice conference, subject to this part, may do anything necessary or desirable to be done in relation to calling the conference, including the following:
  - (a) consulting a person with knowledge of or experience in a particular culture;
  - (b) inviting a person to take part in the conference;
  - (c) deciding whether the conference should require the participants to meet in person, or to communicate in any other way;
  - (d) fixing a time for the conference, and for any continuation of the conference;
  - (e) fixing a venue for the conference, if the participants are to meet in person;
  - (f) identifying the issues that should be addressed at the conference;
  - (g) facilitating the conference;
  - (h) warning participants about the potentially incriminating nature of any statement to be made, or being made, at the conference;
  - (i) facilitating an agreement between the participants;
  - (j) ensuring that this Act is complied with in relation to the conference and any agreement;
  - (k) any other function required under the regulations.
- (2) The convenor must carry out the functions mentioned in subsection (1) in a way that ensures that no-one's safety, rights or dignity is compromised.

## **Division 8.3            Conduct of conference**

### **42            Required participants**

- (1) A restorative justice conference for an offence must not proceed unless each of the following takes part in the conference:
  - (a) a suitable victim or parent, or a substitute participant for a suitable victim or parent;
  - (b) the offender.
- (2) A person mentioned in subsection (1) who takes part (or who is to take part) in a restorative justice conference for an offence is a ***required participant*** in the conference for this part.

*Note*        The convenor may invite supporters of the offender and victim to take part in the conference, and the informant police officer (see s 44).

### **43            Substitute participants**

A person (a ***substitute participant***) acting for a suitable victim or parent may take part in a restorative justice conference instead of the victim or parent if—

- (a) the victim or parent asks for, or agrees to, the substitution; and
- (b) the convenor agrees to the substitution.

*Note*        If the conference results in a restorative justice agreement, the substitute participant for the victim or parent must sign the agreement, and is taken to do so on behalf of the victim or parent (see s 52).

### **44            Invited participants**

- (1) Any of the following may take part in a restorative justice conference if invited by the convenor:
  - (a) the police officer who is the informant for the offence;
  - (b) a parent of a suitable victim or the offender;

- (c) a family member or domestic partner of a suitable victim, a suitable parent or the offender;
  - (d) a person in a domestic relationship with a suitable victim, a suitable parent or the offender;
  - (e) anyone else, if—
    - (i) a suitable victim or parent, or the offender, considers the person can provide emotional or practical support for the victim, parent or offender; or
    - (ii) the convenor considers that the participation of the person would help to promote the objects of this Act in relation to the conference.
- (2) If a required participant asks the convenor to invite a person mentioned in subsection (1) to take part in the conference, the convenor must not refuse the request unless the convenor considers, on reasonable grounds, that to invite the participant would be significantly detrimental to the objects of this Act in relation to the conference.
- (3) If a participant in a restorative justice conference is represented by someone acting for the participant in a professional capacity, the representative may not take part in the conference in that capacity.

**Examples of people acting for participants in a professional capacity**

- 1 lawyers
- 2 victim intercessors
- 3 offender intercessors

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) In this section:

***domestic relationship***—see the *Domestic Relationships Act 1994*, section 3 (Interpretation).

*Note* For the meaning of ***domestic partner***, see Legislation Act, s 169.

## **45 Explanation for participants**

Before a restorative justice conference begins, the convenor must ensure that reasonable steps are taken to explain to each person who is to take part in the conference (in language that each can readily understand)—

- (a) the objects of this Act in relation to the conference, including the purpose of restorative justice generally and for the particular offence; and
- (b) the nature of restorative justice, including the following:
  - (i) the nature of a restorative justice conference;
  - (ii) who may take part in a restorative justice conference;
  - (iii) the nature of a restorative justice agreement; and
- (c) that the person may, before and after the conference is called, seek independent legal advice about taking part in a restorative justice conference and about the effect of any restorative justice agreement reached at a conference; and
- (d) that no-one is under an obligation to take part in the conference, or to continue to take part in conference after it has started; and
- (e) if the offender has not entered a plea for the offence—that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty to the offence; and

- (f) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
  - (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and
  - (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

#### **46 Form of conference**

The convenor of a restorative justice conference may conduct the conference in any form (or combination of forms) consistent with the restorative justice guidelines that would, in the convenor's opinion, best facilitate—

- (a) interaction between the participants; and
- (b) the promotion of the objects of this Act in relation to the conference.

##### **Examples of conference forms**

- 1 face-to-face meeting
- 2 exchange of written or emailed statements between participants
- 3 exchange of prerecorded videos between participants
- 4 teleconferencing
- 5 videoconferencing

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**47 Discontinuance of restorative justice**

- (1) The convenor of a restorative justice conference may decide to—
  - (a) cancel the conference before it is conducted; or
  - (b) discontinue the conference at any time after it has started.
- (2) The convenor may cancel or discontinue the conference only if, in the convenor's opinion based on reasonable grounds, there is no significant prospect of promoting the objects of this Act by conducting, or continuing to conduct, the conference.
- (3) Without limiting subsection (2), the convenor must cancel or discontinue the conference if, in the convenor's opinion based on reasonable grounds, before or during the conference—
  - (a) a suitable victim or parent has withdrawn his or her agreement to take part in the conference, and there is no other suitable victim or parent (or substitute participant for a suitable victim or parent) who agrees to take part in the conference; or
  - (b) the offender has withdrawn his or her agreement to take part in the conference.
- (4) If the convenor decides to cancel or discontinue the conference, the convenor must give notice of the decision to—
  - (a) each required participant in the conference; and
  - (b) the referring entity for the offence.

**48 Report to referring entity about outcome**

- (1) After the end of a restorative justice conference, the convenor must give a report about the outcome of the conference to the referring entity for the offence.
- (2) The report about the outcome of the conference must include the following information:
  - (a) details of the conference and when it ended; and

- (b) whether the conference resulted in a restorative justice agreement.

*Note* If the conference resulted in an agreement, the convenor must give a copy of the agreement to the referring entity as well (see s 54).

## Division 8.4 Restorative justice agreements

### 49 Application—div 8.4

This division applies in relation to a restorative justice agreement that results from (or that may result from) a restorative justice conference.

### 50 Agreement as object of conference

A restorative justice conference has as a primary object the formation of an agreement under this division (a *restorative justice agreement*) between each required participant in the conference.

### 51 Nature of agreement

- (1) A restorative justice agreement in relation to an offence must include measures intended to repair the harm caused by the offence.
- (2) The agreement may include 1 or more of the following:
  - (a) an apology by the offender to any victim or parent of a victim;
  - (b) a plan to address the offending behaviour of the offender;
  - (c) a work plan to be carried out by the offender for the benefit of any victim or parent of a victim;
  - (d) a work plan to be carried out by the offender for the benefit of the community or a part of the community;
  - (e) financial reparation to be paid by the offender to any victim or parent of a victim;

- (f) anything else that each required participant and substitute participant in the conference agree would help repair the harm caused by the offence.
- (3) The agreement must be fair and, in the opinion of each required participant and substitute participant in the conference and the convenor, reasonably able to be carried out by the offender.
- (4) The agreement must not require the offender or anyone else to do anything that would—
  - (a) be unlawful; or
  - (b) require the detention of the offender (whether full-time or for any period); or
  - (c) be degrading or humiliating to the offender or anyone else; or
  - (d) cause distress to the offender or anyone else.
- (5) The agreement must be for a term of no longer than 6 months, starting on—
  - (a) the date the agreement is made; or
  - (b) if a later starting date is stated in the agreement—the later date.

*Note* The term of the agreement may be extended beyond this period, or reduced, by an amendment under s 55.

## **52 Form of agreement**

- (1) A restorative justice agreement must be—
  - (a) in writing; and
  - (b) signed by each required participant in the conference.
- (2) If a substitute participant for a suitable victim or parent signs a restorative justice agreement—
  - (a) the substitute participant is taken to sign the agreement on behalf of the victim or parent; and

- (b) the victim or parent is taken to have consented to the agreement.

*Note* If there is a substitute victim or parent for a restorative justice conference under s 43, the substitute is a **required participant** in the conference (see s 42), and so may sign a restorative justice agreement under s (1) (b).

### **53 Explanation of effect of agreement**

Before a restorative justice agreement is signed, the convenor must ensure that reasonable steps are taken to explain to each required participant in the conference (in language that each can readily understand)—

- (a) the nature, purpose and effect of the agreement; and
- (b) that no-one is under an obligation to sign the agreement; and
- (c) that the participant may, before signing the agreement, seek independent legal advice about the effect of the proposed agreement; and
- (d) if the offender has not entered a plea for the offence—that any statement in the agreement that the offender accepts responsibility for the commission of the offence does not prevent the offender from pleading not guilty to the offence; and
- (e) if a sentence-related order has not been made for the offender—that, if the offender is found guilty of the offence, a court, in sentencing the offender—
  - (i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and
  - (ii) must not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

**54 Notice of agreement**

The convenor must give a copy of a restorative justice agreement to—

- (a) each required participant in the conference; and
- (b) the referring entity for the offence.

**55 Amendment of agreement**

- (1) The convenor may amend a restorative justice agreement on the application of a required participant in the conference, or the convenor's initiative, if the convenor considers that the amendment is necessary or desirable—
  - (a) to respond to a change in the situation of any suitable victim or parent, or the offender; or
  - (b) to correct an error.
- (2) Without limiting subsection (1), the convenor may amend a restorative justice agreement under the subsection in response to a change in the situation of any suitable victim or parent, or the offender—
  - (a) to increase the term of the agreement, including an increase that would provide for the agreement to end more than 6 months after the day it started under section 51 (5); or
  - (b) to reduce the term of the agreement.

**Example**

Sam is an offender, and Bella is a victim of Sam's offence. Sam is found guilty of the offence but, under the *Crimes Act 1900*, s 402 (1), the charge is dismissed and no conviction is recorded. After taking part in a restorative justice conference, Sam and Bella sign a restorative justice agreement under which Sam agrees to work in Bella's garden every Saturday for 6 months.

However, 4 months after the start of the agreement, the company Sam works for moves its head office from Canberra to Brisbane, and Sam is required to move there before the 6 months is over in order to keep his job. Sam has until then complied fully with the agreement.

The convenor may consider, because of Sam's history of compliance with the agreement, and the change in Sam's situation, there is a change in Sam's situation that would justify an amendment to the agreement to reduce its term so that it will end when Sam has to move to Brisbane.

*Note 1* See s (5), def ***change in the situation***. The definition excludes a change in the offender's, victim's or parent's attitude to compliance with the restorative justice agreement.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) However, any amendment of a restorative justice agreement to respond to a change in the situation of any suitable victim or parent, or the offender, may only be made after the convenor has consulted each required participant in the conference who is a suitable victim or parent, or a substitute participant for a suitable victim or parent.
- (4) If the convenor amends a restorative justice agreement under this section, the convenor must give notice of the amendment and a copy of the agreement, as amended, to—
  - (a) each required participant in the conference; and
  - (b) the referring entity for the offence.
- (5) In this section:

***change in the situation***, of a victim, parent or offender in relation to a restorative justice agreement, does not include a change in the victim's, parent's or offender's attitude to complying with the agreement.

## **Division 8.5                      Monitoring compliance with restorative justice agreements**

### **56                      Application—div 8.5**

This section applies to a restorative justice agreement for an offence that is referred for restorative justice by a referring entity.

### **57                      Monitoring compliance—chief executive (restorative justice)**

- (1) The chief executive (restorative justice) may do anything reasonable to check whether the restorative justice agreement is being complied with.

#### **Example**

Alex has been convicted and sentenced for an offence. As a condition of the sentence, Alex has taken part in restorative justice. After a restorative justice conference, Alex signed a restorative justice agreement with the victim agreeing to perform 50 hours unpaid work for a charity service organisation. The chief executive (restorative justice) may, under this subsection, contact the organisation at reasonable intervals to make sure that Alex performs the work satisfactorily.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the chief executive (restorative justice) is satisfied on reasonable grounds that there has been a significant failure to comply with the restorative justice agreement, the chief executive must report the noncompliance to the referring entity.
- (3) If the chief executive (restorative justice) is satisfied on reasonable grounds that the restorative justice agreement has been substantially or fully complied with, the chief executive must report the compliance to the referring entity.

- (4) Subsections (2) and (3) do not apply if the referring entity is the chief executive (restorative justice).

*Note 1* The referring entity may be the chief executive (restorative justice) under table 22, item 1 or 5.

*Note 2* Section 72 deals with what happens if the referring entity is the same chief executive as the chief executive (restorative justice), but the referring entity is the chief executive in his or her capacity as chief executive (corrections) or chief executive (children and young people).

That section provides that the chief executive must ensure that appropriate administrative arrangements are made for the report to be given by a delegate of the chief executive as chief executive (restorative justice) to a delegate of the chief executive as chief executive (corrections) or chief executive (children and young people).

## **58 Monitoring compliance—referring entities**

- (1) The referring entity may do anything reasonable to check whether the agreement is being complied with.

### **Example**

The example for section 57 (1) applies in relation to the checking of compliance by the referring entity.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the referring entity is satisfied on reasonable grounds that there has been a significant failure to comply with the restorative justice agreement, the referring entity must report the noncompliance to the chief executive (restorative justice).
- (3) If the referring entity is satisfied on reasonable grounds that the restorative justice agreement has been substantially or fully complied with, the referring entity must report the compliance to the chief executive (restorative justice).

- (4) Subsections (2) and (3) do not apply if the referring entity is the chief executive (restorative justice).

*Note 1* The referring entity may be the chief executive (restorative justice) under s 22, table 22, item 1 or 5.

*Note 2* Section 72 deals with what happens if the referring entity is the same chief executive as the chief executive (restorative justice), but the referring entity is the chief executive in his or her capacity as chief executive (corrections) or chief executive (children and young people).

That section provides that the chief executive must ensure that appropriate administrative arrangements are made for the report to be given by a delegate of the chief executive as chief executive (corrections) or chief executive (children and young people) to a delegate of the chief executive as chief executive (restorative justice).

## **Division 8.6 Evidence of statements made at conferences**

### **59 Evidence of offences**

- (1) This section applies if a statement is made by an offender (the *conference offender*) during a restorative justice conference, or in a restorative justice agreement, in relation to an offence (the *conference offence*) that has been committed by anyone (including the conference offender).
- (2) Evidence of the statement may not be admitted in court in a proceeding in relation to a less serious offence (including the conference offence, if that is a less serious offence), whether or not the conference offender is accused of the offence.
- (3) However, subsection (2) does not prevent a court, in sentencing an offender for an offence (whether the offence is a less serious offence or a serious offence), from considering a statement made by the offender during a restorative justice conference, or in a restorative justice agreement, in relation to the offence or any other offence.

*Note* There may be circumstances in which evidence of the statement is admissible in court in a proceeding in relation to a serious offence,

whether or not the conference offence is a serious offence, or the conference offender is accused of the offence. Territory law that deals generally with the admission of evidence in criminal proceedings would apply.

## **60 Evidence of future offences**

- (1) This section applies if a statement is made by an offender (the *conference offender*) during a restorative justice conference, or in a restorative justice agreement, in relation to an offence (the *conference future offence*) proposed to be committed after the time of the conference or agreement by anyone (including the conference offender).
- (2) This Act does not prevent evidence of the statement being admitted in court in a proceeding in relation to the conference future offence—
  - (a) whether or not the offence is a serious offence; and
  - (b) whether or not the conference offender intends to commit, or is alleged to have committed, the offence.

## **Part 9 Administration**

### **Division 9.1 General administration**

#### **61 Restorative justice guidelines**

- (1) The chief executive may issue guidelines (*restorative justice guidelines*) outlining procedures for the following:
  - (a) the referral of offences for restorative justice, including procedures for making decisions about referrals;
  - (b) the management of restorative justice;
  - (c) the conduct of restorative justice conferences;
  - (d) monitoring the progress of restorative justice;
  - (e) monitoring compliance with restorative justice agreements;
  - (f) any other aspect of the administration of this Act.
- (2) Restorative justice guidelines—
  - (a) may deal with matters also dealt with elsewhere under this Act; but
  - (b) must not be inconsistent with this Act.
- (3) Restorative justice guidelines are disallowable instruments.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (4) A referring entity for an offence must comply with the guidelines.

## 62 Police participation in restorative justice

The chief executive may make arrangements with the chief police officer—

- (a) for the participation of police officers in the administration of this Act; and
- (b) for the appointment of police officers to call restorative justice conferences, subject to this Act.

## 63 Information sharing

- (1) The chief executive may ask a referring entity to give the chief executive information about a victim, the parent of a victim, an offender or anyone else if the information is necessary for the administration of this Act.
- (2) A referring entity must do everything reasonable to comply with a request under subsection (1).

## 64 Secrecy

- (1) In this section:

*secret-keeper* means a person who is exercising, or has exercised, a function under this Act.

### Examples

- 1 a referring entity, or the delegate of a referring entity, if the referring entity or delegate is considering whether to refer an offence for restorative justice
- 2 the chief executive, or a delegate of the chief executive, if the chief executive or delegate is considering whether an offence is suitable for restorative justice, or whether a restorative justice conference for an offence should be called
- 3 the convenor of a restorative justice conference, if the convenor is making preparations for a restorative justice conference

- 4 a staff member of an administrative unit, if the staff member is assisting a secret-keeper mentioned in examples 1, 2 or 3 in carrying out the functions mentioned in those examples

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***protected information—***

- (a) means information about a person that is disclosed to, or obtained by, a secret-keeper because of the exercise of a function by the secret-keeper under this Act; but
- (b) does not include information in a restorative justice agreement or information disclosing who attended a restorative justice conference.

**Examples of protected information**

- 1 information obtained by a referring entity or the chief executive in assessing the eligibility of a victim, parent or offender for restorative justice
- 2 information obtained by the convenor of a restorative justice conference in preparing the conference
- 3 a transcript (or other record) of what is said during a restorative justice conference that is kept by the convenor or the chief executive

- (2) A secret-keeper commits an offence if the secret-keeper—
- (a) makes a record of protected information; or
- (b) directly or indirectly discloses or communicates protected information about someone to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is disclosed or communicated—
- (a) under this or any other Act; or
- (b) in relation to the exercise of a function, as a secret-keeper, under this or any other Act.

- (4) Subsection (2) does not prevent a secret-keeper from divulging or communicating protected information about someone with that person's consent.
- (5) For a civil proceeding, a secret-keeper must not—
  - (a) disclose or communicate protected information to a court; or
  - (b) produce or permit access to a document containing protected information to a court.
- (6) For a criminal proceeding, unless it is necessary to do so to comply with this Act, any other Territory law or a law of the Commonwealth, a secret-keeper is not required—
  - (a) to disclose or communicate protected information to a court; or
  - (b) to produce or permit access to a document containing protected information to a court.

*Note* The *Freedom of Information Act 1989*, s 38 (Documents to which secrecy provisions of enactments apply) provides that a document is exempt from access requirements under that Act if another Act applies specifically to information of a particular kind in a document and prohibits the disclosure of that information by persons mentioned in the other Act. The section is stated to apply whether or not the prohibition is absolute or subject to exceptions or qualification.

## **65 Secrecy about information acquired under other Acts**

- (1) The provisions of another Act imposing restrictions or obligations of secrecy or nondisclosure of information acquired in the administration of that Act apply to a person who, in the exercise of functions under this Act, has access to the information because of the information having been acquired in the administration of the other Act.
- (2) For subsection (1), the person who has access to the information in the exercise of functions under this Act is taken to be a person engaged in the administration of the other Act.

- (3) Subsection (1) does not prevent—
- (a) the giving of access to records under this Act; or
  - (b) the preparation and dissemination of guides and aids to finding information contained in the records.

**66 Protection from liability**

- (1) A person is not personally liable for anything done or omitted to be done honestly and without negligence—
- (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any liability that, apart from subsection (1), would attach to a person attaches instead to the Territory.

**Division 9.2 Reporting and records**

**67 Meaning of *referring entity*—div 9.2**

- (1) In this division:
- referring entity*, in relation to an offence—see section 22.
- (2) However, if an offence is referred for restorative justice by a court in making a sentence-related order, *referring entity* means the chief executive (corrections).

**68 Quarterly reporting by chief executive**

- (1) This section applies in relation to a quarter of a year if—
- (a) an offence is referred for restorative justice before the start of, or during, the quarter; and
  - (b) restorative justice—
    - (i) has not ended for the offence; or

(ii) ended for the offence during the quarter.

*Note* **Quarter** is defined in the Legislation Act, dict, pt 1 to mean the 3 months following 1 January, 1 April, 1 July or 1 October in any year.

(2) Within 7 days after the last day of the quarter, the chief executive (restorative justice) must report to the referring entity on the progress of restorative justice for the offence during the quarter.

*Note* Section 72 deals with what happens if the referring entity is the same chief executive as the chief executive (restorative justice), but the referring entity is the chief executive in his or her capacity as chief executive (corrections) or chief executive (children and young people).

That section provides that the chief executive must ensure that appropriate administrative arrangements are made for the report to be given by a delegate of the chief executive as chief executive (restorative justice) to a delegate of the chief executive as chief executive (corrections) or chief executive (children and young people).

(3) This section does not apply if the referring entity is the chief executive (restorative justice).

*Note* The referring entity may be the chief executive (restorative justice) under table 22, item 1 or 5.

(4) In this section:

**ends**—restorative justice **ends** for an offence if—

- (a) the chief executive decides that restorative justice is not suitable for the offence; or
- (b) the convenor of a restorative justice conference for the offence discontinues the conference under section 47; or
- (c) a restorative justice conference for the offence is concluded.

*Note* **Restorative justice** means the process of restorative justice provided under this Act, including a restorative justice conference (see s 10). Restorative justice, apart from the process provided under this Act that is mentioned in the definition, does not necessarily end as provided in the definition of **ends** for this section.

**69 Record-keeping by referring entities**

- (1) If an offence is referred to the chief executive for restorative justice, the referring entity must ensure that appropriate records are kept in relation to—
  - (a) the circumstances in which the referral was made; and
  - (b) the progress of restorative justice for the offence; and
  - (c) the outcome of restorative justice for the offence.
- (2) The referring entity must also ensure that a copy of any restorative justice agreement for the offence (as amended, if at all, under section 55) is kept as part of the records.
- (3) The records mentioned in subsection (1) must be kept as part of the administrative or court records normally kept by the referring entity in relation to the offence.

**70 Record-keeping by chief executive**

- (1) The chief executive must keep records of—
  - (a) each referral of an offence to the chief executive for restorative justice; and
  - (b) any assessment of suitability for restorative justice under part 7, whether because of a referral of an offence for restorative justice or in other circumstances; and
  - (c) each offence for which a restorative justice conference is called; and
  - (d) each restorative justice conference that is conducted; and
  - (e) each restorative justice conference that is cancelled or discontinued; and
  - (f) each restorative justice agreement that is reached at a conference; and

- (g) the offender's compliance with each restorative justice agreement.
- (2) The records mentioned in subsection (1) (g) must be kept in consultation with the relevant referring entity.
- (3) A record of an offence for which a restorative justice agreement is reached must include a copy of the restorative justice agreement (as amended, if at all, under section 55).

**71 Restorative justice database**

- (1) The chief executive must ensure that a database is kept of information in the records required to be kept under section 70 to enable research, analysis and evaluation of restorative justice.
- (2) The database must be kept in accordance with the regulations.
- (3) Regulations made for this section—
  - (a) may allow access to the information in the database by anyone for research, analysis and evaluation of restorative justice; but
  - (b) must not allow access to the information in the database in any form that would allow the identity of anyone taking part in restorative justice to be worked out.

## Part 10 Miscellaneous

### 72 Exercise of functions by chief executive

- (1) This section applies if—
  - (a) section 23, section 57, section 58 or section 68 requires a chief executive, in the chief executive's capacity as responsible for a particular matter (the *first capacity*) to give a referral or report to a chief executive, in the chief executive's capacity as responsible for another matter (the *second capacity*); and
  - (b) a single chief executive acts in both the first and second capacities.
- (2) A chief executive mentioned in subsection (1) must ensure that administrative arrangements are made for a delegate of the chief executive in the first capacity to give the referral or report to a delegate of the chief executive in the second capacity who is a different person from the delegate in the first capacity.

#### Example

Pat has been found guilty of an offence but released on a recognisance entered into under an order under the *Crimes Act 1900*, section 402 (1) (a *sentence-related order*—see s 12). The offence is referred for restorative justice by the chief executive (corrections).

After a restorative justice conference, Pat enters into a restorative justice agreement with the victim of the offence. Under the agreement, Pat promises to attend a rehabilitation program on a particular night of the week for 3 months. However, after 2 weeks, Pat breaches the agreement by stopping attending the program.

The chief executive (restorative justice) becomes aware of the breach of the agreement. Under section 57 (2), the chief executive (restorative justice) must report the breach to the referring entity, the chief executive (corrections). However, the chief executive (restorative justice) is the same person as the chief executive (corrections).

This section requires the chief executive to ensure that administrative arrangements are made for the report to be given by a delegate of the chief executive in the chief executive's capacity as administering this Act to someone else who is a delegate of the chief executive in the chief executive's capacity as administering sentence-related orders such as the order for Pat.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **73 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the form must be used for that purpose.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### **74 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Without limiting subsection (1), the regulations may make provision in relation to the following:
  - (a) referring entities for table 22, item 6;
  - (b) the qualifications and experience of convenors, for section 40 (2) (a);
  - (c) the functions of convenors, for section 41 (1) (k);
  - (d) the keeping of a database of restorative justice information, for section 71.

**75 Ministerial reviews**

- (1) The Minister must—
  - (a) begin a review (the *first phase review*) of the operation of restorative justice no later than 18 months after the day this section commences; and
  - (b) present a report on the review to the Legislative Assembly within 3 months after the day the review is started.
- (2) The Minister must—
  - (a) begin another review (the *second phase review*) of the operation of restorative justice no later than 18 months after the phase 2 application day under section 15 (4); and
  - (b) present a report on the review to the Legislative Assembly within 3 months after the day the review is started.
- (3) The first phase and second phase reviews must include an evaluation of restorative justice against the following indicators:
  - (a) victim satisfaction and opportunities for meaningful participation by victims;
  - (b) rehabilitation of offenders who have taken part in restorative justice, including any reduction in recidivism;
  - (c) community satisfaction;
  - (d) reintegration of victims and offenders into the community;
  - (e) respect for the rights of everyone directly involved in restorative justice, and the rights of others in the community;
  - (f) recognition of fairness of process and outcome by victims and offenders.
- (4) This section expires on 1 July 2008.
- (5) This section is a provision to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

**76 Administrative Decisions (Judicial Review) Act 1989, schedule 1, new clause 9**

*insert*

- 9 This Act does not apply to decisions under the *Crimes (Restorative Justice) Act 2004*.

**77 Crimes Act 1900, section 342 (1) (u)**

*substitute*

- (u) whether the person has paid the prescribed penalty in accordance with an offence notice served, under section 441, on him or her for an offence;
- (v) if the person has accepted responsibility for the offence to take part in restorative justice under the *Crimes (Restorative Justice) Act 2004*—that fact.

**78 Crimes Act 1900, section 344 (1) (f)**

*substitute*

- (f) that the person chose to plead not guilty;
- (g) that the offender chose not to take part, or chose not to continue to take part, in restorative justice for the offence under the *Crimes (Restorative Justice) Act 2004*.

**79 Crimes Act 1900, section 364 (1) (k)**

*substitute*

- (k) the authorised officer's opinion about—
- (i) the offender's attitude to the offence; and
- (ii) the likelihood that the offender may commit additional offences; and

- (iii) whether it would be appropriate to refer the offender for restorative justice under the *Crimes (Restorative Justice) Act 2004*.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- adult
- amend
- chief executive (see s 163)
- chief police officer
- child
- Childrens Court
- director of public prosecutions (or DPP)
- domestic partner (see s 169 (1))
- found guilty (of an offence)
- Legislative Assembly
- Magistrates Court
- property
- quarter
- sentence administration board
- sitting day
- Supreme Court
- the Territory.

***adult offender***—see section 12.

***chief executive (children and young people)***—see section 22 (2).

***chief executive (corrections)***—see section 22 (2).

***chief executive (restorative justice)***—see section 22 (2).

*Note* If this Act refers simply to ***the chief executive***, this is a reference to the chief executive of the administrative unit responsible for the administration of this Act (see Legislation Act, s 163).

***child victim***—see section 11.

***commission***, of an offence that is alleged to have been committed—see section 12.

***convenor*** means a person appointed as a convenor for part 8 (Restorative justice conferences and agreements) under section 40.

***court referral order***—see section 27 (2) (Referral during court proceeding).

***domestic violence offence***—see section 12.

***eligible offender***—see section 19.

***eligible parent***—see section 18.

***eligible victim***—see section 17.

***less serious offence***—see section 12.

***objects***, of this Act—see section 6.

***offence***—see section 12.

***offender***—see section 12.

***parent***—see section 11.

***personal characteristics***, of a victim, parent of a victim, or offender, for part 7 (Suitability for restorative justice)—see section 29.

***referred***—see section 10.

***referring entity***—

- (a) see section 22; but
- (b) for part 8 (Restorative justice conferences and agreements)—see section 38; and
- (c) for division 9.2 (Reporting and records)—see section 67.

***required participant***, in a restorative justice conference, for part 8 (Restorative justice conferences and agreements)—see section 42.

*restorative justice*—see section 10.

*restorative justice agreement*—see section 50 (Agreement as object of conference).

*restorative justice conference* means a conference called for part 8 (Restorative justice conferences and agreements).

*restorative justice guidelines*—see section 61.

*section 24 referral conditions*—see section 24 (Referral power).

*sentence-related order*, for an offender who is found guilty of an offence—see section 13.

*serious offence*—see section 12.

*substitute participant*, for part 8 (Restorative justice conferences and agreements)—see section 43.

*suitable*—section 10.

*suitable parent*—see section 35.

*suitable victim*—see section 34.

*victim*—see section 11.

*young offender*—see section 12.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 August 2004.

**2 Notification**

Notified under the Legislation Act on 6 September 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Crimes (Restorative Justice) Bill 2004, which was passed by the Legislative Assembly on 24 August 2004.

Acting Clerk of the Legislative Assembly

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