

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Brendan Smyth)

Corrections Reform Amendment Bill 2003

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
Part 2	
Crimes Act 1900	
3 Act amended—pt 2	3
4 New division 15.1A	3
5 New division 15.3	6
6 Part 15	10
7 Dictionary, new definition of <i>corrections legislation</i>	10

		Page
Part 3	Rehabilitation of Offenders (Interim) Act 2001	
8	Act amended—pt 3	11
9	New section 4A	11
10	Meaning of subject to imprisonment etc New section 5 (5)	11
11	New chapter 2A	12
12	Functions of board New section 66 (aa) and (ab)	17
13	Section 66 (d)	17
14	Section 66	17
15	New section 97A	18
16	Dictionary, new definition of <i>case manager</i>	18
17	Dictionary, new definitions	18

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Brendan Smyth)

Corrections Reform Amendment Bill 2003

A Bill for

An Act for the sentencing and rehabilitation of offenders, and for related purposes

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

1

Part 1 Preliminary

Section 1

1

2 **Part 1 Preliminary**

3 **1 Name of Act**

4 This Act is the *Corrections Reform Amendment Act 2003*.

5 **2 Commencement**

6 This Act commences on 1 July 2004.

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

Part 2 Crimes Act 1900

3 Act amended—pt 2

This part amends the *Crimes Act 1900*.

4 New division 15.1A

before division 15.1, insert

Division 15.1A Objects of corrections legislation

337 Objects

(1) The corrections legislation includes the following objects:

- (a) providing for the secure and safe imprisonment, care, treatment, health management and rehabilitation of offenders;
- (b) reducing the repetition of criminal and other antisocial behaviour by offenders.

Note **Corrections legislation** is defined in s 339.

(2) Subsection (1) does not limit the objects of the corrections legislation.

338 Achieving the objects

(1) The objects of the corrections legislation are to be achieved by—

- (a) enabling courts to formulate sentences for offenders using a range of stated penalty options in each sentence that—
 - (i) provide incentives and opportunities for offenders to progress through a number of custodial and other arrangements stated in the sentence; and
 - (ii) can be reviewed by the sentence administration board; and

Section 4

- 1 (b) enabling the use of a case management approach to
2 rehabilitation that—
- 3 (i) has regard to the needs of the offenders and the
4 community; and
- 5 (ii) involves other government agencies and the community;
6 and
- 7 *Note* Case managers for offenders are appointed under the *Rehabilitation of*
8 *Offenders (Interim) Act 2001*.
- 9 (c) enabling the provision of rehabilitation programs that—
- 10 (i) combine with broader based community programs; and
- 11 (ii) recognise the distinct needs of men and women,
12 offenders of different ages, and cultural, ethnic and other
13 disadvantaged groups; and
- 14 (iii) involve, as appropriate, family and other support
15 mechanisms; and
- 16 **Examples of rehabilitation programs**
17 health and life skills, therapeutic, education and training, sport and recreation, and
18 spiritual programs
- 19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 Legislation Act, s 126 and s 132).
- 22 (d) establishing the framework for the delivery of custodial and
23 other correctional programs; and
- 24 (e) ensuring the application of the highest standards of
25 competency, professionalism and ethical behaviour in
26 corrections management in the ACT; and
- 27 (f) establishing a set of institutional, management and operational
28 arrangements to achieve the objects in accordance with the
29 principles of transparency and accountability.

- 1 (2) Subsection (1) does not limit how the objects of this Act or the
2 related corrections legislation may be achieved.

3 **339 What is *corrections legislation*?**

4 In this division:

5 *corrections legislation* means the following:

- 6 (a) this part, part 18 (Conditional release of offenders) and part 19
7 (Community service orders);
8 (b) the *Community Based Sentences (Transfer) Act 2003*;
9 (c) the *Parole Orders (Transfer) Act 1983*;
10 (d) the *Periodic Detention Act 1995*;
11 (e) the *Prisoners (International Travel) Act 1999*;
12 (f) the *Prisoners Interstate Leave Act 1997*;
13 (g) the *Rehabilitation of Offenders (Interim) Act 2001*;
14 (h) the *Removal of Prisoners Act 1968*;
15 (i) the *Supervision of Offenders (Community Service Orders) Act*
16 *1985*.

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

5 New division 15.3*insert***Division 15.3 Imposition of sentences****366A Sentences and alternatives**

- (1) A court may impose a sentence on an offender convicted of an offence against a Territory law.
- (2) However, instead of imposing a sentence on the offender, the court may take action under any of the following provisions that are applicable:
- section 350 (Reparation orders)
 - section 402 (Conditional release of offenders without proceeding to conviction)
 - section 403 (1) (a) (that deals with the conditional release of offenders after proceeding to conviction, but without passing sentence).

366B Penalty options

The court may, in a sentence, impose 1 or more of the following penalties on an offender convicted of an offence for which a sentence of imprisonment may be imposed:

- (a) an order sentencing the offender to full-time imprisonment, including provisions for parole and any nonparole period;
- (b) a periodic detention order under the *Periodic Detention Act 1995*;
- (c) a home detention order under the *Rehabilitation of Offenders (Interim) Act 2001*, chapter 2;
- (d) a community service order under section 408 (Directions to perform work);

-
- (e) a place restriction order under the *Rehabilitation of Offenders (Interim) Act 2001*, chapter 2A;
- (f) a non-association order under the *Rehabilitation of Offenders (Interim) Act 2001*, chapter 2A;
- (g) an order under section 403 (1) (b) (Conditional release of offenders);
- (h) a fine.

Examples of sentences and case histories

The following are examples of hypothetical sentences that may be imposed on an offender by a court:

- 1 18-months sentence, comprising a 12-months home detention order and 6-months community service order
- 2 10-year sentence, comprising 7-years imprisonment with a non-parole period of 4 years followed by a 3-year place restriction order
- 3 2-year sentence, comprising a 1-year periodic detention order, a place restriction for the 2 years of the sentence and 1-year non-association order

Note 1 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).

Note 2

- *par (b)*: a periodic detention order sentences an offender to a stated number of detention periods at a stated detention centre
- *par (c)*: a home detention order directs that an offender's sentence, or part of an offender's sentence, be served by detention at the offender's home
- *par (d)*: a community service order directs an offender to perform unpaid work for a stated number of hours
- *par (e)*: a place restriction order prohibits an offender from going to or being in a stated place or district for a stated period
- *par (f)*: a non-association order prohibits an offender from associating with a stated person for a stated period
- *par (g)*: an order under s 403 (1) (b) sentences an offender to a term of imprisonment, but directs that the offender be released on a condition of giving security, either immediately or after the offender has served a stated part of the sentence of imprisonment

1 **366C Role of sentence administration board**

2 (1) A sentence may be subject to any conditions, stated by the court by
3 order, about review by the sentence administration board, as
4 provided by this section.

5 (2) The court may order 1 or more reviews by the sentence
6 administration board of the sentence within stated periods, or in
7 stated circumstances.

8 (3) The court may order that a penalty mentioned in section 366B is to
9 be imposed on the direction of the sentence administration board
10 after a review.

11 (4) A court order for this section may also indicate circumstances in
12 which a penalty may, subject to conditions stated by the court, be
13 varied on direction by the sentence administration board after a
14 review.

15 (5) However, before varying a penalty imposed on an offender, the
16 sentence administration board must ask the offender's case manager
17 to make written submissions to the board about the proposed
18 variation.

19 *Note* Case managers for offenders are appointed under the *Rehabilitation of*
20 *Offenders (Interim) Act 2001*.

21 (6) The sentence administration board must take into account any
22 submissions given to the board under subsection (5).

23 (7) If the sentence administration board directs the implementation of or
24 change to a penalty order, the order is taken to be implemented or
25 changed as if it had been imposed or changed by the court.

26 (8) If the offender breaches a penalty order, or a condition stated in an
27 order made for this section, the court may, by order, in addition to
28 any other powers the court may exercise in relation to the sentence,
29 change the sentence to restrict or remove the powers of the sentence
30 administration board under this section in relation to the offender.

1 (9) The court may not, by order, authorise the sentence administration
2 board to change:

3 (a) a nonparole period fixed in a sentence; or

4 (b) the overall term of a sentence.

5 (10) This section does not prevent the court, by order, changing a
6 condition imposed by it under subsection (1).

7 **Examples of the role of sentence administration board**

8 The following are hypothetical examples about the role of the sentence
9 administration board in relation to sentences:

10 1 A court imposes on an offender a sentence of 18 months, comprising
11 12-months home detention followed by a 6-months community service order.

12 The court also orders that the board must conduct a review after the offender
13 has completed 9-months home detention and that, after conducting the
14 review, the board may make 1 of the following directions:

15 (a) if the board is satisfied that the offender has achieved a meritorious
16 degree of rehabilitation—that the offender be released from the home
17 detention order and serve the remainder of the sentence on parole;

18 (b) if the board is satisfied that the offender has achieved a poor degree of
19 rehabilitation—that the offender serve the full term of the 18-months
20 sentence under home detention.

21 2 A court imposes on an offender a sentence of 10 years, comprising
22 imprisonment for 7 years with a non-parole period of 4 years, followed by a
23 place restriction order for the remaining 3 years.

24 The court also orders that—

25 (a) the board must conduct a review to consider the offender's parole after
26 the offender has completed 3 years and 9 months of imprisonment; and

27 (b) if the offender is granted parole, the place restriction order is to apply
28 for the remainder of the 10-year period of the offence.

29 The court further orders that the board must conduct a second review after
30 the offender has completed 6 years and 9 months of the sentence and that,
31 after the review, the board may make 1 of the following directions:

32 (a) if the board is satisfied that the offender has achieved a meritorious
33 degree of rehabilitation—that some or all of the period of the place
34 restriction order no longer applies and that the remainder of the
35 sentence be served on parole;

Section 6

- 1 (b) if the board is satisfied that the offender has achieved a poor degree of
2 rehabilitation—that the offender be subject to a periodic detention
3 order for the whole or part of the remainder of the 10 year period of
4 the sentence.

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

8 **366D Quarterly reports by sentence administration board**

9 Within 15 days after the end of each quarter, the sentence
10 administration board must give a report of its operations under
11 section 366C to the registrar of the Supreme Court or Magistrates
12 Court.

13 **6 Part 15**

14 *renumber divisions when Act next republished under the Legislation*
15 *Act*

16 **7 Dictionary, new definition of corrections legislation**

17 *insert*

18 *corrections legislation*, for division 15.1A (Objects of corrections
19 legislation)—see section 339.

Part 3 Rehabilitation of Offenders (Interim) Act 2001

8 Act amended—pt 3

This part amends the *Rehabilitation of Offenders (Interim) Act 2001*.

9 New section 4A

insert

4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

10 Meaning of *subject* to imprisonment etc New section 5 (5)

insert

- (5) A sentenced offender is *subject* to a non-association order or a place restriction order if a non-association order or place restriction order has been made for the offender, whether or not the order has taken effect.

11 New chapter 2A*insert***Chapter 2A Non-association and place restriction orders****28A Non-association and place restriction orders**

- (1) This section applies to an offender who is convicted or found guilty of an offence by a court.
- (2) The court may make an order—
 - (a) prohibiting the offender from associating with someone else for a stated period (a *non-association order*); or
 - (b) prohibiting the offender from often using or visiting a place or area for a stated time (a *place restriction order*).
- (3) A non-association order may—
 - (a) prohibit the offender from being in company with someone else; or
 - (b) prohibit the offender from communicating in any way with someone else.

28B Non-association and place restriction orders not to restrict certain associations or activities

- (1) A person mentioned in a non-association order as a person with whom the offender must not associate may not include any member of the offender's close family.
- (2) The places or areas mentioned in a place restriction order as places or areas that the offender must not often use or visit may not include a place that is, when the order is made—
 - (a) the offender's home; or

-
- 1 (b) the home of any member of the offender's close family; or
2 (c) a regular place of work or business of the offender; or
3 (d) an educational institution where the offender is enrolled; or
4 (e) a place of worship where the offender regularly attends.
- 5 (3) In this section, an offender's *close family* includes—
6 (a) the offender's domestic partner; and
7 (b) the offender's parents, stepparents and grandparents; and
8 (c) the offender's children, stepchildren and grandchildren; and
9 (d) the offender's brothers and sisters, and stepbrothers and
10 stepsisters; and
11 (e) the offender's guardians or carers.

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

13 **28C Explanation of non-association and place restriction**
14 **orders to offenders**

- 15 (1) If a court imposes a non-association order or place restriction order
16 on an offender, the court must ensure that all reasonable steps are
17 taken to explain to the offender (in language that the offender can
18 readily understand)—
19 (a) the offender's obligations under the order; and
20 (b) the consequences that may follow if the offender fails to
21 comply with those obligations.
- 22 (2) A non-association order or place restriction order is not invalid
23 because of a failure to comply with this section.

1 **28D Suspension of non-association and place restriction**
2 **orders while offenders in custody**

- 3 (1) An offender's non-association order or place restriction order is
4 suspended while the offender is in lawful custody.
- 5 (2) The suspension of an offender's non-association order or place
6 restriction order does not operate to postpone the date when the
7 order ends.
- 8 (3) A person is not taken to be in lawful custody only because the
9 person is serving a sentence by way of periodic or home detention.

10 **28E Contravention of non-association and place restriction**
11 **orders**

- 12 (1) An offender must not contravene a non-association order or place
13 restriction order.
- 14 Maximum penalty: 10 penalty units, imprisonment for 6 months, or
15 both.
- 16 (2) Subsection (1) does not apply if—
- 17 (a) the offender associated unintentionally with a person in
18 contravention of a non-association order and the offender
19 immediately ended the association; or
- 20 (b) the offender otherwise has a reasonable excuse for the
21 contravention.

22 **28F Changing or revoking non-association and place**
23 **restriction orders after subsequent conviction**

- 24 (1) This section applies to an offender who is sentenced by a court in
25 relation to an offence (the *new offence*) while subject to a
26 non-association order or place restriction order in relation to another
27 offence (the *old offence*).

- 1 (2) When sentencing the offender for the new offence, the court may
2 change or revoke the non-association order or place restriction order
3 for the old offence.

4 **28G Changing or revoking non-association and place**
5 **restriction orders on application**

- 6 (1) An offender who is subject to a non-association order or place
7 restriction order may, with the leave of the sentencing court that
8 made the order, apply to the court for a change to or revocation of
9 the order.
- 10 (2) The application must be accompanied by a copy of the relevant
11 order, together with any changes to it that have been made.
- 12 (3) The court may give leave only if it is satisfied that, having regard to
13 changes in the applicant's circumstances since the order was made
14 or last varied, it is in the interests of justice that leave be given.
- 15 (4) The court may refuse to consider an application for leave if it is
16 satisfied that the application is frivolous or vexatious.
- 17 (5) If leave is given—
- 18 (a) the court must give written notice of the application to the
19 chief police officer; and
- 20 (b) the chief police officer is entitled to appear and be heard in any
21 proceedings on the application.
- 22 (6) The court may deal with the application without conducting a
23 hearing.
- 24 (7) The court may—
- 25 (a) change or revoke the non-association order or place restriction
26 order in accordance with the application; or
- 27 (b) dismiss the application.

1 **28H Certain information not to be disclosed**

- 2 (1) A person commits an offence if the person discloses—
- 3 (a) the fact that a named person (other than the offender) is
- 4 mentioned in a non-association order under section 28A (2) (a)
- 5 (Non-association and place restriction orders); or
- 6 (b) any information that might reasonably identify the named
- 7 person as a person mentioned in a non-association order under
- 8 section 28 (2) (a).
- 9 Maximum penalty: 10 penalty units.
- 10 (2) Subsection (1) does not apply to the disclosure of information to any
- 11 of the following people:
- 12 (a) the offender;
- 13 (b) a person mentioned in the non-association order as a person
- 14 with whom the offender is prohibited or restricted from
- 15 associating;
- 16 (c) a police officer;
- 17 (d) a person involved in the administration of the non-association
- 18 order or of any other penalty to which the offender is subject in
- 19 relation to the same offence;
- 20 (e) a person involved in proceedings for an alleged breach of the
- 21 non-association order;
- 22 (f) a person mentioned in the non-association order as a person to
- 23 whom the information may be disclosed;
- 24 (g) anyone else to whom the information is required or authorised
- 25 to be disclosed under a law.
- 26 (3) Subsection (1) does not apply to the disclosure of an official report
- 27 of the proceedings of a court.

- 1 (4) It is a defence to a prosecution of a person for an offence against
2 this section, in relation to a person named in a non-association order
3 under section 28 (2) (a), if the person establishes that the named
4 person consented to the name or information being disclosed before
5 the disclosure happened.
- 6 (5) An offence against this section is a strict liability offence.

7 **12 Functions of board**
8 **New section 66 (aa) and (ab)**

9 *insert*

- 10 (aa) to consider the consequences of complying with, or failing to
11 comply with, the terms of an order imposed as part of a
12 sentence on a sentenced offender; and
- 13 (ab) to review any sentence in accordance with the terms of any
14 order made as part of the sentence, and exercise any function
15 given to the board in relation to the sentence under the *Crimes*
16 *Act 1900*, section 366C; and

17 **13 Section 66 (d)**

18 *omit*

19 **14 Section 66**

20 *renumber paragraphs when Act next republished under Legislation*
21 *Act*

1 **15 New section 97A**

2 *insert*

3 **97A Case managers—appointment and functions**

4 (1) The director of corrective services must, in writing, appoint a case
5 manager to a sentenced offender.

6 (2) The case manager has the functions given to him or her under this
7 Act or any other Territory law, or by the director of corrective
8 services.

9 **16 Dictionary, new definition of *case manager***

10 *insert*

11 *case manager*, in relation to a sentenced offender, means the person
12 who is appointed a case manager to the sentenced offender under
13 section 97A.

14 **17 Dictionary, new definitions**

15 *insert*

16 *non-association order*—see section 28A.

17 *place restriction order*—see section 28A.

Endnote

Republications of amended laws

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