

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Crimes (Sentencing) Bill 2004

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**Dictionary**

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## **EXPOSURE DRAFT**



# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Crimes (Sentencing) Bill 2004

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### **A Bill for**

An Act to consolidate and reform the law for sentencing offenders, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Sentencing) Act 2004*.

### 2 Commencement

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

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

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

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

### 3 Dictionary

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

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

For example, the signpost definition ‘*young offender*—see the *Children and Young People Act 1999*, section 64.’ means that the term ‘young offender’ is defined in that section and the definition applies to this Act.

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

#### 4 Notes

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

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

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

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

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

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

*Note 2* *Penalty units*

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

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## **Part 2 Objects and important concepts**

### **6 Objects of Act**

The objects of this Act include the following:

- (a) to promote respect for the law and the maintenance of a just and safe society;
- (b) to provide a range of sentences suitable for the appropriate punishment and rehabilitation of offenders;
- (c) to maximise the opportunity for imposing sentences that are constructively adapted to individual offenders;
- (d) to promote flexibility in sentencing by providing for combination sentences;
- (e) to consolidate the statutory law relating to the imposition of sentences.

### **7 Purposes of sentencing**

A court may impose a sentence for 1 or more of the following purposes:

- (a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;
- (b) to prevent crime by deterring the offender and other people from committing the same or similar offences;
- (c) to protect the community from the offender;
- (d) to promote the rehabilitation of the offender;
- (e) to make the offender accountable for his or her actions;

- (f) to denounce the conduct of the offender;
- (g) to recognise the harm done to the victim of the crime and the community.

## **8 Meaning of *offender***

In this Act:

*offender*—

- (a) means a person convicted or found guilty of an offence by a court; and
- (b) for division 4.2 (Presentence reports)—see section 48.

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## Part 3 Sentencing and non-conviction options

*Note 1* Under this Act, a court has the following sentencing and non-conviction options:

- imprisonment served by full-time detention in a correctional centre (see div 3.2 and pt 5)
- imprisonment served by home detention (see s 11 and pt 6)
- imprisonment served by periodic detention in a correctional centre (see s 12 and pt 7)
- good behaviour bond under good behaviour order (see s 13 and pt 8)
- community service condition in good behaviour bond (see s 14 and pt 9)
- rehabilitation program condition in good behaviour bond (see s 15 and pt 10)
- non-conviction order (see s 16)
- suspended sentence order (see s 17)
- presentence order (see div 3.5)
- financial penalty order (see s 22)
- fine or donation condition in good behaviour bond (see s 23 and s 24)
- non-association or place restriction condition on a home detention order, periodic detention order or good behaviour bond (see div 3.7)
- driver licence disqualification order (see s div 3.8)
- reparation order (see div 3.9 and pt 11)

*Note 2* In sentencing an offender to imprisonment, a court may also impose a **combination sentence** combining 2 or more of the options listed in note 1 (see div 3.10).

## **Division 3.1            General**

### **9            Imposition of penalties**

- (1) The penalty a court may impose for an offence is the penalty provided under this Act or any other Territory law.
- (2) Part 4 (Sentencing procedures generally) applies to the imposition of all penalties imposed by a court, whether under this Act or otherwise.

*Note*        The Legislation Act, s 133, s 135 and s 136 deal with penalty units and the effect of the statement of a penalty for an offence in a Territory law.

## **Division 3.2            Sentences of imprisonment**

### **10          Imprisonment generally**

- (1) This section applies if a court is sentencing an offender convicted of an offence punishable by imprisonment.
- (2) The court may sentence the offender to imprisonment, for all or part of the term of the sentence, if the court is satisfied, having considered all possible alternatives, that no other penalty is appropriate.

*Note*        An order sentencing an offender to imprisonment may be made as part of a **combination sentence** together with other sentencing orders (see div 3.10).

- (3) If the court sentences the offender to imprisonment, the sentence must be served by full-time detention in a correctional centre, unless—
  - (a) the court orders otherwise; or

(b) the offender is released from detention under this Act or another law in force in the ACT.

**Examples for par (a)**

- 1 a home detention order
- 2 a periodic detention order
- 3 a suspended sentence order

**Example for par (b)**

release on parole under the *Crimes (Sentence Administration) Act 2004*

*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) If the court sentences the offender to imprisonment, the court must record the reasons for its decision.
- (5) This section is subject to part 5 (Imprisonment).
- (6) This section also applies subject to any contrary intention in the law that creates the offence.
- (7) Failure to comply with this section does not invalidate a sentence.
- (8) In this section:  
*creates*—a law *creates* an offence if it directly or indirectly creates the offence or affects its scope or operation.



- (5) A home detention order may include any condition the court considers appropriate that is consistent with this Act and the *Crimes (Sentence Administration) Act 2004*.
- (6) This section is subject to part 6 (Home detention).

## **12 Periodic detention—generally**

- (1) This section applies if a court sentences a convicted offender to imprisonment for an offence.
- (2) The court may make an order (a ***periodic detention order***) directing that the offender serve all or part of the sentence by periodic detention if—
  - (a) the court would otherwise require the offender to serve the sentence, or that part of the sentence, by full-time detention in a correctional centre; and
  - (b) the court is satisfied that the offender is eligible for periodic detention under division 7.2 (Periodic detention—eligibility).

*Note 1* ***Periodic detention*** consists of detention for 1 stated detention period (a period of 48 hours, for example from Friday evening until Sunday evening) for each week of the term stated in a periodic detention order, except for the Easter weekend or Christmas day (if they would otherwise fall during a detention period). See the *Crimes (Sentence Administration) Act 2004*, s 136 (Periodic detention—definitions) and s 137 (Meaning of *detention period*).

*Note 2* A periodic detention order for a convicted offender may be made as part of a ***combination sentence*** together with other sentencing orders (see div 3.10 (Combination sentences)).

- (3) In a periodic detention order, the court must state the day the first detention period under the order is to start.

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- (4) In a periodic detention order, a court may only direct that the offender is subject to periodic detention for between 3 months and 2 years.
- (5) A court that makes a periodic detention order for a term of 1 year or longer for an offender must state in the order the alternative nonparole period (if any) the court would have set for the offender if that term of the sentence were to be served by full-time detention in a correctional centre.

*Note* If the periodic detention order is cancelled under the *Crimes (Sentence Administration) Act 2004*, the offender may be required to serve the remainder of the term of the sentence by full-time detention in a correctional centre. If so, the offender may apply for the court to set a nonparole period for the remaining term of the sentence if the remaining term is 1 year or longer. The court must consider the stated alternative nonparole period (if any) in making a decision on the application (see *Crimes (Sentence Administration) Act 2004*, s 170).

- (6) A periodic detention order may include any condition the court considers appropriate that is consistent with this Act and the *Crimes (Sentence Administration) Act 2004*.
- (7) This section is subject to part 7 (Periodic detention).

## **Division 3.4                    Non-custodial alternatives**

### **13                    Good behaviour orders—generally**

- (1) This section applies if an offender has been found guilty of an offence, whether or not the offender has been convicted of the offence.
- (2) The court may make an order (a *good behaviour order*) requiring the offender to enter into a good behaviour bond for a stated period.

- (3) If the offence is punishable by imprisonment, the good behaviour order—
- (a) may be made instead of imposing a sentence of imprisonment on the offender or as part of a combination sentence that includes imprisonment; and
  - (b) may apply to part or all of the term of the sentence.
- (4) A good behaviour order, and a good behaviour bond entered into under a good behaviour order, may include any condition the court considers appropriate that is consistent with this Act and the *Crimes (Sentence Administration) Act 2004*.

**Examples of conditions that may be included in good behaviour bonds**

- 1 a community service condition (see s 14)
- 2 a rehabilitation program condition and a probation condition (see s 15 (2))
- 3 a fine condition (see s 23 (2) (a) (Bonded financial penalty orders))
- 4 a donation condition (see s 23 (2) (b) and s 24 (2) (Bonded donation orders)).

*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).

- (5) This section is subject to part 8 (Good behaviour bonds).

*Note* Div 8.2 provides in more detail for the conditions that may be included in good behaviour bonds.

**14 Good behaviour orders—community service conditions**

- (1) This section applies if a court is sentencing a convicted offender for an offence.
- (2) If the court makes a good behaviour order for the offender, the order may require the offender to enter into a good behaviour bond that includes a condition (a *community service condition*) that the

offender perform community service work for a stated number of hours during a stated period.

*Note 1* The number of hours that may be required to be worked for a community service condition is between 20 and 500 (see s 121).

*Note 2* **Community service work** is work prescribed under regulations under the *Crimes (Sentence Administration) Act 2004* (see that Act, s 386).

- (3) A good behaviour order mentioned in subsection (2) is a **community service order**, no matter what other conditions are included in the bond the offender is required to enter into under the order.

**Example of community service order requiring multiple bond conditions**

a good behaviour order requiring an offender to enter into a good behaviour bond that includes the following conditions:

- a community service condition (see s (2))
- a rehabilitation program condition and a probation condition (see s 15 (2))
- a fine condition (see s 23 (2) (a) (Bonded financial penalty orders))

*Note 1* The community service order in the example may also be described, for this Act, as a **good behaviour order**, a **rehabilitation program order** and a **bonded financial penalty order**. Accordingly, the provisions of this Act governing all these various kinds of orders would apply, in relevant respects, to the order in the example.

*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).

- (4) This section is subject to part 8 (Good behaviour bonds) and part 9 (Community service).

**15 Good behaviour orders—rehabilitation program conditions**

- (1) This section applies if an offender has been found guilty of an offence, whether or not the offender has been convicted of the offence.

- (2) For this Act, a **rehabilitation program** is a program prescribed under the regulations for the rehabilitation of offenders.
- (3) If the court makes a good behaviour order for the offender, the order may require the offender to enter into a good behaviour bond that includes both of the following:
- (a) a condition (a **rehabilitation program condition**) that the offender undertake a rehabilitation program for no longer than 3 years;
  - (b) a probation condition under section 115 (Good behaviour—bond conditions).
- (4) A good behaviour order mentioned in subsection (3) is a **rehabilitation program order**, no matter what other conditions are included in the bond the offender is required to enter into under the order.

**Example of rehabilitation program order requiring multiple bond conditions**

a good behaviour order requiring a convicted offender to enter into a good behaviour bond that includes the following conditions:

- a rehabilitation program condition and a probation condition (see s (2))
- a community service condition (see section 14 (2))
- a fine condition (see s 23 (2) (a) (Bonded financial penalty orders))

*Note 1* The rehabilitation program order in the example may also be described, for this Act, as a **good behaviour order**, a **community service order** and a **bonded financial penalty order**. Accordingly, the provisions of this Act governing all these various kinds of orders would apply, in relevant respects, to the order in the example.

*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).

- (5) This section is subject to part 8 (Good behaviour) and part 10 (Rehabilitation programs).

*Note* A court may also issue assessment orders and treatment orders under the *Drugs of Dependence Act 1989*, pt 9 providing for the participation of offenders in drug treatment programs.

## **16 Non-conviction orders**

- (1) This section applies if an offender has been found guilty of an offence.
- (2) Without convicting the offender of the offence, the court may make either of the following orders (each of which is a ***non-conviction order***):

- (a) an order directing that the charge be dismissed, if the court is satisfied that it is not appropriate to impose any punishment (other than nominal punishment) on the offender;
- (b) a good behaviour order requiring the offender to enter into a good behaviour bond for no longer than 3 years.

*Note* See also s 13 and pt 8.

- (3) In deciding whether to make a non-conviction order for the offender, the court must consider the following:
- (a) the offender's character, antecedents, age, health and mental condition;
- (b) the seriousness of the offence;
- (c) any extenuating circumstances in which the offence was committed.
- (4) In deciding whether to make a non-conviction order for the offender, the court may also consider anything else the court considers relevant.

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- (5) A non-conviction order has the same effect as a conviction—
- (a) for the application of division 3.8 (Driver licence disqualification orders): and
  - (b) for the application of division 3.9 (Reparation orders) (see section 31).

*Note* An appeal may lie to the Supreme Court from a decision of the Magistrates Court to make a non-conviction order for an offender in the same circumstances as an appeal from a decision of the Magistrates Court in relation to an offender's conviction for an offence (see *Magistrates Court Act 1930*, pt 3.10).

## **17 Suspended sentences**

- (1) This section applies if a court sentences a convicted offender to imprisonment for an offence.
- (2) The court may make an order (a *suspended sentence order*) suspending execution of all or part of the sentence of imprisonment.
- (3) If the court makes a suspended sentence order, the court must also make a good behaviour order requiring the offender to enter into a good behaviour bond for the period during which the sentence is suspended.

*Note 1* See also s 13, s 68 and pt 8.

*Note 2* A suspended sentence order may be made as part of a *combination sentence* together with other sentencing orders (see div 3.10).

- (4) Part 5 (Imprisonment) does not apply in relation to a sentence that is suspended under a suspended sentence order, or the suspended part of the sentence, except to the extent to which it deals with setting the nonparole period and the balance of the term of the sentence.

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## Division 3.5 Presentence orders

### 18 Presentence orders—generally

- (1) This section applies if—
  - (a) an offender has been found guilty of an offence punishable by imprisonment; and
  - (b) the offender is neither serving, nor is liable to serve, a term of imprisonment for another offence; and
  - (c) a court grants bail to the offender under the *Bail Act 1992*.

*Note* The order granting bail may be subject to conditions. For example, the order may require the offender to undertake a rehabilitation program (see *Bail Act 1992*, s 25).

- (2) The court may make an order (a **presentence order**) requiring the offender to appear before the court at the time, on the day (the **sentencing day**) and at the place stated in the order to be sentenced for the offence.
- (3) In a presentence order, the court may also require the offender to appear before the court at the times, on the days (before the sentencing day) and at the places stated in the order for the purpose of reviewing the offender's compliance with the offender's bail conditions.

### 19 Presentence orders—decision

- (1) The court may make a presentence order for an offender only if it considers that—
  - (a) making the order and releasing the offender on bail would allow the offender to address his or her criminal behaviour and anything that has contributed to the behaviour; and

- (b) if the offender were to comply with the order and any bail conditions, the court might not impose a sentence as severe as if the offender were not to comply with the order.

**Example**

If the court considers that the seriousness of the offence justifies a sentence of imprisonment, the court may make a presentence order if it considers that, if the offender were to comply with the order and bail conditions designed to address the offender's criminal behaviour, the court might not impose the sentence of imprisonment, and might impose a less severe sentence.

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

- (2) If the court receives a presentence report about the offender—
- (a) the court must consider the report in deciding whether to make a presentence order for the offender; and
- (b) the court must record reasons for its decision if the presentence report states that a presentence order is suitable for the offender, but the court decides not to make a presentence order.

*Note* The court may order a presentence report under s 49 (Court may order presentence reports).

- (3) The court may make a presentence order whether or not it considers that the seriousness of the offence justifies a sentence of imprisonment.
- (4) In a presentence order, the court must state, in general terms—
- (a) the penalty the offender might receive if the offender complies with the order and any bail conditions; and
- (b) the penalty the offender might receive if the offender does not comply with the order or a bail condition.

- (5) A presentence order applies to all offences for which the court is sentencing the offender, whether or not they are punishable by imprisonment.

## **20 Presentence orders—period of effect**

- (1) A presentence order must not be made fixing a sentencing day that is more than 12 months after the day the order is made.
- (2) A presentence order—
- (a) starts on the day it is made; and
  - (b) ends on—
    - (i) the sentencing day; or
    - (ii) if the court cancels it before the sentencing day—the day the court cancels it.
- (3) In this section:  
*sentencing day*—see section 18 (2).

## **21 Presentence orders—explanation**

- (1) If the court makes a presentence order for an offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
- (a) the offender's obligations under the order and under any bail conditions; and
  - (b) the consequences that may follow if the offender breaches the obligations.

*Note* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (2) However, failure to comply with this section does not invalidate a presentence order.

## Division 3.6 Financial penalties

### 22 Financial penalty orders

- (1) This section applies if a court is sentencing a convicted offender for an offence.
- (2) The court may make an order (a *financial penalty order*) directing that the offender—
- (a) pay a fine; or
  - (b) make a donation; or
  - (c) pay a fine and make a donation.

*Note* The maximum amount of the financial penalty (a fine or a donation) that may be imposed for an offence is provided for in s 25.

- (3) Before making the order, the court must consider the financial circumstances of the offender (if details are available to the court), in addition to any other relevant matters.
- (4) The court may make a financial penalty order for the offender whether or not the offence is punishable by a fine otherwise than under this division.
- (5) If, in a financial penalty order, the court directs a fine to be paid, the court must state in the order—
- (a) the amount of the fine; and

- (b) how the fine is to be paid (for example, by stated instalments at stated times).

*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).

- (6) If, in a financial penalty order, the court directs a donation to be made, the court must state in the order—
- (a) the amount of the donation; and
  - (b) how the donation is to be made (for example, by stated instalments at stated times); and
  - (c) the name of the institution, or the kind of institution, to which the donation must be made.

## **23 Bonded financial penalty orders**

- (1) This section applies if a court is sentencing a convicted offender for an offence.
- (2) If the court makes a good behaviour order for the offender, the order may require the good behaviour bond to be entered into by the offender to include—
- (a) a condition that the offender pay a fine (a *fine condition*); or
  - (b) a condition that the offender make a donation (a *donation condition*); or
  - (c) both a fine condition and a donation condition.

*Note* The maximum amount of the financial penalty (a fine or a donation) that may be imposed for an offence is provided for in s 25.

- (3) Before making the order, the court must consider the financial circumstances of the offender (if details are available to the court), in addition to any other relevant matters.

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- (4) A fine condition or a donation condition (or both) may be included in a good behaviour bond required to be entered into by the offender under the order whether or not the offence is punishable by a fine otherwise than under this division.
- (5) A fine condition must state—
- (a) the amount of the fine; and
  - (b) how the fine is to be paid (for example, by stated instalments at stated times).

*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).

- (6) A donation condition must state—
- (a) the amount of the donation; and
  - (b) how the donation is to be made (for example, by stated instalments at stated times).
  - (c) the name of the institution, or the kind of institution, to which the donation must be made.

*Note* The maximum amount of the financial penalty (a fine or donation) that may be imposed for an offence is provided for in s 25.

- (7) A good behaviour order mentioned in subsection (2) is a ***bonded financial penalty order***, no matter what other conditions are included in the bond the offender is required to enter into under the order.

**Example of bonded financial penalty order requiring multiple bond conditions**

a good behaviour order that requires an offender to enter into a good behaviour bond that includes the following conditions:

- a fine condition (see s (2) (a))
- a community service condition (see s 14 (2))

- a rehabilitation program condition and probation condition (see s 15 (2))

*Note* The bonded financial penalty order in the example may also be described, for this Act, as a **good behaviour order**, a **rehabilitation program order** and a **community service order**. Accordingly, the provisions of this Act governing all these various kinds of orders would apply, in relevant respects, to the order in the example.

- (8) This section is subject to section 13 (Good behaviour orders—generally) and part 8 (Good behaviour bonds).

## **24 Bonded donation orders**

- (1) This section applies if a court makes a non-conviction order for an offender for an offence requiring the offender to enter into a good behaviour bond.
- (2) The non-conviction order may require the good behaviour bond to be entered into by the offender to include a condition that the offender make a donation (a **donation condition**).

*Note* If the non-conviction order does not dismiss the charge for the offence, the court must make a good behaviour order for the offence (see s 16 (2)).

- (3) Before making the order, the court must consider the financial circumstances of the offender (if details are available to the court), in addition to any other relevant matters.
- (4) A donation condition may be included in a good behaviour bond required to be entered into by the offender under the order whether or not the offence is punishable by a fine otherwise than under this division.
- (5) A donation condition must state—
- (a) the amount of the donation; and

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- (b) how the donation is to be made (for example, by stated instalments at stated times).
- (c) the name of the institution, or the kind of institution, to which the donation must be made.

*Note 1* The maximum amount of the donation that may be required is provided for in s 25.

*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) A good behaviour bond mentioned in subsection (2) is a ***bonded donation order***, no matter what other conditions are included in the bond the offender is required to enter into under the order.

**Example of bonded donation order requiring multiple bond conditions**

a good behaviour order requiring an offender to enter into a good behaviour bond that includes the following conditions:

- a donation condition (see s (2))
- a rehabilitation program condition and a probation condition (see s 15 (2))

*Note* The bonded donation order in the example may also be described, for this Act, as a ***good behaviour order*** or a ***rehabilitation program order***. Accordingly, the provisions of this Act governing these kinds of orders would apply, in relevant respects, to the order in the example.

## 25 Maximum amount of financial penalties

- (1) This section applies if a court proposes to make any of the following orders for an offender for an offence:
  - (a) a financial penalty order directing the offender to pay a fine or donation, or both;
  - (b) a bonded financial penalty order requiring the offender to enter into a good behaviour bond including a fine condition, donation condition or both;

- (c) a bonded donation order requiring the offender to enter into a good behaviour bond including a donation condition.
- (2) The maximum financial penalty that may be imposed for the offence is—
  - (a) if the offence is punishable by a fine otherwise than under this division—the maximum amount fixed for the fine; or
  - (b) in any other case—
    - (i) if the Supreme Court makes the order—\$10 000; or
    - (ii) if the Magistrates Court makes the order—\$2 000.
- (3) In this section:

*financial penalty* means the total amount payable under an order or bond to which this section applies (whether as a fine or donation, or both).

## **Division 3.7                      Non-association and place restriction conditions**

### **26                      Application—div 3.7**

This division applies to an offender if a court makes any of the following orders for the offender:

- (a) a good behaviour order requiring the offender to enter into a good behaviour bond;
- (b) a periodic detention order;
- (c) a home detention order.

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**27 Meaning of *non-association condition* and *place restriction condition***

In this Act:

*non-association condition*, of a good behaviour bond, periodic detention order or home detention order to which an offender is subject, means a condition of the bond or order prohibiting the offender from doing 1 of the following (as directed by the bond or order) with a stated person for a stated period of no longer than 12 months:

- (a) being with the person or attempting to be with the person;
- (b) being with the person or communicating in any way with the person, or attempting to be with the person or to communicate in any way with the person;

*place restriction condition*, of a good behaviour bond, periodic detention order or home detention order to which an offender is subject, means a condition of the bond or order prohibiting the offender from doing both of the following for a stated period of no longer than 12 months:

- (a) being in or visiting a place or area stated in the bond or order;
- (b) attempting to be in, or to visit, a place or area stated in the bond or order.

**28 Non-association and place restriction—conditions**

- (1) The court may include a non-association condition or place restriction condition in the bond or order.
- (2) However, the court may include a non-association condition or place restriction condition only if it is satisfied that it is necessary and reasonable.

- (3) The period of a non-association condition or place restriction condition included in the bond or order—
- (a) is not limited by any term of imprisonment imposed for the offence; and
  - (b) may be stated to start after the offender has served any period of full-time imprisonment that may be required by the offender's sentence for the offence.

*Note* A non-association condition or place restriction condition may apply for no longer than 12 months (see s 27).

- (4) This section does not limit the power of the court to make any other order or to give any direction under this Act or any other Territory law.

*Note* See also s 13 and pt 8.

## **29 Non-association and place restriction—disclosure of identifying information**

- (1) This section applies if—
- (a) an offender has entered into a good behaviour bond, or is subject to a periodic detention order or home detention order, for an offence; and
  - (b) a non-association condition applies in relation to someone else under the bond or order (the *associated person*).
- (2) A person must not publish or broadcast—
- (a) the fact that a named person is the associated person; or
  - (b) any information that could reasonably identify the associated person.

Maximum penalty: 10 penalty units.

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- (3) Subsection (2) does not apply to the publication or broadcast of information—
- (a) to a relevant person; or
  - (b) in the interests of justice by or at the direction of a court to someone named by the court; or
  - (c) if the information is relevant to a court proceeding—as part of an official report of the proceeding.

(4) An offence against this section is a strict liability offence.

(5) In this section:

*relevant person*, in relation to the publication or broadcast of information under subsection (2), means any of the following:

- (a) the offender;
- (b) the associated person;
- (c) a police officer;
- (d) anyone involved in the administration of the bond or order, or any other penalty to which the offender is subject in relation to the offence for which the bond or order was entered into or made;
- (e) anyone involved in a proceeding for failure to comply with the non-association condition;
- (f) anyone stated in the non-association condition as someone to whom the information may be published or broadcast;
- (g) anyone else to whom the information is required or allowed to be published or broadcast under a law of the Territory, the Commonwealth, a State or another Territory.

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## **Division 3.8                      Driver licence disqualification orders**

### **30                      Driver licence disqualification orders—motor vehicle theft**

- (1) This section applies if—
- (a) an offender is convicted of an offence against a Territory law of theft in relation to a motor vehicle; or

**Example**

an offence against any of the following provisions of the Criminal Code in relation to property that is a motor vehicle:

- s 308 (Theft)
  - s 309 (Robbery)
  - s 310 (Aggravated robbery)
  - s 311 (Burglary)
  - s 312 (Aggravated burglary)
- (b) an offender is convicted of an offence against the Criminal Code, section 318 (Taking etc motor vehicle without consent); or

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(c) under division 4.4 (Taking additional offences into account in sentencing), an offence mentioned in paragraph (a) or (b) is taken into account in imposing a penalty on the offender for another offence.

*Note 1* Section 16 (Non-conviction orders) provides that a non-conviction order has the same effect as a conviction for the application of this division.

*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 sentencing the offender may make an order (a ***driver licence disqualification order***) disqualifying the offender from holding or obtaining a driver licence under the *Road Transport (Driver Licensing) Act 1999* for a period the court considers appropriate.

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

(3) The court sentencing the offender must give details of a driver licence disqualification order to the road transport authority.

(4) This section does not limit the power of a court making a driver licence disqualification order to make any other order or to give any direction under this Act or any other Territory law.

(5) In this section:

***motor vehicle***—see the Criminal Code, section 318 (3).

(6) This section also applies if an offender is convicted of an offence against a Territory law of stealing or attempting to steal a motor vehicle.

(7) Subsection (6), this subsection and subsection (8) expire 2 years after the day this section commences.

- (8) Subsections (6) and (7) and this subsection are laws to which the Legislation Act, section 88 applies.

## **Division 3.9            Reparation orders**

### **31            Application—div 3.9**

- (1) This division applies if—
- (a) a court sentences a convicted offender for an offence against a Territory law (a *reparation offence*); or
  - (b) in sentencing a convicted offender, a court takes an offence against a Territory law (also a *reparation offence*) into account under division 4.4 (Taking additional offences into account in sentencing) in imposing a penalty on the offender for another offence.

*Note*        Section 16 (5) provides that a non-conviction order has the same effect as a conviction for the application of this division.

- (2) This division applies subject to part 11 (Reparation).

### **32            Reparation—generally**

- (1) This section applies if a person (the *injured person*) suffers loss or incurs expense (including any out-of-pocket expense) as a direct result of the commission of the reparation offence.
- (2) Before the court sentences the offender, the director of public prosecutions may apply to the court for an order under this section in relation to the injured person.

- (3) On application under subsection (2), or its own initiative, the court may make an order (a *reparation order*) requiring the offender to make reparation to the injured person, by way of a payment of money or otherwise, for the loss or expense.

*Note* If the reparation order is made in relation to stolen property, the total amount that may be recovered under a reparation order is the value of the stolen property in addition to the amount of any additional loss or expense incurred by the injured person as a direct result of the commission of the offence (see s 33).

- (4) However, the court must not order the offender to make reparation to a person only because the person's property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003*.
- (5) This section does not limit the power of the court making the reparation order to make any other order or to give any direction under this Act or any other Territory law.
- (6) In this section:  
*loss*—see the Criminal Code, section 300.

### **33 Reparation—person originally entitled to stolen property**

- (1) This section applies if the reparation offence relates to stolen property.
- (2) On the application of the director of public prosecutions, or its own initiative, the court sentencing the offender may make an order (a *reparation order*) that a person having custody or possession of the stolen property restore it to someone entitled to recover it from the person.
- (3) On the application of someone who, if the stolen property were in the custody or possession of the offender, would be entitled to recover it from the offender, the court sentencing the offender may

## **EXPOSURE DRAFT**

make an order (also a *reparation order*) that an amount not exceeding the total of the following amounts be paid to the applicant by the offender:

- (a) the value of the stolen property;
  - (b) the amount of any additional loss suffered, or expense (including any out-of-pocket expense) incurred, by the applicant as a direct result of the commission of the offence.
- (4) This section does not limit the power of the court making the reparation order to make any other order (including, for example, another reparation order under this division) or to give any direction under this Act or any other Territory law.

*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).

- (5) In this section:

*stolen property*—see the Criminal Code, section 314 (Receiving—meaning of *stolen property*).

*Note* Under the Criminal Code, stolen property includes tainted property. Tainted property is the proceeds of the sale of stolen property, or property that is exchanged for stolen property.

### **34      **Reparation—purchaser of stolen property****

- (1) This section applies if—
- (a) the court makes an order under section 33 (2) (Reparation—person originally entitled to stolen property) for restoration of stolen property; and
  - (b) the court considers that the offender has sold the property to a purchaser who was acting honestly.

- (2) On the application of the purchaser, the court may make an order (a *reparation order*) that the offender pay the applicant an amount not exceeding the amount paid for the purchase by the applicant, in addition to the amount of any other loss suffered, or expense (including any out-of-pocket expense) incurred, by the applicant as a direct result of the purchase.
- (3) This section does not limit the power of the court to make any other order (including, for example, another reparation order under this division) or to give any direction under this Act or any other Territory law.

*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).

### **35 Reparation—mortgagee of stolen property**

- (1) This section applies if—
  - (a) the court makes an order under section 33 (2) (Reparation—person originally entitled to stolen property) for restoration of stolen property; and
  - (b) the court considers that the offender has borrowed money on the security of the property from a lender acting honestly.
- (2) On the application of the lender, the court may make an order (a *reparation order*) that the offender pay the applicant an amount not exceeding the amount owed to the applicant under the loan, in addition to the amount of any other loss suffered, or expense (including any out-of-pocket expense) incurred, by the applicant as a direct result of the loan.

- (3) This section does not limit the power of the court to make any other order (including, for example, another reparation order under this division) or to give any direction under this Act or any other Territory law.

*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).

## **Division 3.10          Combination sentences**

### **36          Application—div 3.10**

This division applies if an offender is convicted of an offence punishable by imprisonment.

### **37          Combination sentences—nature**

- (1) The court sentencing the offender may impose a sentence (a *combination sentence*) consisting of 2 or more of the following orders:

- (a) an order sentencing the offender to imprisonment;

*Note* A sentence of imprisonment must be served by full-time detention in a correctional centre unless the court orders otherwise, or the offender is released from detention under this Act or another law in force in the ACT (see s 10 (3)).

- (b) a home detention order;  
(c) a periodic detention order;  
(d) a good behaviour order;  
(e) an order imposing a fine on an offender;  
(f) a driver licence disqualification order;

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- (g) a treatment order under the *Drugs of Dependence Act 1989*, section 123.

**Examples**

The following are examples of sentences that might be imposed on an offender by a court who has been convicted of an offence punishable by imprisonment:

- 1 a sentence of 18 months as follows:
  - 12 months home detention
  - a good behaviour order requiring the offender to enter into a good behaviour bond that includes conditions requiring the offender to undertake 240 hours community service work, and to pay a fine of \$500, by instalments stated in the bond, before the end of the sentence
- 2 a sentence of 3 years and 6 months as follows:
  - 1 year full-time detention in a correctional centre (with no nonparole period)
  - 1 year periodic detention, subject to a non-association condition
  - a good behaviour order requiring the offender to enter into a good behaviour bond for the remainder of the sentence, including a non-association condition
- 3 a sentence of 2 years as follows:
  - 1 year periodic detention, subject to a place restriction condition
  - a good behaviour order requiring the offender to enter into a good behaviour bond for the remainder of the sentence
  - a driver licence disqualification order for all of the sentence.

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

- (2) However, the court may make an order that forms part of a combination sentence only if the court would have power to make the order otherwise than as part of a combination sentence.

**38            Combination sentences—start and end**

- (1) For a combination sentence, a court may fix the start or end of the term of any part of the sentence, or of any order or good behaviour bond forming part of the sentence, by reference to—
- (a) a stated day; or
  - (b) the lapse of a stated period of time; or
  - (c) whenever a stated event happens, or whenever the earlier or later of 2 or more stated events happens.

**Example for par (c)**

a 5-year combination sentence consisting of the following orders:

- an order for full-time detention in a correctional centre, with a 3-year nonparole period
- an order that the offender enter into a good behaviour bond subject to a place restriction order, stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence
- a driver licence disqualification order, also stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence

*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* The term of a good behaviour bond may be amended by a court under the *Crimes (Sentence Administration) Act 2004*.

**39 Combination sentences—breach of order forming part of sentence**

- (1) This section applies if—
- (a) an offender is subject to 2 or more orders forming part of a combination sentence; and
  - (b) the offender breaches 1 of the orders (including a condition of an order), or a good behaviour bond (including a condition of a bond) entered into under 1 of the orders.
- (2) For the *Crimes (Sentence Administration) Act 2004*—
- (a) the breach is taken to be a breach of—
    - (i) each order that forms part of the sentence; and
    - (ii) if the offender is subject to a good behaviour bond as part of the sentence—the bond; and
  - (b) action may be taken accordingly for any breach mentioned in this subsection.
- Note* An offender may **breach** an order or bond by failing to comply with it (see Legislation Act, dict, pt 1, def **breach**).
- (3) This section does not limit the power of a court in relation to a breach of an order or good behaviour bond.

## **Part 4 Sentencing procedures generally**

### **Division 4.1 General principles**

#### **40 Power to reduce penalties**

- (1) If, under a Territory law, an offender is liable to imprisonment for life, a court may nevertheless impose a sentence of imprisonment for a stated term.
- (2) If, under a Territory law, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.
- (3) If, under a Territory law, an offender is liable to a fine of a stated amount, a court may nevertheless require the payment of a fine of a lesser amount.

*Note* See div 3.6 (Financial penalties) for further provisions about financial penalties, including maximum amounts.

- (4) This section—
  - (a) is not limited by any other provision of this part; and
  - (b) does not limit any discretion the court has, apart from this section, about the imposition of penalties.

#### **41 Sentencing—relevant considerations**

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court:
  - (a) the nature and circumstances of the offence;

- (b) any other offences required or allowed to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—the course of conduct;
- (d) if the personal circumstances of any victim of the offence were known to the offender when the offence was committed—the circumstances;
- (e) any injury, loss or damage resulting from the offence;
- (f) any action the offender may have taken to make reparation for any injury, loss or damage resulting from the offence;
- (g) the degree of responsibility of the offender for the commission of the offence;
- (h) a plea of guilty by the offender;  
*Note* See s 43 (Reduction of sentence—guilty plea).
- (i) the nature and extent of any pre-trial disclosures by the defence;
- (j) any assistance by the offender to law enforcement authorities;  
*Note* See s 44 (Reduction of sentence—assistance to law enforcement authorities).
- (k) the cultural background, character, antecedents, age and physical or mental condition of the offender;
- (l) the financial circumstances of the offender;
- (m) the probable effect that any sentence or order under consideration would have on any of the offender's family or dependants;

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- (n) whether the offender was affected by alcohol, a drug of dependence or a prohibited substance when the offence was committed and the circumstances in which the person became so affected;
- (o) the degree to which the offence was the result of provocation, duress or entrapment;
- (p) whether the recording of a conviction or the imposition of a particular sanction would be likely to cause particular hardship to the offender;
- (q) any jury recommendation for mercy;
- (r) whether the offender is voluntarily seeking treatment for any physical or mental condition that may have contributed to the commission of the offence;
- (s) whether the offender was in a position of trust or authority when the offence was committed;
- (t) the reason or reasons why the offender committed the offence;
- (u) whether the offender has demonstrated remorse;
- (v) if the person has accepted responsibility for the offence to take part in restorative justice under the *Crimes (Restorative Justice) Act 2004*—that fact;
- (w) whether the offender has paid the prescribed penalty in accordance with an offence notice served, under the *Crimes Act 1900*, section 441, on the offender for an offence;
- (x) current sentencing practice.

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- (2) Without limiting subsection (1), in deciding whether a good behaviour order is an appropriate penalty for an offence, the court must consider the nature and severity of the conditions that may apply to, the offender under the order.
- (3) Subsections (1) and (2) do not limit the matters a court may consider in deciding how an offender should be sentenced (if at all) for an offence.
- (4) The fact that any relevant factor is known to the court does not require the court to increase or reduce the severity of the sentence for the offence.

## **42 Sentencing—irrelevant considerations**

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must not increase the severity of the sentence it would otherwise have imposed because of any of the following:
  - (a) a law that has not commenced;
  - (b) any alleged offences that the offender has not admitted in accordance with section 63 (Outstanding additional offences taken into account in sentencing);
  - (c) that the offender chose not to give evidence on oath;
  - (d) that the offender may have committed perjury or been guilty of contempt of court during the proceeding;
  - (e) the offender's behaviour in court;
  - (f) that the offender chose to plead not guilty;
  - (g) that the offender chose not to take part, or chose not to continue to take part, in restorative justice for the offence under the *Crimes (Restorative Justice) Act 2004*.

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- (2) In deciding how an offender should be sentenced for an offence, a court must not reduce the severity of a sentence it would otherwise have imposed because of an automatic forfeiture of property, a forfeiture order, or a penalty order, under the *Confiscation of Criminal Assets Act 2003*.

**43 Reduction of sentence—guilty plea**

- (1) This section applies if an offender pleads guilty to an offence.
- (2) In deciding how the offender should be sentenced (if at all) for the offence, a court must consider—
- (a) the fact that the offender pleaded guilty; and
  - (b) when the offender pleaded guilty, or indicated an intention to plead guilty.
- (3) The court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed if the offender had not pleaded guilty to the offence.
- (4) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.
- (5) If the court imposes a lesser penalty for the offence under this section, the court must state the penalty it would otherwise have imposed.

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**44 Reduction of sentence—assistance to law enforcement authorities**

- (1) This section applies if an offender—
  - (a) is found guilty of an offence; and
  - (b) assisted, or undertook to assist, law enforcement authorities in—
    - (i) preventing, detecting or investigating the offence or any other offence; or
    - (ii) a proceeding in relation to the offence or any other offence.
- (2) A court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed in consideration of the degree of assistance provided, or undertaken to be provided, to law enforcement authorities.
- (3) In deciding whether to impose a lesser penalty for the offence, and the nature and extent of the penalty to be imposed, the court must consider the following matters:
  - (a) the effect of the offence on the victims of the offence and the victims' families;
  - (b) the significance and usefulness of the offender's assistance to law enforcement authorities, taking into account any evaluation by the authorities of the assistance provided or undertaken to be provided;
  - (c) the truthfulness, completeness and reliability of any information or evidence provided by the offender;
  - (d) the nature and extent of the offender's assistance or promised assistance;

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- (e) the timeliness of the assistance or undertaking to assist;
  - (f) any benefits that the offender has gained or may gain because of the assistance or undertaking to assist;
  - (g) whether the offender will suffer harsher custodial conditions because of the assistance or undertaking to assist;
  - (h) any injury suffered by the offender or the offender's family, or any danger or risk of injury to the offender or the offender's family, because of the assistance or undertaking to assist;
  - (i) whether the assistance or promised assistance is in relation to the offence for which the offender is being sentenced or an unrelated offence;
  - (j) if the offender is to serve a sentence of detention—the likelihood that the offender will commit additional offences after release from detention.
- (4) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.
- (5) If the court imposes a lesser penalty for the offence under this section, the court must state—
- (a) the reason for the imposition of the lesser penalty; and
  - (b) the penalty that it would otherwise have imposed.

#### **45 Judgment after sentence deferred**

- (1) If an offender is convicted of an offence and sentence is deferred, the court before which the person was tried, or the Supreme Court, may sentence the offender for the offence at any time afterwards.

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- (2) This section does not apply if the court has made a presentence order.

*Note* Section 18 (Presentence orders—generally) and s 20 (Presentence orders—period of effect) provide that a presentence order defers sentencing until a fixed day. The sentencing day may only be sooner if the court cancels the order.

#### 46 Sentences of imprisonment and uncompleted young offender orders

- (1) This section applies to an adult offender who is, at the time of sentencing, subject to a young offender order.
- (2) In imposing a defined sentence on the offender, a court must—
- (a) in deciding the term of the defined sentence, consider any remaining period during which the young offender order would remain in force if not discharged under paragraph (b); and
  - (b) discharge the young offender order accordingly.
- (3) In this section:

*young offender order* means an order under the *Children and Young People Act 1999*, section 96 (1) (g), (h), (i), (j), (k) or (l).

*defined sentence*, for an adult offender, means a sentence that would be likely to bring the offender into contact with other adult offenders.

##### Examples

- 1 a sentence of imprisonment
- 2 a periodic detention order
- 3 a community service order

*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).

## **Division 4.2 Presentence reports**

### **47 Application—div 4.2**

This division applies if—

- (a) a court finds a person guilty of an offence; or
- (b) a person indicates to a court an intention to plead guilty to an offence.

### **48 Definitions—div 4.2**

In this division:

*authorised officer*, for a presentence report, means the person to whom the chief executive has, under the *Public Sector Management Act 1994*, delegated the chief executive's function under this division to prepare the report.

*offender*, in relation to an offence, includes a person who has indicated to a court an intention to plead guilty to the offence.

*presentence report* means a report prepared for this division.

*presentence report order*—see section 49 (1) (a).

### **49 Presentence reports—order**

- (1) Before sentencing an offender, a court may—
  - (a) by order (a *presentence report order*) direct the chief executive to prepare a presentence report for the offender; and
  - (b) adjourn the proceeding for the report to be prepared.

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- (2) The court may, in a presentence report order, direct that the report deal with the offender's suitability, under this Act, to serve a sentence in a particular way, including any of the following:
- (a) by home detention;
  - (b) by periodic detention;
  - (c) by performing community service;
  - (d) by taking part in a stated rehabilitation program.

*Note* The court may make a direction in relation to the offender's suitability to serve a sentence by home detention only if the court considers that there is a real likelihood, based on the information currently available to the court, that the offender would be sentenced to imprisonment, and the term of the sentence would be 18 months or less (see s 94 (3)).

- (3) A presentence report may be presented to the court either orally or in writing.
- (4) In preparing a presentence report, the authorised officer—
- (a) may conduct any investigation the officer considers appropriate; and
  - (b) must comply with any direction of the court in the order for the presentence report; and
  - (c) may ask any of the following to provide information:
    - (i) an administrative unit;
    - (ii) a Territory authority;
    - (iii) a statutory office-holder;
    - (iv) any other entity.

- (5) If an entity mentioned in subsection (4) (c) (i), (ii) or (iii) is asked to provide information by the authorised officer under subsection (4), the entity must promptly comply with the request.
- (6) If an entity gives information honestly and with reasonable care in response to a request under subsection (4), the giving of the information is not—
- (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
  - (b) a ground for a civil proceeding for libel, slander, malicious prosecution or conspiracy.
- (7) This section does not limit any other power of the authorised officer to obtain information.
- (8) In this section:  
*information* includes a document.

## **50 Presentence reports—contents**

- (1) The authorised officer preparing a presentence report for an offender must, as far as practicable, include in the report details of each of the following matters that, on investigation, appears to be relevant:
- (a) the offender's age;
  - (b) the offender's social history and background (including cultural background);
  - (c) the offender's medical and psychiatric history;
  - (d) the offender's educational background;
  - (e) the offender's employment history;

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- (f) the circumstances of any offences for which the offender is to be sentenced;
  - (g) the extent to which the offender is complying, or has complied, with any sentence;
  - (h) the offender's financial circumstances;
  - (i) any special needs of the offender;
  - (j) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which the offender may benefit;
  - (k) the authorised officer's opinion about—
    - (i) the offender's attitude to the offence; and
    - (ii) the likelihood that the offender may commit additional offences; and
    - (iii) whether it would be appropriate to refer the offender for restorative justice under the *Crimes (Restorative Justice) Act 2004*.
- (2) The authorised officer must include in the report details of anything else that the court directs in the presentence report order.
- (3) The authorised officer may prepare a presentence report addressing only the following matters if the court so directs in the presentence report order:
- (a) matters mentioned in subsection (1) that are directed by the court;
  - (b) matters mentioned in subsection (1) that are relevant to a direction given by the court as mentioned in section 49 (2) (Court may order presentence reports).

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- (4) The authorised officer may include in the report details of anything else the officer considers relevant.
- (5) If the court directs in the presentence report order that the presentence report deal with an assessment of the offender's suitability for home detention, section 98 (Home detention—assessment reports) applies to the part of the report that deals with the home detention assessment as if it were an assessment report under that section.
- (6) If the court directs in the presentence report order that the presentence report deal with an assessment of the offender's suitability for periodic detention, section 108 (Periodic detention service—assessment reports) applies to the part of the report that deals with the periodic detention assessment as if it were an assessment report under that section.
- (7) If the court directs in the presentence report order that the presentence report deal with an assessment of the offender's suitability for community service, section 126 (Community service—assessment reports) applies to the part of the presentence report that deals with the assessment about community service as if it were an assessment report under that section.
- (8) If the court directs in the presentence report order that the presentence report deal with an assessment of the offender's suitability for a rehabilitation program, section 136 (Rehabilitation programs—assessment reports) applies to the part of the report that deals with the rehabilitation program assessment as if it were an assessment report under that section.

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**51 Presentence reports—circulation**

Before the court sentences an offender for whom a presentence report has been prepared, the authorised officer must give a copy of the report (if it is written) to—

- (a) the prosecutor; and
- (b) any lawyer representing the offender; and
- (c) the offender, if—
  - (i) the court has so directed; or
  - (ii) the offender is not legally represented.

**52 Presentence reports—cross-examination**

- (1) The prosecutor and the defence may cross-examine an authorised officer on the contents of a presentence report prepared by the officer for an offender.
- (2) In this section:  
*defence* means—
  - (a) any lawyer representing the offender; or
  - (b) if the offender is not legally represented—the offender.

**Division 4.3 Victim impact statements**

**53 Application—div 4.3**

This division applies in relation to an indictable offence punishable by imprisonment for at least 5 years.

**54 Definitions—div 4.3**

In this division:

*because of*, the offence, means as a result of, or in the course of, the commission of the offence.

*harm* includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

*victim*, of the offence, means—

- (a) a person (a *primary victim*) who suffers harm—
  - (i) because of the offence; or
  - (ii) in the course of assisting a police officer in the exercise of the officer's power to arrest a person for the offence or to take action to prevent the offence; or
- (b) if a primary victim dies because of the offence—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.

*victim impact statement*, for the offence, means a statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence.

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**55 Victim impact statements—who may make**

- (1) The following people may make a victim impact statement for the offence:
  - (a) a victim of the offence;
  - (b) a person with parental responsibility for a victim of the offence;
  - (c) a carer for a victim of the offence.

- (2) In this section:

*carer*, for a victim, means a person on whom the victim is completely or substantially dependent for ongoing care and attention.

**56 Victim impact statements—oral or written**

A victim impact statement for the offence may be made as—

- (a) a written statement signed by or for a victim of the offence; or
- (b) a statement given orally in court by or for a victim of the offence.

**57 Victim impact statements—form and contents**

- (1) A victim impact statement for the offence must identify the victim to whom it relates.
- (2) The statement must include the full name of the person who makes the statement.
- (3) If the person who makes the statement is not the victim (or the victim's representative)—
  - (a) the statement must indicate that the victim does not object to the statement being made to the court; and

- (b) if practicable, the victim (or representative) must sign the statement, or make a separate written or oral statement to the court, to verify that the victim does not object.
- (4) If the victim to whom the statement relates is not the primary victim, the statement must identify the primary victim and state the nature and length of the victim's relationship with the primary victim.
- (5) If the statement is made by a person who is not the victim, the statement must indicate the nature and length of the person's relationship with the victim.
- (6) The statement must not contain anything that is offensive, threatening, intimidating or harassing.
- (7) This section does not prevent a victim impact statement being made by or for more than 1 victim.

**58 Victim impact statements—use in court**

- (1) A victim impact statement may be—
  - (a) tendered to the court; or
  - (b) made orally in court; or
  - (c) read out in court by the person who made the statement or someone else (whether or not the statement is tendered to the court).
- (2) The statement may be given when the court considers appropriate—
  - (a) after the offender has been convicted; and
  - (b) before the offender is sentenced.

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**59 Victim impact statements—effect**

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court—
  - (a) must consider any victim impact statement given to the court in relation to the offence; and
  - (b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence.
- (2) A victim impact statement must not be given in writing to the court unless—
  - (a) the statement is made in accordance with section 57 (Victim impact statements—form and contents); and
  - (b) a copy of the statement has been given to the defence.
- (3) The defence may cross-examine a person who makes a victim impact statement on the contents of the statement.
- (4) In this section:

*defence* means—

  - (a) the lawyer representing the offender; or
  - (b) if the offender is not represented—the offender.

*given* includes made orally in court or read out in court under this division.

## **Division 4.4                      Taking additional offences into account in sentencing**

### **60                      Application—div 4.4**

- (1) This division does not apply in relation to an offence punishable by life imprisonment.
- (2) This division applies if a prosecutor files a list of additional offences in court under section 62 (List of additional offences) in relation to an offence.

### **61                      Definitions—div 4.4**

In this division:

*additional offence* means an offence mentioned in a list of additional offences.

*list of additional offences*—see section 62 (2).

*sentence-related order*—see section 62 (1).

*principal offence*—see section 62 (1).

### **62                      List of additional offences**

- (1) This section applies if an offender has been found guilty of an offence (the *principal offence*), but none of the following orders (each of which is a *sentence-related order*) have been made:
  - (a) an order imposing a penalty on the offender for the offence;
  - (b) a presentence, non-conviction or suspended sentence order for the offence.

- (2) The prosecutor may file in the court that is sentencing the offender a document (a *list of additional offences*) that lists additional offences allegedly committed by the offender.
- (3) The list of additional offences must—
  - (a) indicate that the offences listed are offences that the offender wants the court to take into account in making a sentence-related order for the principal offence; and
  - (b) be signed by the director of public prosecutions and the offender.
- (4) A copy of the list of additional offences must be given to the offender.

**63 Outstanding additional offences taken into account in sentencing**

- (1) Before making a sentence-related order for the principal offence, the court must ask the offender whether the offender wants the court to take any of the additional offences into account in relation to the principal offence.
- (2) The court may take an additional offence into account in making a sentence-related order for the principal offence if—
  - (a) the offender admits guilt to the additional offence; and
  - (b) the offender confirms that the offender wants the additional offence to be taken into account by the court in relation to the principal offence; and
  - (c) the prosecutor consents to the additional offence being taken into account.

- (3) If the court takes an additional offence into account in relation to the principal offence, any penalty imposed for the principal offence must not exceed the maximum penalty the court could have imposed for the principal offence if the additional offence had not been taken into account.
- (4) The court may not take an additional offence into account if the court does not have jurisdiction to make a sentence-related order for the offence.
- (5) For subsection (4), a court is taken to have jurisdiction to make a sentence-related order for an additional offence even if the jurisdiction may only be exercised with the offender's consent.
- (6) To remove any doubt, subsection (4) does not prevent the Supreme Court from taking a summary offence into account.

**64 Ancillary orders relating to offences taken into account in sentencing**

- (1) This section applies if the court takes an additional offence into account in making a sentence-related order for the offender for the principal offence.
- (2) The court may make any ancillary order that it could have made if it had convicted the offender of the additional offence when it took the offence into account.
- (3) However, the court may not make a separate sentence-related order for the additional offence.
- (4) The offender has the same rights of appeal in relation to the making of the ancillary order as the offender would have had if the order had been made on the conviction of the offender for the additional offence.

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(5) The ancillary order lapses by operation of this subsection if the conviction or finding of guilt of the offender for the principal offence is reversed or set aside.

(6) In this section:

*ancillary order* means an order or direction in relation to any of the following:

- (a) restitution;
- (b) compensation;
- (c) costs;
- (d) forfeiture;
- (e) destruction;
- (f) disqualification or loss or suspension of a licence or privilege.

**Examples**

- 1 a reparation order
- 2 a driver licence disqualification order

*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).

**65 Consequences of taking offences into account in sentencing**

- (1) This section applies if an additional offence is taken into account by the court in making a sentence-related order for the offender for the principal offence.
- (2) The court must certify, on the list of additional offences, that the additional offence has been taken into account.

- (3) A proceeding must not be taken or continued in relation to the additional offence unless the conviction or finding of guilt for the principal offence is reversed or set aside.
- (4) Subsection (3) does not prevent the court from taking the additional offence into account if the court, on a later occasion, makes another sentence-related order for the offender, or resentsences the offender, for the principal offence.
- (5) The offender's admission of guilt in relation to the additional offence is not admissible in evidence in a proceeding in relation to—
  - (a) the additional offence; or
  - (b) any other offence mentioned in the list of additional offences.
- (6) The offender is not, for any purpose, taken to have been convicted of the additional offence only because the additional offence is taken into account.

**66 Evidence of offences taken into account in sentencing**

- (1) This section applies if an additional offence is taken into account by the court in making a sentence-related order for the offender for the principal offence.
- (2) The fact that the additional offence has been taken into account is admissible in a criminal proceeding if—
  - (a) the fact that the offender has been found guilty or convicted of the principal offence is admissible in the proceeding; and
  - (b) had the offender been convicted of the additional offence, the fact that the offender had been found convicted of the additional offence would have been admissible in the proceeding.

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- (3) For subsection (2), a fact is *admissible* in a criminal proceeding if—
  - (a) reference may be made to the fact in the proceeding; or
  - (b) evidence may be given of the fact in the proceeding.
- (4) The fact that the additional offence has been taken into account may be proved in the same way as the finding of guilt or conviction for the principal offence.

## **Division 4.5 Correction and adjustment of penalties**

### **67 Reopening proceedings to correct penalty errors**

- (1) This section applies to a criminal proceeding (including a proceeding on appeal) in which a court has—
  - (a) made a sentence-related order that is contrary to law, or
  - (b) failed to make a sentence-related order that is required to be made by law.
- (2) This section applies whether or not anyone has been found guilty or convicted of an offence in the proceeding.
- (3) The court may reopen the proceeding (on the application of a party to the proceeding, or its own initiative) and may, after giving the parties an opportunity to be heard, do either or both of the following:
  - (a) make a sentence-related order that is in accordance with law;
  - (b) amend any relevant finding of guilt, conviction, sentence or order.

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- (4) For this section, the court may issue a warrant for the arrest of a person charged in the proceeding if—
- (a) the court considers that the person will not appear unless the warrant is issued; or
  - (b) the person fails to appear when the court calls on the person to appear.
- (5) For an appeal under any Act against a sentence-related order made under this section, the time within which the appeal must be made begins on the day the order is made.
- (6) However, this section does not otherwise affect any right of appeal.
- (7) In this section:
- sentence-related order*—
- (a) has the meaning given by section 62 (1) (List of additional offences); and
  - (b) includes an ancillary order within the meaning of section 64 (Ancillary orders relating to offences taken into account in sentencing).

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## **Part 5                                  Imprisonment**

### **Division 5.1                          Preliminary**

#### **68                                  Application—pt 5**

- (1) This part applies if a court sentences an offender to any of the following sentences of imprisonment:
  - (a) full-time imprisonment;
  - (b) periodic detention;
  - (c) home detention.
- (2) However, this part applies subject to the following sections:
  - (a) section 17 (Suspended sentences);
  - (b) *Crimes (Sentence Administration) Act 2004*, section 206 (Consequences of cancellation of bond).

### **Division 5.2                          Start of sentences**

#### **69                                  Start of sentences—general rule**

- (1) The sentence of imprisonment starts on the day the sentence is imposed, subject to the following provisions:
  - (a) section 38 (Combination sentences—start and end);
  - (b) section 70 (Start of combination sentences);
  - (c) section 71 (Backdated sentences);
  - (d) division 5.5 (Concurrent and consecutive sentences);
  - (e) section 110 (Start of periodic detention).

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- (2) A sentence of imprisonment starts at the beginning of the day when it starts (or is taken to have started) and ends at the end of the day when it ends.

## **70 Start of combination sentences**

If a home detention order or periodic detention order is part of a combination sentence, the order may start after the day the sentence is imposed if the court directs a later starting time in the order for the combination sentence.

### **Example**

Ahmet is convicted of an offence punishable by imprisonment, and the court imposes a combination sentence for an overall term of 9 months imprisonment.

The combination sentence consists of an order for 6 months full-time detention in a correctional centre and a periodic detention order for 3 months, directed by the court to take effect after Ahmet has served 6 months full-time detention.

The periodic detention order starts 6 months after the combination sentence is made.

*Note 1* A **combination sentence** is a sentence consisting of 2 or more sentencing orders (see s 37 (Combination sentences—nature)). The start and end of any part of a combination sentence may be fixed by reference to a stated day, the lapse of a stated period of time or the happening of a stated event (or the earlier or later of 2 or more stated events)—see s 38 (Combination sentences—start and end).

*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).

## **71 Backdated sentences**

- (1) The court may direct that the sentence of imprisonment is taken to have started on a day before the day the sentence is imposed.
- (2) In deciding whether or not to make a direction, and the day when the sentence is taken to have started, the court must take into

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account any period during which the offender has already been held in custody in relation to the offence.

- (3) Subsection (2) does not apply to—
- (a) a period of custody of less than 1 day; or
  - (b) a sentence of imprisonment of less than 1 day; or
  - (c) a sentence of imprisonment that is completely suspended; or
  - (d) the suspended part of a partly suspended sentence of imprisonment.
- (4) If a person charged with a series of offences committed on different occasions has been in custody continuously since arrest, the period of custody for subsection (2) must be worked out from the time of the person's arrest, even if the person is not convicted of—
- (a) the offence for which the person was first arrested; or
  - (b) any particular offence or offences in the series.

## **Division 5.3            Nonparole periods**

### **72            Application—div 5.3**

- (1) This division does not apply in relation to—
- (a) a sentence of life imprisonment; or
  - (b) a sentence of imprisonment imposed in default of payment of a fine; or
  - (c) a sentence of imprisonment imposed for an offence committed while in custody; or
  - (d) a sentence of imprisonment served by periodic detention.

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- (2) In this section:

*fine*—see the *Magistrates Court Act 1930*, section 146.

### **73 Court to set nonparole period**

- (1) This section applies if the court sentences the offender to a term of imprisonment of 1 year or longer, or 2 or more terms of imprisonment that total 1 year or longer.
- (2) The court must set a period (a *nonparole period*) during which the offender is not eligible to be released on parole.

*Note* If the offender is released on parole, the sentence is not discharged unless the parole is completed without the parole order being cancelled (see *Crimes (Sentence Administration) Act 2004*, s 232 (Sentence not discharged unless parole completed)).

- (3) When the court sets the nonparole period, the court must state when the nonparole period starts and ends.

*Note* A sentence may be backdated to account for time already held in custody (see s 71 (Backdated sentences)).

- (4) However, the court may decline to set a nonparole period in sentencing the offender if the court considers that it would be inappropriate to do so, considering the nature of the offence or offences and the offender's antecedents.
- (5) If the offender is subject to a sentence of life imprisonment, the court must not set a nonparole period for any sentence of imprisonment that is later imposed.
- (6) If the sentence of imprisonment is suspended—
- (a) the sentence must be disregarded for this section; or
  - (b) if the sentence is partly suspended—the period for which it is suspended must be disregarded for this section.

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- (7) This section applies to offences (and to offenders and sentences in relation to offences) whenever the offences were committed or the sentences imposed, whether before or after the commencement of this section.
- (8) Subsection (7) and this subsection expire 5 years after the day this section commences.

*Note*     The expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

## **74           Recommended conditions for parole**

- (1) In sentencing the offender to imprisonment, the court may recommend conditions for the offender's parole.

### **Example**

The court may recommend that the offender only be paroled subject to a condition corresponding to a place restriction condition or non-association condition under this Act.

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

- (2) In fixing conditions for the parole of the offender, the sentence administration board—
- (a) must consider any recommendation made by the court under this section; but
- (b) is not bound to follow the recommendation.

**75 Review of decision on nonparole period**

- (1) This section applies if the court fails to set, or fails to set properly, a nonparole period for a sentence of imprisonment.
- (2) The court may set a nonparole period on the application of any of the following people:
  - (a) the Attorney-General;
  - (b) the director of public prosecutions;
  - (c) the secretary of the sentence administration board;
  - (d) the offender.

**76 Setting of nonparole period—sentence currently being served**

- (1) This section applies if—
  - (a) the offender is serving a sentence of imprisonment (the *already-imposed sentence*); and
  - (b) the offender is sentenced to a further term of imprisonment (the *primary sentence*).

*Note* Div 5.5 (Concurrent and consecutive sentences) deals with whether the primary sentence is to be served concurrently or consecutively (or partly concurrently and partly consecutively) with the already-imposed sentence.

- (2) Section 73 (Court to set nonparole period) applies as if the court that imposes the primary sentence had sentenced the person to imprisonment for a term equal to the total of the terms of the already-imposed sentence and the primary sentence.
- (3) The imposition of the primary sentence automatically cancels any nonparole period set for the already-imposed sentence.

- (4) The nonparole period set for the primary sentence must not make the offender eligible to be released on parole earlier than if the primary sentence had not been imposed.
- (5) This section applies whether the already-imposed sentence was imposed before, or is imposed after, the commencement of this section.
- (6) Subsection (5) and this subsection expire 5 years after the day this section commences.

*Note*     The expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

## **77            Appeals—amendment etc of nonparole periods**

- (1) If an appeal is made against the conviction or sentence of imprisonment, the court deciding the appeal—
  - (a) may amend or cancel a nonparole period set by the sentencing court; or
  - (b) if the sentencing court did not set a nonparole period—may set a nonparole period for the sentence.
- (2) A nonparole period that is amended or set under this section must comply with this division.
- (3) This section does not limit any other power of a court in deciding an appeal.

**78 Nonparole periods—information for sentence administration board**

- (1) This section applies if the court sets a nonparole period for the sentence of imprisonment.
- (2) The court must give the secretary of the sentence administration board written notice of the following as soon as practicable:
  - (a) the sentence;
  - (b) the nonparole period;
  - (c) when the nonparole period starts;
  - (d) when the nonparole period ends;
  - (e) if a victim consents to information about the victim being given to the board—that information.
- (3) For subsection (2) (e), if a victim is under 15 years old, the consent mentioned may only be given by a person with parental responsibility for the victim.

**Division 5.4 Explanation to offenders**

**79 Imprisonment—explanation**

- (1) The court must ensure that reasonable steps are taken to explain to the offender (and in language the offender can readily understand)—
  - (a) the reason why the sentence of imprisonment is imposed, and why no penalty other than imprisonment is appropriate; and
  - (b) the purpose of the sentence; and

- (c) if the offender is sentenced to full-time detention in a correctional centre—in general terms, the offender’s obligations under the *Crimes (Sentence Administration) Act 2004*, section 93 (Full-time detention—obligations of detainees) and the consequences of breaching the obligations; and

*Note 1* For offenders who are to serve the sentence by home detention or periodic detention, an explanation of their obligations under that Act must also be given (see s 100 (Home detention—explanation) and s 112 (Periodic detention—explanation)).

*Note 2* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (d) the day when the sentence starts or is taken to have started; and
- (e) if a suspended sentence order is made for the offender suspending the execution of the sentence in part—in general terms, the effect of the suspension of the sentence; and

*Note* There is no need for an explanation under this section if the sentence is entirely suspended (see s (2)). Explanations for the offender and any surety of the effect of entering into a good behaviour bond are required under div 8.3.

- (f) the earliest day (on the basis of the information currently available to the court) that the offender will become entitled to be released from detention, or eligible to be released on parole, considering—
- (i) each sentence of imprisonment to which the offender is subject; and
- (ii) any applicable nonparole period; and

- (g) if a nonparole period is fixed for the sentence—that, if the offender is released on parole, the offender’s release will be subject to a parole order and any conditions included in the order.

**Examples for par (d)**

- 1 A court sentences Rick to 7 days imprisonment. The sentence is imposed on a Monday. Rick is not subject to any other sentence of imprisonment.

To comply with paragraph (d), the court should explain to Rick that the sentence starts on the Monday on which it is imposed and that the earliest day when Rick will become entitled to be released from detention is the following Monday.

- 2 A court sentences Ken to 12 months imprisonment. The sentence is imposed on 5 May 2005. The court has set a nonparole period of 9 months. Ken is not subject to any other sentence of imprisonment. Because Ken has been remanded in custody for sentencing since 27 April 2005, the court has backdated the start of the sentence to that date.

To comply with paragraph (d), the court should explain to Ken that the sentence is taken to have started on 27 April 2005 and that the earliest date when Ken will become entitled to be released on parole is 27 January 2006.

- 3 On 1 July 2004, Colleen began serving a 2-year sentence of imprisonment for an offence. The nonparole period for the sentence was 18 months (Colleen would be eligible for parole on 1 January 2006). Colleen is later convicted of another offence, with a further sentence of 2 years to start from 1 January 2005, to be served partly concurrently and partly consecutively with the first sentence (under s 83 (Concurrent and consecutive sentences—general rule)). The court cancels the first nonparole period and sets a new nonparole period of 18 months from 1 January 2005 (under s 76 (Setting of nonparole period—sentence currently being served)).

To comply with paragraph (d), the court should explain to Colleen that the sentence for the 2nd offence starts on 1 January 2005 and ends on 1 January 2007, that it will be served partly concurrently and partly consecutively with her current sentence, and that the earliest date when Colleen will become eligible to be released on parole is now 1 July 2006.

*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).

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- (2) This section applies to a sentence of imprisonment even if the sentence is partly suspended, or forms part of a combination sentence, but does not apply if the sentence is completely suspended.
- (3) Failure to comply with this section does not invalidate the sentence.

**80 Written record of explanation**

- (1) The court must ensure that a written record of the explanation given to the offender under this division is given to the offender or the offender's lawyer.
- (2) However, failure to comply with this section does not invalidate the sentence.

**Division 5.5 Concurrent and consecutive sentences**

**81 Application—div 5.5**

- (1) This division applies to a sentence of imprisonment (a *primary sentence*) imposed on an offender if—
  - (a) when the primary sentence is imposed, the offender is serving another sentence of imprisonment (the *already-imposed sentence*), including a sentence imposing a young offender committal order; or
  - (b) the offender has been sentenced to another sentence of imprisonment (the *already-imposed sentence*), including a sentence imposing a young offender committal order, but, when the primary sentence is imposed, the other sentence has not yet started; or

- (c) the offender is sentenced to another sentence of imprisonment (the *already-imposed sentence*) in the same proceeding.
- (2) This division applies only to an already-imposed sentence for an offence against a Territory law.
- (3) This division is subject to section 46 (Sentences of imprisonment and uncompleted young offender orders).

*Note* Section 46 deals with certain primary sentences imposed on adult offenders who are subject to already-imposed sentences consisting of an order under the *Children and Young People Act 1999*, s 96 (1) (g) to (l).

- (4) In this section:

*sentence of imprisonment* means—

- (a) if a nonparole period has been set—the nonparole period of the sentence; or
- (b) if a nonparole period has not been set—the term of the sentence.

*Note* Section 76 deals with the setting of a nonparole period for the primary sentence.

## 82 **Definitions—div 5.5**

In this division:

*already-imposed sentence*—see section 81.

*fine*—see the *Magistrates Court Act 1930*, section 146.

*primary sentence*—see section 81 (1).

*young offender committal order* means an order committing a young person to an institution under the *Children and Young People Act 1999*, section 96 (1) (k) or (l).

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**83            Concurrent and consecutive sentences—general rule**

- (1) In the absence of a direction under subsection (2), the primary sentence must be served concurrently with the already-imposed sentence.
- (2) The court may direct that the primary sentence be served consecutively (or partly concurrently and partly consecutively) with the already-imposed sentence.
- (3) This section does not apply if the primary sentence is imposed—
  - (a) for an offence committed while the offender was in lawful custody, or subject to a young offender committal order; or
  - (b) for an offence involving an escape from custody (whether or not the escape was from a correctional centre); or
  - (c) in default of payment of a fine.

**84            Sentences for offences committed while in custody or involving escape from custody**

- (1) This section applies to a primary sentence of imprisonment—
  - (a) for an offence committed while the offender was in custody, or subject to a young offender committal order; or
  - (b) for an offence involving an escape from custody (whether or not the escape was from a correctional centre).
- (2) In the absence of a direction under subsection (3), the primary sentence must be served consecutively with the already-imposed sentence of imprisonment.
- (3) The court may direct that the primary sentence be served concurrently (or partly concurrently and partly consecutively) with the already-imposed sentence.

- (4) Unless the court considers that special circumstances apply, the court must not give a direction under subsection (3) if the primary sentence is an offence involving an assault, or another offence against the person, against a corrections officer committed by the offender while the offender was—
- (a) in custody; or
  - (b) escaping from custody (whether or not the escape was from a correctional centre).

**85 Sentences for fine default offences**

- (1) This section applies if the primary sentence is imposed in default of payment of a fine.
- (2) In the absence of a direction under subsection (3), the primary sentence must be served—
- (a) consecutively with an already-imposed sentence in default of payment of a fine; and
  - (b) concurrently with any other already-imposed sentence.
- (3) The court may direct that the primary sentence be served concurrently or consecutively (or partly concurrently and partly consecutively) with any already-imposed sentence.

**86 Amendment of start of sentences on setting aside or amending other sentences**

- (1) If a court sets aside or amends a sentence of imprisonment imposed on the offender (whether on appeal or otherwise), the court may amend the starting day of any other sentence that has been imposed on the offender by the court or another court.
- (2) If the offender is subject to 2 or more sentences, this section applies to each of them.

- (3) The court may amend the starting day of a sentence under this section on its own initiative, or the application of a party to the proceeding on the setting aside or amendment of the other sentence.
- (4) An appeal does not lie only because the starting day of a sentence is amended under this section.
- (5) The term of a sentence, or the nonparole period of a sentence, may not be amended under this section.

**87 Previous sentences to be noted in new sentence**

- (1) If the court imposes the primary sentence consecutively (or partly concurrently and partly consecutively) with an already-imposed sentence, the court must include in the record of the primary sentence details of each already-imposed sentence, including—
  - (a) the starting day (or the likely starting day of a sentence that has not yet started); and
  - (b) the term of the sentence.
- (2) Failure to comply with this section does not invalidate any sentence.

**Division 5.6 Imprisonment—breach of undertaking to assist law enforcement authorities**

**88 Appeal if assistance undertaking breached**

- (1) This section applies if an offender's sentence of imprisonment or nonparole period for an offence is reduced because the offender undertook to assist law enforcement authorities.

*Note* The court may have regard to an undertaking to assist in this way in deciding the sentence to impose on the offender (see s 44 (Reduction of penalties—assistance to law enforcement authorities)).

- (2) If, after the sentence is imposed, the offender does not assist law enforcement authorities in accordance with the undertaking, the director of public prosecutions may, at any time during the term of the sentence, appeal against the inadequacy of the sentence or nonparole period.
- (3) The director of public prosecutions may appeal only if the director is of the opinion that the appeal is in the interests of the administration of justice.
- (4) If the court hearing the appeal is satisfied that the offender has completely failed to assist law enforcement authorities in accordance with the undertaking, the court must substitute for the reduced sentence or nonparole period the sentence or nonparole period that it would otherwise have imposed.
- (5) If the court hearing the appeal is satisfied that the offender has partly failed to assist law enforcement authorities in accordance with the undertaking, the court may substitute for the reduced sentence or nonparole period the sentence or nonparole period it considers appropriate.
- (6) The sentence or nonparole period that may be substituted under subsection (5) must not exceed the sentence or nonparole period that may be substituted under subsection (4) if the offender had completely failed to assist law enforcement authorities in accordance with the undertaking.
- (7) In this section:  
*assist law enforcement authorities*, in relation to an offence, means assist law enforcement authorities in—
  - (a) preventing, detecting or investigating the offence or any other offence; or
  - (b) a proceeding in relation to the offence or any other offence.

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## Part 6 Home detention

### Division 6.1 Home detention—preliminary

#### 89 Application—pt 6

This part applies if a court is considering whether to make, or has made, a home detention order for—

- (a) an offender who is to be, or has been, sentenced to imprisonment for an offence; or
- (b) a remandee.

#### 90 Definitions—pt 6

In this part:

*domestic violence offence*—see the *Protection Orders Act 2001*, section 9 (2).

*home detention obligations*, under a home detention order to which the offender or remandee is subject, mean the obligations the offender or remandee has under the *Crimes (Sentencing Administration) Act 2004*, section 136 because of the order.

*Note* For the meaning of *home detention order*, see s 11 (2) and (4) (Home detention).

*remandee*—a person for whom a home detention order is sought is a *remandee* if, at the time the order is sought—

- (a) the person has been charged with an offence; and
- (b) a verdict has not yet been reached in a court proceeding for the offence; and

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- (c) the person is remanded in custody by a court.

## **Division 6.2 Home detention—eligibility**

### **91 Home detention—offender disqualification for certain offences**

A home detention order must not be made for the offender if the offence committed by the offender is against any of the following provisions:

- (a) the following provisions of the *Crimes Act 1900*:
- (i) section 12 (Murder) or section 15 (Manslaughter);
  - (ii) section 19 (Intentionally inflicting grievous bodily harm) or section 20 (Recklessly inflicting grievous bodily harm);
  - (iii) section 24 (Assault occasioning actual bodily harm) or section 25 (Causing grievous bodily harm);
  - (iv) section 35 (Stalking);
  - (v) part 3 (Sexual offences);
  - (vi) any other provision of that Act providing for an offence involving the use of a firearm;
- (b) the following provisions of the Criminal Code:
- (i) section 310 (Aggravated robbery);
  - (ii) section 312 (Aggravated burglary);
  - (iii) any other provision of the Criminal Code providing for an offence involving the use of a firearm;

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- (c) a provision of a law that provides for a domestic violence offence, if the behaviour in relation to which the offence is charged is directed at anyone with whom it is likely the offender or remandee would live in the same household if the home detention order were made;
- (d) the Criminal Code, chapter 6 (Serious drug offences), other than the following provisions:
  - (i) section 603 (8) (which is about trafficking in cannabis);
  - (ii) section 616 (8) (which is about cultivating a cannabis plant for selling);
  - (iii) section 618 (Cultivating controlled plant);
  - (iv) section 619 (8) (which is about selling a cannabis plant);
- (e) a provision of any other Territory law prescribed under the regulations.

**92 Home detention—offender disqualification for certain histories**

- (1) A home detention order must not be made for the offender if—
  - (a) the offender has at any time been convicted of any of the following offences:
    - (i) murder, manslaughter or a corresponding offence against a law outside the ACT or Australia;
    - (ii) sexual assault of an adult or child;
    - (iii) a sexual offence involving a child; or
  - (b) the offender has at any time in the last 10 years been convicted, whether in or outside the ACT or Australia, of—

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- (i) an offence against the *Crimes Act 1900*, section 35 (Stalking) or a corresponding offence against a law outside the ACT or Australia; or
  - (ii) a domestic violence offence, or a corresponding offence against a law outside the ACT or Australia, directed at anyone with whom it is likely the offender or remandee would live in the same household if the home detention order were made.
- (2) A home detention order must not be made for the offender if—
- (a) the offender has at any time been convicted of an offence prescribed under the regulations; or
  - (b) a home detention order has previously been made for the offender in relation to the offence and the order has been cancelled under the *Crimes (Sentence Administration) Act 2004*, part 5.3 (Home detention—breach of obligations); or
  - (c) the offender is, or has at any time during the last 5 years been, subject to a final order under the *Protection Orders Act 2001* (other than an order set aside on appeal) that restrains or restrained the offender from engaging in behaviour in relation to someone with whom it is likely the offender would live in the same household if the home detention order were made.
- (3) An offence prescribed under the regulations for subsection (2) (a) may include an offence against a law of the Commonwealth, a State, another Territory or a foreign country.
- (4) Subsection (2) (b) does not apply if the home detention order was cancelled for a reason other than a breach of the home detention obligations.

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- (5) In subsection (2) (b), the reference to the cancellation of a home detention order includes a reference to the cancellation of a home detention order under the *Rehabilitation of Offenders (Interim) Act 1999*.
- (6) In subsection (2) (c), a reference to a final order under the *Protection Orders Act 2001* includes a protection order under the *Domestic Violence Agencies Act 1986* and a restraining order under the *Magistrates Court Act 1930*.
- (7) Subsections (5) and (6) and this subsection expire 5 years after the day this section commences.

**93 Home detention—offender and remandee suitability**

- (1) The court may make a home detention order for the offender or remandee only if satisfied that—
  - (a) home detention is suitable for the offender or remandee; and
  - (b) it is appropriate for the offender or remandee to serve the sentence or remand (completely or partly) by home detention; and
  - (c) each of the people with whom it is likely the offender or remandee would live in the same household (other than as a tenant or boarder) while on home detention—
    - (i) fully understands the nature and consequences of making the order; and
    - (ii) free from the offender’s or remandee’s influence, has consented in writing to the making of the order; and
  - (d) the offender or remandee has signed an undertaking to comply with the home detention obligations.

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- (2) For subsection (1) (c), the consent of a child, or a person with a mental disability—
- (a) may be given on behalf of the child or the person with a mental disability in accordance with the regulations; or
  - (b) may be dispensed with in accordance with the regulations if the regulations allow the consent to be dispensed with.

- (3) In subsection (2):

*person with a mental disability*, in relation to a consent under subsection (1) (c), means a person (other than a child) who is not legally competent to give the consent, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

#### **94 Home detention—suitability and reports**

- (1) The court may make a home detention order for the offender or remandee only if 1 of the following reports (the *relevant report*) is provided about the offender's or remandee's suitability to serve the sentence (completely or partly) by home detention:
- (a) if the order is made when the offender is sentenced to imprisonment—a presentence report or an assessment report under division 6.3 (Home detention—assessment);
  - (b) for a remandee, or if the offender is serving a sentence of imprisonment by full-time detention—an assessment report under division 6.3.
- (2) The court may make a home detention order for the offender or remandee only if the relevant report is given to the court within 1 month before the day the order is made.

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- (3) The court must not order a presentence report about an offender for subsection (1) (a) unless the court considers that there is a real likelihood, based on the information currently available to the court, that—
  - (a) the offender would be sentenced to imprisonment; and
  - (b) the term of the sentence of imprisonment would be 18 months or less.
- (4) In deciding whether to make a home detention order for the offender or remandee, the court must have regard to the following:
  - (a) the relevant report;
  - (b) any evidence given by a corrections officer about the offender or remandee.
- (5) The court must not make a home detention order for the offender or remandee if the court considers it likely that the offender or remandee will commit a sexual offence or an offence involving violence while on home detention, even if the offender or remandee has no history of committing offences of that kind.
- (6) The court may decline to make a home detention order despite any recommendation in the relevant report and any evidence given by a corrections officer.
- (7) However, the court may make a home detention order for the offender or remandee only if the relevant report states that home detention is suitable for the offender or remandee.

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**95 Home detention—concurrent and consecutive sentences**

- (1) This section applies if—
- (a) the court is considering whether to make a home detention order (the *new order*) for the offender; and
  - (b) the offender is currently serving a sentence of imprisonment for another offence under a home detention order.

*Note* Div 5.5 (Concurrent and consecutive sentences) deals with the imposition of 2 sentences of imprisonment on an offender.

- (2) The new order must be stated to end no later than 18 months after the day it is made (no matter when the order is to take effect).

**Division 6.3 Home detention—assessment**

**96 Meaning of *home detention assessor*—div 6.3**

In this division:

*home detention assessor*—see section 97.

**97 Home detention—referral for assessment**

- (1) Before making a decision about whether to make a home detention order for the offender or remandee, the court may refer the offender or remandee to a person (a *home detention assessor*) for an assessment of the offender's or remandee's suitability for home detention.

**Example of *home detention assessor***

a person authorised by the chief executive to prepare assessments for this division

*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).

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- (2) A referral under subsection (1)—
  - (a) for an offender—does not stay the execution of the offender’s sentence; or
  - (b) for a remandee—does not affect the order for remand.

**98 Home detention—assessment reports**

- (1) On a referral under section 97, the home detention assessor must provide a written assessment report to the court that addresses the following:
  - (a) for an offender—
    - (i) the potential for the order to help in the rehabilitation of the offender;
    - (ii) the criminal record (if any) of the offender;
  - (b) the likelihood that the offender or remandee would commit an offence while on home detention;
  - (c) any cultural issues in relation to the offender or remandee, or the household in which the offender or remandee would live;
  - (d) the degree (if any) of dependence of the offender or remandee on alcohol, a drug of dependence or a prohibited substance;
  - (e) the likelihood that the offender or remandee would commit a domestic violence offence while subject to home detention;
  - (f) the likelihood that the offender or remandee would commit a sexual offence or an offence involving violence even if the offender or remandee has no history of committing offences of that kind);

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- (g) whether any circumstances of the offender's or remandee's residence, employment, study or other activities would inhibit effective monitoring of a home detention order;
  - (h) whether each of the people with whom it is likely the offender or remandee would live in the same household (other than as a tenant or boarder) while on home detention—
    - (i) fully understands the nature and consequences of making the order; and
    - (ii) free from the offender's or remandee's influence, has consented in writing to the making of the order; and
  - (i) whether the making of the order would place at risk of harm the offender or remandee, or anyone who would be living with the offender or remandee or nearby;
  - (j) anything else prescribed under the regulations.
- (2) The report may indicate the kind of additional conditions that would be appropriate for the court to impose on a home detention order if the court were to make an order.
- (3) Subsections (1) and (2) do not limit the matters that may be addressed in the report.
- (4) The regulations may make provision in relation to the conduct of assessments and the preparation and provision of reports under this section.

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**99 Home detention—information for assessment**

- (1) For a referral under section 97, the home detention assessor may ask any of the following to provide information:
  - (a) an administrative unit;
  - (b) a Territory authority;
  - (c) a statutory office-holder;
  - (d) any other entity.
- (2) If an entity mentioned in subsection (1) (a), (b) or (c) is asked to provide information by the authorised officer under subsection (1), the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
  - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
  - (b) a ground for a civil proceeding for libel, slander, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the authorised officer to obtain information.
- (5) In this section:  
*information* includes a document.

## **Division 6.4 Home detention—miscellaneous**

### **100 Home detention—explanation**

- (1) If the court makes a home detention order for the offender or remandee, the court must ensure that reasonable steps are taken to explain to the offender or remandee in general terms (in language that the offender or remandee can readily understand)—

- (a) the home detention obligations; and
- (b) the consequences if the offender or remandee breaches the obligations.

*Note 1* An offender or remandee may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

*Note 2* An explanation must also be given to an offender of the matters mentioned in s 79 (Imprisonment—explanation).

- (2) Failure to comply with this section does not invalidate a home detention order.

### **101 Home detention—official notice of order**

- (1) This section applies if the court makes a home detention order for the offender or remandee.
- (2) As soon as practicable after the court makes the home detention order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender or remandee; and
  - (b) the chief executive.

- (3) The notice must include the following details:
  - (a) the address where the offender or remandee is to serve the sentence by home detention;
  - (b) the date or time fixed for the start of the sentence;
  - (c) the date or time the sentence will end;
  - (d) any conditions included in the home detention order.
- (4) Failure to comply with this section does not invalidate a home detention order.

## **EXPOSURE DRAFT**

## **Part 7                      Periodic detention**

### **Division 7.1              Periodic detention—preliminary**

#### **102              Application—pt 6**

This part applies if a court is considering whether to make, or has made, a periodic detention order for an offender who is sentenced to imprisonment for an offence.

#### **103              Definition of *periodic detention obligations*—pt 6**

In this part:

*periodic detention obligations*, under a periodic detention order to which the offender is subject, mean the obligations the offender has under the *Crimes (Sentence Administration) Act 2004*, section 139 because of the order.

*Note*      For the meaning of *periodic detention order*, see s 12 (2).

### **Division 7.2              Periodic detention—eligibility**

#### **104              Periodic detention—suitability**

- (1) The court may make a periodic detention order for the offender only if satisfied that—
  - (a) periodic detention is suitable for the offender; and
  - (b) it is appropriate for the offender to serve the sentence (completely or partly) by periodic detention; and
  - (c) there are appropriate facilities available at a correctional centre for the offender to serve the sentence (completely or partly) by periodic detention; and

- (d) the offender has signed an undertaking to comply with the periodic detention obligations.
- (2) The court may decline to make a periodic detention order for the offender if—
  - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
  - (b) the offender does not undergo the examination in accordance with the direction.
- (3) The court may make a periodic detention order for the offender only if 1 of the following reports (the *relevant report*) is provided about the offender’s suitability to serve the sentence (completely or partly) by periodic detention:
  - (a) a presentence report;
  - (b) an assessment report under division 7.3 (Periodic detention—assessment).
- (4) In deciding whether to make a periodic detention order for the offender, the court must have regard to the following:
  - (a) the relevant report;
  - (b) any medical report of the offender provided to the court;
  - (c) any evidence given by a corrections officer about the offender.
- (5) The court may decline to make a periodic detention order despite any recommendation in the relevant report or any evidence given by a corrections officer.
- (6) However, the court may make a periodic detention order for the offender only if the relevant report states that periodic detention is suitable for the offender.

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**105 Periodic detention—concurrent and consecutive sentences**

- (1) This section applies if—
- (a) the court is considering whether to make a periodic detention order (the *new order*) for the offender; and
  - (b) the offender is currently serving a sentence of imprisonment for another offence under a periodic detention order.

*Note* Div 5.5 (Concurrent and consecutive sentences) deals with the imposition of 2 sentences of imprisonment on the offender.

- (2) The new order must be stated to end no later than 2 years after the day it is made (no matter when the order is to take effect).

**Division 7.3 Periodic detention—assessment**

**106 Meaning of *periodic detention assessor*—div 7.3**

In this division:

*periodic detention assessor*—see section 107 (Periodic detention—referral for assessment).

**107 Periodic detention—referral for assessment**

Before making a decision about whether to make a periodic detention order for the offender, the court may refer the offender to a person (a *periodic detention assessor*) for an assessment of the offender's suitability for periodic detention.

**Example of *periodic detention assessor***

a person authorised by the chief executive to prepare assessments for this division

*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).

**108            Periodic detention—assessment reports**

- (1) On a referral under section 107, the periodic detention assessor must provide a written or oral assessment report to the court that addresses the matters mentioned in table 108, column 2.
- (2) Subsection (1) does not limit the matters that may be addressed in the report.
- (3) In considering the report, the court must have regard to any indicators of unsuitability mentioned in table 108, column 3 that are stated in the report to apply to the offender.
- (4) The regulations may make provision in relation to the conduct of assessments and the preparation and provision of reports under this section.

**Table 108            Assessment of suitability for periodic detention**

<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
1	degree of dependence on alcohol, a drug of dependence or a prohibited substance	major problem with alcohol, a drug of dependence or a prohibited substance
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to report for periodic detention
4	criminal record	serious criminal record

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<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
5	employment and personal circumstances	potential impracticability of regular reporting for periodic detention

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**109 Periodic detention—information for assessment**

- (1) For a referral under section 107, the periodic detention assessor may ask any of the following to provide information:
  - (a) an administrative unit;
  - (b) a Territory authority;
  - (c) a statutory office-holder;
  - (d) any other entity.
- (2) If an entity mentioned in subsection (1) (a), (b) or (c) is asked to provide information by the authorised officer under subsection (1), the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
  - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
  - (b) a ground for a civil proceeding for libel, slander, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the authorised officer to obtain information.
- (5) In this section:  
*information* includes a document.

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## Division 7.4 Periodic detention—miscellaneous

### 110 Periodic detention—start

A sentence of periodic detention under a periodic detention order starts as provided by the order.

### 111 Periodic detention—extended order and order taking effect later

- (1) This section applies if—
  - (a) a periodic detention order has effect as part of a combination sentence; and
  - (b) the combination sentence includes an order taking effect after the end of the periodic detention order; and
  - (c) the term of the periodic detention order is extended for a period (the *extension period*) under the *Crimes (Sentence Administration) Act 2004*, section 127.
- (2) The term of the order that is to take effect after the end of the periodic detention order is taken to be extended by the length of the extension period.

#### Example

Dieter is subject to a combination sentence with an overall term of 3 years and that consists of a 2-year periodic detention order and a good behaviour order. The good behaviour order is expressed to have effect for the remainder of the sentence after the end of the periodic detention order.

Dieter's periodic detention order is extended under the *Crimes (Sentence Administration) Act 2004*, s 127 for a period of 1 month. As a result, the term of the good behaviour order is also extended for a period of 1 month (beyond the end of the original overall term).

*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).

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**112 Periodic detention—explanation**

- (1) If the court makes a periodic detention order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—

- (a) the periodic detention obligations; and
- (b) the consequences if the offender breaches the obligations.

*Note 1* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

*Note 2* An explanation must also be given to the offender of the matters mentioned in s 79 (Imprisonment—explanation)

- (2) Failure to comply with this section does not invalidate a periodic detention order.

**113 Periodic detention—official notice of order**

- (1) This section applies if the court makes a periodic detention order for the offender.

- (2) As soon as practicable after the court makes the periodic detention order, the court must ensure that written notice of the order, together with a copy of the order, is given to—

- (a) the offender; and
- (b) the chief executive.

- (3) The notice must include the following details:

- (a) the address of the correctional centre where the offender is to serve the periodic detention order;
- (b) the date and time when the offender is first to report to the correctional centre for periodic detention;

- (c) the day of the week, and the time, when the offender is afterwards to report during the term of the periodic detention order.
- (4) The court may remand the periodic detainee in custody until the offender is given the notice.
- (5) Failure to comply with this section does not invalidate a periodic detention order.

## **Part 8**                      **Good behaviour bonds**

### **Division 8.1**              **Good behaviour bonds—preliminary**

#### **114**              **Application—pt 8**

This part applies if a court is considering whether to make, or has made, a good behaviour order for an offender requiring the offender to enter into a good behaviour bond.

### **Division 8.2**              **Good behaviour bonds—conditions**

#### **115**              **Good behaviour—bond conditions**

- (1) The good behaviour bond may include any or all of the following conditions:
  - (a) that the offender give security for a stated amount, with or without sureties, for compliance with the bond;
  - (b) a fine condition or donation condition;
  - (c) a probation condition;
  - (d) a non-association condition or place restriction condition;
  - (e) a community service condition;
  - (f) a rehabilitation program condition;

*Note*              A bond that includes a rehabilitation program condition must also include a probation condition (see s 15 (3)).

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- (g) that the offender comply with a reparation order;
- (h) any conditions prescribed under the regulations;
- (i) any other condition the court considers appropriate.

**Examples of conditions for par (i)**

- 1 that the offender undertake medical treatment and supervision, including the taking of medication and cooperation 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 refrain from driving a motor vehicle or consuming alcohol or non-prescription drugs or medications
- 5 that the offender regularly attend alcoholics anonymous or narcotics anonymous meetings
- 6 that the offender stay at home during a particular period every day (for example, from 9pm to 7am), or on particular days of the week
- 7 that the offender be subject to electronic monitoring, for example while staying at home as mentioned in example 6.

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

- (2) In this section:

***probation condition***, of a good behaviour bond, means a condition included in the bond that, during the term of the bond, or for a period stated in the bond, the offender is—

- (a) to be on probation subject to the supervision of a person appointed under the order; and

(b) to obey all reasonable directions of the appointed person.

**Examples of directions for par (b)**

- 1 that the offender comply with a non-association condition or a place restriction condition, even if the condition is not a condition of the bond
- 2 that the offender comply with a condition mentioned in subsection (2) (i), examples, even if the condition is not a condition of the bond

*Note 1* A good behaviour bond is also subject to the core conditions under the *Crimes (Sentence Administration) Act 2004*, s 180.

*Note 2* Other provisions of this Act are relevant to the application of these conditions, as follows:

- security—see s 116
- fine conditions and donation conditions (for bonded financial penalty orders and bonded donation orders) see div 3.6
- non-association conditions and place restriction conditions—see div 3.7
- community service conditions (for community service orders)—see s 14 and pt 9
- rehabilitation program conditions (for rehabilitation program orders)—see s 15 and pt 10
- reparation conditions (for reparation orders)—see div 3.9 and pt 11.

**116 Good behaviour—security and sureties under bonds**

- (1) The maximum amount of security that may be required to be given by the offender or a surety as a condition of the offender entering into the good behaviour bond is—
  - (a) if the offence is punishable by a fine—the maximum fine that may be imposed for the commission of the offence; or
  - (b) if the offence is not punishable by a fine—
    - (i) for the Supreme Court—\$10 000; or

- (ii) for the Magistrates Court—\$2 000.
- (2) However, if the good behaviour bond is entered into in accordance with an order of the Magistrates Court, the bond may include a condition that the offender or a surety give security only if—
  - (a) the offence is punishable by imprisonment for longer than 6 months; or
  - (b) a suspended sentence order has been made for the offence.

## Division 8.3 Good behaviour bonds—explanations

### 117 Good behaviour—explanation for offenders

- (1) If the court makes a good behaviour order requiring the offender to enter into a good behaviour bond, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
  - (a) the nature and conditions of the bond; and
  - (b) the good behaviour obligations; and
  - (c) the consequences if the offender breaches the obligations.

*Note* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (2) Failure to comply with this section does not invalidate the good behaviour order or a good behaviour bond entered into under the order.

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**118 Good behaviour—explanation for sureties**

- (1) This section applies if the good behaviour bond includes a condition that a surety give security for an offender.
- (2) The court must ensure that reasonable steps are taken to explain to the surety in general terms (and in language the surety can readily understand)—
  - (a) the nature and the conditions of the bond (including the amount of the security); and
  - (b) the consequences for the offender and the surety if the offender breaches the bond.

*Note* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (3) The court must also ensure that reasonable steps are taken to give a copy of the bond to the surety.
- (4) Failure to comply with this section does not invalidate the good behaviour bond.

## Part 9                    Community service

### Division 9.1            Community service—general

#### 119            Application—pt 9

This part applies if a court is considering whether to make, or has made, a community service order for an offender for an offence.

*Note*        A **community service order** is a good behaviour order requiring an offender to enter into a good behaviour bond that includes a community service condition (see s 14).

#### 120            Definitions—pt 9

In this part:

**community service obligations**, under a good behaviour bond by which the offender is subject to a community service condition, mean the obligations that the offender has under the *Crimes (Sentence Administration) Act 2004*, section 179 (Good behaviour—obligations) because of the order.

**period**, of a community service order, means the period within which the community service work to be performed under the relevant good behaviour bond must be completed.

*Note*        For the meaning of the following terms, see the provisions indicated:

- **community service condition**—s 14 (2))
- **community service work**—*Crimes (Sentence Administration) Act 2004*, dict.

**121 Community service—hours to be worked**

- (1) The number of hours of work required to be performed for a community service condition must be between 20 and 500 hours.
- (2) The period during which the work is required to be performed must be no shorter than—
  - (a) if fewer than 250 hours are required—12 months; or
  - (b) if 250 or more hours are required—24 months.

**Division 9.2 Community service—eligibility**

**122 Community service—suitability**

- (1) The court may make a community service order for the offender only if satisfied that—
  - (a) community service work is suitable for the offender; and
  - (b) it is appropriate that the offender be required to perform community service work; and
  - (c) the offender has signed an undertaking to comply with the community service obligations.
- (2) The court may decline to make a community service order for the offender if—
  - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
  - (b) the offender does not undergo the examination in accordance with the direction.

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- (3) The court may make a community service order for the offender only if 1 of the following reports (the *relevant report*) is provided about the offender's suitability to be subject to a community service condition:
  - (a) a presentence report;
  - (b) an assessment report under division 9.3 (Community service—assessment).
- (4) In deciding whether to make a community service order for the offender, the court must have regard to the following:
  - (a) the relevant report;
  - (b) any medical report of the offender provided to the court;
  - (c) any evidence given by a corrections officer about the offender.
- (5) The court may decline to make a community service order despite any recommendation in the relevant report or any evidence given by a corrections officer.
- (6) However, the court may make a community service order for community service work only if the relevant report states that community service work is suitable for the offender.

## **123 Community service—concurrent and consecutive orders**

- (1) This section applies if—
  - (a) the court is considering whether to make a community service order for the offence requiring the offender to enter into a good behaviour bond (the *new bond*) subject to a community service condition; and

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- (b) the offender is currently subject to a good behaviour bond (the *existing bond*) for another offence that is subject to a community service condition.
- (2) The court may make a community service order for the new bond, with the hours of community service work to be performed to run concurrently or consecutively, or partly concurrently and partly consecutively with those remaining to be performed under the existing bond.
- (3) However, the total of the hours stated to be performed under the new bond and those remaining to be performed under the existing bond must be not more than 500.

## **Division 9.3                      Community service—assessment**

### **124                      Meaning of *community service assessor*—div 9.3**

In this division:

*community service assessor*—see section 125.

### **125                      Community service—referral for assessment**

Before making a decision about whether to make a community service order for the offender, the court may refer the offender to a person (a *community service assessor*) for an assessment of the offender's suitability for community service work.

#### **Example of *community service assessor***

a person authorised by the chief executive to prepare assessments for this division

*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).

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**126 Community service—assessment reports**

- (1) On a referral under section 125, the community service assessor must provide a written or oral assessment report to the court that addresses the matters mentioned in table 127, column 2.
- (2) Subsection (1) does not limit the matters that may be addressed in the report.
- (3) In considering the report, the court must have regard to any indicators of unsuitability mentioned in table 127, column 3 that are stated in the report to apply to the offender.
- (4) The regulations may make provision in relation to the conduct of assessments and the preparation and provision of reports under this section.

**Table 127 Assessment of suitability for community service**

<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
1	degree of dependence on alcohol, a drug of dependence or a prohibited substance	major problem with alcohol, a drug of dependence or a prohibited substance
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to perform community service
4	criminal record	serious criminal record

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<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
5	employment and personal circumstances	potential impracticability of regular reporting for community service

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**127 Community service—information for assessment**

- (1) For a referral under section 125, the community service assessor may ask any of the following to provide information (including documents):
  - (a) an administrative unit;
  - (b) a Territory authority;
  - (c) a statutory office-holder;
  - (d) any other entity.
- (2) If an entity mentioned in subsection (1) (a), (b) or (c) is asked to provide information by the authorised officer under subsection (1), the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
  - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
  - (b) a ground for a civil proceeding for libel, slander, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the authorised officer to obtain information.

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- (5) In this section:  
*information* includes a document.

## **Division 9.4 Community service—miscellaneous**

### **128 Community service—explanation**

- (1) If the court makes a community service order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
- (a) the nature of the community service condition applying to the offender; and
  - (b) the offender's obligations under the *Crimes (Sentencing Administration) Act 2004*, division 7.4 (Performance of community service work).

*Note* An explanation must also be given to the offender of the matters mentioned in s 117 (Good behaviour—explanation for offenders). If the bond to be entered into by the offender is subject to security given by a surety, an explanation must be given to the surety of the matters mentioned in s 118 (Good behaviour—explanation for sureties).

- (2) Failure to comply with this section does not invalidate a community service order or a good behaviour bond entered into under the order.

### **129 Community service—official notice of order**

- (1) This section applies if the court makes a community service order for the offender.
- (2) As soon as practicable after the court makes the community service order, the court must ensure that written notice of the order, together with a copy of the order and the good behaviour bond the offender is required to enter under the order, is given to—

- (a) the offender; and
  - (b) the chief executive.
- (3) The notice must include the following details:
- (a) the place where the offender must present himself or herself for the administration of the order to start;
  - (b) the period within which the offender must present himself or herself.
- (4) Failure to comply with this section does not invalidate the community service order or a good behaviour bond entered into under the order.

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## Part 10 Rehabilitation programs

### Division 10.1 Rehabilitation programs—preliminary

#### 130 Application—pt 10

This part applies if a court is considering whether to make, or has made, a rehabilitation program order for an offender for an offence.

*Note 1* A *rehabilitation program order* is a good behaviour order requiring an offender to enter into a good behaviour bond subject to a rehabilitation program condition (see s 15).

*Note 2* A *rehabilitation program* is a program for the rehabilitation of offenders prescribed under the regulations (see s 15).

#### 131 Definition of *rehabilitation obligations*—pt 10

In this part:

*rehabilitation obligations*, under a good behaviour bond by which the offender is subject to a rehabilitation program condition, mean the obligations that the offender has under the *Crimes (Sentencing Administration) Act 2004*, section 179 (Good behaviour—obligations) because of the order.

*Note* For the meaning of the following terms, see the provisions indicated:

- *rehabilitation program*—s 15 (2)
- *rehabilitation program condition*—s 15 (3)
- *rehabilitation program order*—s 15 (4).

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## **Division 10.2      Rehabilitation programs—eligibility**

### **132      Rehabilitation programs—suitability**

- (1) The court may make a rehabilitation program order for the offender only if 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) the offender has signed an undertaking to comply with the rehabilitation obligations.
- (2) In deciding whether to make a rehabilitation program order for the offender, the court must consider whether the offender was—
  - (a) under the influence of alcohol, a drug of dependence or a prohibited substance when the offence was committed; or
  - (b) motivated to commit the offence by a desire—
    - (i) to administer a drug of dependence or prohibited substance to himself or herself; or
    - (ii) to obtain a drug of dependence or prohibited substance for self-administration; or
    - (iii) to obtain resources to enable the offender to obtain a drug of dependence or prohibited substance for self-administration.
- (3) Subsection (2) does not limit the matters that the court may consider.

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- (4) The court may decline to make a rehabilitation program order for the offender if—
- (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
  - (b) the offender does not undergo the examination in accordance with the direction.
- (5) The court may make a rehabilitation program order for the offender only if—
- (a) 1 of the following reports (a *relevant report*) is provided about the offender’s suitability to undertake a rehabilitation program:
    - (i) a presentence report;
    - (ii) an assessment report under division 10.3 (Rehabilitation program orders—assessment); or
  - (b) there is some other information (*relevant information*) before the court about the nature of the program and its suitability for the offender justifying making the order.
- Example of relevant information that may justify making an order**  
a letter offering the offender a place in a rehabilitation program that explains the nature of the program and why it would be suitable for the offender
- 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).
- (6) In deciding whether to make a rehabilitation program order for the offender, the court must consider the following:
- (a) a relevant report or any relevant information;
  - (b) any medical report of the offender provided to the court;

- (c) any evidence given by a corrections officer about the offender.
- (7) The court may decline to make a rehabilitation program order despite any recommendation in a relevant report, any relevant information or any evidence given by a corrections officer.
- (8) However, the court may make a rehabilitation program order for a rehabilitation program of a particular kind only if a relevant report or any relevant information states that a rehabilitation program of that kind is suitable for the offender.

**133 Rehabilitation programs—concurrent and consecutive orders**

- (1) This section applies if—
  - (a) the court is considering whether to make a rehabilitation program order (the *new order*) for the offence requiring the offender to enter into a good behaviour bond (the *new bond*) subject to a rehabilitation program condition; and
  - (b) the offender is currently subject to a good behaviour bond (the *existing bond*) for another offence that is subject to a rehabilitation program condition.
- (2) The new bond may operate concurrently or consecutively, or partly concurrently and partly consecutively.
- (3) The new bond must be stated to end no later than 3 years after the day the new order is made (no matter when the bond is to take effect).

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## Division 10.3 Rehabilitation programs—assessment

### 134 Meaning of *rehabilitation program assessor*—div 10.3

In this division:

*rehabilitation program assessor*—see section 135.

### 135 Rehabilitation programs—referral for assessment

Before making a decision about whether to make a rehabilitation program order for the offender, the court may refer the offender to a person (a *rehabilitation program assessor*) for an assessment of the offender's suitability for a rehabilitation program.

#### **Example of *rehabilitation program assessor***

a person authorised by the chief executive to prepare assessments for this division

*Note 1* The court may instead decide to make an assessment order under the *Drugs of Dependence Act 1989*, s 122 referring the offender to a treatment assessment panel for a recommendation about whether a treatment order under that Act, s 123 should be made in relation to the offender.

*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).

### 136 Rehabilitation programs—assessment reports

- (1) On a referral under section 135, the rehabilitation program assessor must provide a written or oral assessment report to the court that addresses the matters mentioned in section 132 (1) and (2) (Suitability for rehabilitation program).
- (2) Subsection (1) does not limit the matters that may be addressed in the report.

- (3) The regulations may make provision in relation to the conduct of assessments and the preparation and provision of reports under this section.

**137 Rehabilitation programs—information for assessment**

- (1) For a referral under section 135 (Rehabilitation programs—referral for assessment), the rehabilitation program assessor may ask any of the following to provide information (including documents):
- (a) an administrative unit;
  - (b) a Territory authority;
  - (c) a statutory office-holder;
  - (d) any other entity.
- (2) If an entity mentioned in subsection (1) (a), (b) or (c) is asked to provide information by the authorised officer under subsection (1), the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
- (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
  - (b) a ground for a civil proceeding for libel, slander, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the authorised officer to obtain information.
- (5) In this section:  
*information* includes a document.

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## **Division 10.4 Rehabilitation programs— miscellaneous**

### **138 Rehabilitation programs—explanation**

- (1) If the court makes a rehabilitation program order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand) the nature of the rehabilitation program condition applying to the offender.

*Note* An explanation must also be given to the offender of the matters mentioned in s 117 (Good behaviour—explanation for offenders). If the bond to be entered into by the offender is subject to security given by a surety, an explanation must be given to the surety of the matters mentioned in s 118 (Good behaviour—explanation for sureties).

- (2) However, failure to comply with this section does not invalidate a rehabilitation program order or a good behaviour bond entered into under the order.

### **139 Rehabilitation programs—official notice of orders**

- (1) This section applies if the court makes a rehabilitation program order for the offender.
- (2) As soon as practicable after the court makes the rehabilitation program order, the court must ensure that written notice of the order, together with a copy of the order and the good behaviour bond the offender is required to enter under the order, is given to—
  - (a) the offender; and
  - (b) the chief executive.

- (3) The notice must include the following details:
  - (a) the place where the offender must present himself or herself for the administration of the order to start;
  - (b) the period within which the offender must present himself or herself.
- (4) Failure to comply with this section does not invalidate the rehabilitation program order or a good behaviour bond entered into under the order.

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## **Part 11                            Reparation**

### **140            Application—pt 11**

This part applies if a court is considering whether to make, or has made, a reparation order for an offender for an offence.

### **141            Reparation—no agreement about amount of loss etc**

- (1) If the offender and the director of public prosecutions (or any other applicant for the reparation order) do not agree about the amount the offender is to be ordered to pay under the reparation order, the court must decide the amount.
- (2) To remove any doubt, section 146 (Evidential basis for reparation orders) applies in relation to facts about the amount that is required to be paid under the reparation order.

### **142            Reparation—enforcement of order as final judgment**

The reparation order may be enforced as if it were a final judgment of the court.

### **143            Reparation—payment by instalments**

- (1) If the court makes a reparation order for the payment of money, the court may, in addition, order that—
  - (a) the amount be paid by stated instalments; and
  - (b) the offender give security, with or without sureties, to the satisfaction of a stated officer of the court for the payment of the amount or of each instalment of the amount.

- (2) The *Magistrates Court Act 1930*, section 249 to section 252 apply in relation to a security mentioned in subsection (1) (b) ordered by the Magistrates Court as if it were a security given under that Act.

*Note* The *Magistrates Court Act 1930*, s 249 to s 252, deal with procedures relating to securities given under that Act, as follows:

- s 249 (Securities taken under Act)
- s 252 (Sums paid by surety may be recovered by principal).

- (3) If an instalment under the reparation order is not paid as required by the order, the order may be enforced as if it were a final judgment of the court for the payment of the entire amount remaining unpaid.

#### **144      Reparation—enforcement of order by payment of money**

- (1) This section applies if the reparation order does not require the payment of money.

*Note* An offender may breach a reparation order by failing to comply with it (see Legislation Act, dict, pt 1, def *breach*).

- (2) If the offender breaches the reparation order, the person in whose favour the order was made may apply to the court for an order under this section to be made against the offender.
- (3) On an application under subsection (2), the court may make an order for the payment of money against the offender in substitution for the breached order.

#### **145      Reparation—enforcement of order by imprisonment**

The offender may not be imprisoned for breaching the reparation order unless complying with the order is a condition of a good behaviour bond entered into under a good behaviour order (including a non-conviction order).

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**146       Reparation—evidential basis for orders**

- (1) A reparation order must not be made for the offence unless the court is satisfied that the order should be made on the basis of facts established by—
- (a) evidence given at the trial; or
  - (b) available documents; or
  - (c) submissions made by or on behalf of anyone (including the director of public prosecutions).

- (2) In this section:

*available documents*, in relation to the offence, means any of the following:

- (a) any written statements or admissions made for use as evidence at a trial that would have been admissible as evidence at the trial for the offence;
- (b) depositions taken at any committal proceeding for the offence;
- (c) any written statements or admissions used as evidence in any committal proceeding for the offence;
- (d) any other relevant written documents.

**Example for par (d)**

if the value of an object, or the cost of its repair, is relevant to the proceeding for a reparation order—an affidavit by a valuer or repairer about the value of the object or the cost of its repair

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

## Part 12                      Miscellaneous

### 147            **Reparation—other actions for recovery**

- (1) This Act does not abolish or otherwise affect any cause of action that anyone may have—
  - (a) to recover goods or property; or
  - (b) to recover damages for, or be indemnified against, any loss or expense.
- (2) However, in a proceeding in relation to any loss or expense mentioned in subsection (1) (b) that resulted from the commission of an offence, a court must have regard to any amount paid under a reparation order in relation to the commission of the offence.

### 148            **Effect of failure to comply with Act**

A failure to comply with this Act may be considered by an appeal court in any appeal against sentence even if this Act declares that the failure to comply does not invalidate the sentence.

### 149            **Regulation-making power**

The Executive may make regulations for this Act.

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

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## Part 13 Transitional

### 150 Meaning of *commencement day*

In this part:

*commencement day* means the day this part commences.

### 151 Application of Act—offences on or after commencement day

- (1) This Act applies in relation to an offence, or alleged offence, only if the offence is committed, or allegedly committed, on or after the commencement day.
- (2) The old sentencing law continues to apply in a proceeding for an offence committed, or allegedly committed, before the commencement day.
- (3) Subsection (2) applies subject to the *Crimes (Sentence Administration) Act 2004*, chapter 16 (Transitional).

*Note* The *Crimes (Sentence Administration) Act 2004*, ch 16 provides, broadly speaking (with some exceptions), for the application of that Act in relation to the administration and enforcement of sentences and orders made under the old sentencing law that are still in force, or that come into force, on or after the commencement day.

- (4) In this section:

*old sentencing law* means the law of the Territory as in force immediately before the commencement day in relation to proceedings for offences, including the following:

- (a) the making of orders for the conditional release of offenders (whether with or without conviction);

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- (b) the imposition of sentences for offenders convicted of offences;
- (c) the making and enforcement of reparation orders for offenders;
- (d) the making of other orders for offenders on conviction (for example, community service orders);
- (e) the making of orders for the remand of alleged offenders on home detention.

**Examples**

- 1 the *Crimes Act 1900*, pt 15 (Sentences), pt 18 (Conditional release of offenders) and pt 19 (Community service orders)
- 2 the *Rehabilitation of Offenders (Interim) Act 2001*, s 6 and s 7 (which deal with home detention orders)
- 3 the *Periodic Detention Act 1995*, s 4

*Note 1* The legislation in the examples, and other aspects of the old sentencing law, are repealed or amended by the *Crimes (Sentencing Legislation) Consequential Amendments Act 2004*.

*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).

**152 Nonparole periods—Rehabilitation of Offenders (Interim) Act 2001, s 31**

- (1) This section applies if, before, on or after the commencement day—
  - (a) a nonparole period (an *old nonparole period*), whether before, on or after the commencement day, is set for an offender under the *Rehabilitation of Offenders (Interim) Act 2001*, section 31 (Court to set nonparole period); and
  - (b) for an old nonparole period set before the commencement day—the old nonparole period has not ended.

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- (2) The old nonparole period is taken to be a nonparole period set under this Act, section 73—
  - (a) if the old nonparole period was set before the commencement day—for the remainder of the period for which it was originally set; or
  - (b) if the old nonparole period is set on or after the commencement day—for the period fixed by the court.

**153      *Reparation orders—Crimes Act 1900, s 350***

- (1) This section applies if, in a proceeding in relation to an offence committed before the commencement day (whether the proceeding started or ended before, on or after the commencement day)—
  - (a) a court makes an order (the *old reparation order*) under the *Crimes Act 1900*, section 350 for the offender to make reparation to a person in relation to the commission of the offence; and
  - (b) if the old reparation order was made before the commencement day—the order is still in force.
- (2) If the old reparation order was made before the commencement day, on and after the commencement day—
  - (a) the old reparation order (as in force immediately before the commencement day) is taken to be a reparation order under division 3.9 (the *new reparation order*); and
  - (b) any conditions included in the old reparation order (as in force immediately before the commencement day) are taken to be conditions included in the new reparation order; and
  - (c) the new reparation order may be enforced under part 11 as if it had been made under this Act.

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- (3) If the old reparation order is made on or after the commencement day—
- (a) the old reparation order is taken to be a reparation order under division 3.9 (the *new reparation order*) immediately after the time it is made; and
  - (b) any conditions included in the old reparation order (as in force immediately before the commencement day) are taken to be conditions included in the new reparation order; and
  - (c) the new reparation order may be enforced under part 11 as if it had been made under this Act.

**154 Transitional regulations—pt 13**

- (1) The regulations may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2004*.
- (2) Without limiting the scope of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act, or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2004*.
- (3) Regulations made for this section must not be taken to be inconsistent with this Act, the *Crimes (Sentence Administration) Act 2004* or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2004* as far as they can operate concurrently with this Act.
- (4) This section is additional to, and does not limit, section 155.

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**155 Modification—pt 13**

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

**156 Expiry—pt 13**

This part expires 2 years after the day it commences.

## Dictionary

(see s 3)

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

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

- administrative unit
- adult
- Australian driver licence
- chief executive (see s 163)
- director of public prosecutions
- doctor
- entity
- law (of the Territory)
- lawyer
- NSW correctional centre
- may (see s 146)
- must (see s 146)
- police officer
- public servant
- road transport authority
- sentence administration board
- statutory office-holder
- Territory authority.

***additional offence***, for division 4.4 (Taking additional offences into account in sentencing)—see section 61.

***already-imposed sentence***, for division 5.5 (Concurrent and consecutive sentences)—see section 81 (1).

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**authorised officer**, for division 4.2 (Presentence reports)—see section 48.

**because of**, an offence in relation to which division 4.3 (Victim impact statements) applies, for that division—see section 54.

**bonded donation order**—see section 24 (6).

**bonded financial penalty order**—see section 23 (7).

**combination sentence**—see section 37 (1).

**community service assessor**, for division 9.3 (Community service—assessment)—see section 125.

**community service condition**—see section 14 (2) (Good behaviour orders—community service conditions).

**community service obligations**, for part 9 (Community service)—see section 120.

**community service order**—see section 14 (3) (Good behaviour orders—community service conditions).

**community service work**—see the *Crimes (Sentence Administration) Act 2004*, dictionary.

**correctional centre** means—

- (a) a correctional centre under the *Crimes (Sentence Administration) Act 2004*; or
- (b) a NSW correctional centre.

**corrections officer**—see the *Crimes (Sentence Administration) Act 2004*, dictionary.

**court**—if a **court** has sentenced an offender, made an order or given a direction, means the same court, however constituted.

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**domestic violence offence**, for part 6 (Home detention)—see section 90.

**donation condition**—

(a) see section 23 (2) (b) (Bonded financial penalty orders); and

(b) see section 24 (2) (Bonded donation orders).

**driver licence disqualification order**—see section 30 (2).

**drug of dependence**—see the *Drugs of Dependence Act 1989*, section 3.

**fine**, for division 5.5 (Concurrent and consecutive sentences)—see section 82.

**fine condition**—see section 23 (2) (a) (Bonded financial penalty orders).

**financial penalty order**—see section 22 (2).

**good behaviour order**—see section 13 (2)

**harm**, for division 4.3 (Victim impact statements)—see section 54.

**home detention** means detention under the *Crimes (Sentence Administration) Act 2004*, chapter 5 (Home detention).

**home detention assessor**, for division 6.3 (Home detention—assessment)—see section 97.

**home detention obligations**, for part 6 (Home detention)—see section 90.

**home detention order**—see section 11 (2) and (4).

**list of additional offences**, for division 4.4 (Taking additional offences into account in sentencing)—see section 62 (2).

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***non-association condition***, of a good behaviour bond, periodic detention order or home detention order to which an offender is subject—see section 27.

***non-conviction order***—see section 16 (2).

***nonparole period***, for a sentence of imprisonment—

- (a) see section 73 (2) (Court to set nonparole period); and
- (b) if the nonparole period of the sentence is amended—means the nonparole period as amended.

***offender***—see section 8.

***parental responsibility***—see the *Children and Young People Act 1999*, section 17.

***parole order***—see the *Crimes (Sentence Administration) Act 2004*, dictionary.

***period***, of a community service order, for part 9 (Community service)—see section 120.

***periodic detention***—see the *Crimes (Sentence Administration) Act 2004*, section 136.

***periodic detention assessor***, for division 7.3 (Periodic detention—assessment)—see section 107.

***periodic detention obligations***, for part 7 (Periodic detention)—see section 103.

***periodic detention order***—see section 12 (2).

***place restriction condition***, of a good behaviour bond, periodic detention order or home detention order to which an offender is subject—see section 27.

***presentence order***—see section 18 (2).

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***presentence report*** means a report prepared for division 4.2 (Presentence reports).

***presentence report order***—see section 49 (1) (a).

***primary sentence***, for division 5.5 (Concurrent and consecutive sentences)—see section 81 (1).

***primary victim***, for division 4.3 (Victim impact statements)—see section 54, definition of ***victim***, paragraph (a).

***principal offence***, for division 4.4 (Taking additional offences into account in sentencing)—see section 62 (1).

***prohibited substance***—see the *Drugs of Dependence Act 1989*, section 3.

***rehabilitation obligations***, for part 10 (Rehabilitation programs)—see section 131.

***rehabilitation program***—see section 15 (2) (Good behaviour orders—rehabilitation program conditions).

***rehabilitation program assessor***, for division 10.3 (Rehabilitation program—assessment)—see section 135.

***rehabilitation program condition***—see section 15 (3) (a) (Good behaviour orders—rehabilitation program conditions).

***rehabilitation program order***—see section 15 (4) (Good behaviour orders—rehabilitation program conditions).

***remandee***, for part 6 (Home detention)—see section 90.

***reparation offence***, for division 3.9 (Reparation orders)—see section 31 (1).

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**reparation order**—see the following:

- (a) section 32 (3) (Reparation—generally);
- (b) section 33 (2) and (3) (Reparation—person originally entitled to stolen property);
- (c) section 34 (2) (Reparation—purchaser of stolen property);
- (d) section 35 (2) (Reparation—mortgagee of stolen property).

**sentence** means—

- (a) when used as a noun—the penalty imposed for an offence; or
- (b) when used as a verb—to impose a penalty for an offence.

**sentence of imprisonment** includes—

- (a) a sentence of imprisonment that has been imposed but is yet to start; and
- (b) a combination sentence that imposes a penalty of imprisonment together with another penalty.

**sentence-related order**, for division 4.4 (Taking additional offences into account in sentencing)—see section 62 (1).

**surety**, for a good behaviour bond to which an offender is subject, means a person other than the offender who gives security for complying with the bond.

**suspended sentence order**—see section 17 (2).

**term**—if the term of a sentence or order has been amended under the *Crimes (Sentence Administration) Act 2004*, the **term** of the sentence or order is amended.

**victim**, of an offence in relation to which division 4.3 (Victim impact statements) applies, for that division—see section 54.

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*victim impact statement*, for an offence in relation to which division 4.3 (Victim impact statements) applies, for that division—see section 54.

*young offender*—see the *Children and Young People Act 1999*, section 64.

*young offender committal order*, for division 5.5 (Concurrent and consecutive sentences)—see section 82.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2004.

**2 Notification**

Notified under the Legislation Act on 2004.

**3 Republications of amended laws**

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

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