2015

LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

CRIMES (SENTENCING AND RESTORATIVE JUSTICE) AMENDMENT BILL 2015

EXPLANATORY STATEMENT

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Crimes (Sentencing and Restorative Justice) Amendment Bill 2015

Outline

Introduction

This explanatory statement relates to the Crimes (Sentencing and Restorative Justice) Amendment Bill 2015 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The Crimes (Sentencing and Restorative Justice) Amendment Bill 2015 (the Bill) has two objectives. The first is to introduce a new sentencing option into the Territory's sentencing framework. The second is to legislate for a staged implementation of phase 2 of restorative justice. The Bill is the second legislative outcome of the Justice Reform Strategy and follows on from the *Crimes (Sentencing) Amendment Act 2014*, which commenced the transition away from periodic detention as a way of serving a sentence of imprisonment.

In May 2014 the Government announced it would pursue a new justice reform strategy focused on enhancing the legal framework for sentencing and restorative justice, including the merits of introducing new sentencing options, such as intensive correction orders, used in other jurisdictions.

The work of the Justice Reform Strategy has involved academic research and extensive consultation to ensure proposals for reform are evidence-based. It has been provided with considerable assistance by an Advisory Group which includes representatives from government agencies, the ACT legal profession, academics, ACT Policing and representatives of groups with an interest or involvement in the justice system.

The work to develop the Bill also took note of the submissions, both written and oral, to the Justice and Community Safety Directorate's *Inquiry into Sentencing*. As a result, the Bill responds to a number of the recommendations of the report tabled in the Legislative

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Assembly in March 2015, including a recommendation to legislate to introduce an intensive corrections orders regime (rec 4) and a recommendation that the Attorney-General should proclaim a 'phase 2 application day' in relation to restorative justice (rec 46).

The new sentence – an 'intensive correction order'

Sentencing in criminal matters is an area of law and practice which is constantly evolving and the new intensive correction order has been created to ensure that the ACT's sentencing framework is modern and responsive.

The new sentence, to be called an 'intensive correction order' is formulated by the Bill's provisions to be a stand-alone way of serving a sentence of imprisonment. As such, it will sit just below a sentence of full-time imprisonment in the sentencing framework. It is intended as a sentence of 'last resort' for offenders before full-time imprisonment. The sentence can fulfil more than one of the purposes of sentencing in circumstances where community safety and other sentencing considerations do not require the sentence to be served by way of full-time imprisonment.

The intensive correction order is designed to be punitive while still allowing the courts to incorporate elements of rehabilitation. It will allow offenders to remain in employment and maintain their community ties which are important to reduce the risk of future offending. It is flexible enough to allow the courts to tailor the order to suit the circumstances of the offence and the offender but still sufficiently structured to ensure every order places appropriate demands on an offender.

The intensive correction order is supported by clear and robust consequences in the event an offender does not adhere to the requirements of the order. If a new offence is committed during the term of the order, a court is required to activate the remaining term of imprisonment either in full or in part unless it is not in the interests of justice to do so. If one or more of the other conditions of the order are breached then the Sentence Administration Board is authorised to conduct a hearing of the matter. The Sentence Administration Board is provided with a power to act quickly and innovatively, by imposing a short period of full-time imprisonment as well as other more traditional consequences, such as cancellation.

The creation of the new sentence has been an open, transparent and highly consultative process. In addition to the consultative aspects of the Advisory Group, a series of core design workshops have been held. Each workshop has focused on a specific topic related to

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sentencing issues with participants invited based on their expertise and experience. The series included a workshop on intensive correction orders which fed into discussions at Advisory Group meetings.

The formulation of the new sentence has also been underpinned by research, both academic and at Directorate level. The Justice and Community Safety Directorate of the ACT Government commissioned a literature review of 'intensive supervision orders' in overseas jurisdictions. The review was undertaken by the University of Canberra and provided a comprehensive explanation of each of the overseas orders considered and examined a variety of evaluation methods for their efficacy. The Justice and Community Safety Directorate undertook two research projects. The first was a desk-based review of 'intensive correction orders' in Victoria, New South Wales and Queensland in order to identify the features of the orders in those three jurisdictions to inform discussion and identify possible applicability in the ACT. The second project was to visit policy and corrections officers in the same three jurisdictions to provide a deeper understanding of both the policy rationale behind the orders and the elements of those orders.

The research and consultation activities of the Justice Reform Strategy culminated in the publication of a First Stage Report with submissions invited from interested parties. Following the receipt of six submissions and careful consideration of all the views expressed through consultation, as well as the information gathered through research, the provisions of the Bill to introduce the new sentence were developed.

Restorative Justice

The *Crimes (Restorative Justice) Act 2004* (the Restorative Justice Act) introduced an innovative model of restorative justice for the ACT and created a statutory framework for a restorative justice scheme in the Territory in a phased approach. The first phase, which has been in operation since 2005, applied the restorative justice scheme to less serious offences committed by young people, excluding sexual offences and offences of domestic violence. The second phase, to commence by ministerial declaration, provides for expansion to include all offences and all offenders.

The purpose of the amendments to the Restorative Justice Act is to introduce a staged approach to the implementation of phase 2 which cannot be properly achieved by a single ministerial declaration. The first stage of phase 2 expands the scheme to include adult

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offenders, as well as more serious offences for both adults and young offenders but excludes sexual offences and offences of domestic violence. The second stage of phase 2 (now called phase 3) expands the scheme to include domestic violence and sexual offences.

The decision to take a staged approach to phase 2 recognises that the expansion of the restorative justice scheme brings new opportunities and challenges. Dealing with sexual offences and offences involving domestic violence requires specialist skills to be acquired and the proposed two-stage implementation will provide the Restorative Justice Unit, which administers the scheme, the opportunity to recruit convenors with the necessary skills and experience and to provide specialist training to existing staff.

The commencement of phase 3 will make domestic violence offenders and sexual offenders eligible to be considered for restorative justice. Due to the nature of these offences, sensitivities will be addressed by attaching certain conditions to their eligibility for restorative justice.

Offenders who have committed serious sexual offences or serious domestic violence offences, as defined by the Bill will only be eligible for restorative justice after entering a plea of guilty or being found guilty by the court. Less serious domestic violence offenders and less serious sexual offenders who have not yet entered a plea or been subject to a finding by the court can only be referred for restorative justice by the court in exceptional circumstances.

In considering whether restorative justice is suitable (under the s 33 suitability criteria) for a less serious domestic violence offence or a less serious sexual offence by a young person or an adult, the director-general must be satisfied that exceptional circumstances exist to call a restorative justice conference.

The tiers of offences are therefore clearly defined in the Bill.

The Bill will also amend the Restorative Justice Act to include the Victims of Crime Commissioner (VOCC) as a referring entity. The introduction of a formal victim-centric restorative justice scheme in the ACT recognised that the interests of victims of crime are an essential consideration throughout the criminal justice process. Adding the VOCC as a referring entity reinforces these objectives.

Expanding the operation of restorative justice to include more serious offences and adult offenders will expand the range of victims that may now be involved in restorative justice processes. Including the VOCC as a primary referring entity, rather than an additional entity

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by way of regulation, is a measure that will highlight the attention being given to victims' rights and wellbeing.

The Restorative Justice Act prescribes a court as a referring entity. The amendments will allow the offender's legal representative to apply to the court for a matter to be referred for restorative justice under section 27(2) of the Act, the same way that the DPP can currently apply.

The expansion of restorative justice to adults and more serious offences requires streamlined, effective and fair referral pathways. Allowing an offender's legal representative to apply to the court for a restorative justice referral will assist to identify matters that might appropriately be dealt with under restorative justice, which could lead to better outcomes for victims and offenders. Both the DPP and the offender's legal representative will need to agree when the other party applies for an order that a matter be referred. The court will maintain discretion to grant or not grant such an order.

Human Rights Considerations

This human rights consideration will provide an overview of the human rights which may be engaged by the two aspects of the Bill, together with a discussion on reasonable limits where appropriate. Where necessary, a further human rights analysis is provided under specific provisions.

The new sentence

The Bill and new sentence have been developed within a human rights framework, informed by the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).[1] The Bill's provisions seek to balance the rights of individual offenders and their families with the rights and interests of victims and the wider community.

The Tokyo Rules "provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment". These principles support human rights by requiring endeavours to "ensure a

[1] General Assembly resolution 45/110 of 14 December 1990.

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proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention".[2]

Sentencing measures of any description can be expected to impact on the human rights of offenders and in broad terms, the provisions of the Bill engage and place limitations on the following rights under the *Human Rights Act 2004* (the Human Rights Act):

- right to liberty and security of person (s 18);
- rights to privacy and reputation (s 12);
- right to the protection of family and children (s 11); and
- right to freedom of movement (s 13).

The following rights are engaged and supported:

- right to liberty and security of person (s 18);
- right to protection from torture and cruel, inhuman or degrading treatment (s 10); and
- right to fair trial (s 21)

In addition the prohibition against retrospective criminal laws (s 25) is considered. While not engaged, the Bill seeks to support the right.

Limitations on human rights – section 28 of the Human Rights Act

Section 28(1) provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) states that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

(a) the nature of the right affected;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relationship between the limitation and its purpose; and

(e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

[2] Ibid Clause 1.4.

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The list of factors in section 28(2) is non-exhaustive. Where it is accepted that a right is engaged and limited by the Bill's provisions in relation to the new sentence, these factors are addressed by referencing the factor in bold type followed by the explanation as to why the limitation is reasonable in relation to that factor.

The right to liberty and security of person

Section 18 of the Human Rights Act provides that everyone has the right to liberty and security of person. This right is engaged by the imposition of an intensive correction order and may be both supported and limited. The right is supported in that the sentence of imprisonment imposed is not to be served in a prison or detention facility, but in the community. However, the right may also be engaged and limited in the event an offender is found to be in breach of the intensive correction order because the suspension or cancellation of an intensive correction order will result in a period of full-time imprisonment.

Commentary on the International Covenant on Civil and Political Rights (the ICCPR) suggests that the right to liberty and security of person relates only to a very specific aspect of human liberty,[3] namely the forceful detention of a person at a certain narrowly bounded location, such as a prison or other detention facility. In *Celepli v Sweden* the United Nations Human Rights Committee considered the assigned residence of a Turkish citizen to a Swedish municipality for nearly seven years and his obligation to report to the police three times a week was an interference with his freedom of movement but not his personal liberty.[4] This suggests that section 18 requires particular consideration where an offender breaches an intensive correction order and must consequently serve full-time imprisonment in custody.

The Bill provides a legislative breach framework which responds proportionately to non-compliance with an intensive correction order in accordance with section 28. The **nature of the right** is not absolute and people who have been found guilty of serious crimes can properly be imprisoned provided it is in accordance with law and is proportionate. **The purpose of the limitation** is to support compliance with an order of the court, as without consequences, there would be no incentive for an offender to comply. The **nature and extent of the limitation** is reasonable because an intensive correction order will only be imposed

[3]Murdoch J.L. (ed), 2005, *Article 5 of the European Convention on Human Rights: The Protection of Liberty and Security of Person.*

[4] (Communication no. 456/1991 *Ismet Celepli v Sweden*) Under the Optional Protocol, individuals who claim that any of their rights set forth in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Human Rights Committee for consideration.

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where a court has formed the view, pursuant to section 10 of the *Crimes (Sentencing) Act 2005*, that no other penalty is appropriate. An offender will be informed, prior to an intensive correction order being imposed, what is required of them and will have to consent to the order before it can be imposed on them. In addition, the penalty may range from a warning through to cancellation of the intensive correction order to allow for the penalty to reflect the nature and seriousness of a breach. There is **no less restrictive means reasonably available** because an intensive correction order would have no effect as a penalty without the ultimate sanction of full-time detention in the event of non-compliance.

The right may also be engaged and limited when an offender commits a further offence punishable by imprisonment during the term of an intensive corrective order. In that event, the sentencing court must cancel the intensive correction order and order the remainder of the offender's sentence be served in full or in part by full-time detention, unless it is not in the interests of justice to do so.

The **purpose of the limitation** is to ensure there are appropriate consequences to the commission of a further offence, which is punishable by imprisonment, while serving a sentence of imprisonment in the community by way of an intensive correction order. The **nature and extent of the limitation** is reasonable to support compliance with an intensive correction order given that a sentencing court will be able to order only part of the remaining sentence to be served by way of full-time detention and there is a further safeguard of an 'interests of justice' test. There is **no less restrictive means reasonably available** as the presumption of cancellation is couched in terms which provide a sentencing court with a proper level of discretion.

The right to freedom of movement

Section 13 of the Human Rights Act states that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

General comment 27 describes the liberty of movement as an "indispensable condition for the free development of a person". [5]

This right is engaged and limited by the Bill's provisions, as conditions imposed as part of an intensive correction order may include restrictions on where a person may live and prohibit

[5] HR1/GEN/1/Rev.9 (Vol 1) page 223

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an offender from being in a specified area or place, or associating with a specific person. Also, an offender who is serving their sentence by way of an intensive correction order may not leave the ACT without the approval of the director-general of the Justice and Community Safety Directorate and may be subject to a curfew condition.

General Comment 27 discusses permissible restrictions and notes that States should respect the principle of proportionality. [6] Proportionality is a principle already embedded in sentencing jurisprudence and operates to guard against unduly lenient or unduly harsh sentences being imposed. In *R v Scott* [7] Howie J stated "[T]here is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed". In order to impose an intensive correction order a sentencing court must have concluded that full-time detention is the appropriate penalty. Therefore, any restrictions imposed have less impact on an offender's freedom of movement than imprisonment served in a place of detention. In addition, the court will weigh up what restrictions are appropriate to create a proportionate response to the circumstances of the offence and offender.

The right is not absolute and may be subject to reasonable limitations pursuant to section 28 of the Human Rights Act. **The purpose of the limitation** is to permit an offender to serve a sentence of imprisonment in the community while still being subject to restrictions that serve one or more of the purposes of sentencing set out in section 7 of the Crimes (Sentencing) Act. The **nature and extent of the limitation** may vary depending on the construction of a particular sentence but within set parameters that are reasonable to achieve their **purpose**. An exception is that all intensive correction orders will contain a core condition that prevents an offender leaving the ACT, but this may be relaxed with the permission of the director-general. At this point, the sentencing court will already have considered whether a **less restrictive** penalty would be appropriate as part of the sentencing process. In addition, knowing the whereabouts of an offender who is subject to an intensive correction order supports the proper supervision of a person who is serving a sentence of imprisonment in the community.

A number of the Bill's provisions specifically engage and limit an individual's freedom of movement and a more detailed analysis can be found under the relevant provisions.

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[6] *Ibid*
[7] [2005] NSWCCA 152 para 15.

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The right to privacy and reputation

The right to privacy and reputation is contained in section 12 of the Human Rights Act and states that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Rule 3.1 of the Tokyo Rules also requires respect for an offender's right to privacy and that of their family in the application of non-custodial measures.

General comment 16 from the Office of the High Commissioner for Human Rights describes this right as the right of every person to be protected against arbitrary or unlawful interference with their privacy, family, home or correspondence. The comment notes that the term 'unlawful' means that no interference can take place except in cases envisaged by the law.[8] The term 'arbitrary interference' is described as intending to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.[9] Therefore, it is reasonable to suggest that a person's right to privacy can be interfered with, provided the interference is both lawful (allowed for by the law) and not arbitrary (reasonable in the circumstances).

The right to privacy is engaged and limited by the Bill's provisions in light of the ability to impose a curfew condition as a form of surveillance, and probation as a core condition of an intensive correction order, as well as other provisions. The curfew condition, in particular, may impact on the privacy of other members of an offender's household.

The right is not absolute as any interference must be unlawful or arbitrary to breach an individual's human rights. The **purpose of the limitation** in each instance is again, to allow an offender to serve a sentence of imprisonment in the community with the **nature and extent of the limitations** being tailored to the circumstances of the offence and offender. The imposition of an intensive correction order is, of itself, a **less restrictive means** of serving a sentence than full-time detention.

[8] Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1988 'General Comment No.16: the right to respect of privacy, family, home and correspondence, and protection of honour and reputation', para.3. Available: (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/23378a8724595410c12563ed004aeecd?Opendocument)
[9] Ibid, para 4.

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A curfew requirement, in particular, has obvious consequences for the privacy of both an offender and their family and a more detailed analysis can be found under the relevant provisions.

The right to protection of the family and children

Section 11(1) of the Human Rights Act states that the family is the natural and basic group unit of society and is entitled to be protected by society. Family has a broad meaning and includes all people who make up a family unit. This right has strong links, particularly in relation to the Bill, with the right to privacy (s 12). General comment 19 from the United Nations Human Rights Council on article 23 (right to protection of the family) of the ICCPR, notes that when read with article 17 (right to privacy), the right to protection of the family establishes a prohibition of arbitrary or unlawful interference with the family unit. [10]

The right is engaged and supported by the provisions of the Bill in that an intensive correction order allows an offender, who would otherwise by subject to a period of full-time detention, to continue to live in the family unit. Removing an individual to a place of detention may be disruptive to family life and have an adverse impact on family relationships.

The right may also be engaged and limited particularly when an offender is subject to restrictions on their movements and surveillance mechanisms are in place as part of an intensive correction order. Such conditions of an intensive correction order have the potential to impact on the family unit and for this reason, the sentencing court must consider the assessment for an intensive correction order undertaken by ACT Corrective Services which will include information on whether other members of the household understand and agree to an intensive correction order.

The **nature of the right** is not absolute and **the purpose of the limitation** is to provide appropriate restrictions on an offender to fulfil one or more of the purposes of sentencing, such as punishment, rehabilitation and protection of the community. The **nature and extent of the limitation** will depend on the circumstance of the offence and the offender and will be

[10] 13 Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, 1990 'General comment 19: Protection of the family, the right to marriage and equality of spouses, para 1. Available: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6f97648603f69bcdc12563ed004c3881?Opendocument.

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tailored accordingly by the sentencing court. There is **no less restrictive means reasonably available** as otherwise the offender would be serving their sentence in full-time detention.

The right to protection from torture

The right under section 10 of the Human Rights Act includes protection from cruel, inhuman or degrading treatment or punishment and is an absolute right. While not defined, such treatment can be mental or physical and is understood to include the use of excessive force by the police or punishment which entails a degree of humiliation beyond the level usually involved in punishment.

General comment 20 from the Office of the High Commissioner for Human Rights describes the aim of the provisions of the corresponding Article 7 of the ICCPR as being to protect both the dignity and the physical and mental integrity of the individual. [11]

It is arguable that an intensive correction order, as opposed to a sentence of full-time imprisonment, supports the right under section 10. The requirement for the offender to consent to the intensive correction order before being subject to it ensures an offender understands the obligations being placed on them and enters into the order with that knowledge. While the conditions of an intensive correction order include punitive aspects, none exceed the level usually involved in punishment.

The right to fair trial

Section 21 of the Human Rights Act provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The Bill applies to an offender who has been tried and found guilty of committing an offence in accordance with criminal law and procedure. Where an offender breaches a condition of an intensive correction order, their rights and obligations will be considered by the Sentence Administration Board during a hearing. The rules and procedures of the Sentence Administration Board set out in the *Crimes (Sentence Administration) Act 2005* are designed to afford natural justice to offenders appearing before it. The Bill provides for the establishment of clear procedures that will

[11] HRI/GEN/1/Rev.9 (Vol. I) page 12.

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apply to this process, ensuring that an offender understands the process following a breach of conditions and is subject to a fair hearing.

The prohibition on retrospective criminal laws

Section 25(2) of the Human Rights Act states that a penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed.

The Bill provides that a person who is found to have breached the obligations imposed on them by a sentence of imprisonment to be served by way of periodic detention must be returned to court for re-sentencing. When re-sentencing, the court may not impose a sentence of periodic detention. The effect of this is to alter the sentencing options available to a court on re-sentence from the options available at the time of the original sentencing.

The issue of retrospective laws is discussed fully in the explanatory statement to the *Crimes (Sentencing) Amendment Act 2014* in the context of the provisions applying to offences sentenced (as opposed to committed) after commencement. As clearly set out in that explanatory statement, altering the sentencing options available, in the way proposed, does not engage the prohibition against retrospective criminal laws.

While the right is not engaged, the Bill's provisions seek to support section 25 of the Human Rights Act by requiring the court not to impose a penalty which, when taken together with the previously imposed penalty, is greater than the maximum penalty the original sentencing court could have imposed for the offence. The court is also directed to take into account the fact that periodic detention was imposed at the original sentencing exercise, and anything done under that periodic detention order. In other words, an offender's degree of completion and compliance with the original order will be a factor at re-sentencing.

Restorative Justice – phase 2

Restorative justice is a form of justice which empowers victims of crime by giving them a safe forum to express how an offence has affected them and providing an opportunity to address unresolved issues and have a say in what needs to be done to put things right. It provides offenders with an opportunity to accept responsibility for their actions, understand the real impact of their behaviour and make amends. It is an entirely voluntary and

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consensual process on the part of both victim and offender (s 9 of the Restorative Justice Act).

The Restorative Justice Act engages and supports the rights to a fair trial and to be presumed innocent contained in sections 21 and 22 of the Human Rights Act. Section 6(d) of the Restorative Justice Act states that an object of the Act is "to enable access to restorative justice at every stage of the criminal justice process without substituting for the criminal justice system or changing the normal process of criminal justice". In addition, section 20(1) of the Restorative Justice Act states "if an offender accepts responsibility for the commission of an offence to take part in restorative justice, this Act does not prevent the offender from pleading not guilty for the offence".

The amendments are intended to achieve a staged implementation of phase 2 of restorative justice and do not alter the human rights status of the Restorative Justice Act. The amendments provide the opportunity for a wider range of victims and offenders to access this form of justice. Some categories of offences, particularly those involving domestic violence or of a sexual nature, require a sensitive and careful approach to ensure the objects in section 6 of the Restorative Justice Act are met. This is reflected in the decision to adopt a staged approach to ensure the Restorative Justice Unit is fully equipped to conduct these categories of referral.

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Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the Crimes (Sentencing and Restorative Justice) Amendment Act 2015.

Clause 2 — Commencement

This clause provides that certain amendments will commence on 2 March 2016 with amendments to the *Crimes (Restorative Justice) Act 2004* commencing on the day after notification on the ACT Legislation Register.

Clause 3 — Legislation amended

This clause identifies the legislation amended by the Act.

Part 2 – Crimes (Sentencing) Act 2005

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

This clause amends note 1 to remove the reference to imprisonment served by periodic detention and substituting it with a reference of imprisonment served by intensive correction.

Clause 5 — Imposition of penalties – Section 9 (2), note 2

This clause amends note 2 to clarify that a combination sentence may not include imprisonment served by intensive correction.

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

This clause amends the example to add a reference to an intensive correction order as an example of when a person may receive a sentence of imprisonment but be ordered to serve the sentence otherwise than in full-time detention at a correctional centre.

Clause 7 — Section 11

This clause substitutes the current section 11 with ‘intensive correction orders’.

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The intention of this provision is to limit the application of intensive correction orders where the term of imprisonment imposed is no longer than 2 years, except for in the exceptional circumstances set out in s 11(3), where an order can apply if the term of imprisonment imposed is up to 4 years.

Section 11(1) states that the intensive correction order only applies to adult offenders where a term of imprisonment imposed. The effect of this subsection is to limit the availability of intensive correction orders to offences which are punishable by imprisonment. Limiting intensive correction orders to adult offenders is consistent with the current approach to periodic detention and recognises the different considerations that apply in the sentencing of children and young people.

Section 11(2) states that when such a sentence of imprisonment of not more than 2 years is imposed, the sentencing court may order that the sentence be served by way of an intensive correction order.

Section 11(3) permits an intensive correction order to be made where a term of imprisonment of not more than 4 years provided certain criteria are met. The intent of this provision is to limit the circumstances in which a longer intensive correction order may be made to those cases where it is appropriate, having regard to the level of harm caused to both the victim and community by the offence being sentenced, whether the offender poses a risk to one or more people and the level of an offender's culpability. The combined considerations of harm, risk and blameworthiness aim to ensure that where a sentence of imprisonment of over 2 years is warranted, but does not exceed 4 years, the offender will be able to receive an intensive correction order but only where the sentencing court weighs up those factors and concludes it is a safe and suitable sentence.

Section 11(4) requires an intensive correction order to include a set of core conditions which apply to every order and which are listed in the *Crimes (Sentence Administration) Act 2005,* section 42.

Section 11(5) lists conditions available to a sentencing court to impose as part of an intensive correction order. The court may impose one, more than one, or none of the conditions as appropriate. Any conditions should be capable of being complied with within the term of the intensive correction order. This means that shorter intensive correction orders may not allow for certain conditions to be attached, which could reduce the level of therapeutic intervention,

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although offenders will still be able to access referrals and ongoing support on a voluntary basis.

The condition at section 11 (5) (c) for an offender to comply with a reparation order is not a condition requiring supervision by ACT Corrective Services. Reparation orders are dealt with in Chapter 6A of the *Crimes (Sentence Administration) Act 2005.*

Section 11 (6) states that a curfew condition may be included if the court is satisfied that each adult who lives at the place specified in the curfew condition or an adult with parental responsibility or guardianship for a person living there consents to the curfew.

Section 11 (7) makes this section subject to chapter 5 (Imprisonment) of the Crimes (Sentencing) Act.

Clause 8 – Definitions – pt 3.4 – section 21, definition of *non-association order*, paragraph (b)

This clause substitutes the existing definition of *non-association order* and makes it clear that electronic communication is also not permitted under such an order.

Clause 9 – Application – pt 3.4 - Section 22

This clause amends the section to remove ‘or both’ to reflect the fact that an intensive correction order cannot be combined with a good behaviour order.

Clause 10 – Section 22 (a)

This clause substitutes the reference to an order for periodic detention with a reference to an intensive correction order. This ensures non-association orders and place restriction orders are available, subject to the legislative criteria being met, in respect of intensive correction orders.

Clause 11 – Non-association and place restriction orders – maximum period, Section 24 (1) (a)

This clause limits the length of a non-association order that forms part of an intensive correction order to 24 months.

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Clause 12 – Non-association and place restriction orders – maximum period – Section 24 (2), example, except note

This clause amends the example in section 24 (2) to reflect the removal of periodic detention as an available sentence and the insertion of imprisonment served by intensive correction as a sentencing option.

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

This clause removes the reference to the prohibition against combining full-time detention and periodic detention inserted by the *Crimes (Sentencing) Amendment Act 2014.* This is because periodic detention will no longer be an available sentence.

Clause 14 — New section 29 (1) (aa)

This clause inserts a reference to the new intensive correction order and prohibits the combination of the intensive correction order with full-time imprisonment, a suspended sentence of imprisonment, or a good behaviour order. This ensures that the intensive correction order is a stand-alone way of serving a sentence of imprisonment while still allowing it to be combined with other appropriate orders. The prohibition against combination with a good behaviour order recognises that an offender will already have been subject to an appropriate period of supervision while under an intensive correction order.

Clause 15 — Section 29 (1), example 1

This clause substitutes the example in section 29 (1) to remove the reference to periodic detention.

Clause 16 — Section 29 (1), example 3

This clause removes the example, which primarily relates to periodic detention.

Clause 17 – Pre-sentence reports – order – Section 41 (4) (a)

This clause removes a reference to periodic detention which is no longer required.

Clause 18 — Pre-sentence reports by assessors - Section 42 (3)

This clause removes section 42(3) as it relates only to periodic detention and is no longer relevant.

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Clause 19— Section 42(4)(a)

This clause clarifies that this section applies to pre-sentence reports in relation to good behaviour orders.

Clause 20— Section 42(5)(a)

This section is amended to reflect the new title of section 98. **Clause 21— Start and end of sentences – general rule – Section 62 (2) (a) (i)**

This clause removes the reference to periodic detention.

Clause 22— Application – pt 5.2 – Section 64 (2) and note

This clause removes a subsection and a note which reference periodic detention.

Clause 23— Section 64 (3), definition of *excluded sentence of imprisonment,* paragraph (b)

This clause substitutes periodic detention with an intensive correction order as an excluded sentence of imprisonment. This means that Part 5.2 (Imprisonment – nonparole periods) does not apply to an intensive correction order and so a court is not required to set a nonparole period when sentencing an offender to a sentence of imprisonment to be served by way of an intensive correction order for 1 year or longer. This recognises that the intent is for an intensive correction order to be served in the community.

Clause 24 — Nonparole periods – review of decision on nonparole period – Section 68 (3) and note

This clause removes a subsection and a note relating to periodic detention as this is no longer required.

Clause 25 — Concurrent and consecutive sentences – general rule – Section 71 (3) (d)

This clause substitutes a reference to periodic detention with a reference to intensive correction orders to reflect the new section 80 which ensures that most intensive correction orders are a stand-alone sentence.

Clause 26 — Part 5.4

This clause removes Part 5.4 (Periodic Detention) and inserts a new Part 5.4 dealing with intensive correction orders.

<u>Division 5.4.1 – Intensive correction orders – eligibility and suitability</u>

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Section 76 – Application – pt 5.4

This section provides that part 5.4 applies when a court is considering whether to make an intensive correction order.

Section 77 – Intensive correction orders – eligibility

Section 77 (1) sets out the criteria for making an intensive correction order and requires the court to be satisfied about the suitability of the offender (as per section 78), that it is appropriate for the offender to undertake an intensive correction order and that the offender has given informed consent (as per s 77 (2)).

Section 77 (2) clarifies that in order for the consent of an offender to meet the required standard, the offender must have been given a clear explanation to make a balanced judgment about whether or not to give consent, have had the opportunity to ask questions that have then been answered, and received and appeared to understand the response. This requirement aims to ensure, in as far as possible, that offenders clearly understand the obligations the court intends to place on them. This is important given the nature of obligations attached to an order and potential consequences of breaching the order.

Section 78 – Intensive correction orders – suitability

This section creates a clear two-stage process for a sentencing court in determining whether an intensive correction order may be made.

Section 78(1)(a) requires the court to have considered any pre-sentence report previously prepared and be satisfied that only a term of imprisonment of not more than 2 years (except in limited circumstances, not more than 4 years) is appropriate. The court must also have considered all possible alternatives to ensure that it has determined both that a sentence of imprisonment is the only appropriate penalty and the length of that sentence, before proceeding to the next stage.

Section 78(1)(b) provides the second stage of the process and requires an ‘intensive correction assessment’ to be considered. The requirement for a separate assessment to be undertaken in relation to an offender’s suitability specifically for an intensive correction order recognises the level of supervision and obligations to which an offender will be subject under such an order. It will provide the court with a level of information that will allow detailed consideration as to whether the order is suitable for a particular offender. The court must also consider any previously prepared pre-sentence report, however it is not intended that the

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court request a further pre-sentence report (if one has not been prepared) in addition to the intensive correction assessment. An intensive correction assessment will address all the matters usually covered in a standard pre-sentence report, if one has not previously been prepared.

The intensive correction assessment will be undertaken by ACT Corrective Services, properly delegated by the director-general, under guidelines developed specifically for that purpose. The assessment process will be focused and comprehensive, including home visits and drug testing, which will indicate the commitment and suitability of an offender to serve a sentence of imprisonment in the community.

Section 78 (2) requires the intensive correction assessment to address certain specified matters contained in section 79.

Section 78 (3) requires the court to consider the listed matters to inform the decision as to whether to make an intensive correction order.

Section 78 (4) clarifies that the matters a court may consider in deciding whether to make an intensive correction order are not limited by subsection (3). This ensures that a sentencing court is able to consider all the relevant circumstances.

Section 78 (5) directs the court to specifically consider any indicators of unsuitability contained in table 79 and addressed in the intensive correction assessment.

Section 78 (6) clarifies that despite any recommendation in the intensive correction assessment or any evidence received from the assessment writer or any other corrections officer, the final decision as to whether to make an intensive correction order lies with the court.

Section 78 (7) requires the court to record the reasons for a decision to make, or not make, an intensive correction order if the decision is contrary to the recommendation of the intensive correction assessment. The intent is to highlight the need for a court to consider the recommendation of the assessment carefully while still retaining appropriate discretion.

Section 78 (8) states that a failure to comply with subsection (7) will not affect the validity of the intensive correction order.

Section 78(9) permits a regulation to be made in relation to the preparation of an intensive correction assessment.

<u>Section 79 – Intensive correction orders – intensive correction assessment matters</u>

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This section details the matters that must be included in an intensive correction assessment. The table requires the assessment to cover indicators of unsuitability in connection with drug and alcohol dependence, mental health, physical health, previous criminal convictions (including response to previous sentences), employment and personal circumstances, participation and degree of compliance with an intensive correction assessment and living circumstances of the offender. Section 78 (4) above makes it clear that these are not the only relevant matters.

It is important to note that the intent or effect of this section is not to exclude offenders with drug, alcohol, mental health or other issues from receiving an intensive correction order. The intent is for those issues to be assessed and for the intensive correction assessment to speak to whether those issues would prevent an offender from successfully completing an intensive correction order or whether they could be addressed through the order itself.

In considering the living circumstances of an offender an indication of unsuitability is a lack of consent of a household member, or someone with parental responsibility or guardianship for a household member. This provision will ensure that the person preparing an intensive correction assessment will consider and report to the sentencing court on the views of household members. While this provision does not prohibit the court from making an intensive correction order, it will ensure informed and careful consideration is given to the views and circumstances of household members. This includes children and vulnerable people.

Section 80 – Intensive correction orders – concurrent and consecutive periods

Section 80 (1) prohibits a court from making an intensive correction order at the same time as imposing a sentence of full-time imprisonment, a suspended sentence of imprisonment, a sentence of default imprisonment or a good behaviour order. This is intended to ensure that where an offender is being sentenced for more than one offence in a single sentencing event the court is not able to combine an intensive correction order with the other listed sentences. It also prevents the sentencing court from imposing an intensive correction order where there is an existing sentence of full-time imprisonment, suspended sentence of imprisonment, in place. An intensive correction order should be a stand-alone sentence where an offender is able to commence serving the order without delay. This is subject to the provisions below.

Sections 80 (2) and (3) combined permit a court to make an intensive correction order concurrently with a good behaviour order where the good behaviour order is not part of a

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suspended sentence order and where the offender is convicted of an offence committed prior to the offence for which the good behaviour order was made.

Sections 80 (4) and (5) combined allows a court to make an intensive correction order in respect of an offender who is subject to a fully suspended sentence order of imprisonment and is convicted of an offence committed prior to that suspended sentence order. In these circumstances the suspended sentence order must be cancelled, and the offender sentenced to an intensive correction order in respect of the original offence as well as the current offence. These provisions recognise that some offenders may have been previously convicted and sentenced. Such sentences do not interfere with the purposes of an intensive correction order.

Division 5.4.2 – Intensive correction orders – community service conditions

The sections in this division largely reflect the sections already in place in relation to good behaviour orders. As with good behaviour orders, community service is an additional condition which is available to the court to impose as part of an intensive correction order.

Section 80A – Meaning of *community service condition* – div 5.4.2

This section defines *community service condition* as meaning a condition which is included in an intensive correction order that the offender perform community service work.

Section 80B – Application – div 5.4.2

This section provides that this division applies in the circumstances where a court is considering whether to include a community service condition as part of an intensive correction order.

Section 80C – Intensive correction orders – community service – eligibility

The court must be satisfied that community service is both suitable and appropriate for an offender. If the court considers medical clearance is required before an offender can perform community service, and the offender refuses to undergo a medical assessment as directed, the court may decline to include community service as a condition in the intensive correction order.

Section 80D – Intensive correction orders – community service - suitability

In assessing suitability, this section directs the court that a community service condition must not be made unless the question of the offender's suitability is addressed in an intensive correction assessment. While the court must consider the assessment and other evidence,

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including any medical evidence, it is also able to consider any other relevant matters by virtue of section 80D (3). The court is also directed by section 80D (4) to consider any of the listed indicators of unsuitability contained in the intensive correction assessment report. While the court is not obliged to follow the recommendation of the report, if it does not do so then reasons must be recorded. However, failure to do so will not invalidate the intensive correction order.

Section 80E – Intensive correction orders – community service – hours to be performed

This section requires community service work to be between 20 and 500 hours, and sets the minimum period which an offender must be given to complete those hours. The provision also makes it clear that the period during which the community service work is required to be completed must be at least 6 month if the order requires less than 125 hours of community service work, at least 12 months for 125 hours or more but less than 250 hours, and 24 months if more than 250 hours of community service work is required.

Section 80F – Intensive correction orders – community service – concurrent and consecutive orders

This section envisages the situation where an offender is subject to two or more intensive correction orders or a good behaviour order made on different occasions. This situation may arise, for example, where a second sentencing exercise takes place shortly after a first intensive correction order or good behaviour order has been imposed. In those circumstances, this section allows any second community service condition to run concurrent or consecutively to the first with a cap on the total hours of 500.

Division 5.4.3 – Intensive correction orders – rehabilitation program conditions

The sections in this division reflect the sections in relation to rehabilitation program conditions already in place in relation to good behaviour orders.

Section 80G – Definitions – div 5.4.3

This section provides definitions for the terms *rehabilitation program* (being those prescribed by the *Crimes (Sentencing) Regulation 2006*) and *rehabilitation program condition.*

Section 80H – Application – div 5.4.3

This section provides for the division to apply to circumstances where a court is considering making a rehabilitation program condition as part of an intensive correction order.

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Section 80I – Intensive correction orders – rehabilitation programs – eligibility

The criteria the court must consider when deciding on the appropriateness of a rehabilitation program condition are set out as being suitability of aprogram, appropriateness of such a program and the availability of a place in a program. The court may decline to make a condition if an offender fails to undertake a medical examination as ordered.

Section 80J – Intensive correction orders – rehabilitation programs - suitability

The court may only include a rehabilitation program condition if the intensive correction assessment report addresses the issue and there is other information available about the nature and suitability of the proposed program. The court must consider the intensive correction assessment, any medical report and any other evidence provided by ACT Corrective Services, but may also take other matters into account.

The decision as to suitability is for the court despite any recommendation in an intensive correction assessment or evidence provided by ACT Corrective Services although reasons must be recorded if any recommendation is not followed. However, failure to do so will not invalidate the intensive correction order.

Section 80K – Intensive correction orders – rehabilitation programs – maximum period

This section limits the maximum period of a rehabilitation program condition to 2 years. This will coincide with the maximum expected term (for the majority of intensive correction orders) of 2 years. However it must be recognised that some rehabilitation programs extend for longer periods than 2 years, an example being Alcoholics Anonymous. This provision does not preclude a person from entering a longer rehabilitation program but means that an intensive corrections order condition requiring rehabilitation should not extend beyond the length of that order.

Section 80L – Intensive correction orders – rehabilitation programs – concurrent and consecutive orders

As with section 80F above, this section addresses the situation where a further intensive correction order is made. Any rehabilitation program condition may be ordered to run concurrently or consecutively to a condition already imposed by an earlier intensive correction order provided it ends no later than 2 years after being made. The same principle applies regarding the length of rehabilitation programs as that above at section 80K.

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Clause 27 — Imprisonment – explanation to offender – Section 82 (1) (d)

This clause substitutes the previous subsection relating to periodic with a new provision which requires a court to explain an offender's obligations under an intensive correction order and the consequences should the obligations be breached.

Clause 28 – Imprisonment – official notice of sentence – Section 84 (1) (c)

This clause removes a redundant reference to periodic detention.

Clause 29 — Section 84 (2) (c)

This clause removes a reference to periodic detention and substitutes a reference to an intensive correction order. The effect of the amendment is to ensure the court must issue a written notice of the order in accordance with the requirements of section 84.

Clause 30 — Section 84 (2) (f)

This clause substitutes a provision referencing periodic detention with a provision which requires the official notice of sentence to detail the conditions made by the court as part of an intensive correction order.

Clause 31 — Section 84 (3)

This clause allows a court to remand an offender in custody until given the official notice of sentence.

Clauses 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44— Various

These clauses substitute new headings to clarify that these provisions relate to good behaviour orders.

Clause 45 — Young offenders – community service- hours to be performed – Section 133L(3)

This clause clarifies that this section applies to pre-sentence reports in relation to good behaviour orders.

Clause 46 — Dictionary, definition of *community service condition*

This clause amends the definition of a community service condition by substituting a reference to an intensive correction order.

Clause 47 — Dictionary, new definitions

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This clause inserts two new definitions into the dictionary of the *Crimes (Sentencing) Act 2005.*

Clause 48 — Dictionary, definitions of *periodic detention* and *periodic detention period*

This clause removes two definitions which are no longer required.

Clause 49 — Dictionary, definitions of *rehabilitation program* and *rehabilitation program condition*

This clause amends the definition of a rehabilitation program condition to include a reference to an intensive correction order.

Part 3 – Crimes (Sentence Administration) Act 2005

Part 3 of the Bill makes amendments to provide for the effective administration of intensive correction orders.

Clause 50 — Treatment of sentenced offenders – Section 7 (2)

This clause removes a redundant reference to periodic detention to allow the provision to apply solely to full-time detention.

Clause 51 — Application – part 3.1 – Section 10 (1) (b) (i)

This clause removes a reference to periodic detention.

Clause 52 — Definitions – ch 4 – Section 23 (1) (a)

This clause amends the definition of ***recommitted*** by removing the provision relating to periodic detention.

Clause 53 — Chapter 5

This clause substitutes Chapter 5 to replace provisions relating to periodic detention with provisions relating to an intensive correction order.

Part 5.1- Preliminary

Section 39 – Application – ch 5

This section provides that chapter 5 applies to an offender in respect of whom the court makes an intensive correction order.

Section 40 – Definitions – ch 5

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This section provides necessary definitions for the chapter.

Part 5.2 – Serving intensive correction

Section 41 – Intensive correction order obligations

This section requires an offender to serve an intensive correction order in accordance with the provisions of part 5.2 by complying with the core conditions of the order, any additional conditions, any non-association or place restriction order made by the sentencing court, and any other requirement prescribed by regulation or imposed under the *Crimes (Sentence Administration) Act 2005* or the *Corrections Management Act 2007.* Section 41 (3) permits the making of a regulation in relation to electronic monitoring which can be used to monitor an offender's compliance with any condition of an intensive correction order. This regulation making power has been included to support the implementation of electronic monitoring. The ACT Government is currently exploring available options for the use of electronic monitoring and once adopted, could be used to monitor offenders sentenced to intensive correction orders. The possible need for further amendments to the Crimes (Sentencing) Act and Crimes (Sentence Administration) Act will also be the subject of further consideration.

Section 42 – Intensive correction order – core conditions

Section 42 (1) sets out the core conditions that apply to every intensive correction order, dealt with in turn below:

(a) An offender must not commit an offence punishable by imprisonment either in Australia or overseas.

(b) If charged with any offence then the offender must tell the director-general as soon as possible but, in any event, within 2 days.

(c) An offender must tell the director-general of a change of contact details (see s42(4)) as soon as possible but, in any event within 1 day. Section 151A of the *Legislation Act 2001* provides that if something must be done on a particular day and that day is not a working day, the thing must be done on the next day that is a working day. For example, if an offender changes their telephone number on a Saturday, they are not able to report this on the Sunday, which is not a working day, therefore need to report it on the Monday. If the Monday is a public holiday, they will need to report it on the Tuesday.

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(d) An offender must comply with any direction given by the director-general under this Act or the *Corrections Management Act 2007.*

(e) The offender must apply with the probation condition. This means that every intensive correction order must include a probation condition (see s42(4)) so that an offender is under the supervision of the director-general. It is intended that the level of supervision will reflect an offender's level of risk as assessed by the director-general.

(f) Any test sample for alcohol or drugs must not be positive.

(g) An offender must not use or obtain a drug. The definition of 'drug' is adopted from s132 Corrections Management Act which ensures that an offender who is taking as prescribed by a health practitioner is able to do so.

(h) An offender is not permitted to leave the ACT for any period without the approval of the director-general and must not leave Australia without the written approval of the Sentence Administration Board.

(i) If given approval to leave the ACT or Australia, then the offender must comply with any condition of the approval.

(j) An offender must comply with any direction of the director-general to live at any premises, undertake any program, report to a corrections officer or allow a corrections officer to visit where the offender is living at any reasonable time. These requirements are intended to ensure an offender is able to be appropriately supervised. A person is taken to reside where they live, sleep and keep their belongings.

(k) The offender must comply with any notice given under section 63 to attend a hearing of the board. This makes is clear that non-attendance will amount to a breach of the intensive correction order.

(l) This obliges an offender to comply with any core conditions added to this list by way of regulation.

Section 42 (2) requires the director-general to deal appropriately with any request for approval by either approving or refusing to approve the request. The decision may be notified orally or in writing.

Section 42 (3) stipulates that any application can be made orally or in writing and must either be made before the changes occurs or, if this is not possible, then as soon as possible after the change has taken place and no later than 1 day.

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Section 42 (4) provides definitions for *contact details* and *probation condition*.

Section 43 – Intensive correction order – alcohol and drug tests

This section permits the director-general to require an offender to give a test sample for alcohol or drugs when subject to an intensive correction order. It also applies the relevant provisions of the Corrections Management Act to the requirement.

Part 5.3 Intensive correction order – community service work

Section 44 – Application – pt 5.3

The section applies part 5.3 to an intensive correction order where a community service condition is imposed.

Section 45 – Intensive correction orders - compliance with a community service condition

The section states that in order to comply with a community service condition, an offender must comply with the requirements of part 5.3.

Section 46 – Intensive correction orders - community service work – director-general directions

Section 46 (1) provides the director-general with authority to give directions to an offender in relation to community service work that is considered suitable.

Section 46 (2) requires the directions to contain specified information, such as the place and time of reporting which will set out clear expectations for the offender.

Section 46 (3) also allows a direction to include that the offender is appropriately prepared when they report to do the community service work, such as they are properly attired and that their hygiene and cleanliness is at an appropriate standard for the work they are about to perform.

Section 46 (4) states that a direction takes effect at the time it is given to the offender or any specified later date and section 46 (5) clarifies that an offender is obliged to comply.

Section 46 (6) provides caveats to ensure the directions given are reasonable. First, an offender must not be required to undertake work that the offender is not capable of performing. Second, there is a clear expectation that community service work should not, in as far as practicable, prevent an offender from working in their usual or a new occupation or attending a place of education. This supports the benefits both to an offender and the community of an offender maintaining employment or undertaking education.

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Section 46 (7) clarifies that an offender must comply with any reasonable direction given by the person supervising the community service work.

Section 46 (8) places an obligation on the offender to tell the supervisor if they are unable to comply with directions and then comply with any further directions given.

Section 47 – Intensive correction order - Community service work – failure to report etc

This section applies where an offender fails to comply with community service work by not reporting or performing community service as directed, or not complying with a reasonable direction by a work supervisor. Section 47 (2) states that the director-general may direct the offender not to undertake further work and to leave the work placement.

Section 47 (3) recognises that where an offender is remanded in custody or detained under the *Mental Health Act 2015* and is therefore unable to undertake community service work then any missed work periods should be taken to have been completed.

Section 48 – Intensive correction orders - community service work – maximum daily hours

This section limits the number of hours to be performed, or credited to an offender to 8 and clarifies how the hours worked should be calculated.

Section 49 – Intensive correction orders - community service work – health disclosures

This section requires an offender to tell the director-general about any changes in their physical or mental health that affects their ability to perform community service work safely.

Section 50 – Intensive correction orders - community service work – alcohol and drug tests

This section permits the director-general to request an offender undergo alcohol or drug testing when reporting to do community service work. This recognises the importance of safety of the offender and any other person at the work placement.

Section 51 – Intensive correction orders - community service work – reports by entities

Where the Territory has made an agreement for another entity to provide community service work, this section requires the director-general to ensure such an agreement includes a reporting obligation on that entity in connection with an offender's participation.

Part 5.4 – Intensive correction order – rehabilitation programs

Section 52 – Application – pt 5.4

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This section provides that part 5.4 applies when the sentencing court imposes an intensive correction order with a rehabilitation program condition.

Section 53 – Intensive correction orders - rehabilitation program condition – compliance

This section makes it clear that an offender must comply with the provisions of this part in order to comply with a rehabilitation program condition of an intensive correction order.

Section 54 – Intensive correction orders - rehabilitation programs – director-general directions

Section 54 states that the director –general may provide an offender with directions in respect of any rehabilitation program condition, including what program the offender must attend and where, the time that the offender must report and to whom.

Section 55 – Intensive correction orders - rehabilitation program providers – reports by providers

Where the Territory has an agreement with an organisation to provide a rehabilitation program, this section requires the agreement to include a requirement for that organisation to provide written reports in respect of an offender's participation.

Part 5.5 – Intensive correction orders – curfew

Section 56 – Application – pt 5.5

This section provides that the provisions of 5.5 apply to an intensive correction order with a curfew condition.

Section 57 – Compliance with curfew

This section clarifies that an offender must comply with the provisions of part 5.5 in order to comply with a curfew condition imposed as part of an intensive correction order.

Section 58 – Curfew – directions

Section 58 (1) requires the sentencing court to detail the place of curfew and the period of time the curfew will be in force. This provision is intended to allow the period of a curfew direction to be shorter (but not longer) than the length of the intensive correction order.

Section 58 (2) permits the sentencing court to recommend the amount of time for which a curfew should apply and section 58 (3) permits the director-general to issue directions in connection with the days and hours that the curfew will operate, taking into account any

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recommendation of the court. This will allow flexibility in the operation of the curfew while permitting the sentencing court to set expectations for director-general. The maximum period of a curfew is limited to 12 hours in a period of 24 hours and requires the court to set the period of time a curfew is in place which must not exceed the length of the intensive correction order. These provisions allow the sentencing to create a flexible curfew condition, tailored to the circumstances of the offence and offender. The example provided is intended to clarify that the 12 hours can be split during the 24 hours period and specific days can be selected.

Section 58 (4) permits the director-general to delay the start of any curfew and section 58(5) imposes a requirement for the offender to comply with any direction given under this section.

The imposition of a curfew condition engages and limits the following human rights:

- rights to privacy and reputation (s 12);
- right to the protection of family and children (s 11); and
- right to freedom of movement (s 13).

The **nature of the rights** is not absolute and so may be subject to reasonable limitations pursuant to section 28 of the Human Rights Act.

The **purpose of the limitation** is to allow a sentencing court to restrict an offender's movements to fulfil one or more of the purposes of sentencing. For example, a curfew condition imposed in respect of an offender convicted of violent offences in public places due to over-consumption of alcohol may punish, promote rehabilitation, protect the community and act as a future deterrent. The **nature and extent of the limitation** is reasonable in light of the restrictions on the length of curfew and because it would be imposed as one element of a sentence of imprisonment to be served in the community. A 12 hour maximum allows offenders to work and participate in society while still providing sufficient restrictions to serve the purposes of sentencing. **No less restrictive means is reasonably available** bearing in mind the need to impose a sentence that reflects the seriousness of an offence and the legislative restrictions on a curfew requirement.

Part 5.6 – Supervising intensive correction orders

Division 5.6.1 – Intensive correction orders – supervision

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Section 59 – Corrections officers to report breach of intensive correction order obligations

This section requires a corrections officer to report a reasonable belief that an offender has breached any of their obligations under an intensive correction order to the Sentence Administration Board (the board). The report must be in writing and detail the grounds for the officer's belief.

Section 60 – Arrest without warrant – breach of intensive correction order obligations

This section allows a police officer to arrest an offender without a warrant when the officer believes, on reasonable grounds, that the offender has breached any of their obligations under an intensive correction order.

Once arrested, the offender must be taken as soon as practicable to appear before the board. If the board is not sitting, the offender must be taken before a magistrate who must then adjourn the matter to be heard by the board.

Section 61– Arrest warrant – breach of intensive correction order obligations

This section permits a judge or magistrate to issue an arrest warrant where information is given on oath that an offender has breached any of their obligations under an intensive correction order. The contents of the warrant are specified by section 62 (2). Again, the offender must be taken as soon as practicable to appear before the board, or if the board is not sitting, a magistrate.

Division 5.6.2 – Intensive correction orders – breach

Section 62 – Board inquiry – breach of intensive correction order obligations

Section 62 (1) allows the board to conduct an inquiry to decide if an offender has breached any of the obligations of an intensive correction order.

Section 62 (2) requires the boards to conduct a hearing for an inquiry when application is made by the director-general, a report under section 59 is received or the offender is arrested pursuant to sections 60 or 61.

Section 62 (3) clarifies that this section does not apply where a conviction for a new offence punishable by imprisonment has occurred. In these circumstances the matter will be dealt with by a court.

Section 62 (4) allows the board to conduct an inquiry at the same time as an inquiry into another matter.

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Section 62 (5) creates a mechanism to ensure the director-general is made aware of any inquiry held following arrest. It also requires the hearing to be held as soon as practicable to ensure that hearings occur with a minimum of delay.

Section 63 – Notice of inquiry – breach of intensive correction order obligations

This section requires the director-general to give written notice of an inquiry to be held under section 62 to both the offender and the Director of Public Prosecutions and specifies the information that must be included. An offender is required to attend a hearing by section 63 (3). The director-general must tell the board that a notice has been issued.

Section 64 – Board powers – breach of intensive correction order obligations

If a board conducts an inquiry and concludes that a breach of obligations has occurred, this section permits the board to take one or more of the specified actions.

Section 64 (2) empowers the board to issue a warning, suspend the intensive correction order, cancel the intensive correction order or, in limited circumstances, refer the offender back to the sentencing court.

The options on suspension are limited to either 3 days or 7 days. Where the offender admits the breach then the suspension will be for 3 days but in other circumstances the suspension will be for 7 days. Other circumstances will include where the offender denies the breach which is then found by the board to have occurred. This approach allows an offender to take responsibility for the breach and receive a reduced penalty. Suspension of the intensive correction order means that the offender will spend the period of suspension in full-time detention but will then be automatically released to serve the remainder of the sentence in accordance with the intensive correction order (see s 69).

Cancellation of the intensive correction order will result in the remainder of the sentence being served by way of full-time detention subject to the provisions of division 5.6.3.

Section 64 (3) limits the number of warnings to 3 in a 12 month period. This recognises that some breaches may be of a more minor nature but that repeated breaches, even of a minor nature, may indicate a more pervasive level of non-compliance.

Section 65 – Cancellation of intensive correction order on further conviction etc

This section requires a sentencing court to cancel an intensive correction order on conviction of a further offence which is punishable by imprisonment and order the offender serve the remainder of the term of imprisonment either in full or in part. Cancellation must occur

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unless the sentencing court considers it is not in the interests of justice and gives reasons for that decision. This is intended to create a clear presumption of cancellation where an offender has re-offended in breach of the intensive correction order and supports the intensive correction order as a sentence of last resort before full-time detention.

Section 66 – Cancellation of intensive correction order if offender withdraws consent

This section states that a withdrawal of an offender's consent to an intensive correction order amounts to a breach of the order and must result in cancellation.

Division 5.6.3 – Suspension and cancellation of intensive correction order

Section 67 – Application – div 5.7.3

This section applies division 5.7.3 to decisions of the board pursuant to sections 64 or 66.

Section 68 – Notice of board decisions about intensive correction order

Section 68 requires the board to provide written notice of decisions to each interested person. An interested person is defined by section 40 as the offender, the director-general and the director of public prosecutions.

Section 69 – Intensive correction order – effect of suspension or cancellation

When a decision has been made by the board to suspend or cancel an intensive correction order, this section states that the decision take effect on provision of the notice to the offender or on a specified later date.

Section 69 (3) states that during a period of suspension the offender must be in full-time detention and that the period of full-time detention counts towards completion of the intensive correction order. The intensive correction order, in effect, prevents an offender from serving a sentence of imprisonment in full-time detention and when the intensive correction order element is suspended, the underlying sentence of full-time detention takes over. On completion of the period of suspension, the offender will be automatically released from full-time detention to continue with the remaining period of intensive correction order. The time in full-time detention will have counted towards the completion of their sentence.

Section 69 (4) deals with the effect of cancellation in that an offender will be required to serve the remainder of their sentence in full-time detention. It is intended that this sentence will be served in accordance with all the provisions applicable to a sentence of full-time detention.

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

Section 71 clarifies that a board may deal with any other outstanding intensive correction order when making a decision in relation to an intensive correction order.

Section 71 – Intensive correction orders – effect of suspension or cancellation on parole

This section ensures that when suspending or cancelling an intensive correction order the board may also exercise its powers in relation to supervising parole.

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

Following a decision to suspend or cancel an intensive correction order, the board is required to order an offender is placed into the director-general's custody to serve the period of suspension or the remainder of the sentence of imprisonment. The board is authorised to issue a warrant to arrest and take into custody, signed by the chair or deputy chair of the board and directed to any or a named escort officer. Once arrested the offender must be placed in the custody of the director-general as soon as reasonably practicable.

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

This section allows an offender to seek reinstatement of the intensive correction order in certain circumstances.

An offender must have served at least 30 days of full-time detention before submitting an application for reinstatement and must satisfy the board that they will comply with the obligations of their intensive correction order. The board must consider an intensive correction order assessment prepared by the director-general. Reapplication is not permitted after a refusal within 6 months, unless there are exceptional circumstances.

The board may refuse a frivolous, vexatious or misconceived application or it has already refused an application made within the previous 6 months.

Section 73 (6) clarifies that any period served in full-time detention counts toward the completion of the overall sentence of imprisonment.

Part 5.7 – Intensive correction orders – amendment or discharge

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Section 74 – Court powers – amendment of discharge or intensive correction order

Section 74 allows a court to either amend or discharge an intensive correction order but subject to section 75. A power to amend is provided in recognition that an offender's circumstances may change. For example, an offender may be ordered to complete community service work but due to health issues which may arise after the original sentence is not able to do so. A power to discharge is also provided but is more fully discussed under section 75 below. The decision to amend or discharge can be made by the court acting on referral by the board, or application by an interested person.

Section 75 – Intensive correction orders – limitations on amendment or discharge

The operation of section 74 is limited by section 75.

A court may discharge an intensive correction order if an offender has complied with the order for a minimum period of 12 months. The order must be replaced with a suspended sentence order with a good behaviour order attached. The good behaviour order will be subject only to core conditions. This provision is intended to provide an incentive and reward offenders for compliance with an intensive correction order while acknowledging it is appropriate to ensure the offender remains at risk of having their sentence activated if they commit a further offence or breach a good behaviour order. For this reason, the court is not able to amend the length of an intensive correction order.

The court may also discharge an intensive correction order if satisfied, on application by the director-general or referral by the board, that the offender's health or other exceptional circumstances mean they are unlikely to be able to complete the intensive correction order. Again, a suspended sentence order with a good behaviour order (core conditions only) must be substituted.

Part 5.9 – Intensive correction orders – reporting and records

Section 76 – Record-keeping by director-general

This section details the information to be recorded by the director-general. This will allow effective data capture to inform evaluation of the intensive correction order.

Section 77 – Authorised person may access data

By requiring datato be kept, information relating to the intensive correction order will be easily accessible.

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Part 5.10 – Intensive correction orders – miscellaneous

Section 78 – Intensive correction order proceedings – rights of interested person

An interested person is defined in section 40. Each interested person is entitled, by virtue of this section to appear before a court and receive written notice of a court's decision and a copy of any order or direction. The court is required to hear any relevant submissions made by an interested person. This will allow all parties to make representations to a court in connection with the intensive correction order.

Section 79 – Intensive correction order – court powers after end of order

This section clarifies that the court or board may act in respect of anything arising during the term of the intensive correction order, even if the order has ended.

Section 80 – Intensive correction orders – extension of sentence for outstanding warrant

This effect of this section is to ensure an offender is not completing their term of imprisonment while wanted on a warrant.

Section 81 – Review of ch 5

This section creates a statutory review provision in relation to intensive correction orders.

The review must occur after three years with a report being tabled in the Legislative Assembly by 2 March 2020.

This section will expire four years after commencement as it will no longer be required.

Clause 54 — Good behaviour – core conditions – Section 86(1)(e)

This clause clarifies that this section applies in respect of good behaviour orders.

Clauses 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, and 65

These clauses substitute new headings to clarify that these provisions relate to good behaviour orders.

Clause 66 — Cancellation of good behaviour order with suspended sentence order – Section 110 (4), example

This clause amends the example provided by removing the reference of periodic detention and replacing it with a reference to an intensive correction order.

Clause 67 — Imprisonment – periodic detention – Section 116ZL

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This clause removes section 116ZL as it applies to periodic detention and is no longer required.

Clause 68 – Imprisonment – rate of discharge of outstanding fine – Section 166ZM (3) and (4)

This clause removes two sub-sections dealing with the rate of fine discharge by periodic detention as periodic detention will no longer be available.

Clause 69 — Functions of board – Section 172 (a) (i)

This clause substitutes a reference to periodic detention with a reference to intensive correction orders.

Clause 70 —Meaning of board's *supervisory functions* – Section 180 (a) (i)

This clause replaces a reference to periodic detention with a reference to intensive correction orders.

Clause 71 — Notice of board hearing – New section 204 (4)

This clause inserts a new sub-section to clarify that a notice does not need to be given under section 204 where a notice had been given under section 63.

Clause 72 — Arrest of offender for board hearing – Section 206 (1) (a)

This clause substitutes the current section 206 (1) (a) to add a power for the board to issue warrant of arrest for an offender where the offender has failed to attend the board for a hearing in accordance with a notice issued under section 63.

Clause 73 — Disclosures to register victims – offenders other than young offenders – Section 216 (1), example 2

This clause amends the example by substituting an example of information it may be appropriate to release in relation to an offender who is serving a sentence of imprisonment by way of an intensive correction order.

Clause 74 — Meaning of *community-based sentence*– section 264(1) (a) (i)

This clause substitutes a reference to periodic detention with a reference to an intensive correction order. This ensures that an intensive correction order falls within the definition of a community-based sentence and is able to be transferred interstate.

Clause 75 — Section 264 (2) (a)

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This clause replaces a reference to periodic detention with an intensive correction order

Clause 76 — Meaning of *community service work* – Section 316

This clause permits a regulation to declare participation in a community service program to be declared a community service work.

Clause 77 — Evidentiary certificates – Section 321A (2) (a)

This clause removes a reference to periodic detention which is no longer required.

Clause 78 —- Section 321A (2) (d)

This clause amends the section by inserting a provision which specifies that an evidentiary certificate may include a statement that a stated offender subject to an intensive correction order did not comply with a stated obligation of the order. This means that an evidentiary certificate may be used as evidence of something done or not done under an intensive correction order.

Clause 79 — New chapter 20

This clause inserts a new chapter 20 to provide transitional arrangements in relation to sentences of periodic detention.

Section 900- meaning of *commencement day* – ch 20

Commencement day is defined as the day the *Crimes (Sentencing and Restorative Justice) Amendment Bill 2015,* section 4 commences.

Section 901 – Application of amendments – periodic detention

Section 901 (1) applies the new section to an offender who is serving a sentence of periodic detention immediately prior to the commencement day.

Section 901 (2) clarifies that the amendments made to the Crimes (Sentence Administration) Act and Crimes (Sentencing) Act by the Crimes (Sentencing and Restorative Justice) Amendment Act 2015 do not apply to such an offender but that the provisions in force prior to amendment do apply. This has the effect of preserving all the necessary provisions of both Acts in the case of an offender currently serving periodic detention.

Section 901 (3) excludes three sections of the Crimes (Sentence Administration) Act from applying to offenders who are serving periodic detention at the time of commencement. The

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provisions are no longer required as breaches of periodic detention will be dealt with pursuant to section 902.

Section 902 – Transitional – referral of periodic detention in certain circumstances

This section ensures that any offender who breaches an order of periodic detention on or after commencement will be referred back to the sentencing court for re-sentencing.

Section 902 (1) – this provision requires the Sentence Administration Board (the board) to refer an offender back to the sentencing court in the event the board decides the offender is in breach of their order of periodic detention or is convicted or found guilty of an offence punishable by imprisonment.

Section 902 (2) – this subsection requires the sentencing court dealing with an offender referred to it pursuant to section 902(1) to re-sentence the offender for the original offence for which the order of periodic detention was made.

Section 902 (3) – in re-sentencing the offender, the sentencing court must take into account the fact that a sentence of periodic detention was imposed originally, rather than any other form of sentence, including full-time detention. The court must also take into account anything done under that order of periodic detention, as well as any other relevant matters. The intent of this provision is to ensure a resentencing exercise acknowledges the efforts made by an offender prior to any breach. The court is also directed that when re-sentencing the court must not imposed a penalty which, taken together with the earlier penalty, would exceed the maximum sentence available. Any sentence must not include periodic detention.

Although the prohibition against retrospective criminal laws is not engaged (Human Rights Act, s 25), this provision nevertheless seeks to support that right by as discussed in the Human Rights section above.

Section 903 – Transitional regulations

This section permits the making of regulations in relation to modifications required which have arisen as a result of the amendments introduced by the Bill. This power allows the executive to make a regulation to modify the chapter dealing with transitional arrangements. This power is appropriate as it is not possible to anticipate every scenario that may arise.

Section 904 – Expiry – ch 20

This section removes the transitional provisions after three years as they will no longer be required.

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Clause 80 — Dictionary, definition of *additional condition,* paragraph (a)

This clause amends the dictionary to refer to intensive correction orders in place of periodic detention.

Clause 81 —Dictionary, definition of *core condition,* paragraph (a)

This clause amends the dictionary to refer to intensive correction orders in place of periodic detention.

Clause 82 — Dictionary, definition of *detention period*

This clause removes a redundant definition in relation to periodic detention.

Clause 83 —Dictionary, definition of *finishing time*

This clause removes a definition in relation to periodic detention which is no longer necessary.

Clause 84 —Dictionary, new definition of *intensive correction order*

The term 'intensive correction order' is added to the dictionary, by reference to section 11 of the Crimes (Sentencing) Act to reflect the amendments introduced by this Bill

Clause 85 —Dictionary, definition of interested person

This clause adds a reference to section 40 to define 'interested person' in connection with an intensive correction order.

Clause 86 —Dictionary

This clause removes references to periodic detention which are no longer required.

Clause 87 —Dictionary, definition of *rehabilitation program condition*

This clause adds a reference to section 80G to provide the definition in relation to an intensive correction order.

Clause 88 —Dictionary

This clause removes redundant definitions in relation to periodic detention.

Part 4 – Crimes (Restorative Justice) Act 2004

Clause 89 — Definitions – offences and offenders, section 12, definition of *domestic violence offence*

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This clause updates the current definition of domestic violence offence to clarify that there are different criteria for restorative justice to apply to less serious and serious domestic violence offences.

Clause 90 - Section 12, new definitions

This clause inserts definitions to clarify the meaning of less serious domestic violence offences, less serious sexual offences, serious domestic violence offences and serious sexual offences. While all of these offences are eligible to be referred for restorative justice in phase 3, there are different pre-requisites that need to be satisfied. For example, less serious domestic violence offences may be referred for restorative justice at any stage in the justice process. A serious domestic violence offence is only eligible for referral if the offender has pleaded guilty to the offence or a finding has been entered by the court.

The use of 'less serious' for these offences is not intended to lessen the serious nature of the offences nor the level of harm they cause to victims, but only to clarify the eligibility requirements for restorative justice.

The definitions for less serious and serious sexual offences are based on the penalties for those offences in the *Crimes Act 1900*. Less serious sexual offences are those in Part 4 of the Crimes Act punishable by 10 years imprisonment or less. Serious sexual offences are Part 4 offences punishable by more than 10 years imprisonment.

The definitions for less serious and serious domestic violence offences are defined to mean the offences included in the *Domestic Violence and Protection Orders Act 2008*. The definition also notes that a victim of a domestic violence offence is a *relevant person* under s 36B of that Act.

Clause 91 — Sections 14 to 16

This clause replaces the former sections that guided the application of the Act and replaces them with a more streamlined approach, aligned to the commencement of phases 2 and 3.

New section 14 sets out the Act's application to less serious offences committed by either a young person or an adult. This section will apply even if the offence was committed prior to the commencement of phase 2. This section also makes it clear that section 14 does not apply to domestic violence or sexual offences, which are governed by section 16.

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New section 15 sets out the Act's application to more serious offences committed by a young person or an adult (again excluding domestic violence or sexual offences). This section does not apply until the phase 2 application day is declared by the Minister. This section will also apply even if the offence was committed prior to the commencement of phase 2.

New section 16 sets out the Act's application to less serious and serious domestic violence offences and less serious and serious sexual offences. The Act will not apply to these offences until the commencement of phase 3 but will cover offences committed prior to that date.

Less serious domestic violence offences and less serious sexual offences committed by a young person or an adult are eligible to be referred to restorative justice at any stage during the justice process. A serious sexual offence or a serious domestic violence offence is only eligible for referral if the offender has pleaded guilty to the offence or been found guilty by the court.

If a less serious domestic violence or less serious sexual offence has been referred for restorative justice prior to the offender entering a plea and prior to a finding by the court, the director-general (restorative justice) must be satisfied as part of the suitability assessment that exceptional circumstances exist for the calling of a restorative justice conference. This is to protect the integrity of the conferencing process where the offender has not yet taken formal legal responsibility for their actions.

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

This clause inserts a new definition of *victims of crime commissioner.*

Clause 93 —Clause 94 — new definition, table 22, items 1 and 5 amended

These clauses add the Victims of Crime Commissioner (VOCC) as a referring entity for the purposes of the Act. This means that the VOCC can refer matters for restorative justice either after the offender is cautioned or apprehended, and before the matter is referred for prosecution, or after a court has made a sentence-related order in relation to the offender and before the end of the term of the sentence-related order or sentence. A sentence-related order is defined as an order sentencing the offender or a suspended sentence, or a non-conviction order.

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This amendment acknowledges the important role that the VOCC has in the ACT's criminal justice system and also reinforces the critical objective of restorative justice – to provide a voice to the victim.

Clause 95

This clause is a technical amendment that changes section 24(3)(a) to reflect the new heading of section 26.

Clause 96 —Clause 97 —Clause 98 —Clause 99 —Clause 100 — Referral by DPP – less serious domestic violence offences and less serious sexual offences

These clauses amend section 26 to clarify the application of the Act when phase 3 commences. The DPP will be able to refer a less serious domestic violence offence or a less serious sexual offence for restorative justice if the section 24 referral conditions apply and if the DPP has consulted the victims (and parents, where relevant) involved in the matter. This provision is an additional safeguard to preserve the integrity of the restorative justice process and its victim-centric nature, as the DPP is only able to refer a matter to restorative justice, as a referring entity in its own right, before a second mention hearing for the offence (s 22, table 22, item 2, column 2).

Clause 101 – Section 26 (8), new definition of *phase 3 application day*

This clause includes a reference to the phase 3 application day definition at s 16(5).

Clause 102 —Referral during court proceeding, section 27 (2)

These clauses amend section 27 to clarify the application of the Act during court proceedings when phase 3 commences. Section 27 (2) is amended to enable the offender's legal representative, in addition to the DPP, to apply to the court for an order to refer the offender for restorative justice. A court may make such an order if the prosecution and any lawyer representing the offender agree, if the criteria at section 24 are satisfied and if the restorative justice process is suitably explained to the offender.

Clause 103 – Section 27 (4), including note

Section 27 (4) is amended to clarify that for phase 3, a less serious domestic violence offence or a less serious sexual offence alleged to have been committed by a young offender or an adult offender, may only be referred for restorative justice by the court (prior to the offender entering a plead or a finding being entered by the court) if it considers that exceptional circumstances exist to justify the referral. This amendment protects the integrity of the

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restorative justice process where the offender has not yet taken formal legal responsibility for their actions but a court considers restorative justice is appropriate in the circumstances.

Clause 104 – Section 27 (5) to (8)

This clause updates this section to clarify that this section of the Act will not apply to domestic violence or sexual offences prior to the commencement of phase 3.

Clause 105 – Section 27 (10), definition of *phase 2 application day*

This clause refers back to the definition of *phase 2 application day* in section 16 (5).

Clause 106 - Section 27 (1), new definition of *phase 3 application day*

This clause includes a reference to the phase 3 application day definition at s 16(5).

Clause 107 — Suitability – general considerations, section 33 (2)

This amendment applies to a less serious domestic violence or less serious sexual offence committed by a young offender or adult offender that has been referred for restorative justice prior to the offender entering a plea and prior to a finding by the court, and requires that the director-general (restorative justice) must be satisfied as part of the suitability assessment that exceptional circumstances exist for the calling of a restorative justice conference. The conference is the most personal component of restorative justice and this amendment protects the integrity of the process where the offender has not yet taken formal legal responsibility for their actions.

Clause 108 —Section 33 (3) to (6)

This clause is a technical amendment to ensure that domestic violence and sexual offences are not considered for restorative justice prior to the commencement of phase 3.

Clause 109 — section 33 (8), definition of *phase 2 application day*

This clause omits the existing definition of *phase 2 application day*.

Clause 110 - Section 33 (8), new definition of *phase 3 application day*

This clause includes a reference to the phase 3 application day definition at s 16(5).

Clause 111 – Dictionary, definition of *domestic violence offence*

This clause omits the former definition of *domestic violence offence*.

Clause 112 – Dictionary, new definitions

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These amendments clarify the new definitions in the Act including *less serious domestic violence offence, less serious sexual offence, serious domestic violence offence, serious sexual offence, domestic violence offence and sexual offence*.

Schedule 1 Consequential amendments

Part 1.1 Administrative Decisions (Judicial Review) Act 1989

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

This clause amends Schedule 1 (decisions to which the Act does not apply) to replace previous references to 'periodic detention' with the appropriate amendments.

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

This clause amends Schedule 2 (decisions to which s 13 does not apply) to replace previous references to 'periodic detention' with a reference to intensive correction orders.

Clause [1.3] Schedule 2, section 2.6 (2)

This clause deletes section 2.6 (2) of Schedule 2, which dealt exclusively with periodic detention.

Part 1.2 Bail Act 1992

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

This clause replaces a reference to 'a periodic detention obligation' with 'an intensive correction order obligation'.

Clause [1.5] Section 8A (2), example 1

This clause deletes example 1, which referred to periodic detention.

Clause [1.6] Section 8A (2), example heading

This clause replaces the former example heading that referred to periodic detention.

Part 1.3 Births, Deaths and Marriages Registration Act 1997

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

This clause replaces the reference to periodic detention with 'an intensive correction order'.

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Part 1.4 Coroners Act 1997

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

This clause removes reference to periodic detention.

Part 1.5 Corrections Management Act 2007

Clause [1.9] Section 6 (1) (b)

Clause [1.10] Section 63, definition of *admission*

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

These amendments all remove references to periodic detention.

Clause [1.12] Section 133 (1) (d)

This clause removes reference to periodic detention and applies the drug testing regime under the Act to an offender under an intensive correction order.

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

These amendments all remove references to periodic detention.

Part 1.6 Corrections Management Regulation 2010

Clause [1.14] Section 48 (c)

This clause removes reference to periodic detention.

Part 1.7 Crimes Act 1900

Clause [1.15] Section 157

This clause deletes section 157, which dealt exclusively with periodic detention.

Part 1.8 Crimes (Restorative Justice) Act 2004

Clause [1.16] Section 13, Example 2

This clause replaces an *order for periodic detention* with an *order for intensive correction*.

Part 1.9 Electoral Act 1992

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

This clause replaces references to periodic detention with intensive correction and intensive correction orders.

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Part 1.10 Spent Convictions Act 2000

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

This clause removes reference to periodic detention.

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