



Australian Capital Territory

Crimes (Sentencing and Restorative Justice) Amendment Act 2016

A2016-4

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Australian Capital Territory

Crimes (Sentencing and Restorative Justice) Amendment Act 2016

A2016-4

An Act to amend the *Crimes (Sentencing) Act 2005*, the *Crimes (Sentence Administration) Act 2005* and the *Crimes (Restorative Justice) Act 2004*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*.

2 Commencement

- (1) This Act (other than part 4) commences on 2 March 2016.

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

- (2) Part 4 commences on the day after this Act's notification day.

3 Legislation amended

This Act amends the following legislation:

- [Crimes \(Sentencing\) Act 2005](#)
- [Crimes \(Sentence Administration\) Act 2005](#)
- [Crimes \(Restorative Justice\) Act 2004](#).

Note This Act also amends other legislation (see sch 1).

Part 2 Crimes (Sentencing) Act 2005

4 Imposition of penalties Section 9 (2), note 1, 2nd dot point

substitute

- imprisonment served by intensive correction (see s 11)

5 Section 9 (2), note 2

after

in note 1

insert

(other than imprisonment served by intensive correction)

6 Imprisonment Section 10 (3), example—par (a)

substitute

Examples—par (a)

- 1 the court makes an intensive correction order
- 2 the court makes a suspended sentence order

7 Section 11

substitute

11 Intensive correction orders

- (1) This section applies if an adult offender is convicted of an offence and the court imposes a sentence of imprisonment.
- (2) If the sentence of imprisonment is for not more than 2 years the court may order that the sentence be served by intensive correction in the community (an *intensive correction order*).

- (3) The court may make an intensive correction order if the sentence of imprisonment is for more than 2 years but not more than 4 years, but only if the court considers it is appropriate to do so, having regard to—
- (a) the level of harm to the victim and the community caused by the offence; and
 - (b) whether the offender poses a risk to 1 or more people or the community; and
 - (c) the offender’s culpability for the offence having regard to all the circumstances.

Note An intensive correction order must not be combined with a sentence of full-time imprisonment, a suspended sentence of imprisonment or a good behaviour order (see s 29 (1) (aa)).

- (4) An intensive correction order must include the core conditions mentioned in the *Crimes (Sentence Administration) Act 2005*, section 42.
- (5) An intensive correction order may include 1 or more of the following additional conditions that can reasonably be complied with within the term of the order:
- (a) a community service condition;
 - (b) a rehabilitation program condition;
 - (c) that the offender comply with a reparation order, a non-association order or place restriction order;
 - (d) a condition prescribed by regulation;

- (e) any other condition, not inconsistent with this Act or the *Crimes (Sentence Administration) Act 2005*, that the court considers appropriate.

Examples—conditions for s (5) (e)

- 1 that the offender undertake medical treatment and supervision (eg by taking medication and cooperating with medical assessments)
- 2 that the offender supply samples of blood, breath, hair, saliva or urine for alcohol or drug testing if required by a corrections officer
- 3 that the offender attend educational, vocational, psychological, psychiatric or other programs or counselling
- 4 that the offender not drive a motor vehicle or consume alcohol or non-prescription drugs or medications
- 5 that the offender regularly attend alcohol or drug management programs

Note 1 For core conditions of an intensive correction order, see the *Crimes (Sentence Administration) Act 2005*, s 42.

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).

- (6) An intensive correction order may also include a curfew condition if the court is satisfied that each adult who is living at the curfew place or has parental responsibility or guardianship for a person who is living at the curfew place consents to the curfew.
- (7) This section is subject to chapter 5 (Imprisonment).

8 Definitions—pt 3.4
Section 21, definition of *non-association order*, paragraph (b)

substitute

- (b) being with a named person or communicating in any way (including electronically) with the person, or attempting to be with the person or to communicate in any way (including electronically) with the person.

**9 Application—pt 3.4
Section 22**

omit

or both

10 Section 22 (a)

substitute

(a) an intensive correction order;

**11 Non-association and place restriction orders—maximum
period
Section 24 (1) (a)**

substitute

(a) must be for a period not longer than—

(i) if the order is made with an intensive correction order—
24 months; or

(ii) in any other case—12 months; and

12 Section 24 (2), example, except note

substitute

Example

Sean is convicted of an offence. The court decides that the appropriate penalty is 6 months imprisonment served by intensive correction and a place restriction order. The place restriction order may be for longer than 6 months (but not longer than 24 months).

13 **Combination sentences—offences punishable by imprisonment**
Section 29 (1) (a), except note

substitute

- (a) an order sentencing the offender to imprisonment as full-time detention;

14 **New section 29 (1) (aa)**

after the note, insert

- (aa) an intensive correction order (but not in combination with a sentence of full-time imprisonment, a suspended sentence of imprisonment or a good behaviour order);

15 **Section 29 (1), example 1**

substitute

- 1 a sentence of 18 months as follows:
- an order for imprisonment for 1 year with no parole period
 - a fine order directing payment of \$500 by stated instalments
 - a good behaviour order for 6 months (the remainder of the term of the sentence)
 - a driver licence disqualification order for all of the sentence

16 **Section 29 (1), example 3**

omit

17 **Pre-sentence reports—order**
Section 41 (4) (a)

omit

18 Section 41 (6)

omit

(Rehabilitation programs—suitability)

substitute

(Good behaviour orders—rehabilitation programs—suitability)

**19 Pre-sentence reports by assessors
Section 42 (3)**

omit

20 Section 42 (4) (a)

omit

(Community service—pre-sentence report matters)

substitute

(Good behaviour orders—community service—pre-sentence report matters)

21 Section 42 (5) (a)

omit

(Rehabilitation programs—pre-sentence report matters)

substitute

(Good behaviour orders—rehabilitation programs—pre-sentence report matters)

**22 Start and end of sentences—general rule
Section 62 (2) (a) (i)**

omit

**23 Application—pt 5.2
Section 64 (2) and note**

omit

24 Section 64 (3), definition of *excluded sentence of imprisonment*, paragraph (b)

substitute

(b) a sentence of imprisonment to be served by intensive correction; or

**25 Nonparole periods—review of decision on nonparole period
Section 68 (3) and note**

omit

**26 Concurrent and consecutive sentences—general rule
Section 71 (3) (d)**

substitute

(d) section 80 (Intensive correction orders—concurrent and consecutive periods).

27 Part 5.4

substitute

Part 5.4 Intensive correction orders

Division 5.4.1 Intensive correction orders—eligibility and suitability

76 Application—pt 5.4

This part applies if a court is considering whether to make an intensive correction order for an offender for an offence.

77 Intensive correction orders—eligibility

- (1) The court must not make an intensive correction order for the offender unless satisfied that—
 - (a) an intensive correction order is suitable for the offender under section 78; and
 - (b) it is appropriate for the offender to serve the sentence by intensive correction; and
 - (c) the offender has given informed consent to serving the sentence by intensive correction.
- (2) An offender gives informed consent for subsection (1) (c) if the offender consents after the offender is given—
 - (a) a clear explanation of the intensive correction order that contains sufficient information to enable the offender to make a balanced judgment about whether or not to consent to serve the sentence by intensive correction; and

- (b) an opportunity to ask any questions about the order, and those questions have been answered and the offender appears to have understood the answers.

Note An intensive correction order may not be made for a young offender (see s 11).

78 Intensive correction orders—suitability

- (1) The court must not make an intensive correction order for the offender unless—
 - (a) the court has considered any pre-sentence report prepared for the offender in the proceeding and is satisfied, having considered possible alternatives, that only a term of imprisonment of not more than 4 years is appropriate for the offender; and
 - (b) after the court has considered any pre-sentence report mentioned in paragraph (a)—an assessment by the director-general about whether an intensive correction order is suitable for the offender (an *intensive correction assessment*) is given to the court.
- Note* The court cannot make an intensive correction order if the court sentences the offender to a term of imprisonment of more than 4 years (see s 11).
- (2) The intensive correction assessment must address the matters mentioned in section 79.
 - (3) In deciding whether to make an intensive correction order for the offender, the court must consider the following:
 - (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;

- (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (4) Subsection (3) does not limit the matters that the court may consider.
- (5) In considering the intensive correction assessment, the court must consider any indicators of unsuitability mentioned in table 79, column 3 that are stated in the assessment to apply to the offender.
- (6) The court may make, or decline to make, an intensive correction order for the offender despite—
 - (a) any recommendation in the intensive correction assessment; or
 - (b) any evidence given by the person who prepared the intensive correction assessment or a corrections officer.
- (7) The court must record reasons for its decision to make, or decline to make, an intensive correction order for the offender if the intensive correction assessment recommends that the offender—
 - (a) is suitable but the court decides not to make an intensive correction order for the offender; or
 - (b) is not suitable but the court decides to make an intensive correction order for the offender.
- (8) Failure to comply with subsection (7) does not invalidate the intensive correction order.
- (9) A regulation may make provision in relation to the preparation of an intensive correction assessment.

79 Intensive correction orders—intensive correction assessment matters

For section 78 (2), the matters for assessing the offender's suitability to serve a sentence by intensive correction order are the matters mentioned in table 79, column 2.

Table 79 Assessment of suitability—intensive correction order

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to comply with an intensive correction order
4	criminal record and response to previous court orders	serious criminal record or substantial noncompliance with previous court orders
5	employment and personal circumstances	potential impracticability of compliance with intensive correction order
6	participation and degree of compliance with intensive correction assessment	substantial noncompliance with assessment
7	living circumstances of the offender	member of offender's household does not consent to living with the offender while the offender is serving intensive correction someone with parental responsibility or guardianship for a person who is a member of the offender's household does not consent to the person living with the offender while the offender is serving intensive correction

80 Intensive correction orders—concurrent and consecutive periods

- (1) A court must not make an intensive correction order with intensive correction to be served concurrently or consecutively with a sentence of full-time imprisonment, a suspended sentence of imprisonment, a sentence of default imprisonment or a good behaviour order.
- (2) However, a court may make an intensive correction order with intensive correction to be served concurrently with a good behaviour order if—
 - (a) an offender is under a good behaviour order but not under a suspended sentence order; and
 - (b) the offender is convicted of an offence that was committed before the offence to which the order relates.
- (3) If subsection (2) applies, the sentencing court may sentence the offender to serve a term of imprisonment by intensive correction to be served concurrently with the offender's good behaviour order.
- (4) A court may also make an intensive correction order if—
 - (a) an offender is under a suspended sentence order but not in full-time detention; and
 - (b) the offender is convicted of an offence that was committed before the offence to which the order relates.
- (5) If the sentencing court makes an order under subsection (4), the court must cancel the offender's suspended sentence order and re-sentence the offender to serve a term of imprisonment by intensive correction.

Division 5.4.2 Intensive correction orders— community service conditions

80A Meaning of *community service condition*—div 5.4.2

In this division:

community service condition, of an intensive correction order for an offender, means a condition included in the order that the offender perform community service work.

80B Application—div 5.4.2

This division applies if a court is considering whether to include a community service condition in an intensive correction order for an offender.

80C Intensive correction orders—community service— eligibility

- (1) The court must not include a community service condition in the intensive correction order unless satisfied that—
 - (a) community service work is suitable for the offender under section 80D; and
 - (b) it is appropriate that the offender be required to perform community service work.
- (2) The court may decline to include a community service condition in the intensive correction order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender fails to comply with the direction.

80D Intensive correction order—community service—suitability

- (1) The court must not include a community service condition in the intensive correction order unless an assessment by the director-general about whether a community service condition is suitable for the offender (an *intensive correction assessment*) is given to the court.
- (2) In deciding whether to include a community service condition in the intensive correction order, the court must consider the following:
 - (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) In considering the intensive correction assessment, the court must consider any of the following indicators of unsuitability that are stated in the assessment to apply to the offender:
 - (a) any major problem with alcohol or a controlled drug;
 - (b) any major psychiatric or psychological disorder;
 - (c) any serious criminal record;
 - (d) any potential impracticability of regular reporting for community service work;
 - (e) any potential unfitness to perform community service work.

- (5) The court may include, or decline to include, a community service condition in an intensive correction order for the offender despite—
- (a) any recommendation in the intensive correction assessment about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work; or
 - (b) any evidence given by the person who prepared the intensive correction assessment or a corrections officer.
- (6) The court must record reasons for its decision to include, or decline to include, a community service condition in the intensive correction order if the intensive correction assessment recommends that the offender—
- (a) is suitable but the court decides not to include a community service condition; or
 - (b) is not suitable but the court decides to include a community service condition.
- (7) Failure to comply with subsection (6) does not invalidate the intensive correction order.

80E Intensive correction orders—community service—hours to be performed

- (1) The number of hours of community service work required to be performed for a community service condition in the intensive correction order must be at least 20 hours and not more than 500 hours.
- (2) The period during which the community service work is required to be completed under the community service condition must be at least—
- (a) if less than 125 hours work is required—6 months; or
 - (b) if 125 or more hours work but less than 250 hours work is required—12 months; or

(c) if 250 or more hours work is required—24 months.

80F Intensive correction orders—community service—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a community service condition under an intensive correction order or a good behaviour order (an *existing order*).
- (2) If the court makes a further intensive correction order that includes a community service condition (a *new order*), the court may direct that the hours of community service work to be performed by the offender under the new order run concurrently or consecutively, or partly concurrently and partly consecutively, with the hours of community service work remaining to be performed under the existing order.
- (3) However, the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 500.

Division 5.4.3 Intensive correction orders—rehabilitation program conditions

80G Definitions—div 5.4.3

In this division:

rehabilitation program, for an intensive correction order, means a program prescribed by regulation for the rehabilitation of offenders.

rehabilitation program condition, of an intensive correction order for an offender, means a condition included in the order that the offender undertake a rehabilitation program.

80H Application—div 5.4.3

This division applies if a court is considering whether to include a rehabilitation program condition in an intensive correction order for an offender.

80I Intensive correction orders—rehabilitation programs—eligibility

- (1) The court must not include a rehabilitation program condition in the intensive correction order unless satisfied that—
 - (a) a rehabilitation program of a particular kind is suitable for the offender; and
 - (b) it is appropriate that the offender undertake a rehabilitation program of that kind; and
 - (c) a place for the offender in a program of that kind is available or will become available within a reasonable time.
- (2) The court may decline to include a rehabilitation program condition in the intensive correction order if—
 - (a) the court directs the offender to undergo a medical examination by a doctor; and
 - (b) the offender does not undergo the examination in accordance with the direction.

80J Intensive correction orders—rehabilitation programs—suitability

- (1) The court must not include a rehabilitation program condition in the intensive correction order unless—
 - (a) an assessment by the director-general about whether a rehabilitation program condition is suitable for the offender (an *intensive correction assessment*) is given to the court; or

- (b) there is some other information (*relevant sentencing information*) before the court about the nature of the program and its suitability for the offender that justifies including the condition in the intensive correction order.

Note For an example of relevant sentencing information, see s 97 (1) (b) (Good behaviour orders—rehabilitation programs—suitability).

- (2) In deciding whether to include a rehabilitation program condition in the intensive correction order, the court must consider the following:
- (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) The court may include, or decline to include, a rehabilitation program condition in the intensive correction order despite—
- (a) any recommendation in the intensive correction assessment about the offender's suitability to serve a sentence (or part of a sentence) by taking part in a rehabilitation program; or
 - (b) any evidence given by the person who prepared the intensive correction assessment for the offender or who gave relevant sentencing information to the court; or
 - (c) any evidence given by a corrections officer.

- (5) The court must record reasons for its decisions to include, or decline to include, a rehabilitation program condition in the intensive correction order if the intensive correction assessment recommends that the offender—
- (a) is suitable but the court decides not to include a rehabilitation program condition; or
 - (b) is not suitable but the court decides to include a rehabilitation program condition.
- (6) Failure to comply with subsection (5) does not invalidate the intensive correction order.

80K Intensive correction orders—rehabilitation programs—maximum period

A rehabilitation program condition included in the intensive correction order must not require the offender to take part in a rehabilitation program for longer than 2 years.

80L Intensive correction orders—rehabilitation programs—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a rehabilitation condition under an intensive correction order or a good behaviour order (an *existing order*).
- (2) If the court makes a further intensive correction order that includes a rehabilitation program condition (a *new order*), the court may direct that the new order operate concurrently or consecutively, or partly concurrently and partly consecutively, with the existing order.
- (3) However, the new order must not be stated to end later than 2 years after the day the new order is made, irrespective of when the order is to take effect.

**28 Imprisonment—explanation to offender
Section 82 (1) (d)**

substitute

- (d) if the court makes an intensive correction order—in general terms, the offender’s obligations under the *Crimes (Sentence Administration) Act 2005* and the consequences if the offender breaches the obligations; and

**29 Imprisonment—official notice of sentence
Section 84 (1) (c)**

omit

periodic detention period or

30 Section 84 (2) (c)

substitute

- (c) whether the sentence is to be served as full-time detention or by intensive correction;

31 Section 84 (2) (f)

substitute

- (f) if the court makes an intensive correction order—any conditions made by the court for the intensive correction order;

32 Section 84 (3)

substitute

- (3) If the court makes an intensive correction order for the offender, the court may remand the offender in custody until the offender is given the notice.

- 33** **Section 85 heading**
substitute
- 85** **Good behaviour orders—meaning of *community service condition***
- 34** **Section 87 heading**
substitute
- 87** **Good behaviour orders—community service—convicted offenders only**
- 35** **Section 88 heading**
substitute
- 88** **Good behaviour orders—community service—eligibility**
- 36** **Section 89 heading**
substitute
- 89** **Good behaviour orders—community service—suitability**
- 37** **Section 90 heading**
substitute
- 90** **Good behaviour orders—community service—pre-sentence report matters**
- 38** **Section 91 heading**
substitute
- 91** **Good behaviour orders—community service—hours to be performed**

39 Section 92 heading

substitute

92 Good behaviour orders—community service—concurrent and consecutive orders

40 Section 95 heading

substitute

95 Good behaviour orders—rehabilitation programs—probation condition required

41 Section 96 heading

substitute

96 Good behaviour orders—rehabilitation programs—eligibility

42 Section 97 heading

substitute

97 Good behaviour orders—rehabilitation programs—suitability

43 Section 98 heading

substitute

98 Good behaviour orders—rehabilitation programs—pre-sentence report matters

44 Section 99 heading

substitute

**99 Good behaviour orders—rehabilitation programs—
maximum period****45 Section 100 heading**

substitute

**100 Good behaviour orders—rehabilitation programs—
concurrent and consecutive orders****46 Young offenders—community service—hours to be
performed
Section 133L (3)**

omit

(Community service—concurrent and consecutive orders)

substitute

(Good behaviour orders—community service—concurrent and
consecutive orders)

47 Dictionary, definition of *community service condition*

substitute

community service condition—

- (a) of a good behaviour order for an offender, for this Act generally—see section 85; and
- (b) of an intensive correction order for an offender, for division 5.4.2 (Intensive correction orders—community service conditions)—see section 80A.

48 Dictionary, new definitions

insert

intensive correction means intensive correction in the community under an intensive correction order.

intensive correction order—see section 11.

49 Dictionary, definitions of *periodic detention* and *periodic detention period*

omit

50 Dictionary, definitions of *rehabilitation program* and *rehabilitation program condition*

substitute

rehabilitation program—

- (a) for a good behaviour order, for this Act generally—see section 93; and
- (b) for an intensive correction order, for division 5.4.3 (Intensive correction orders—rehabilitation program conditions)—see section 80G.

rehabilitation program condition—

- (a) of a good behaviour order for an offender, for this Act generally—see section 93; and
- (b) of an intensive correction order for an offender, for division 5.4.3 (Intensive correction orders—rehabilitation program conditions)—see section 80G.

Part 3 Crimes (Sentence Administration) Act 2005

51 Treatment of sentenced offenders Section 7 (2)

omit

(whether by full-time or periodic detention)

52 Application—pt 3.1 Section 10 (1) (b) (i)

omit

53 Definitions—ch 4 Section 23 (1), definition of *recommitted*, paragraph (a)

omit

54 Chapter 5

substitute

Chapter 5 Intensive correction orders

Part 5.1 Preliminary

39 Application—ch 5

This chapter applies to an offender sentenced to imprisonment if the sentencing court makes an intensive correction order in relation to the offender.

40 Definitions—ch 5

In this chapter:

additional condition, of an offender's intensive correction order, means—

- (a) a condition of the order made by the sentencing court under the *Crimes (Sentencing) Act 2005*, section 11 after the court has considered an intensive correction assessment for the order; or
- (b) a condition of the order imposed under—
 - (i) part 5.6 (Supervising intensive correction orders); or
 - (ii) part 5.7 (Intensive correction orders—amendment and discharge); or
- (c) if a condition is amended under part 5.6 or part 5.7—the condition as amended.

community service condition, of an intensive correction order for an offender—see the *Crimes (Sentencing) Act 2005*, section 80A.

core condition, of an offender's intensive correction order, means a core condition under section 42.

intensive correction—see the *Crimes (Sentencing) Act 2005*, dictionary.

intensive correction assessment means an assessment by the director-general about whether an intensive correction order is suitable for the offender.

intensive correction order—see the *Crimes (Sentencing) Act 2005*, section 11.

interested person, for an offender's intensive correction order, means any of the following:

- (a) the offender;
- (b) the director-general;
- (c) the director of public prosecutions.

rehabilitation program condition, of an intensive correction order for an offender—see the *Crimes (Sentencing) Act 2005*, section 80G.

Part 5.2 Serving intensive correction

41 Intensive correction order obligations

- (1) An offender must serve intensive correction in the period of the offender's sentence in accordance with this part.
- (2) To serve intensive correction, the offender must, during the period of the offender's sentence comply with—
 - (a) the core conditions of the offender's order; and
 - (b) any additional condition of the offender's order; and
 - (c) any non-association order or place restriction order made by the sentencing court for the offender; and
 - (d) any requirement prescribed by regulation; and
 - (e) any other requirement under this Act or the *Corrections Management Act 2007* that applies to the offender.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see *Legislation Act*, s 104).

- (3) A regulation may make provision in relation to electronic monitoring to monitor the offender's compliance with a condition of the offender's intensive correction order.

42 Intensive correction order—core conditions

- (1) The core conditions of an offender's intensive correction order are as follows:
- (a) the offender must not commit—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia against a law of a place outside Australia that, if it had been committed in Australia, would be punishable by imprisonment;
 - (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—the offender must tell the director-general about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge;
 - (c) if the offender's contact details change—the offender must tell the director-general about the change as soon as possible, but not later than 1 day after the day the offender becomes aware of the change of details;
 - (d) the offender must comply with any direction given to the offender by the director-general under this Act or the *Corrections Management Act 2007* in relation to the intensive correction order;
 - (e) the offender must comply with the offender's probation condition;

(f) any test sample given by the offender under a direction under section 43 (Intensive correction order—alcohol and drug tests) must not be positive;

(g) the offender must not use or obtain a drug;

Note **Drug**—see the *Corrections Management Act 2007*, s 132.

(h) the offender must not—

(i) leave the ACT without the director-general's approval; or

(ii) leave Australia without the board's written approval;

(i) if leaving the ACT or Australia, the offender must comply with any condition of the approval to leave;

(j) the offender must comply with any direction given to the offender by the director-general to—

(i) live at any premises; or

(ii) undertake any program; or

(iii) report to a corrections officer; or

(iv) allow a corrections officer to visit the place where the offender lives at any reasonable time;

(k) the offender must comply with any notice made under section 63 to attend a hearing of the board;

(l) any condition prescribed by regulation that applies to the offender.

(2) If an offender applies to the director-general for approval for a change in the offender's contact details, the director-general must—

(a) approve, or refuse to approve, the change to which the application relates; and

(b) give the offender notice of the decision, orally or in writing.

- (3) An application for approval under subsection (2)—
- (a) may be made orally or in writing; and
 - (b) must be made—
 - (i) before the change to which it applies; or
 - (ii) if it is not possible to apply before the change—as soon as possible after, but not later than 1 day after, the day of the change.
- (4) In this section:
- contact details* means the offender's—
- (a) home address or phone number; and
 - (b) work address or phone number; and
 - (c) mobile phone number.
- probation condition*, of an intensive correction order for an offender, means a condition included in the order that, during the period of the order, the offender is—
- (a) to be on probation subject to the supervision of the director-general; and
 - (b) to obey all reasonable directions of the director-general.

43 Intensive correction order—alcohol and drug tests

- (1) The director-general may direct an offender, orally or in writing, to give a test sample during the offender's sentence of imprisonment by intensive correction.
- (2) The provisions of the *Corrections Management Act 2007* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

Part 5.3 Intensive correction order— community service work

44 Application—pt 5.3

This part applies if an offender's intensive correction order is subject to a community service condition.

45 Intensive correction orders—compliance with community service condition

To comply with a community service condition of an offender's intensive correction order, the offender must comply with the requirements of this part.

46 Intensive correction orders—community service work— director-general directions

- (1) The director-general may direct an offender, orally or in writing, to do community service work that the director-general considers suitable for the offender.
- (2) The direction must include details of the following:
 - (a) the community service work the offender must do;
 - (b) the place to which the offender must report for the work (the *reporting place*);
 - (c) the time when the offender must report;
 - (d) the person (if any) to whom the offender must report (the *work supervisor*);
 - (e) the person the offender must tell if subsection (8) applies (the *corrections supervisor*).

- (3) The direction may also include a requirement that the offender must comply with when reporting to do the community service work.

Note For examples of reporting requirements directed by the director-general, see s 91 (3) (Good behaviour orders—community service work—director-general directions).

- (4) A direction under this section takes effect—
- (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the direction—on the date stated.
- (5) The offender must comply with the direction.
- (6) However—
- (a) the offender is not required to do work the offender is not capable of doing; and
 - (b) the direction must, as far as practicable, avoid any interference with the offender's normal attendance at another place for work or at an educational institution.
- (7) The offender must also comply with any reasonable direction given to the offender, orally or in writing, by the work supervisor in relation to the community service work.
- (8) If the offender cannot comply with the director-general's direction under this section, the offender must—
- (a) tell the corrections supervisor as soon as possible; and
 - (b) comply with the corrections supervisor's directions.

Note For examples where the offender cannot comply, see s 91 (8) (Good behaviour orders—community service work—director-general directions).

47 Intensive correction orders—community service work—failure to report etc

- (1) Subsection (2) applies if an offender fails to—
 - (a) report to do community service work in accordance with a direction under section 46; or
 - (b) do community service work in accordance with a direction under section 46; or
 - (c) comply with a reasonable direction given to the offender by the work supervisor under section 46 in relation to the work.
- (2) The director-general may direct the offender, orally or in writing, not to do the community service work and to leave the place where it was to be done.
- (3) Subsection (4) applies if—
 - (a) an offender fails to report to do community service work for a period (a *work period*) in accordance with a direction under section 46; and
 - (b) the offender is at the time of the work period—
 - (i) remanded in custody under a territory law or a law of the Commonwealth or a State; or
 - (ii) detained at a place under the *Mental Health Act 2015*.
- (4) The offender is taken to have performed community service work in accordance with the direction for the work period.

48 Intensive correction orders—community service work—maximum daily hours

- (1) An offender must not do, or be credited with, more than 8 hours of community service work on any day.
- (2) To work out the time spent by the offender doing community service work—
 - (a) only actual work time, and any breaks from work approved by the work supervisor or corrections supervisor under section 46, is counted; and
 - (b) if the total work time on any day includes part of an hour, that part is counted as 1 hour.

Note For examples of maximum daily hours, see s 93 (2) (Good behaviour orders—community service work—maximum daily hours).

49 Intensive correction orders—community service work—health disclosures

An offender must tell the director-general as soon as possible about any change of which the offender is aware in the offender's physical or mental condition that affects the offender's ability to do community service work safely.

Example—unsuitability

The indicators of unsuitability for community service set out in the *Crimes (Sentencing) Act 2005*, s 80D.

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).

50 Intensive correction orders—community service work—alcohol and drug tests

- (1) The director-general may direct an offender, orally or in writing, to give a test sample when reporting to do community service work.
- (2) The provisions of the *Corrections Management Act 2007* relating to alcohol and drug tests apply in relation to a direction under this section and any sample given under the direction.

51 Intensive correction orders—community service work—reports by entities

- (1) This section applies if the Territory makes an agreement with an entity under which the offender may participate in community service work for the entity.
- (2) The director-general must ensure that the agreement requires the entity, on the director-general's request, to give the director-general written reports about the offender's participation in the community service work.

Part 5.4 Intensive correction order—rehabilitation programs**52 Application—pt 5.4**

This part applies if an offender's intensive correction order is subject to a rehabilitation program condition.

53 Intensive correction orders—rehabilitation program condition—compliance

To comply with a rehabilitation program condition of an offender's intensive correction order, the offender must comply with the requirements of this part.

54 Intensive correction orders—rehabilitation programs—director-general directions

- (1) The director-general may give an offender directions, orally or in writing, in relation to a rehabilitation program condition to which the offender's intensive correction order is subject.
- (2) Without limiting subsection (1), a direction may include details of the following:
 - (a) the program the offender must attend;
 - (b) the place to which the offender must report for the program;
 - (c) the time when the offender must report;
 - (d) the person (if any) to whom the offender must report.

55 Intensive correction orders—rehabilitation program providers—reports by providers

- (1) This section applies if the Territory makes an agreement with an entity under which an offender may participate in a rehabilitation program provided by the entity.
- (2) The director-general must ensure that the agreement requires the entity, on the director-general's request, to give the director-general written reports about the offender's participation in the rehabilitation program.

Part 5.5 Intensive correction order—curfew**56 Application—pt 5.5**

This part applies if an offender's intensive correction order is subject to a curfew condition.

57 Compliance with curfew

To comply with a curfew condition of an offender's intensive correction order, the offender must comply with the requirements of this part.

58 Curfew—directions

- (1) A curfew condition of an intensive correction order must include details of the following:
 - (a) the place where the offender must remain for the curfew (the *curfew place*);
 - (b) the period of time (not longer than the offender's sentence) that the curfew will be in place.
- (2) The sentencing court may recommend an amount of time that the offender should remain at the curfew place each day.
- (3) The director-general may, after taking into account any recommendation of the sentencing court, direct the offender, orally or in writing, to remain at the curfew place for a period of time (not more than 12 hours in a 24-hour period) each day.

Example

Max is directed to comply with a curfew. Max may be required to remain at the curfew place between 10 pm and 7 am, and between 3 pm and 6 pm on Mondays, Wednesdays and Fridays.

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) A direction under this section takes effect—
 - (a) when it is given to the offender; or
 - (b) if a later date of effect is stated in the direction—on the date stated.
- (5) The offender must comply with a direction under this section.

Part 5.6 Supervising intensive correction orders

Division 5.6.1 Intensive correction orders—supervision

59 Corrections officers to report breach of intensive correction order obligations

- (1) This section applies if a corrections officer believes on reasonable grounds that an offender has breached any of the offender's intensive correction order obligations.
- (2) The corrections officer must report the belief to the board.
- (3) A report under this section must be made in writing and set out the grounds for the corrections officer's belief.

60 Arrest without warrant—breach of intensive correction order obligations

- (1) This section applies if a police officer believes on reasonable grounds that an offender has breached any of the offender's intensive correction order obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the [Bail Act 1992](#).

- (4) If the offender is brought before a magistrate under subsection (3) (b), the magistrate must adjourn the matter until the offender can be brought before the board.

61 Arrest warrant—breach of intensive correction order obligations

- (1) A judge or magistrate may issue a warrant for an offender's arrest if satisfied, by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, any of the offender's intensive correction order obligations.
- (2) The warrant must—
 - (a) be in writing signed by the judge or magistrate; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and
 - (d) order the arrest and bringing of the offender before the board.
- (3) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before—
 - (a) the board; or
 - (b) if the board is not sitting—a magistrate.

Note For remanding or granting bail to the offender, see the [Bail Act 1992](#).

Division 5.6.2 Intensive correction orders—breach**62 Board inquiry—breach of intensive correction order obligations**

- (1) The board may conduct an inquiry to decide whether an offender has breached any of the offender's intensive correction order obligations.
- (2) The board must hold a hearing for an inquiry—
 - (a) on application by the director-general; or

- (b) after receiving a report from a corrections officer under section 59 (Corrections officers to report breach of intensive correction order obligations); or
 - (c) if the offender is arrested under section 60 (Arrest without warrant—breach of intensive correction order obligations) or section 61 (Arrest warrant—breach of intensive correction order obligations).
- (3) This section does not apply if the offender has been convicted of a new offence punishable by imprisonment.
- Note* Section 65 requires the sentencing court to cancel the offender's intensive correction order in certain circumstances.
- (4) To remove any doubt, the board may conduct the inquiry in conjunction with any other inquiry under this Act in relation to the offender.
- (5) The board must, as soon as practicable—
- (a) tell the director-general of an inquiry conducted under subsection (2) (c); and
 - (b) conduct the inquiry.

63 Notice of inquiry—breach of intensive correction order obligations

- (1) Before the board starts an inquiry under section 62 in relation to an offender, the director-general must give written notice of the inquiry to—
- (a) the offender; and
 - (b) the director of public prosecutions.

- (2) The notice must include—
 - (a) the reasons for the inquiry; and
 - (b) an invitation for the offender to make submissions to the board by a stated date for the inquiry; and
 - (c) if a board hearing is to be held in relation to the inquiry—
 - (i) the date, time and location of the hearing; and
 - (ii) a statement about the effect of section 209 (Offender's rights at board hearing).
- (3) An offender who is given notice of a hearing under this section must appear at the hearing.
- (4) The director-general must, as soon as practicable, tell the board of the offender being given written notice under subsection (1) (a).

64 Board powers—breach of intensive correction order obligations

- (1) This section applies if, after conducting an inquiry under section 62 (Board inquiry—breach of intensive correction order obligations) in relation to an offender, the board is satisfied that the offender has breached any of the offender's intensive correction order obligations.
- (2) The board may do 1 or more of the following:
 - (a) give the offender a warning about the need to comply with the offender's intensive correction order obligations;
 - (b) suspend the offender's intensive correction order for—
 - (i) if the offender admits that the offender has breached an obligation—3 days to be served by imprisonment by full-time detention, but not past the end of the offender's sentence; or

- (ii) in any other case—7 days to be served by imprisonment by full-time detention, but not past the end of the offender's sentence;
- (c) cancel the offender's intensive correction order;

Note Section 65 requires the sentencing court to cancel the offender's intensive correction order in certain circumstances and s 66 requires the board to cancel the order if the offender withdraws consent.

- (d) refer the offender to a court for amendment or discharge of the intensive correction order if the board decides that the offender is unlikely to be able to serve the remainder of the order by intensive correction, having regard to—
 - (i) the offender's health; or
 - (ii) any exceptional circumstances affecting the offender.
- (3) The board must not give more than 3 warnings under subsection (2) (a) in a 12-month period.
- (4) To remove any doubt, if an inquiry under section 62 in relation to an offender is conducted in conjunction with another inquiry under this Act in relation to the offender, the board may exercise its powers under this division with any other powers of the board in relation to the other inquiry.

65 Cancellation of intensive correction order on further conviction etc

- (1) This section applies if, after an offender was sentenced to serve intensive correction, the offender commits, and is convicted or found guilty of—
 - (a) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or

- (b) an offence outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.
- (2) The sentencing court must, as soon as practicable, cancel the offender's intensive correction order and order that the remainder of the offender's sentence be served in full or in part by full-time detention, unless it is not in the interests of justice to do so.
- (3) If the court considers that it is not in the interests of justice to make an order under subsection (2), the court must give reasons for its decision not to make the order.

66 Cancellation of intensive correction order if offender withdraws consent

- (1) This section applies if the board is satisfied that the offender has withdrawn the offender's consent to serve the offender's sentence by intensive correction.
- (2) The board must cancel the offender's intensive correction order.

Division 5.6.3 Suspension and cancellation of intensive correction order

67 Application—div 5.6.3

This division applies to a decision made by the board under section 64 or section 66.

68 Notice of board decisions about intensive correction order

The board must give written notice of its decision to each interested person.

69 Intensive correction order—effect of suspension or cancellation

- (1) This section applies to a decision of the board to suspend or cancel the offender's intensive correction order.
- (2) The decision takes effect—
 - (a) when written notice of the decision is given to the offender under section 68; or
 - (b) if a later date of effect is stated in the notice—on the date stated.
- (3) If the decision is to suspend the offender's intensive correction order—
 - (a) during the suspension the offender must be imprisoned under full-time detention; and
 - (b) while serving the full-time detention the offender is taken to comply with the offender's intensive correction obligations.
- (4) If the decision is to cancel the offender's intensive correction order, the cancellation ends the intensive correction order and the offender must serve the remainder of the sentence of imprisonment—
 - (a) by full-time detention until when the intensive correction order would have ended apart from the cancellation; and
 - (b) otherwise in accordance with the sentence.

70 Intensive correction orders—effect of suspension or cancellation on other intensive correction order

- (1) This section applies if—
 - (a) the board decides to suspend or cancel an offender's intensive correction order; and

- (b) when the suspension or cancellation takes effect the offender is also subject to intensive correction under another sentence of imprisonment.
- (2) To remove any doubt, at the inquiry for the suspension or cancellation under this part, the board may also exercise its powers under this part in relation to the other intensive correction order.

71 Intensive correction orders—effect of suspension or cancellation on parole

- (1) This section applies if—
 - (a) the board decides to suspend or cancel an offender’s intensive correction order; and
 - (b) when the suspension or cancellation takes effect a parole order applies to the offender, whether for the same or another offence.
- (2) To remove any doubt, at the inquiry for the suspension or cancellation under this part, the board may also exercise its powers under part 7.4 (Supervising parole) in relation to the offender’s parole.

72 Suspension or cancellation of intensive correction order—recommittal to full-time detention

- (1) This section applies if the board decides to suspend or cancel an offender’s intensive correction order.
- (2) The board must order that the offender be placed in the director-general’s custody to serve the relevant part of the offender’s sentence by imprisonment under full-time detention.

Note See s 69 (Intensive correction order—effect of suspension or cancellation).

- (3) If the offender is not in custody, the board may also issue a warrant for the offender to be arrested and placed in the director-general's custody.
- (4) The warrant must—
 - (a) be in writing signed by the chair, or deputy chair, of the board; and
 - (b) be directed to all escort officers or a named escort officer.
- (5) An escort officer who arrests the offender under this section must place the offender in the director-general's custody as soon as practicable.

73 Cancellation of intensive correction order—offender may apply for order to be reinstated

- (1) This section applies if the board decides to cancel an offender's intensive correction order.
- (2) On application by the offender, the board may order that the offender's intensive correction order be reinstated if—
 - (a) following the cancellation of the order, the offender has served at least 30 days of the offender's sentence by imprisonment under full-time detention; and
 - (b) the board—
 - (i) is satisfied by information provided by the offender that the offender will comply with the offender's intensive correction order obligations; and
 - (ii) has considered an assessment by the director-general about whether an intensive correction order is suitable for the offender (an *intensive correction assessment*).

- (3) If the board decides not to reinstate the offender's intensive correction order, the offender must not make another application under this section within 6 months after the day the board makes the decision.
- (4) However, if the offender believes there are exceptional circumstances, the offender may apply to the board before the day mentioned in subsection (3).
- (5) The board may refuse an application under this section if—
 - (a) satisfied the application is frivolous, vexatious or misconceived; or
 - (b) the board decided not to reinstate the offender's intensive correction order within the 6-month period before the application was made.
- (6) To remove any doubt, if an offender's intensive correction order is reinstated under this section, the period the offender served by imprisonment under full-time detention is taken to be part of the offender's sentence of imprisonment by intensive correction.

Part 5.7 Intensive correction orders— amendment or discharge

74 Court powers—amendment or discharge of intensive correction order

- (1) A court may, by order—
 - (a) amend an offender's intensive correction order; or
 - (b) discharge an offender's intensive correction order.

Example—par (a)

- impose an additional condition

- amend a condition

Note 1 **Amend** includes omit or substitute (see [Legislation Act](#), dict, pt 1).

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).

- (2) The court may act under this part—
 - (a) on referral by the board under section 64 (2) (d) (Board powers—breach of intensive correction order obligations); or
 - (b) on application by an interested person.
- (3) However, if the court is acting on referral by the board under section 64 (2) (d), the court must consider any report given to the court by the board about the offender before making the order.
- (4) The amendment of the intensive correction order takes effect as stated in the court order.
- (5) This section is subject to section 75.

75 Intensive correction orders—limitations on amendment or discharge

- (1) A court must not discharge an intensive correction order unless—
 - (a) the court is satisfied that the offender has complied with the order; and
 - (b) the offender has served at least 12 months of the offender’s sentence by intensive correction; and
 - (c) the order is replaced with a—
 - (i) suspended sentence order; and
 - (ii) good behaviour order with core conditions.

- (2) Despite subsection (1) a court may, on application by the director-general or referral by the board under section 64 (2) (d), discharge an intensive correction order if—
- (a) the court is satisfied that the offender is unlikely to be able to serve the remainder of the order by intensive correction, having regard to—
 - (i) the offender's health; or
 - (ii) any exceptional circumstances affecting the offender; and
 - (b) the order is replaced with a—
 - (i) suspended sentence order; and
 - (ii) good behaviour order with core conditions.
- (3) A court must not amend the length of an intensive correction order.

Part 5.8 Intensive correction orders— reporting and records

76 Record-keeping by director-general

The director-general must keep data of—

- (a) each intensive correction order made in relation to an offender; and
- (b) the offence for which an order is made; and
- (c) each order that is cancelled, suspended or discharged including the reasons for the cancellation, suspension or discharge.

77 Authorised person may access data

The director-general—

- (a) may allow a person, authorised in writing by the director-general, access to the data mentioned in section 76 for research, analysis and evaluation of intensive correction orders; but
- (b) must not allow access to the data in any form that would allow the identity of anyone taking part in an intensive correction order to be worked out.

**Part 5.9 Intensive correction orders—
miscellaneous****78 Intensive correction order proceedings—rights of
interested person**

- (1) An interested person for an intensive correction order may appear before a court in a proceeding under this chapter.
- (2) A court must—
 - (a) give each interested person for an intensive correction order (whether or not the person appeared before the court)—
 - (i) written notice of the court’s decision; and
 - (ii) a copy of the order or direction by the court; and
 - (b) hear any relevant submissions put to the court by an interested person.

79 Intensive correction order—court and board powers after end of order

A court or the board may act under this chapter in relation to anything arising during the term of an intensive correction order, even if the term of the order has ended.

80 Intensive correction orders—outstanding warrants

- (1) This section applies if a warrant is issued for an offender's arrest under this chapter.
- (2) Any period of time that the warrant is outstanding does not count as part of the offender's term of imprisonment by intensive correction.

81 Review—ch 5

- (1) The Minister must—
 - (a) review the operation and effectiveness of this chapter at the end of its 3rd year of operation (2 March 2019); and
 - (b) present a report of the review to the Legislative Assembly before the end of the chapter's 4th year of operation (2 March 2020).
- (2) This section expires 4 years after the day it commences.

**55 Good-behaviour—core conditions
Section 86 (1) (e)**

omit

(Community service work—alcohol and drug tests)

substitute

(Good behaviour orders—community service work—alcohol and drug tests)

56 Section 90 heading

substitute

90 Good behaviour orders—compliance with community service condition

57 Section 91 heading

substitute

91 Good behaviour orders—community service work—director-general directions

58 Section 92 heading

substitute

92 Good behaviour orders—community service work—failure to report etc

59 Section 93 heading

substitute

93 Good behaviour orders—community service work—maximum daily hours

60 Section 94 heading

substitute

94 Good behaviour orders—community service work—health disclosures

- 61** **Section 95 heading**
substitute
- 95** **Good behaviour orders—community service work—
alcohol and drug tests**
- 62** **Section 96 heading**
substitute
- 96** **Good behaviour orders—community service work—frisk
searches**
- 63** **Section 97 heading**
substitute
- 97** **Good behaviour orders—community service work—
reports by entities**
- 64** **Section 99 heading**
substitute
- 99** **Good behaviour orders—compliance with rehabilitation
program condition**
- 65** **Section 100 heading**
substitute
- 100** **Good behaviour orders—rehabilitation programs—
director-general directions**

66 Section 101 heading*substitute***101 Good behaviour orders—rehabilitation program providers—reports by providers****67 Cancellation of good behaviour order with suspended sentence order
Section 110 (4), example***omit*

periodic detention

substitute

intensive correction

**68 Imprisonment—periodic detention
Section 116ZL***omit***69 Imprisonment—rate of discharge of outstanding fine
Section 116ZM (3) and (4)***omit***70 Functions of board
Section 172 (a) (i)***substitute*

(i) chapter 5 (Intensive correction orders);

71 **Meaning of board's *supervisory functions***
Section 180 (a) (i)

substitute

- (i) chapter 5 (Intensive correction orders);

72 **Notice of board hearing**
New section 204 (4)

insert

- (4) This section does not apply if the offender is given notice under section 63 (Notice of inquiry—breach of intensive correction order obligations).

73 **Arrest of offender for board hearing**
Section 206 (1) (a)

substitute

- (a) an offender does not appear before the board at a hearing in accordance with—
- (i) a notice under section 63 (Notice of inquiry—breach of intensive correction order obligations); or
 - (ii) a notice under section 205 (1); or
 - (iii) an agreement mentioned in section 205 (3); or

74 **Disclosures to registered victims—offenders other than young offenders**
Section 216 (1), example 2

substitute

- 2 if the offender is under an intensive correction order—the place where the offender may do community service work or attend a rehabilitation program

**75 Meaning of *community-based sentence*
Section 264 (1) (a) (i)**

substitute

- (i) an intensive correction order;

76 Section 264 (2) (a)

substitute

- (a) an intensive correction order;

**77 Meaning of *community service work*
Section 316**

after

work

insert

or participation in a community service program

**78 Evidentiary certificates
Section 321A (2) (a)**

omit

or periodic detention

79 Section 321A (2) (d)

substitute

- (d) that a stated offender subject to an intensive correction order did not comply with a stated obligation of the order;

80 New chapter 20*insert***Chapter 20 Transitional—Crimes
(Sentencing and Restorative
Justice) Amendment Act 2016****900 Meaning of *commencement day*—ch 20**

In this chapter:

commencement day means the day the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*, section 4 commences.

901 Application of amendments—periodic detention

- (1) This section applies to an offender who, immediately before the commencement day, is serving a sentence by periodic detention.
- (2) Subject to subsection (3), this Act, the *Crimes (Sentencing) Act 2005* and legislation mentioned in the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*, schedule 1 (Consequential amendments), as in force immediately before the commencement day, continue to apply to the offender as if the amendments made by the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* had not been made.
- (3) The following sections of this Act, as in force immediately before the commencement day, no longer apply to the offender:
 - (a) section 68 (Board powers—breach of periodic detention obligations);
 - (b) section 69 (Board powers—repeated failures to perform periodic detention);

- (c) section 70 (Cancellation of periodic detention on further conviction etc).

902 Referral of periodic detention in certain circumstances

- (1) The board must refer an offender serving a sentence by periodic detention for re-sentencing by the sentencing court if—
 - (a) the board decides that the offender has breached any of the offender's periodic detention obligations; or
 - (b) after the offender was sentenced to serve periodic detention, the offender commits, and is convicted or found guilty of—
 - (i) an offence against a territory law, or a law of the Commonwealth, a State or another Territory, that is punishable by imprisonment; or
 - (ii) an offence outside Australia that, if it had been committed in Australia, would be punishable by imprisonment.
- (2) If the board refers the offender for re-sentencing under subsection (1), the sentencing court must re-sentence the offender for the offence in relation to which the periodic detention order was made.
- (3) In re-sentencing the offender, the court—
 - (a) must take into account the following (in addition to any other matters the court considers should be taken into account):
 - (i) the fact that the offender was sentenced to periodic detention;
 - (ii) anything done under the periodic detention; and

(b) must not—

- (i) impose a penalty that, when taken together with a penalty previously imposed for the offence for which the periodic detention was ordered, is greater than the maximum penalty the court could have imposed for the offence; or
- (ii) re-sentence the offender to periodic detention.

903 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

904 Expiry—ch 20

This chapter expires 3 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

81 Dictionary, definition of *additional condition*, paragraph (a)

substitute

- (a) of an offender's intensive correction order—see section 40; or

82 Dictionary, definition of *core condition*, paragraph (a)

substitute

(a) of an offender's intensive correction order—see section 40; or

83 Dictionary, definitions of *detention period* and *finishing time*

omit

84 Dictionary, new definition of *intensive correction order*

insert

intensive correction order—see the [Crimes \(Sentencing\) Act 2005](#), section 11.

85 Dictionary, definition of *interested person*

substitute

interested person—

(a) for an offender's good behaviour order—see section 84; and

(b) for an offender's intensive correction order—see section 40.

86 Dictionary

omit the definitions of

periodic detention

periodic detention obligations

periodic detention period

87 Dictionary, definition of *rehabilitation program condition*

substitute

rehabilitation program condition—

- (a) of a good behaviour order for an offender, for this Act generally—see the *Crimes (Sentencing) Act 2005*, section 93; and
- (b) of an intensive correction order for an offender, for chapter 5—see the *Crimes (Sentencing) Act 2005*, section 80G.

88 Dictionary

omit the definitions

reporting day

reporting place

reporting time

Part 4 Crimes (Restorative Justice) Act 2004

89 Definitions—offences and offenders Section 12, definition of *domestic violence offence*

substitute

domestic violence offence means a less serious domestic violence offence or a serious domestic violence offence.

90 Section 12, new definitions

insert

less serious domestic violence offence means—

- (a) an offence mentioned in the *Domestic Violence and Protection Orders Act 2008*, schedule 1—
 - (i) committed by an offender against a relevant person; and
 - (ii) that is punishable by a term of imprisonment of—
 - (A) if the offence relates to money or other property—14 years or less; or
 - (B) in any other case—10 years or less; and
- (b) an animal violence offence mentioned in the *Domestic Violence and Protection Orders Act 2008*, section 13 (3); and
- (c) a contravention of a protection order under the *Domestic Violence and Protection Orders Act 2008*, section 90.

less serious sexual offence means an offence under the *Crimes Act 1900*, part 3 that is punishable by a term of imprisonment of 10 years or less.

relevant person—see the *Domestic Violence and Protection Orders Act 2008*, section 15 (1).

relevant relationship—see the *Domestic Violence and Protection Orders Act 2008*, section 15 (2).

serious domestic violence offence means an offence mentioned in the *Domestic Violence and Protection Orders Act 2008*, schedule 1—

- (a) committed by an offender against a relevant person; and
- (b) that is punishable by a term of imprisonment of—
 - (i) if the offence relates to money or other property—more than 14 years; or;
 - (ii) in any other case—more than 10 years.

serious sexual offence means an offence under the *Crimes Act 1900*, part 3 that is punishable by a term of imprisonment of more than 10 years.

sexual offence means a less serious sexual offence or a serious sexual offence.

91 Sections 14 to 16

substitute

14 Application of Act—less serious offences

- (1) This Act applies to a less serious offence committed by a young offender or an adult offender.
- (2) This Act applies to a less serious offence committed by a young offender or an adult offender even if the offence was committed before the day this section commenced.
- (3) This section does not apply to a domestic violence offence or a sexual offence.

Note For the application of this Act to domestic violence offences and sexual offences, see s 16.

15 Application of Act—serious offences

- (1) This Act applies to a serious offence committed by a young offender or an adult offender if the offender—
 - (a) is charged with the offence; and
 - (b) either—
 - (i) pleads guilty to the offence; or
 - (ii) is found guilty of the offence (whether or not the offender is convicted or sentenced for the offence).
- (2) This Act applies to a serious offence committed by a young offender or an adult offender even if the offence was committed before the day this section commenced.
- (3) This section does not apply to a domestic violence offence or a sexual offence.

Note For the application of this Act to domestic violence offences and sexual offences, see s 16.

16 Application of Act—domestic violence offences and sexual offences

- (1) This Act applies to a less serious domestic violence offence or a less serious sexual offence committed by a young offender or an adult offender.

- (2) Subsection (1) applies whether or not the young offender or adult 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 director-general to decide that a less serious domestic violence offence or a less serious sexual offence committed by a young offender or an adult offender is suitable for restorative justice under pt 7 before the offender pleads guilty to the offence or is found guilty of the offence, the director-general 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 serious domestic violence offence or a serious sexual offence 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).

- (4) However, subsections (1) to (3) may apply to a domestic violence offence or a sexual offence even if the offence was committed before the phase 3 application day.

- (5) Subsections (1) to (4) do not apply before a day declared by the Minister (the **phase 3 application day**).

- (6) To remove any doubt, the [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to subsections (1) to (4).

Note If the [Legislation Act](#), s 79 applied to ss (1) to (4), the subsections would automatically commence 6 months after the day this Act commences (apart from s 1 and s 2) if it had not already been effectively commenced by the declaration of the phase 3 application day.

- (7) Subsections (5) and (6) are laws to which the [Legislation Act](#), section 88 (Repeal does not end effect of transitional laws etc) applies.
- (8) Subsections (5) to (7) and this subsection expire on the phase 3 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).

92 Referring entities
Section 22 (2), new definition of *victims of crime* commissioner

insert

victims of crime commissioner means the victims of crime commissioner appointed under the [Victims of Crime Act 1994](#).

93 Table 22, item 1, column 2

after police officer, insert

victims of crime
 commissioner

94 Table 22, item 5, column 2

after sentence administration board, insert

victims of crime
 commissioner

95 Section 24 (3) (a)

omit

(Referral by DPP—Domestic violence offences by young offenders)

substitute

(Referral by DPP—less serious domestic violence offences and less serious sexual offences)

96 Section 26 heading

substitute

26 Referral by DPP—less serious domestic violence offences and less serious sexual offences**97 Section 26 (1)**

substitute

- (1) This section applies if the director of public prosecutions is the referring entity for a less serious domestic violence offence or a less serious sexual offence allegedly committed by a young offender or an adult offender.

98 Section 26 (2), note

omit

99 Section 26 (3) to (6)

omit

phase 2

substitute

phase 3

100 Section 26 (8), definition of *phase 2 application day*

substitute

phase 3 application day—see section 16 (5).

**101 Referral during court proceeding
Section 27 (2)**

omit

of the director of public prosecutions.

insert

of—

- (a) the director of public prosecutions; or
- (b) the offender's legal representative.

102 Section 27 (4), including note

substitute

- (4) For the referral of a less serious domestic violence offence or a less serious sexual offence alleged to have been committed by a young offender or an adult offender, the court may make a court referral order, before the offender pleads guilty to the offence or is found guilty of the offence, only if it considers that exceptional circumstances exist to justify the referral.

Note This Act does not apply to a serious domestic violence offence or a serious sexual offence unless the offender pleads guilty to the offence, or is found guilty of the offence (see s 16).

103 Section 27 (5) to (8)

omit

phase 2

substitute

phase 3

104 Section 27 (10), definition of *phase 2 application day*

substitute

phase 3 application day—see section 16 (5).

**105 Suitability—general considerations
Section 33 (2)**

substitute

- (2) The director-general may decide that restorative justice is suitable for a less serious domestic violence offence or a less serious sexual offence committed by a young offender or an adult offender before the offender pleads guilty to the offence or is found guilty of the offence only if satisfied that exceptional circumstances exist to justify the calling of a restorative justice conference for the offence.

106 Section 33 (3) to (6)

omit

phase 2

substitute

phase 3

107 Section 33 (8), definition of *phase 2 application day*

substitute

phase 3 application day—see section 16 (5).

108 Dictionary, definition of *domestic violence offence*

omit

109 Dictionary, new definitions

insert

less serious domestic violence offence—see section 12.

less serious sexual offence—see section 12.

relevant person—see the [Domestic Violence and Protection Orders Act 2008](#), section 15 (1).

relevant relationship—see the [Domestic Violence and Protection Orders Act 2008](#), section 15 (2).

serious domestic violence offence—see section 12.

serious sexual offence—see section 12.

sexual offence—see section 12.

Schedule 1 Consequential amendments

Part 1.1 Administrative Decisions (Judicial Review) Act 1989

[1.1] Schedule 1, item 4, column 3, 4th and 5th dot points

substitute

- section 43 (Intensive correction order—alcohol and drug tests)
- section 50 (Intensive correction orders—community service work—alcohol and drug tests)

[1.2] Schedule 2, section 2.6 (1), 3rd to 8th dot points

substitute

- section 46 (Intensive correction orders—community service work—director-general directions)

[1.3] Schedule 2, section 2.6 (2)

omit

Part 1.2 Bail Act 1992

[1.4] Section 8A (1) (b) (i)

substitute

- (i) an intensive correction order obligation;

[1.5] Section 8A (2), example heading

substitute

Example—bail entitlement

[1.6] Section 8A (2), example 1

omit

**Part 1.3 Births, Deaths and Marriages
Registration Act 1997**

[1.7] Section 22A, definition of *restricted person*, paragraph (a)

omit

periodic detention

substitute

intensive correction order

Part 1.4 Coroners Act 1997

[1.8] Section 3C (1) (c)

omit

**Part 1.5 Corrections Management
Act 2007**

[1.9] Section 6 (1) (b)

omit

[1.10] Section 63, definition of *admission*

substitute

admission, of a detainee to a correctional centre, means admission of the detainee to the centre for detention.

[1.11] Section 76 (2) (d) (i)

omit

periodic detention period or other

[1.12] Section 133 (1) (d)

substitute

(d) for a person serving a term of imprisonment by intensive correction—the person provides a test sample that shows the person—

(i) either—

(A) if the person is under a condition or a direction that the person not take alcohol—has taken alcohol; or

(B) in any other case—has a blood alcohol concentration of the prescribed concentration or more; or

(ii) has taken a drug.

[1.13] Dictionary, definitions of *detention period* and *periodic detention*

omit

Part 1.6 Corrections Management Regulation 2010

[1.14] Section 48 (c)

omit

Part 1.7 Crimes Act 1900

[1.15] Section 157

omit

Part 1.8 Crimes (Restorative Justice) Act 2004

[1.16] Section 13, example 2

substitute

- 2 an order for intensive correction under the [Crimes \(Sentencing\) Act 2005](#)

Part 1.9 Electoral Act 1992

[1.17] Section 71A (2), definition of *sentence of imprisonment*

substitute

sentence of imprisonment does not include a sentence of imprisonment served by intensive correction made by a court under the [Crimes \(Sentencing\) Act 2005](#), section 11 (Intensive correction orders).

Part 1.10 Spent Convictions Act 2000

[1.18] Section 11 (3), definition of *sentence of imprisonment*

substitute

sentence of imprisonment does not include the detention of a person under a control order.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the [Legislation Act](#) on 24 February 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Sentencing and Restorative Justice) Amendment Bill 2016, which originated in the Legislative Assembly as the Crimes (Sentencing and Restorative Justice) Amendment Bill 2015 and was passed by the Assembly on 11 February 2016.

Acting Clerk of the Legislative Assembly

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