



Australian Capital Territory

# Crimes (Restorative Justice) Amendment Act 2018

A2018-34

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Australian Capital Territory

# Crimes (Restorative Justice) Amendment Act 2018

**A2018-34**

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

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

**1 Name of Act**

This Act is the *Crimes (Restorative Justice) Amendment Act 2018*.

**2 Commencement**

This Act commences on 1 October 2018.

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

**3 Legislation amended**

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

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

**4 Eligible victims  
Section 17 (1) (c) and (2) (c), except note**

*omit*

**5 Eligible parents  
Section 18 (1) (c)**

*omit*

**6 Eligible offenders  
Section 19 (1) (b)**

*substitute*

(b) the offender—

(i) either—

(A) accepts responsibility for the commission of the offence; or

(B) if the offender is a young offender and the offence is a less serious offence—does not deny 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) agrees to take part in restorative justice.

## **7 Section 20**

*substitute*

### **20 Accepting or not denying responsibility for offences**

- (1) This Act does not prevent an offender from pleading not guilty to an offence only because section 19 (1) (b) (i) applies to the offender.
- (2) A court is not required to reduce the severity of any sentence it may impose on an offender or young offender because the court is aware section 19 (1) (b) (i) applies to the offender.

*Note 1* To be eligible to take part in restorative justice, an offender must accept responsibility for the commission of the offence or, if the offender is a young offender and the offence is a less serious offence, must not deny responsibility for the commission of the offence (see s 19).

*Note 2* The *Crimes (Sentencing) Act 2005*, section 33 (1) (y) provides that, in deciding how an offender or young offender should be sentenced (if at all) for an offence, the matters known to the court that it must consider include whether this Act, s 19 (1) (b) (i) applies to the offender.

However, the *Crimes (Sentencing) Act 2005*, section 34 (1) (h) 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 (including a young offender) has chosen not to take part, or to continue to take part, in restorative justice for the offence.

**8 Referring entities**  
**Table 22, item 3, column 3, paragraph (b)**

*omit*

case management hearing

*substitute*

pre-hearing mention

**9 Referral power**  
**Section 24 (3) (b)**

*substitute*

(b) section 27 (Referral during court proceeding—before offender enters plea).

**10 New section 24 (4)**

*insert*

(4) This section does not apply to a referral under section 28A (Referrals not requiring offender notification—post-sentence stage).

**11 Explanation of restorative justice**  
**Section 25 (e)**

*substitute*

(e) if the offender has not entered a plea in relation to the offence—that the offender is not prevented from pleading not guilty to the offence only because section 19 (1) (b) (i) applies to the offender; and



**12 Section 25 (f) (i)**

*substitute*

- (i) may consider whether section 19 (1) (b) (i) applies to the offender, but is not required to reduce the severity of any sentence as a result; and

**13 Section 27 heading**

*substitute*

**27 Referral during court proceeding—before offender enters plea**

**14 Section 27 (3)**

*substitute*

- (3) The court must ensure that a copy of the court referral order is given to—
  - (a) the director-general (restorative justice); and
  - (b) the director of public prosecutions; and
  - (c) any lawyer representing the offender.
- (3A) The director-general (restorative justice) must ensure that a copy of the court referral order received under section (3) (a) is given to—
  - (a) each person who could be an eligible victim or eligible parent in relation to the offence; and
  - (b) the offender.

**15 Court referral orders—reports  
Section 28 (3)**

*substitute*

- (3) The report must include a statement of the following:
- (a) whether the director-general is satisfied that, in relation to the offence—
    - (i) there is an eligible victim or eligible parent in relation to the offence; and
    - (ii) there is an eligible offender in relation to the offence; and
    - (iii) the offence is a suitable offence for restorative justice;
  - (b) whether a restorative justice conference was held;
  - (c) 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.

**16 Section 28 (5)**

*substitute*

- (5) The director-general must give a copy of the report to—
- (a) each person who is a required participant in a restorative justice conference under section 42 (Required participants); and
  - (b) the director of public prosecutions; and
  - (c) any lawyer representing the offender.

**17 New division 6.4***insert***Division 6.4 Referrals not requiring offender notification****28A Referrals not requiring offender notification—  
post-sentence stage**

- (1) A post-sentence referring entity may refer an offence for restorative justice if—
  - (a) the entity is satisfied there is an eligible victim or eligible parent in relation to the offence; and
  - (b) the offender—
    - (i) was at least 10 years old when the offence was committed; and
    - (ii) is in the post-sentence stage in relation to the offence; and
  - (c) the entity is satisfied, having regard to the objects of this Act, that it is not appropriate, or it is not reasonably practicable in the circumstances, to notify the offender that the offence is being considered for restorative justice.

*Note* For a referral under this section, the referring entity is not required to be satisfied the offender is an eligible offender. However, the director-general must be satisfied of that before deciding the offence is suitable for restorative justice (see s 30 (b)).

- (2) The restorative justice guidelines may prescribe procedures for how a post-sentence referring entity must make decisions about referrals under subsection (1).

- (3) In this section:

***post-sentence referring entity*** means an entity mentioned in table 22, item 5, column 2.

*post-sentence stage*, in relation to an offence for which the offender is found guilty, means—

- (a) after a court has made a sentence-related order for 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).

## **18 Section 29**

*substitute*

### **29 Meaning of *personal characteristics***

In this Act:

*personal characteristics*, of a victim, or a parent of a child victim, or offender, means personal characteristics of the victim, parent or offender that might affect—

- (a) the capability of the victim, parent or offender to agree to take part in restorative justice; or
- (b) the outcome of restorative justice for the relevant offence.

#### **Examples**

- age
- gender
- social or cultural background

*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).

**19 Finding of eligibility by referring entity  
Section 31 (1)**

*after*

section 23 (Referral—procedure)

*insert*

or section 28A (Referrals not requiring offender notification—post-sentence stage)

**20 Section 31 (1), new note**

*insert*

*Note* For a referral under s 28A, the referring entity is not required to be satisfied that the offender is an eligible offender.

**21 Suitability—decision  
New section 32 (4)**

*after the note, insert*

(4) In this section:

**written consent** includes oral or other consent, if a written record of the consent is made by a person who was with the person giving the consent when it was given.

**Example**

Royce is an eligible victim who has an acquired brain injury that limits his ability to write and speak. Royce is able to indicate his consent by using a communication board. Royce's mother is with Royce when he consents and makes a written record of his actions.

*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).

**22 Explanation of restorative justice—before consent  
Section 32A (e)**

*substitute*

- (e) if the offender has not entered a plea in relation to the offence—  
that the offender is not prevented from pleading not guilty to the  
offence only because section 19 (1) (b) (i) applies to the  
offender; and

**23 Section 32A (f) (i)**

*substitute*

- (i) may consider whether section 19 (1) (b) (i) applies to the  
offender, but is not required to reduce the severity of any  
sentence as a result; and

**24 Explanation for participants  
Section 45 (e)**

*substitute*

- (e) if the offender has not entered a plea in relation to the offence—  
that the offender is not prevented from pleading not guilty to the  
offence only because section 19 (1) (b) (i) applies to the  
offender; and

**25 Section 45 (f) (i)**

*substitute*

- (i) may consider whether section 19 (1) (b) (i) applies to the  
offender, but is not required to reduce the severity of any  
sentence as a result; and

**26 Form of agreement  
New section 52 (3)**

*after the note, insert*

- (3) If a required participant is not able to sign a restorative justice agreement but has given oral or other consent to the agreement, the director-general must ensure that a written record of the consent is—
- (a) made by a person who was with the person giving the consent when it was given; and
  - (b) kept with the restorative justice agreement.

**27 Explanation of effect of agreement  
Section 53 (d)**

*substitute*

- (d) if the offender has not entered a plea in relation to the offence— that the offender is not prevented from pleading not guilty to the offence only because section 19 (1) (b) (i) applies to the offender; and

**28 Section 53 (e) (i)**

*substitute*

- (i) may consider whether section 19 (1) (b) (i) applies to the offender, but is not required to reduce the severity of any sentence as a result; and

**29**      **Secrecy**  
**Section 64 (1), definition of *protected information*, paragraph (b)**

*substitute*

- (b) does not include—
- (i) information in a restorative justice agreement; or
  - (ii) information disclosing who attended a restorative justice conference; or
  - (iii) a written record of consent made under section 52 (3).

**30**      **Dictionary, definition of *personal characteristics***

*substitute*

***personal characteristics***, of a victim, or a parent of a child victim, or offender—see section 29.



## Schedule 1      Crimes (Sentencing) Act 2005—Consequential amendment

(see s 3)

### **[1.1]      Section 33 (1) (y)**

*substitute*

(y) if the *Crimes (Restorative Justice) Act 2004*,  
section 19 (1) (b) (i) applies to the offender—that fact;

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 23 August 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 26 September 2018.

**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) Amendment Bill 2018, which was passed by the Legislative Assembly on 18 September 2018.

Clerk of the Legislative Assembly

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