

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Restorative Justice) Bill 2004

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2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Restorative Justice) Bill 2004

A Bill for

An Act to provide a process of restorative justice for victims, offenders and the community, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Restorative Justice) Act 2004*.

4 **2 Commencement**

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

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

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

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

15 **3 Dictionary**

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

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

20 For example, the signpost definition ‘*adult offender*—see section 12’
21 means that the expression ‘adult offender’ is defined in this Act, s 12
22 and the definition applies to the entire Act.

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

1 **4** **Notes**

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

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

4 **5** **Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1* *Criminal Code*

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

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

13 *Note 2* *Penalty units*

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

1 **Part 2 Underlying principles**

2 **6 Objects of Act**

3 The objects of this Act are as follows:

4 (a) to enhance the rights of victims of offences by providing
5 restorative justice as a way of empowering victims to make
6 decisions about how to repair the harm done by offences;

7 (b) to set up a system of restorative justice that brings together
8 victims, offenders and their personal supporters in a carefully
9 managed, safe environment;

10 (c) to ensure that the interests of victims of offences are given high
11 priority in the administration of restorative justice under this
12 Act;

13 (d) to enable access to restorative justice at every stage of the
14 criminal justice process without substituting for the criminal
15 justice system or changing the normal process of criminal
16 justice;

17 (e) to enable agencies that have a role in the criminal justice
18 system to refer offences for restorative justice.

19 *Note* **Offence** includes an offence that is alleged to have been committed, but
20 has not yet been tried in court, or proven (see s 12).

7 Application of restorative justice

- (1) In deciding how to deal with an offence, a referring entity may consider whether it is appropriate to refer the offence for restorative justice before considering other action.

Note **Referring entities** are listed at table 22. They represent the agencies responsible for the various stages of the criminal justice process in relation to an offence.

- (2) However, if an offence is referred for restorative justice, the referral is to have no effect on any other action or proposed action in relation to the offence or the offender by the referring entity.

Example

Sian is arrested and charged with an offence. The chief police officer refers the offence for restorative justice. The referral of the offence does not prevent Sian being required to attend court to answer the charge.

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

8 When restorative justice is available

Restorative justice is available for an offence if all of the following requirements are satisfied:

- (a) there is an eligible victim or eligible parent in relation to the offence;
- (b) the offender is an eligible offender;
- (c) the offence is referred for restorative justice by a referring entity;

1 (d) the chief executive decides that restorative justice is suitable
2 for the offence.

3 *Note 1* Victims, parents and offenders are **eligible** for restorative justice if they
4 qualify under part 5.

5 *Note 2* The chief executive may only decide that restorative justice is **suitable**
6 for an offence according to the requirements of part 7 (see s 10, def).

7 *Note 3* The restorative justice process is provided for by this Act as follows:
8 • Pt 5 (Eligibility for restorative justice) deals with eligibility of
9 victims (or their parents) and offenders for restorative justice
10 • Pt 6 (Referral for restorative justice) deals with the referral of
11 offences for restorative justice
12 • Pt 7 (Suitability for restorative justice) deals with the suitability of
13 restorative justice for an offence.
14 • Pt 8 (Restorative justice conferences and agreements) deals with
15 the calling of restorative justice conferences and the making of
16 restorative justice agreements for an offence

17 **9 No obligation to participate**

18 There is no obligation on a victim, a parent of a child victim or an
19 offender—

20 (a) to take part in restorative justice; or

21 (b) to continue to take part in restorative justice after it has started.

22 *Note* Victims (or their parents) and offenders must be given clear
23 explanations of the purpose and procedures involved in the restorative
24 justice process before agreeing to take part. In addition, the legal status
25 of the process and the legal effect of entering into a restorative justice
26 agreement must be clearly explained to victims (or their parents) and
27 offenders. See the following:

- 28 • s 25 (Explanation of restorative justice)
- 29 • s 45 (Explanation for participants)
- 30 • s 53 (Explanation of effect of agreement).

1 **Part 3** **Key concepts**

2 **10** **Definitions—restorative justice**

3 In this Act:

4 *eligible offender*—see section 19.

5 *eligible parent*—see section 18.

6 *eligible victim*— see section 17.

7 *referred*, for restorative justice—an offence is *referred* for
8 restorative justice if a referring entity proposes that consideration be
9 given to whether restorative justice is suitable for the offence.

10 *referring entity*—

11 (a) see section 22; but

12 (b) for part 8 (Restorative justice conferences and agreements)—
13 see section 38; and

14 (c) for division 9.2 (Reporting and records)—see section 67.

15 *restorative justice* means the process of restorative justice provided
16 under this Act, including a restorative justice conference under this
17 Act.

18 *suitable*—restorative justice is *suitable* for an offence, or an eligible
19 victim, parent or offender in relation to an offence, if the chief
20 executive decides under part 7 that restorative justice is suitable for
21 the offence, victim, parent or offender.

1 **11 Definitions—*child victim, parent and victim***

2 In this Act:

3 ***child victim***, of an offence, means a victim of an offence who is a
4 child.

5 *Note* A ***child*** is an individual under 18 years old (see Legislation Act, dict,
6 pt 1, def ***child***).

7 ***parent***, of a child, means a person with parental responsibility for
8 the child within the meaning of the *Children and Young People Act*
9 *1999*, part 2.3 (Parental responsibility).

10 ***victim***—

11 (a) has the meaning given by the *Victims of Crime Act 1994*,
12 dictionary; and

13 (b) includes a person who would be a victim if a reference in that
14 Act to an ***offence*** included a reference to an offence that is
15 alleged to have been committed.

16 **12 Definitions—offences and offenders**

17 In this Act:

18 ***adult offender***, in relation to an offence, means an offender who
19 was an adult when the offence was committed.

20 *Note* An ***adult*** is an individual who is at least 18 years old (see Legislation
21 Act, dict, pt 1, def ***adult***).

22 ***commission***, of an offence that is alleged to have been committed,
23 includes the alleged commission of the offence.

24 *Note* ***Offence*** is defined to include an offence that is alleged to have
25 committed. ***Offender*** is defined in similar terms. See definitions of
26 ***offence*** and ***offender*** in this section.

1 ***domestic violence offence*** means an offence mentioned in the
2 *Protection Orders Act 2001*, section 9 (2) that is committed by an
3 offender, if the offender directed the behaviour comprising the
4 offence at a relevant person within the meaning of that Act,
5 dictionary in relation to the offender.

6 *Note* Under the *Protection Orders Act 2001*, dict, a ***relevant person*** in
7 relation to the offender would be any of the following people:

- 8 • a domestic partner of the offender (***domestic partner*** is defined in
9 the Legislation Act, s 169 (1))
- 10 • a relative of the offender (***relative*** is defined in the *Protection*
11 *Orders Act 2001*, dict)
- 12 • a child of a domestic partner of the offender
- 13 • someone who normally lives, or normally lived, in the same
14 household as the offender (other than as a tenant or boarder).

15 ***less serious offence*** means an offence other than a serious offence.

16 ***offence***—

- 17 (a) means an offence against a Territory law; and
- 18 (b) includes an offence against a Territory law that is alleged to
19 have been committed by a person, unless—
- 20 (i) a court has acquitted the person of the offence; or
- 21 (ii) a court has dismissed a proceeding against the person for
22 the offence without finding the person guilty.

23 ***offender***—

- 24 (a) means a person who has been convicted or found guilty of an
25 offence against a Territory law; and
- 26 (b) includes a person who is alleged to have committed an offence
27 against a Territory law, unless—
- 28 (i) a court has acquitted the person of the offence; or
- 29 (ii) a court has dismissed a proceeding against the person for
30 the offence without finding the person guilty.

1 *serious offence* means an offence punishable by imprisonment for a
2 term exceeding—

- 3 (a) if the offence relates to money or other property—14 years; or
4 (b) in any other case—10 years.

5 *young offender*, in relation to an offence, means an offender who
6 was less than 18 years old, but at least 10 years old, when the
7 offence was committed or allegedly committed.

8 **13 Definition—*sentence-related order***

9 In this Act:

10 *sentence-related order*, for an offender who is found guilty of an
11 offence, means—

- 12 (a) for an adult offender, any of the following orders of the court:
13 (i) an order sentencing the offender;
14 (ii) an order under the *Crimes Act 1900*, section 402 (1) or
15 section 403 (1), including an order dismissing the charge
16 against the offender under section 402 (1);
17 (b) for a young offender, any of the following orders under the
18 *Children and Young People Act 1999*:
19 (i) an order under that Act, section 96 (Disposition of young
20 offenders);
21 (ii) an order dismissing the charge under that Act, section 98
22 (2) (a) (Disposition without proceeding to conviction);
23 (iii) an order under that Act, section 98 (2) (b).

24 **Examples for par (a) (i)**

- 25 1 an order for a sentence of imprisonment
26 2 a home detention order under the *Rehabilitation of Offenders (Interim) Act*
27 *2002*
28 3 a periodic detention order under the *Periodic Detention Act 1995*

- 1 4 an order under the *Crimes Act 1900* for the offender to carry out community
2 service work
- 3 *Note* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 Legislation Act, s 126 and s 132).

1 **Part 4 Application of Act**

2 **14 Application of Act—young offenders and less serious**
3 **offences**

4 (1) This Act applies to a less serious offence committed by a young
5 offender.

6 (2) This Act applies to a less serious offence committed by a young
7 offender even if the offence was committed before the day this
8 section commenced.

9 (3) Despite subsections (1) and (2), this Act does not apply to a
10 domestic violence offence, or a less serious sexual offence, before
11 the phase 2 application day.

12 (4) Subsections (2) to (6) (including this subsection) expire on the
13 phase 2 application day.

14 *Note* A provision of an Act expires at the end of the day fixed for its expiry
15 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

16 (5) Subsections (2) to (6) (including this subsection) are laws to which
17 the Legislation Act, section 88 (Repeal does not end effect of
18 transitional laws etc) applies.

19 (6) In this section:

20 *less serious sexual offence* means an offence against any of the
21 following provisions of the *Crimes Act 1900*:

22 (a) section 59 (Act of indecency in the third degree);

23 (b) section 60 (Act of indecency without consent);

24 (c) section 61 (2) (Acts of indecency with young people);

25 (d) section 62 (3) (Incest and similar offences);

26 (e) section 63 (Abduction).

1 *phase 2 application day*—see section 15 (4).

2 **15 Application of Act—generally**

3 (1) This Act applies to a less serious offence committed by an adult
4 offender.

5 (2) This Act applies to a serious offence (whether committed by a
6 young offender or an adult offender) if—

7 (a) the offender is charged with the offence; and

8 (b) either—

9 (i) the offender pleads guilty to the offence; or

10 (ii) the offender is found guilty of the offence (whether or not
11 the offender is convicted or sentenced for the offence).

12 (3) This section does not apply to a domestic violence offence.

13 *Note* For the application of the Act to domestic violence offences, see s 16.

14 (4) Subsections (1), (2) and (3) do not apply before a day (the *phase 2*
15 *application day*) declared by the Minister by written notice.

16 (5) However, subsections (1) and (2) may apply to an offence even if
17 the offence was committed before the phase 2 application day.

18 (6) A declaration under subsection (4) is a notifiable instrument.

19 *Note* A notifiable instrument must be notified under the Legislation Act.

20 (7) To remove any doubt, the Legislation Act, section 79 (Automatic
21 commencement of postponed law) does not apply to subsections (1),
22 (2) and (3).

23 *Note* If the Legislation Act, s 79 applied to subsection (1), (2) or (3), the
24 subsection would automatically commence 6 months after the
25 commencement of this Act (apart from s 1 and s 2) if it had not already
26 been effectively commenced by the declaration of the phase 2
27 application day.

1 (8) Subsections (4) to (9) (including this subsection) expire on the
2 phase 2 application day.

3 *Note* A provision of an Act expires at the end of the day fixed for its expiry
4 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

5 (9) Subsections (4) to (8), and this subsection, are laws to which the
6 Legislation Act, section 88 (Repeal does not end effect of
7 transitional laws etc) applies.

8 **16 Application of Act—domestic violence offences**

9 (1) This Act applies to a domestic violence offence committed by a
10 young offender.

11 (2) Subsection (1) applies whether or not the young offender is charged
12 with the offence.

13 *Note 1* An offence may have been *committed* if it is alleged that the offence
14 was committed (see s 12, def *commission*).

15 *Note 2* For the chief executive to decide that a domestic violence offence
16 committed (or allegedly committed) by a young offender is suitable for
17 restorative justice under pt 7, the chief executive must be satisfied that
18 exceptional circumstances exist for the calling of a restorative justice
19 conference (see s 33 (2)).

20 (3) This Act applies to a domestic violence offence committed by an
21 adult offender if—

22 (a) the offender is charged with the offence; and

23 (b) either—

24 (i) the offender pleads guilty to the offence; or

25 (ii) the offender is found guilty of the offence (whether or not
26 the offender is convicted or sentenced for the offence).

27 (4) Subsections (1), (2) and (3) do not apply before the phase 2
28 application day.

- 1 (5) However, subsections (1), (2) and (3) may apply to an offence even
2 if the offence was committed before the phase 2 application day.
- 3 (6) To remove any doubt, the Legislation Act, section 79 (Automatic
4 commencement of postponed law) does not apply to subsection (1),
5 (2) or (3).
- 6 *Note* If the Legislation Act, s 79 applied to subsection (1), (2) or (3), the
7 subsection would automatically commence 6 months after the
8 commencement of this Act (apart from s 1 and s 2) if it had not already
9 been effectively commenced by the declaration of the phase 2
10 application day.
- 11 (7) Subsections (4) to (9) (including this subsection) expire on the
12 phase 2 application day.
- 13 *Note* A provision of an Act expires at the end of the day fixed for its expiry
14 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).
- 15 (8) Subsections (4) to (9) (including this subsection) are laws to which
16 the Legislation Act, section 88 (Repeal does not end effect of
17 transitional laws etc) applies.
- 18 (9) In this section:
19 *phase 2 application day*—see section 15 (4).

1 **Part 5 Eligibility for restorative justice**

2 **17 Eligible victims**

3 (1) A victim of an offence is eligible for restorative justice in relation to
4 the offence if—

5 (a) this Act applies to the offence and the offender under part 4;
6 and

7 (b) the victim is at least 10 years old; and

8 (c) the victim is capable of agreeing to take part in restorative
9 justice.

10 (2) If a victim of an offence is younger than 10 years old, an immediate
11 family member of the victim is eligible for restorative justice in
12 relation to the offence if—

13 (a) this Act applies to the offence and the offender under part 4;
14 and

15 (b) the immediate family member is at least 10 years old; and

16 (c) the immediate family member is capable of agreeing to take
17 part in restorative justice.

18 *Note* Alternatively, a parent of a child victim of an offence may take part in
19 restorative justice as an invited participant (see s 44).

20 (3) For this Act, a victim of an offence, or an immediate family member
21 of a victim of an offence, is an **eligible victim** in relation to the
22 offence if the victim or immediate family member is eligible for
23 restorative justice under this section.

- 1 (4) In this section:
2 *immediate family member*, in relation to a victim of an offence,
3 means a person who was, at the time the offence was committed—
4 (a) a parent of the victim; or
5 (b) a sibling of the victim.
- 6 **Examples of siblings**
7 1 brother or sister
8 2 half-brother or half-sister
9 3 step-brother or step-sister
10 4 someone who has the same guardian or foster parent as the victim
- 11 *Note* An example is part of the Act, is not exhaustive and may extend,
12 but does not limit, the meaning of the provision in which it
13 appears (see Legislation Act, s 126 and s 132).
- 14 **18 Eligible parents**
- 15 (1) A parent of a child victim of an offence (no matter how old the child
16 victim is) is eligible for restorative justice in relation to the offence
17 if—
18 (a) this Act applies to the offence and the offender under
19 part 4; and
20 (b) the child victim is incapable of adequately understanding or
21 responding to the experience of the offence, or has died; and
22 (c) the parent is capable of agreeing to take part in restorative
23 justice.
- 24 (2) For this Act, a parent of a child victim of an offence is an *eligible*
25 *parent* in relation to the offence if the parent is eligible for
26 restorative justice under this section.

1 **19 Eligible offenders**

- 2 (1) An offender who commits an offence is eligible for restorative
3 justice if—
- 4 (a) this Act applies to the offence and the offender under
5 part 4; and
- 6 (b) the offender—
- 7 (i) accepts responsibility for the commission of the offence;
8 and
- 9 (ii) was at least 10 years old when the offence was
10 committed, or was allegedly committed; and
- 11 (iii) is capable of agreeing to take part in restorative justice;
12 and
- 13 (iv) agrees to take part in restorative justice.
- 14 (2) For this Act an offender is an *eligible offender* in relation to the
15 offence if the offender is eligible for restorative justice under this
16 section.

17 **20 Accepting responsibility for offences**

- 18 (1) If an offender accepts responsibility for the commission of an
19 offence to take part in restorative justice, this Act does not prevent
20 the offender from pleading not guilty for the offence.
- 21 (2) The fact that a court knows that an offender has accepted
22 responsibility for the commission of an offence to take part in
23 restorative justice does not require a court to reduce the severity of
24 any sentence it may make for the offender.

25 *Note 1* To be eligible take part in restorative justice, an offender must accept
26 responsibility for the commission of the offence (see s 19).

27 *Note 2* The *Crimes Act 1900*, s 342 (1) (v) provides that in deciding the
28 sentence to be imposed on a person for an offence, the matters to which
29 a court must have regard include the fact (if true) that the person has

1 accepted responsibility for the commission of the offence to take part in
2 restorative justice.

3 However, the *Crimes Act 1900*, s 344 (g) provides that a court must not
4 increase the severity of the sentence that it would otherwise impose on a
5 person for an offence because the offender has chosen not to take part,
6 or to continue to take part, in restorative justice for the offence.

1 **Part 6 Referral for restorative justice**

2 **Division 6.1 Preliminary**

3 **21 Definitions—referral**

4 In this Act:

5 *chief executive (children and young people)*—see section 22 (2).

6 *chief executive (corrections)*—see section 22 (2).

7 *chief executive (restorative justice)*—see section 22 (2).

8 *court referral order*—see section 27 (2) (Referral during court
9 proceeding).

10 *Note* *Referred* is defined in s 10.

11 *referring entity*—see section 22.

12 *section 24 referral conditions*—see section 24 (Referral power).

13 **Division 6.2 General**

14 **22 Referring entities**

15 (1) An entity mentioned in table 22, column 2 (a *referring entity*) may
16 refer an offence for restorative justice at the stage of the criminal
17 justice process described for the entity in column 3 in relation to the
18 offence.

19 (2) In table 22:

20 *chief executive (children and young people)* means the chief
21 executive of the administrative unit responsible for the
22 administration of the *Children and Young People Act 1999*, acting in
23 that capacity.

1 **chief executive (corrections)**, in relation to an offender for whom a
2 sentence-related order is made, means the chief executive of the
3 administrative unit responsible for the administration of the order,
4 acting in that capacity.

5 **chief executive (restorative justice)** means the chief executive of the
6 administrative unit responsible for the administration of this Act,
7 acting in that capacity.

8 **Example (definitions of all chief executives)**

9 For this example, the administrative unit responsible for the administration of
10 sentence-related orders (for both young and adult offenders) is also the
11 administrative unit responsible for the administration of this Act and the *Children*
12 *and Young People Act 1999*. The administrative unit has a single chief executive.
13 That chief executive, in different capacities corresponding to those different
14 responsibilities, may be differently described as follows:

- 15 • The chief executive is the **chief executive (children and young people)** while
16 exercising a function in relation to an offence allegedly committed by a child
17 who is the subject of a care and protection order under the *Children and*
18 *Young People Act 1999*.
- 19 • The chief executive is the **chief executive (corrections)** while exercising a
20 function in relation to a young or adult offender who is the subject of a
21 sentence-related order.
- 22 • The chief executive is the **chief executive (restorative justice)** while
23 exercising a function relating to the administration of this Act.

24 *Note 1* If this Act refers simply to **the chief executive** (without a tag) this is a
25 reference to the chief executive of the administrative unit responsible
26 for the administration of this Act (see Legislation Act, s 163).

27 *Note 2* A chief executive may delegate any powers given to the chief executive
28 under this Act to a public sector officer under the *Public Sector*
29 *Management Act 1994*, s 36.

30 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
31 does not limit, the meaning of the provision in which it appears (see
32 Legislation Act, s 126 and s 132).

33 **prosecution referral**, for an offender, means referral of the offender
34 for prosecution by any of the following:

- 35 (a) a voluntary agreement to attend court;

- 1 (b) a court attendance notice;
 2 (c) a summons;
 3 (d) the arrest and charging of the offender.

4 **Table 22 Referring entities**

column 1 item	column 2 referring entity	column 3 stage of criminal justice process
1	chief police officer chief executive (restorative justice) chief executive (children and young people)	(a) after the offender is cautioned or apprehended; and (b) before a prosecution referral is made for the offender
2	director of public prosecutions	(a) after a prosecution referral is made for the offender; and (b) before a second mention hearing for the offence by a court has begun
3	Magistrates Court (including the Childrens Court) Supreme Court	unless, or until, the offender pleads guilty to the offence— (a) after a second mention hearing for the offence has begun; and (b) before the end of a case management hearing or case status inquiry for the offence

column 1 item	column 2 referring entity	column 3 stage of criminal justice process
4	Magistrates Court (including the Childrens Court) Supreme Court	if the offender pleads guilty to, or is found guilty of, the offence— (a) after the offender pleads guilty to, or is found guilty of, the offence (whether or not the offender has been convicted or sentenced); and (b) before the end of the proceeding
5	chief executive (corrections) chief executive (restorative justice) sentence administration board	(a) after a court has made a sentence- related order in relation to the offender; and (b) before the end of the term of the sentence-related order or the sentence (if any) of which it forms part (whichever is later)
6	referring entity prescribed under the regulations	stage of the criminal justice process prescribed under the regulations

1 **23 Referral—procedure**

2 (1) The referring entity must give a referral to the chief executive
3 (restorative justice).

4 *Note* Section 72 deals with what happens if the referring entity is the same
5 chief executive as the chief executive (restorative justice), but the
6 referral is made by the chief executive as chief executive (corrections)
7 or chief executive (children and young people).

8 That section provides that the chief executive must ensure that
9 appropriate administrative arrangements are made for the referral to be
10 given by a delegate of the chief executive as chief executive
11 (corrections) or chief executive (children and young people) to a
12 delegate of the chief executive as chief executive (restorative justice).

- 1 (2) The referral—
2 (a) must be in writing, stating the grounds for referral; and
3 (b) if the referring entity is a court—may be in the form of a court
4 referral order or sentence-related order, or as a condition of a
5 bail order.

6 *Note* If a form is approved under s 73 for this provision, the form must be
7 used.

- 8 (3) This section does not apply if the referring entity is the chief
9 executive (restorative justice).

10 *Note* The referring entity may be the chief executive (restorative justice)
11 under table 22, item 1 or 5.

12 **24 Referral power**

- 13 (1) A referring entity may refer an offence for restorative justice if the
14 entity is satisfied that all the following conditions (the ***section 24***
15 ***referral conditions***) apply:

- 16 (a) the offender is an eligible offender;
17 (b) there is an eligible victim or parent in relation to the offence;
18 (c) an explanation has been given under section 25 to all eligible
19 victims and parents, and the eligible offender, before they
20 agree to take part in restorative justice.

21 *Note* The conditions under which a victim, parent or offender may be eligible
22 are set out in s 17, s 18 and s 19.

- 23 (2) The restorative justice guidelines may prescribe procedures for
24 making decisions about referrals under subsection (1).

- 25 (3) This section is subject to the following sections:

- 26 (a) section 26 (Referral by DPP—domestic violence offences by
27 young offenders;
28 (b) section 27 (Referral during court proceeding).

1 **25 Explanation of restorative justice**

2 Before an offence is referred for restorative justice, the referring
3 entity must ensure that reasonable steps are taken to explain to each
4 eligible victim and parent, and the offender (in language that the
5 victim, parent or offender can readily understand)—

6 (a) the purpose of restorative justice generally and for the
7 particular offence; and

8 (b) the nature of restorative justice, including the following:

9 (i) the nature of a restorative justice conference;

10 (ii) who may take part in a restorative justice conference;

11 (iii) the nature of a restorative justice agreement; and

12 (c) that the person may seek independent legal advice about taking
13 part in restorative justice; and

14 (d) that no-one is under an obligation to take part in restorative
15 justice, or to continue to take part in restorative justice after it
16 has started; and

17 (e) if the offender has not entered a plea for the offence—that the
18 acceptance of responsibility for the commission of the offence
19 by the offender for the purpose of restorative justice does not
20 prevent the offender from pleading not guilty for the offence;
21 and

22 (f) if a sentence-related order has not been made for the
23 offender—that, if the offender is found guilty of the offence, a
24 court, in sentencing the offender—

25 (i) may consider whether the offender accepts responsibility
26 for the offence to take part in restorative justice, but is not
27 required to reduce the severity of any sentence as a result;
28 and

- 1 (ii) must not consider whether the offender has chosen not to
2 take part, or not to continue to take part, in restorative
3 justice.

4 **26 Referral by DPP—domestic violence offences committed**
5 **by young offenders**

- 6 (1) This section applies if the director of public prosecutions is the
7 referring entity for a domestic violence offence allegedly committed
8 by a young offender.
- 9 (2) The director of public prosecutions may refer the offence for
10 restorative justice if—
- 11 (a) the section 24 referral conditions apply; and
- 12 (b) the director has consulted each person who could be an eligible
13 victim or parent for the offence.
- 14 *Note* This Act does not apply to a domestic violence offence alleged to have
15 been committed by an adult offender unless the offender pleads guilty to
16 the offence, or is found guilty of the offence (see s 16).
- 17 (3) Subsections (1) and (2) do not apply before the phase 2 application
18 day.
- 19 (4) However, subsections (1) and (2) may apply to an offence even if
20 the offence was allegedly committed before the phase 2 application
21 day.
- 22 (5) To remove any doubt, the Legislation Act, section 79 (Automatic
23 commencement of postponed law) does not apply to subsection (1)
24 or (2).

- 25 *Note* If the Legislation Act, s 79 applied to subsection (1) or (2), the
26 subsection would automatically commence 6 months after the
27 commencement of this Act (apart from s 1 and s 2) if it had not already
28 been effectively commenced by the declaration of the phase 2
29 application day.

1 (6) Subsections (3) to (8) (including this subsection) expire on the
2 phase 2 application day.

3 *Note* A provision of an Act expires at the end of the day fixed for its expiry
4 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

5 (7) Subsections (3) to (8) (including this subsection) are laws to which
6 the Legislation Act, section 88 (Repeal does not end effect of
7 transitional laws etc) applies.

8 (8) In this section:
9 *phase 2 application day*—see section 15 (4).

10 **Division 6.3 Referral by courts**

11 **27 Referral during court proceeding**

12 (1) This section applies if—

13 (a) a court is the referring entity for an offence under table 22,
14 item 3; and

15 (b) the prosecution and any lawyer representing the offender agree
16 that the offence should be referred for restorative justice; and

17 (c) either—

18 (i) the court is satisfied that the section 24 referral conditions
19 apply; or

20 (ii) the court considers that it is appropriate to refer the
21 offence for restorative justice, and the court has ensured
22 that explanations have been given as mentioned in
23 section 25 to each person of whom the court is aware who
24 is a victim, or a parent of a child victim, of the offence,
25 and the offender.

26 (2) The court may by order (a *court referral order*) adjourn the
27 proceeding for a stated period, and refer the offence for restorative
28 justice, on the application of the director of public prosecutions.

- 1 (3) The court must ensure that a copy of the court referral order is given
2 to—
- 3 (a) each victim and parent mentioned in subsection (1) (c) (ii); and
4 (b) the offender; and
5 (c) the director of public prosecutions and any lawyer representing
6 the offender; and
7 (d) the chief executive.
- 8 (4) For the referral of a domestic violence offence alleged to have been
9 committed by a young offender, the court may make a court referral
10 order only if it considers that exceptional circumstances exist to
11 justify the referral.
- 12 *Note* This Act does not apply to a domestic violence offence alleged to have
13 been committed by an adult offender unless the offender pleads guilty to
14 the offence, or is found guilty of the offence (see s 16).
- 15 (5) Subsection (4) does not apply before the phase 2 application day.
- 16 (6) However, subsection (4) may apply to an offence even if the offence
17 was allegedly committed before the phase 2 application day.
- 18 (7) To remove any doubt, the Legislation Act, section 79 (Automatic
19 commencement of postponed law) does not apply to subsection (4).
- 20 *Note* If the Legislation Act, s 79 applied to the subsection, it would
21 automatically commence 6 months after the commencement of this Act
22 (apart from s 1 and s 2) if it had not already been effectively
23 commenced by the declaration of the phase 2 application day.
- 24 (8) Subsections (5) to (10) (including this subsection) expire on the
25 phase 2 application day.
- 26 *Note* A provision of an Act expires at the end of the day fixed for its expiry
27 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).
- 28 (9) Subsections (5) to (10) (including this subsection) are laws to which
29 the Legislation Act, section 88 (Repeal does not end effect of
30 transitional laws etc) applies.

1 (10) In this section:

2 *phase 2 application day*—see section 15 (4).

3 **28 Court referral orders—reports**

4 (1) This section applies if a court makes a court referral order for
5 section 27 in relation to a proceeding for an offence.

6 (2) The chief executive must give the court a written report about the
7 outcome of restorative justice for the offence within the period for
8 which the proceeding is adjourned under the order.

9 (3) The report must include a statement of the following in relation to
10 each victim and parent mentioned in section 27 (1) (c) (ii), and the
11 offender:

12 (a) whether the victim, parent or offender is eligible for restorative
13 justice;

14 (b) if the victim, parent or offender is eligible for restorative
15 justice—whether restorative justice is suitable for the victim,
16 parent or offender;

17 (c) whether a restorative justice conference was held;

18 (d) if a restorative justice conference was held—

19 (i) the extent to which the conference met the objects of this
20 Act; and

21 (ii) whether a restorative justice agreement was reached at the
22 conference.

23 *Note* If a form is approved under s 73 for this provision, the form must
24 be used.

25 (4) If a restorative justice agreement was reached at a restorative justice
26 conference for the offence, the report must include a copy of the
27 agreement.

- 1 (5) The chief executive must give a copy of the report to—
- 2 (a) each victim and parent mentioned in section 27 (1) (c) (ii); and
- 3 (b) the offender; and
- 4 (c) the director of public prosecutions and any lawyer representing
- 5 the offender.

1 Part 7 Suitability for restorative justice

2 29 Meaning of *personal characteristics* for pt 7

3 In this part:

4 *personal characteristics*, of a victim, or a parent of a child victim,
5 or offender, means personal characteristics of the victim, parent or
6 offender that might affect the outcome of restorative justice for the
7 relevant offence.

8 Examples

- 9 1 age
- 10 2 gender
- 11 3 social or cultural background

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

15 30 Suitability—eligibility requirement

16 The chief executive may decide that an offence is suitable for
17 restorative justice only if satisfied that—

- 18 (a) there is an eligible victim or eligible parent for the offence; and
- 19 (b) the offender is an eligible offender.

20 31 Finding of eligibility by referring entity

- 21 (1) This section applies if, in a referral under section 23 (Referral—
22 procedure), a referring entity states that a person is an eligible
23 victim, parent, or offender and gives grounds for that statement.
- 24 (2) For this part, the referring entity’s statement—
 - 25 (a) is sufficient for the chief executive to be satisfied of the fact of
26 eligibility; but

- 1 (b) does not prevent the chief executive from being satisfied that a
2 victim, parent or offender is not eligible for restorative justice.

3 **32 Suitability—decision**

- 4 (1) The chief executive is responsible for deciding whether restorative
5 justice is suitable for an offence.
- 6 (2) The chief executive may decide whether restorative justice is
7 suitable for an offence only after considering the following:
- 8 (a) the general considerations mentioned in section 33;
- 9 (b) suitability for the eligible victim or parent under section 34 or
10 section 35;
- 11 (c) suitability for the offender under section 36.
- 12 (3) If the chief executive decides that restorative justice is suitable for
13 an offence, the chief executive must ask the following for written
14 consent for a restorative justice conference to be called for the
15 offence:
- 16 (a) the eligible victim or parent, or both (if there is an eligible
17 victim and an eligible parent);
- 18 (b) the eligible offender.

19 *Note* If a form is approved under s 73 for this provision, the form must be
20 used.

21 **33 Suitability—general considerations**

- 22 (1) In deciding whether restorative justice is suitable for an offence, the
23 chief executive must consider the following:
- 24 (a) any government or administrative policy relating to the
25 treatment of offences of the relevant kind;
- 26 (b) the nature of the offence, including the level of harm caused by
27 or violence involved in its commission or alleged commission;

- 1 (c) the appropriateness of restorative justice at the current stage of
2 the criminal justice process in relation to the offence;
- 3 (d) any potential power imbalance between the people who are to
4 take part in restorative justice for the offence;
- 5 (e) the physical and psychological safety of anyone who is to take
6 part in restorative justice for the offence.
- 7 (2) The chief executive may decide that restorative justice is suitable for
8 a domestic violence offence committed by a young offender only if
9 satisfied that exceptional circumstances exist to justify the calling of
10 a restorative justice conference for the offence.
- 11 (3) Subsection (2) does not apply before the phase 2 application day.
- 12 (4) However, subsection (2) may apply to an offence even if the offence
13 was committed before the phase 2 application day.
- 14 (5) To remove any doubt, the Legislation Act, section 79 (Automatic
15 commencement of postponed law) does not apply to subsection (2).
- 16 *Note* If the Legislation Act, s 79 applied to the subsection, it would
17 automatically commence 6 months after the commencement of this Act
18 (apart from s 1 and s 2) if it had not already been effectively
19 commenced by the declaration of the phase 2 application day.
- 20 (6) Subsections (3) to (8) (including this subsection) expire on the
21 phase 2 application day.
- 22 *Note* A provision of an Act expires at the end of the day fixed for its expiry
23 (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).
- 24 (7) Subsections (3) to (8) (including this subsection) are laws to which
25 the Legislation Act, section 88 (Repeal does not end effect of
26 transitional laws etc) applies.
- 27 (8) In this section:
28 ***phase 2 application day***—see section 15 (4).

1 **34 Suitability—victims**

- 2 (1) In deciding whether restorative justice is suitable for an eligible
3 victim, the chief executive must consider the following:
- 4 (a) the victim’s personal characteristics;
- 5 (b) the victim’s motivation for taking part in restorative justice;
- 6 (c) the impact of the offence as perceived by the victim.
- 7 (2) For this Act, an eligible victim is a *suitable victim* if the chief
8 executive decides under section 32 that the victim is suitable for
9 restorative justice.

10 **35 Suitability—eligible parents**

- 11 (1) In deciding whether restorative justice is suitable for an eligible
12 parent of a child victim, the chief executive must consider the
13 following:
- 14 (a) the relationship between the parent and the child;
- 15 (b) the parent’s and the child victim’s personal characteristics;
- 16 (c) the parent’s and the child victim’s motivation for taking part in
17 restorative justice;
- 18 (d) the impact of the offence as perceived by the parent and the
19 child victim.
- 20 (2) For this Act, an eligible parent is a *suitable parent* if the chief
21 executive decides under section 32 that the parent is suitable for
22 restorative justice.

1 **36 Suitability—offenders**

2 In deciding whether restorative justice is suitable for an offender,
3 the chief executive must consider the following:

- 4 (a) the extent (if any) of the offender’s contrition or remorse for
5 the offence;
- 6 (b) the offender’s personal characteristics;
- 7 (c) the offender’s motivation for taking part in restorative justice;
- 8 (d) the impact of the offence as perceived by the offender.

- 1 **Part 8 Restorative justice conferences**
2 **and agreements**
- 3 **Division 8.1 General**
- 4 **37 Definitions—pt 8**
- 5 In this part:
- 6 *required participant*, in a restorative justice conference—see
7 section 42.
- 8 *restorative justice agreement*—see section 50.
- 9 *substitute participant*—see section 43.
- 10 *suitable parent*—see section 35.
- 11 *suitable victim*—see section 34.
- 12 **38 Meaning of referring entity—pt 8**
- 13 (1) In this part:
- 14 *referring entity*—see section 22.
- 15 (2) However, if an offence is referred for restorative justice by a court
16 in making a sentence-related order, *referring entity* means the chief
17 executive (corrections).
- 18 **39 Decision to call conference**
- 19 (1) The chief executive may require a restorative justice conference to
20 be called for an offence if—
- 21 (a) the chief executive decides, under section 32 (Suitability—
22 decision) that restorative justice is suitable for the offence; and

1 (b) the eligible victim or parent, and the eligible offender, gives
2 consent under section 32 (3) for the conference to be called.

3 (2) The chief executive must assign a convenor to a conference called
4 under this section.

5 **Division 8.2 Convenors**

6 **40 Appointment of convenors**

7 (1) The chief executive may appoint a person as a convenor for this
8 part.

9 *Note 1* For the making of appointments (including acting appointments), see
10 Legislation Act, pt 19.3.

11 *Note 2* In particular, an appointment may be made by naming a person or
12 nominating the occupant of a position (see s 207).

13 *Note 3* Certain Ministerial appointments require consultation with an Assembly
14 committee and are disallowable (see Legislation Act, div 19.3.3).

15 (2) The chief executive may appoint a person as convenor only if—

16 (a) the person has the qualifications and experience prescribed
17 under the regulations; and

18 (b) if the person is not a lawyer—the chief executive is satisfied
19 that the convenor has received sufficient legal training—

20 (i) to advise those who take part in restorative justice of their
21 rights and duties at law and under this Act; and

22 (ii) otherwise to perform the functions of a convenor for this
23 Act.

24 (3) Subsection (2) (b) does not prevent regulations being made
25 requiring a convenor to be a lawyer.

- 1 **41 What a convenor does**
- 2 (1) The convenor of a restorative justice conference, subject to this part,
- 3 may do anything necessary or desirable to be done in relation to
- 4 calling the conference, including the following:
- 5 (a) consulting a person with knowledge of or experience in a
- 6 particular culture;
- 7 (b) inviting a person to take part in the conference;
- 8 (c) deciding whether the conference should require the participants
- 9 to meet in person, or to communicate in any other way;
- 10 (d) fixing a time for the conference, and for any continuation of
- 11 the conference;
- 12 (e) fixing a venue for the conference, if the participants are to meet
- 13 in person;
- 14 (f) identifying the issues that should be addressed at the
- 15 conference;
- 16 (g) facilitating the conference;
- 17 (h) warning participants about the potentially incriminating nature
- 18 of any statement to be made, or being made, at the conference;
- 19 (i) facilitating an agreement between the participants;
- 20 (j) ensuring that this Act is complied with in relation to the
- 21 conference and any agreement;
- 22 (k) any other function required under the regulations.
- 23 (2) The convenor must carry out the functions mentioned in
- 24 subsection (1) in a way that ensures that no-one's safety, rights or
- 25 dignity is compromised.

1 **Division 8.3 Conduct of conference**

2 **42 Required participants**

3 (1) A restorative justice conference for an offence must not proceed
4 unless each of the following takes part in the conference:

5 (a) a suitable victim or parent, or a substitute participant for a
6 suitable victim or parent;

7 (b) the offender.

8 (2) A person mentioned in subsection (1) who takes part (or who is to
9 take part) in a restorative justice conference for an offence is a
10 ***required participant*** in the conference for this part.

11 *Note* The convenor may invite supporters of the offender and victim to take
12 part in the conference, and the informant police officer (see s 44).

13 **43 Substitute participants**

14 A person (a ***substitute participant***) acting for a suitable victim or
15 parent may take part in a restorative justice conference instead of the
16 victim or parent if—

17 (a) the victim or parent asks for, or agrees to, the substitution; and

18 (b) the convenor agrees to the substitution.

19 *Note* If the conference results in a restorative justice agreement, the substitute
20 participant for the victim or parent must sign the agreement, and is
21 taken to do so on behalf of the victim or parent (see s 52).

22 **44 Invited participants**

23 (1) Any of the following may take part in a restorative justice
24 conference if invited by the convenor:

25 (a) the police officer who is the informant for the offence;

26 (b) a parent of a suitable victim or the offender;

- 1 (c) a family member or domestic partner of a suitable victim, a
2 suitable parent or the offender;
- 3 (d) a person in a domestic relationship with a suitable victim, a
4 suitable parent or the offender;
- 5 (e) anyone else, if—
- 6 (i) a suitable victim or parent, or the offender, considers the
7 person can provide emotional or practical support for the
8 victim, parent or offender; or
- 9 (ii) the convenor considers that the participation of the person
10 would help to promote the objects of this Act in relation
11 to the conference.
- 12 (2) If a required participant asks the convenor to invite a person
13 mentioned in subsection (1) to take part in the conference, the
14 convenor must not refuse the request unless the convenor considers,
15 on reasonable grounds, that to invite the participant would be
16 significantly detrimental to the objects of this Act in relation to the
17 conference.
- 18 (3) If a participant in a restorative justice conference is represented by
19 someone acting for the participant in a professional capacity, the
20 representative may not take part in the conference in that capacity.
- 21 **Examples of people acting for participants in a professional capacity**
- 22 1 lawyers
- 23 2 victim intercessors
- 24 3 offender intercessors
- 25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 Legislation Act, s 126 and s 132).

1 (4) In this section:

2 *domestic relationship*—see the *Domestic Relationships Act 1994*,
3 section 3 (Interpretation).

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

5 **45 Explanation for participants**

6 Before a restorative justice conference begins, the convenor must
7 ensure that reasonable steps are taken to explain to each person who
8 is to take part in the conference (in language that each can readily
9 understand)—

10 (a) the objects of this Act in relation to the conference, including
11 the purpose of restorative justice generally and for the
12 particular offence; and

13 (b) the nature of restorative justice, including the following:

14 (i) the nature of a restorative justice conference;

15 (ii) who may take part in a restorative justice conference;

16 (iii) the nature of a restorative justice agreement; and

17 (c) that the person may, before and after the conference is called,
18 seek independent legal advice about taking part in a restorative
19 justice conference and about the effect of any restorative
20 justice agreement reached at a conference; and

21 (d) that no-one is under an obligation to take part in the
22 conference, or to continue to take part in conference after it has
23 started; and

24 (e) if the offender has not entered a plea for the offence—that the
25 acceptance of responsibility for the commission of the offence
26 by the offender for the purpose of restorative justice does not
27 prevent the offender from pleading not guilty to the offence;
28 and

- 1 (f) if a sentence-related order has not been made for the
2 offender—that, if the offender is found guilty of the offence, a
3 court, in sentencing the offender—
- 4 (i) may consider whether the offender accepts responsibility
5 for the offence to take part in restorative justice, but is not
6 required to reduce the severity of any sentence as a result;
7 and
- 8 (ii) must not consider whether the offender has chosen not to
9 take part, or not to continue to take part, in restorative
10 justice.

11 **46 Form of conference**

12 The convenor of a restorative justice conference may conduct the
13 conference in any form (or combination of forms) consistent with
14 the restorative justice guidelines that would, in the convenor's
15 opinion, best facilitate—

- 16 (a) interaction between the participants; and
- 17 (b) the promotion of the objects of this Act in relation to the
18 conference.

19 **Examples of conference forms**

- 20 1 face-to-face meeting
21 2 exchange of written or emailed statements between participants
22 3 exchange of prerecorded videos between participants
23 4 teleconferencing
24 5 videoconferencing

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

- 1 **47** **Discontinuance of restorative justice**
- 2 (1) The convenor of a restorative justice conference may decide to—
- 3 (a) cancel the conference before it is conducted; or
- 4 (b) discontinue the conference at any time after it has started.
- 5 (2) The convenor may cancel or discontinue the conference only if, in
- 6 the convenor’s opinion based on reasonable grounds, there is no
- 7 significant prospect of promoting the objects of this Act by
- 8 conducting, or continuing to conduct, the conference.
- 9 (3) Without limiting subsection (2), the convenor must cancel or
- 10 discontinue the conference if, in the convenor’s opinion based on
- 11 reasonable grounds, before or during the conference—
- 12 (a) a suitable victim or parent has withdrawn his or her agreement
- 13 to take part in the conference, and there is no other suitable
- 14 victim or parent (or substitute participant for a suitable victim
- 15 or parent) who agrees to take part in the conference; or
- 16 (b) the offender has withdrawn his or her agreement to take part in
- 17 the conference.
- 18 (4) If the convenor decides to cancel or discontinue the conference, the
- 19 convenor must give notice of the decision to—
- 20 (a) each required participant in the conference; and
- 21 (b) the referring entity for the offence.
- 22 **48** **Report to referring entity about outcome**
- 23 (1) After the end of a restorative justice conference, the convenor must
- 24 give a report about the outcome of the conference to the referring
- 25 entity for the offence.
- 26 (2) The report about the outcome of the conference must include the
- 27 following information:
- 28 (a) details of the conference and when it ended; and

1 (b) whether the conference resulted in a restorative justice
2 agreement.

3 *Note* If the conference resulted in an agreement, the convenor must give a
4 copy of the agreement to the referring entity as well (see s 54).

5 **Division 8.4 Restorative justice agreements**

6 **49 Application—div 8.4**

7 This division applies in relation to a restorative justice agreement
8 that results from (or that may result from) a restorative justice
9 conference.

10 **50 Agreement as object of conference**

11 A restorative justice conference has as a primary object the
12 formation of an agreement under this division (a *restorative justice*
13 *agreement*) between each required participant in the conference.

14 **51 Nature of agreement**

15 (1) A restorative justice agreement in relation to an offence must
16 include measures intended to repair the harm caused by the offence.

17 (2) The agreement may include 1 or more of the following:

18 (a) an apology by the offender to any victim or parent of a victim;

19 (b) a plan to address the offending behaviour of the offender;

20 (c) a work plan to be carried out by the offender for the benefit of
21 any victim or parent of a victim;

22 (d) a work plan to be carried out by the offender for the benefit of
23 the community or a part of the community;

24 (e) financial reparation to be paid by the offender to any victim or
25 parent of a victim;

- 1 (f) anything else that each required participant and substitute
2 participant in the conference agree would help repair the harm
3 caused by the offence.
- 4 (3) The agreement must be fair and, in the opinion of each required
5 participant and substitute participant in the conference and the
6 convenor, reasonably able to be carried out by the offender.
- 7 (4) The agreement must not require the offender or anyone else to do
8 anything that would—
- 9 (a) be unlawful; or
- 10 (b) require the detention of the offender (whether full-time or for
11 any period); or
- 12 (c) be degrading or humiliating to the offender or anyone else; or
- 13 (d) cause distress to the offender or anyone else.
- 14 (5) The agreement must be for a term of no longer than 6 months,
15 starting on—
- 16 (a) the date the agreement is made; or
- 17 (b) if a later starting date is stated in the agreement—the later date.
- 18 *Note* The term of the agreement may be extended beyond this period, or
19 reduced, by an amendment under s 55.

20 **52 Form of agreement**

- 21 (1) A restorative justice agreement must be—
- 22 (a) in writing; and
- 23 (b) signed by each required participant in the conference.
- 24 (2) If a substitute participant for a suitable victim or parent signs a
25 restorative justice agreement—
- 26 (a) the substitute participant is taken to sign the agreement on
27 behalf of the victim or parent; and

1 (b) the victim or parent is taken to have consented to the
2 agreement.

3 *Note* If there is a substitute victim or parent for a restorative justice
4 conference under s 43, the substitute is a **required participant** in the
5 conference (see s 42), and so may sign a restorative justice agreement
6 under s (1) (b).

7 **53 Explanation of effect of agreement**

8 Before a restorative justice agreement is signed, the convenor must
9 ensure that reasonable steps are taken to explain to each required
10 participant in the conference (in language that each can readily
11 understand)—

12 (a) the nature, purpose and effect of the agreement; and

13 (b) that no-one is under an obligation to sign the agreement; and

14 (c) that the participant may, before signing the agreement, seek
15 independent legal advice about the effect of the proposed
16 agreement; and

17 (d) if the offender has not entered a plea for the offence—that any
18 statement in the agreement that the offender accepts
19 responsibility for the commission of the offence does not
20 prevent the offender from pleading not guilty to the offence;
21 and

22 (e) if a sentence-related order has not been made for the
23 offender—that, if the offender is found guilty of the offence, a
24 court, in sentencing the offender—

25 (i) may consider whether the offender accepts responsibility
26 for the offence to take part in restorative justice, but is not
27 required to reduce the severity of any sentence as a result;
28 and

29 (ii) must not consider whether the offender has chosen not to
30 take part, or not to continue to take part, in restorative
31 justice.

1 **54 Notice of agreement**

2 The convenor must give a copy of a restorative justice agreement
3 to—

- 4 (a) each required participant in the conference; and
5 (b) the referring entity for the offence.

6 **55 Amendment of agreement**

7 (1) The convenor may amend a restorative justice agreement on the
8 application of a required participant in the conference, or the
9 convenor's initiative, if the convenor considers that the amendment
10 is necessary or desirable—

11 (a) to respond to a change in the situation of any suitable victim or
12 parent, or the offender; or

13 (b) to correct an error.

14 (2) Without limiting subsection (1), the convenor may amend a
15 restorative justice agreement under the subsection in response to a
16 change in the situation of any suitable victim or parent, or the
17 offender—

18 (a) to increase the term of the agreement, including an increase
19 that would provide for the agreement to end more than 6
20 months after the day it started under section 51 (5); or

21 (b) to reduce the term of the agreement.

22 **Example**

23 Sam is an offender, and Bella is a victim of Sam's offence. Sam is found guilty of
24 the offence but, under the *Crimes Act 1900*, s 402 (1), the charge is dismissed and
25 no conviction is recorded. After taking part in a restorative justice conference,
26 Sam and Bella sign a restorative justice agreement under which Sam agrees to
27 work in Bella's garden every Saturday for 6 months.

28 However, 4 months after the start of the agreement, the company Sam works for
29 moves its head office from Canberra to Brisbane, and Sam is required to move
30 there before the 6 months is over in order to keep his job. Sam has until then
31 complied fully with the agreement.

- 1 The convenor may consider, because of Sam's history of compliance with the
2 agreement, and the change in Sam's situation, there is a change in Sam's situation
3 that would justify an amendment to the agreement to reduce its term so that it will
4 end when Sam has to move to Brisbane.
- 5 *Note 1* See s (5), def ***change in the situation***. The definition excludes a change
6 in the offender's, victim's or parent's attitude to compliance with the
7 restorative justice agreement.
- 8 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 Legislation Act, s 126 and s 132).
- 11 (3) However, any amendment of a restorative justice agreement to
12 respond to a change in the situation of any suitable victim or parent,
13 or the offender, may only be made after the convenor has consulted
14 each required participant in the conference who is a suitable victim
15 or parent, or a substitute participant for a suitable victim or parent.
- 16 (4) If the convenor amends a restorative justice agreement under this
17 section, the convenor must give notice of the amendment and a copy
18 of the agreement, as amended, to—
- 19 (a) each required participant in the conference; and
20 (b) the referring entity for the offence.
- 21 (5) In this section:
- 22 ***change in the situation***, of a victim, parent or offender in relation to
23 a restorative justice agreement, does not include a change in the
24 victim's, parent's or offender's attitude to complying with the
25 agreement.

1 **Division 8.5** **Monitoring compliance with**
2 **restorative justice agreements**

3 **56** **Application—div 8.5**

4 This section applies to a restorative justice agreement for an offence
5 that is referred for restorative justice by a referring entity.

6 **57** **Monitoring compliance—chief executive (restorative**
7 **justice)**

- 8 (1) The chief executive (restorative justice) may do anything reasonable
9 to check whether the restorative justice agreement is being complied
10 with.

11 **Example**

12 Alex has been convicted and sentenced for an offence. As a condition of the
13 sentence, Alex has taken part in restorative justice. After a restorative justice
14 conference, Alex signed a restorative justice agreement with the victim agreeing
15 to perform 50 hours unpaid work for a charity service organisation. The chief
16 executive (restorative justice) may, under this subsection, contact the organisation
17 at reasonable intervals to make sure that Alex performs the work satisfactorily.

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

- 21 (2) If the chief executive (restorative justice) is satisfied on reasonable
22 grounds that there has been a significant failure to comply with the
23 restorative justice agreement, the chief executive must report the
24 noncompliance to the referring entity.

- 25 (3) If the chief executive (restorative justice) is satisfied on reasonable
26 grounds that the restorative justice agreement has been substantially
27 or fully complied with, the chief executive must report the
28 compliance to the referring entity.

1 (4) Subsections (2) and (3) do not apply if the referring entity is the
2 chief executive (restorative justice).

3 *Note 1* The referring entity may be the chief executive (restorative justice)
4 under table 22, item 1 or 5.

5 *Note 2* Section 72 deals with what happens if the referring entity is the same
6 chief executive as the chief executive (restorative justice), but the
7 referring entity is the chief executive in his or her capacity as chief
8 executive (corrections) or chief executive (children and young people).

9 That section provides that the chief executive must ensure that
10 appropriate administrative arrangements are made for the report to be
11 given by a delegate of the chief executive as chief executive (restorative
12 justice) to a delegate of the chief executive as chief executive
13 (corrections) or chief executive (children and young people).

14 **58 Monitoring compliance—referring entities**

15 (1) The referring entity may do anything reasonable to check whether
16 the agreement is being complied with.

17 **Example**

18 The example for section 57 (1) applies in relation to the checking of compliance
19 by the referring entity.

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

23 (2) If the referring entity is satisfied on reasonable grounds that there
24 has been a significant failure to comply with the restorative justice
25 agreement, the referring entity must report the noncompliance to the
26 chief executive (restorative justice).

27 (3) If the referring entity is satisfied on reasonable grounds that the
28 restorative justice agreement has been substantially or fully
29 complied with, the referring entity must report the compliance to the
30 chief executive (restorative justice).

1 (4) Subsections (2) and (3) do not apply if the referring entity is the
2 chief executive (restorative justice).

3 *Note 1* The referring entity may be the chief executive (restorative justice)
4 under s 22, table 22, item 1 or 5.

5 *Note 2* Section 72 deals with what happens if the referring entity is the same
6 chief executive as the chief executive (restorative justice), but the
7 referring entity is the chief executive in his or her capacity as chief
8 executive (corrections) or chief executive (children and young people).

9 That section provides that the chief executive must ensure that
10 appropriate administrative arrangements are made for the report to be
11 given by a delegate of the chief executive as chief executive
12 (corrections) or chief executive (children and young people) to a
13 delegate of the chief executive as chief executive (restorative justice).

14 **Division 8.6 Evidence of statements made at**
15 **conferences**

16 **59 Evidence of offences**

17 (1) This section applies if a statement is made by an offender (the
18 *conference offender*) during a restorative justice conference, or in a
19 restorative justice agreement, in relation to an offence (the
20 *conference offence*) that has been committed by anyone (including
21 the conference offender).

22 (2) Evidence of the statement may not be admitted in court in a
23 proceeding in relation to a less serious offence (including the
24 conference offence, if that is a less serious offence), whether or not
25 the conference offender is accused of the offence.

26 (3) However, subsection (2) does not prevent a court, in sentencing an
27 offender for an offence (whether the offence is a less serious offence
28 or a serious offence), from considering a statement made by the
29 offender during a restorative justice conference, or in a restorative
30 justice agreement, in relation to the offence or any other offence.

31 *Note* There may be circumstances in which evidence of the statement is
32 admissible in court in a proceeding in relation to a serious offence,

1 whether or not the conference offence is a serious offence, or the
2 conference offender is accused of the offence. Territory law that deals
3 generally with the admission of evidence in criminal proceedings would
4 apply.

5 **60 Evidence of future offences**

- 6 (1) This section applies if a statement is made by an offender (the
7 *conference offender*) during a restorative justice conference, or in a
8 restorative justice agreement, in relation to an offence (the
9 *conference future offence*) proposed to be committed after the time
10 of the conference or agreement by anyone (including the conference
11 offender).
- 12 (2) This Act does not prevent evidence of the statement being admitted
13 in court in a proceeding in relation to the conference future
14 offence—
- 15 (a) whether or not the offence is a serious offence; and
- 16 (b) whether or not the conference offender intends to commit, or is
17 alleged to have committed, the offence.

1 **Part 9 Administration**

2 **Division 9.1 General administration**

3 **61 Restorative justice guidelines**

4 (1) The chief executive may issue guidelines (*restorative justice*
5 *guidelines*) outlining procedures for the following:

6 (a) the referral of offences for restorative justice, including
7 procedures for making decisions about referrals;

8 (b) the management of restorative justice;

9 (c) the conduct of restorative justice conferences;

10 (d) monitoring the progress of restorative justice;

11 (e) monitoring compliance with restorative justice agreements;

12 (f) any other aspect of the administration of this Act.

13 (2) Restorative justice guidelines—

14 (a) may deal with matters also dealt with elsewhere under this Act;
15 but

16 (b) must not be inconsistent with this Act.

17 (3) Restorative justice guidelines are disallowable instruments.

18 *Note* A disallowable instrument must be notified, and presented to the
19 Legislative Assembly, under the Legislation Act.

20 (4) A referring entity for an offence must comply with the guidelines.

1 **62 Police participation in restorative justice**

2 The chief executive may make arrangements with the chief police
3 officer—

- 4 (a) for the participation of police officers in the administration of
5 this Act; and
6 (b) for the appointment of police officers to call restorative justice
7 conferences, subject to this Act.

8 **63 Information sharing**

- 9 (1) The chief executive may ask a referring entity to give the chief
10 executive information about a victim, the parent of a victim, an
11 offender or anyone else if the information is necessary for the
12 administration of this Act.
13 (2) A referring entity must do everything reasonable to comply with a
14 request under subsection (1).

15 **64 Secrecy**

- 16 (1) In this section:

17 *secret-keeper* means a person who is exercising, or has exercised, a
18 function under this Act.

19 **Examples**

- 20 1 a referring entity, or the delegate of a referring entity, if the referring entity
21 or delegate is considering whether to refer an offence for restorative justice
22 2 the chief executive, or a delegate of the chief executive, if the chief executive
23 or delegate is considering whether an offence is suitable for restorative
24 justice, or whether a restorative justice conference for an offence should be
25 called
26 3 the convenor of a restorative justice conference, if the convenor is making
27 preparations for a restorative justice conference

1 4 a staff member of an administrative unit, if the staff member is assisting a
2 secret-keeper mentioned in examples 1, 2 or 3 in carrying out the functions
3 mentioned in those examples

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

7 ***protected information***—

8 (a) means information about a person that is disclosed to, or
9 obtained by, a secret-keeper because of the exercise of a
10 function by the secret-keeper under this Act; but

11 (b) does not include information in a restorative justice agreement
12 or information disclosing who attended a restorative justice
13 conference.

14 **Examples of protected information**

15 1 information obtained by a referring entity or the chief executive in assessing
16 the eligibility of a victim, parent or offender for restorative justice

17 2 information obtained by the convenor of a restorative justice conference in
18 preparing the conference

19 3 a transcript (or other record) of what is said during a restorative justice
20 conference that is kept by the convenor or the chief executive

21 (2) A secret-keeper commits an offence if the secret-keeper—

22 (a) makes a record of protected information; or

23 (b) directly or indirectly discloses or communicates protected
24 information about someone to someone else.

25 Maximum penalty: 50 penalty units, imprisonment for 6 months or
26 both.

27 (3) Subsection (2) does not apply if the record is made, or the
28 information is disclosed or communicated—

29 (a) under this or any other Act; or

30 (b) in relation to the exercise of a function, as a secret-keeper,
31 under this or any other Act.

- 1 (4) Subsection (2) does not prevent a secret-keeper from divulging or
2 communicating protected information about someone with that
3 person's consent.
- 4 (5) For a civil proceeding, a secret-keeper must not—
- 5 (a) disclose or communicate protected information to a court; or
6 (b) produce or permit access to a document containing protected
7 information to a court.
- 8 (6) For a criminal proceeding, unless it is necessary to do so to comply
9 with this Act, any other Territory law or a law of the
10 Commonwealth, a secret-keeper is not required—
- 11 (a) to disclose or communicate protected information to a court; or
12 (b) to produce or permit access to a document containing protected
13 information to a court.

14 *Note* The *Freedom of Information Act 1989*, s 38 (Documents to which
15 secrecy provisions of enactments apply) provides that a document is
16 exempt from access requirements under that Act if another Act applies
17 specifically to information of a particular kind in a document and
18 prohibits the disclosure of that information by persons mentioned in the
19 other Act. The section is stated to apply whether or not the prohibition
20 is absolute or subject to exceptions or qualification.

21 **65 Secrecy about information acquired under other Acts**

- 22 (1) The provisions of another Act imposing restrictions or obligations of
23 secrecy or nondisclosure of information acquired in the
24 administration of that Act apply to a person who, in the exercise of
25 functions under this Act, has access to the information because of
26 the information having been acquired in the administration of the
27 other Act.
- 28 (2) For subsection (1), the person who has access to the information in
29 the exercise of functions under this Act is taken to be a person
30 engaged in the administration of the other Act.

- 1 (3) Subsection (1) does not prevent—
2 (a) the giving of access to records under this Act; or
3 (b) the preparation and dissemination of guides and aids to finding
4 information contained in the records.

5 **66 Protection from liability**

- 6 (1) A person is not personally liable for anything done or omitted to be
7 done honestly and without negligence—
8 (a) in the exercise of a function under this Act; or
9 (b) in the reasonable belief that the act or omission was in the
10 exercise of a function under this Act.
11 (2) Any liability that, apart from subsection (1), would attach to a
12 person attaches instead to the Territory.

13 **Division 9.2 Reporting and records**

14 **67 Meaning of *referring entity*—div 9.2**

- 15 (1) In this division:
16 *referring entity*, in relation to an offence—see section 22.
17 (2) However, if an offence is referred for restorative justice by a court
18 in making a sentence-related order, *referring entity* means the chief
19 executive (corrections).

20 **68 Quarterly reporting by chief executive**

- 21 (1) This section applies in relation to a quarter of a year if—
22 (a) an offence is referred for restorative justice before the start of,
23 or during, the quarter; and
24 (b) restorative justice—
25 (i) has not ended for the offence; or

1 (ii) ended for the offence during the quarter.

2 *Note* **Quarter** is defined in the Legislation Act, dict, pt 1 to mean the
3 3 months following 1 January, 1 April, 1 July or 1 October in any year.

4 (2) Within 7 days after the last day of the quarter, the chief executive
5 (restorative justice) must report to the referring entity on the
6 progress of restorative justice for the offence during the quarter.

7 *Note* Section 72 deals with what happens if the referring entity is the same
8 chief executive as the chief executive (restorative justice), but the
9 referring entity is the chief executive in his or her capacity as chief
10 executive (corrections) or chief executive (children and young people).

11 That section provides that the chief executive must ensure that
12 appropriate administrative arrangements are made for the report to be
13 given by a delegate of the chief executive as chief executive (restorative
14 justice) to a delegate of the chief executive as chief executive
15 (corrections) or chief executive (children and young people).

16 (3) This section does not apply if the referring entity is the chief
17 executive (restorative justice).

18 *Note* The referring entity may be the chief executive (restorative justice)
19 under table 22, item 1 or 5.

20 (4) In this section:

21 **ends**—restorative justice **ends** for an offence if—

22 (a) the chief executive decides that restorative justice is not
23 suitable for the offence; or

24 (b) the convenor of a restorative justice conference for the offence
25 discontinues the conference under section 47; or

26 (c) a restorative justice conference for the offence is concluded.

27 *Note* **Restorative justice** means the process of restorative justice provided
28 under this Act, including a restorative justice conference (see s 10).
29 Restorative justice, apart from the process provided under this Act that
30 is mentioned in the definition, does not necessarily end as provided in
31 the definition of **ends** for this section.

- 1 **69** **Record-keeping by referring entities**
- 2 (1) If an offence is referred to the chief executive for restorative justice,
3 the referring entity must ensure that appropriate records are kept in
4 relation to—
- 5 (a) the circumstances in which the referral was made; and
- 6 (b) the progress of restorative justice for the offence; and
- 7 (c) the outcome of restorative justice for the offence.
- 8 (2) The referring entity must also ensure that a copy of any restorative
9 justice agreement for the offence (as amended, if at all, under
10 section 55) is kept as part of the records.
- 11 (3) The records mentioned in subsection (1) must be kept as part of the
12 administrative or court records normally kept by the referring entity
13 in relation to the offence.
- 14 **70** **Record-keeping by chief executive**
- 15 (1) The chief executive must keep records of—
- 16 (a) each referral of an offence to the chief executive for restorative
17 justice; and
- 18 (b) any assessment of suitability for restorative justice under
19 part 7, whether because of a referral of an offence for
20 restorative justice or in other circumstances; and
- 21 (c) each offence for which a restorative justice conference is
22 called; and
- 23 (d) each restorative justice conference that is conducted; and
- 24 (e) each restorative justice conference that is cancelled or
25 discontinued; and
- 26 (f) each restorative justice agreement that is reached at a
27 conference; and

- 1 (g) the offender's compliance with each restorative justice
2 agreement.
- 3 (2) The records mentioned in subsection (1) (g) must be kept in
4 consultation with the relevant referring entity.
- 5 (3) A record of an offence for which a restorative justice agreement is
6 reached must include a copy of the restorative justice agreement (as
7 amended, if at all, under section 55).

8 **71 Restorative justice database**

- 9 (1) The chief executive must ensure that a database is kept of
10 information in the records required to be kept under section 70 to
11 enable research, analysis and evaluation of restorative justice.
- 12 (2) The database must be kept in accordance with the regulations.
- 13 (3) Regulations made for this section—
- 14 (a) may allow access to the information in the database by anyone
15 for research, analysis and evaluation of restorative justice; but
- 16 (b) must not allow access to the information in the database in any
17 form that would allow the identity of anyone taking part in
18 restorative justice to be worked out.

1 Part 10 Miscellaneous

2 72 Exercise of functions by chief executive

3 (1) This section applies if—

4 (a) section 23, section 57, section 58 or section 68 requires a chief
5 executive, in the chief executive's capacity as responsible for a
6 particular matter (the *first capacity*) to give a referral or report
7 to a chief executive, in the chief executive's capacity as
8 responsible for another matter (the *second capacity*); and

9 (b) a single chief executive acts in both the first and second
10 capacities.

11 (2) A chief executive mentioned in subsection (1) must ensure that
12 administrative arrangements are made for a delegate of the chief
13 executive in the first capacity to give the referral or report to a
14 delegate of the chief executive in the second capacity who is a
15 different person from the delegate in the first capacity.

16 Example

17 Pat has been found guilty of an offence but released on a recognisance entered
18 into under an order under the *Crimes Act 1900*, section 402 (1) (a *sentence-*
19 *related order*—see s 12). The offence is referred for restorative justice by the
20 chief executive (corrections).

21 After a restorative justice conference, Pat enters into a restorative justice
22 agreement with the victim of the offence. Under the agreement, Pat promises to
23 attend a rehabilitation program on a particular night of the week for 3 months.
24 However, after 2 weeks, Pat breaches the agreement by stopping attending the
25 program.

26 The chief executive (restorative justice) becomes aware of the breach of the
27 agreement. Under section 57 (2), the chief executive (restorative justice) must
28 report the breach to the referring entity, the chief executive (corrections).
29 However, the chief executive (restorative justice) is the same person as the chief
30 executive (corrections).

1 This section requires the chief executive to ensure that administrative
2 arrangements are made for the report to be given by a delegate of the chief
3 executive in the chief executive's capacity as administering this Act to someone
4 else who is a delegate of the chief executive in the chief executive's capacity as
5 administering sentence-related orders such as the order for Pat.

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

9 **73 Approved forms**

- 10 (1) The Minister may, in writing, approve forms for this Act.
11 (2) If the Minister approves a form for a particular purpose, the form
12 must be used for that purpose.

13 *Note* For other provisions about forms, see Legislation Act, s 255.

- 14 (3) An approved form is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the Legislation Act.

16 **74 Regulation-making power**

- 17 (1) The Executive may make regulations for this Act.

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

- 20 (2) Without limiting subsection (1), the regulations may make provision
21 in relation to the following:

- 22 (a) referring entities for table 22, item 6;
23 (b) the qualifications and experience of convenors, for section 40
24 (2) (a);
25 (c) the functions of convenors, for section 41 (1) (k);
26 (d) the keeping of a database of restorative justice information, for
27 section 71.

-
- 1 **75** **Ministerial reviews**
- 2 (1) The Minister must—
- 3 (a) begin a review (the *first phase review*) of the operation of
- 4 restorative justice no later than 18 months after the day this
- 5 section commences; and
- 6 (b) present a report on the review to the Legislative Assembly
- 7 within 3 months after the day the review is started.
- 8 (2) The Minister must—
- 9 (a) begin another review (the *second phase review*) of the
- 10 operation of restorative justice no later than 18 months after the
- 11 phase 2 application day under section 15 (4); and
- 12 (b) present a report on the review to the Legislative Assembly
- 13 within 3 months after the day the review is started.
- 14 (3) The first phase and second phase reviews must include an
- 15 evaluation of restorative justice against the following indicators:
- 16 (a) victim satisfaction and opportunities for meaningful
- 17 participation by victims;
- 18 (b) rehabilitation of offenders who have taken part in restorative
- 19 justice, including any reduction in recidivism;
- 20 (c) community satisfaction;
- 21 (d) reintegration of victims and offenders into the community;
- 22 (e) respect for the rights of everyone directly involved in
- 23 restorative justice, and the rights of others in the community;
- 24 (f) recognition of fairness of process and outcome by victims and
- 25 offenders.
- 26 (4) This section expires on 1 July 2008.
- 27 (5) This section is a provision to which the Legislation Act, section 88
- 28 (Repeal does not end effect of transitional laws etc) applies.
-

- 1 **76 Administrative Decisions (Judicial Review) Act 1989,**
2 **schedule 1, new clause 9**
- 3 *insert*
- 4 9 This Act does not apply to decisions under the *Crimes (Restorative*
5 *Justice) Act 2004*.
- 6 **77 Crimes Act 1900, section 342 (1) (u)**
- 7 *substitute*
- 8 (u) whether the person has paid the prescribed penalty in
9 accordance with an offence notice served, under section 441,
10 on him or her for an offence;
- 11 (v) if the person has accepted responsibility for the offence to take
12 part in restorative justice under the *Crimes (Restorative*
13 *Justice) Act 2004*—that fact.
- 14 **78 Crimes Act 1900, section 344 (1) (f)**
- 15 *substitute*
- 16 (f) that the person chose to plead not guilty;
- 17 (g) that the offender chose not to take part, or chose not to
18 continue to take part, in restorative justice for the offence
19 under the *Crimes (Restorative Justice) Act 2004*.
- 20 **79 Crimes Act 1900, section 364 (1) (k)**
- 21 *substitute*
- 22 (k) the authorised officer’s opinion about—
- 23 (i) the offender’s attitude to the offence; and
- 24 (ii) the likelihood that the offender may commit additional
25 offences; and

- 1 (ii) whether it would be appropriate to refer the offender for
2 restorative justice under the *Crimes (Restorative Justice)*
3 *Act 2004*.

1 Dictionary

2 (see s 3)

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

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

- 6 • ACT
- 7 • adult
- 8 • amend
- 9 • chief executive (see s 163)
- 10 • chief police officer
- 11 • child
- 12 • Childrens Court
- 13 • director of public prosecutions (or DPP)
- 14 • domestic partner (see s 169 (1))
- 15 • found guilty (of an offence)
- 16 • Legislative Assembly
- 17 • Magistrates Court
- 18 • property
- 19 • quarter
- 20 • sentence administration board
- 21 • sitting day
- 22 • Supreme Court
- 23 • the Territory.

24 ***adult offender***—see section 12.

25 ***chief executive (children and young people)***—see section 22 (2).

26 ***chief executive (corrections)***—see section 22 (2).

27 ***chief executive (restorative justice)***—see section 22 (2).

28 *Note* If this Act refers simply to ***the chief executive***, this is a reference to the
29 chief executive of the administrative unit responsible for the
30 administration of this Act (see Legislation Act, s 163).

- 1 ***child victim***—see section 11.
- 2 ***commission***, of an offence that is alleged to have been committed—
3 see section 12.
- 4 ***convenor*** means a person appointed as a convenor for part 8
5 (Restorative justice conferences and agreements) under section 40.
- 6 ***court referral order***—see section 27 (2) (Referral during court
7 proceeding).
- 8 ***domestic violence offence***—see section 12.
- 9 ***eligible offender***—see section 19.
- 10 ***eligible parent***—see section 18.
- 11 ***eligible victim***—see section 17.
- 12 ***less serious offence***— see section 12.
- 13 ***objects***, of this Act—see section 6.
- 14 ***offence***—see section 12.
- 15 ***offender***—see section 12.
- 16 ***parent***—see section 11.
- 17 ***personal characteristics***, of a victim, parent of a victim, or offender,
18 for part 7 (Suitability for restorative justice)—see section 29.
- 19 ***referred***—see section 10.
- 20 ***referring entity***—
- 21 (a) see section 22; but
- 22 (b) for part 8 (Restorative justice conferences and agreements)—
23 see section 38; and
- 24 (c) for division 9.2 (Reporting and records)—see section 67.
- 25 ***required participant***, in a restorative justice conference, for part 8
26 (Restorative justice conferences and agreements)—see section 42.

- 1 *restorative justice*—see section 10.
- 2 *restorative justice agreement*—see section 50 (Agreement as object
3 of conference).
- 4 *restorative justice conference* means a conference called for part 8
5 (Restorative justice conferences and agreements).
- 6 *restorative justice guidelines*—see section 61.
- 7 *section 24 referral conditions*—see section 24 (Referral power).
- 8 *sentence-related order*, for an offender who is found guilty of an
9 offence—see section 13.
- 10 *serious offence*—see section 12.
- 11 *substitute participant*, for part 8 (Restorative justice conferences
12 and agreements)—see section 43.
- 13 *suitable*—section 10.
- 14 *suitable parent*—see section 35.
- 15 *suitable victim*—see section 34.
- 16 *victim*—see section 11.
- 17 *young offender*—see section 12.

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2004.
- 2 Notification**
Notified under the Legislation Act on 2004.
- 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.