



Australian Capital Territory

Crimes (Sentencing) Act 2005

A2005-58

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About this republication

The republished law

This is a republication of the *Crimes (Sentencing) Act 2005* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 3 December 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 3 December 2019.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see [Legislation Act 2001](#), s 133).



Australian Capital Territory

Crimes (Sentencing) Act 2005

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Australian Capital Territory

Crimes (Sentencing) Act 2005

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

Chapter 1 Preliminary

1 Name of Act

This Act is the *Crimes (Sentencing) Act 2005*.

3 Dictionary

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

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

For example, the signpost definition ‘*parole order*—see the [Crimes \(Sentence Administration\) Act 2005](#), section 117.’ means that the term ‘parole order’ is defined in that section of that Act and the definition applies to this Act.

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

Chapter 2 Objects and important concepts

6 Objects of Act

The objects of this Act include the following:

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

7 Purposes of sentencing

- (1) A court may impose a sentence on an offender for 1 or more of the following purposes:
 - (a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;
 - (b) to prevent crime by deterring the offender and other people from committing the same or similar offences;
 - (c) to protect the community from the offender;
 - (d) to promote the rehabilitation of the offender;
 - (e) to make the offender accountable for his or her actions;
 - (f) to denounce the conduct of the offender;
 - (g) to recognise the harm done to the victim of the crime and the community.

- (2) To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.

Note However, see s 133C in relation to the sentencing of a young offender.

8 Meaning of *offender*

- (1) In this Act:

offender—

- (a) means a person convicted or found guilty of an offence by a court, and includes a young offender; but
- (b) for—
 - (i) part 4.2 (Pre-sentence reports)—see section 40; and
 - (ii) part 4.2A (Intensive correction assessments)—see section 46B; and
 - (iii) a treatment order provision—see section 46I.

- (2) In this section:

treatment order provision means the following:

- (a) section 12A (Drug and alcohol treatment orders);
- (b) part 4.2B (Drug and alcohol treatment assessments);
- (c) part 5.4A (Drug and alcohol treatment orders).

Chapter 3 Sentencing and non-conviction options

Part 3.1 General

9 Imposition of penalties

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

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

- imprisonment served by full-time detention at a correctional centre or detention place (see s 10, ch 5 and s 133H)
- imprisonment served by intensive correction (see s 11)
- suspension of a sentence of imprisonment (see s 12)
- good behaviour order (see s 13 and ch 6)
- fine order (see s 14 and s 15)
- driver licence disqualification order (see s 16)
- non-conviction order (see s 17 and s 18)
- reparation order (see s 19, s 20 and ch 7)
- non-association order (see pt 3.4)
- place restriction order (see pt 3.4)
- deferred sentence order (see s 27 and ch 8)
- accommodation order (young offenders only) (see pt 8A.3).

Note 2 A court may also impose a **combination sentence** combining 2 or more of the options listed in note 1 (other than imprisonment served by intensive correction) or otherwise available under a territory law (see pt 3.6).

Part 3.2 Sentences of imprisonment

10 Imprisonment

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

Note 1 An order sentencing an offender to imprisonment may be part of a combination sentence together with other sentencing options (see pt 3.6).

Note 2 See s 133G for additional matters that apply in sentencing a young offender to imprisonment.

- (3) If the court sentences the offender to imprisonment, the sentence must be served by full-time detention at a correctional centre, unless—
 - (a) the court orders otherwise; or
 - (b) the offender is released from full-time detention under this Act or another territory law.

Examples—par (a)

- 1 the court makes an intensive correction order
- 2 the court makes a suspended sentence order

Example—par (b)

release on parole under the *Crimes (Sentence Administration) Act 2005*

Note For a young offender who is under 21 years old when the sentence is imposed, see s 133H.

- (4) If the court sentences the offender to imprisonment, the court must record the reasons for its decision.
- (5) Failure to comply with subsection (4) does not invalidate the sentence of imprisonment.

- (6) This section also applies subject to any contrary intention in the law that directly or indirectly creates the offence or directly or indirectly affects its scope or operation.
- (7) This section is subject to chapter 5 (Imprisonment).

11 Intensive correction orders

- (1) This section applies if an adult offender is convicted of an offence and the court imposes a sentence of imprisonment.
- (2) If the sentence of imprisonment is for not more than 2 years the court may order that the sentence be served by intensive correction in the community (an *intensive correction order*).
- (3) The court may make an intensive correction order if the sentence of imprisonment is for more than 2 years but not more than 4 years, but only if the court considers it is appropriate to do so, having regard to—
 - (a) the level of harm to the victim and the community caused by the offence; and
 - (b) whether the offender poses a risk to 1 or more people or the community; and
 - (c) the offender's culpability for the offence having regard to all the circumstances.

Note An intensive correction order must not be combined with a sentence of full-time imprisonment, a suspended sentence of imprisonment or a good behaviour order (see s 29 (1) (b)).

- (4) An intensive correction order must include the core conditions mentioned in the *Crimes (Sentence Administration) Act 2005*, section 42.

- (5) An intensive correction order may include 1 or more of the following additional conditions that can reasonably be complied with within the term of the order:
- (a) a community service condition;
 - (b) a rehabilitation program condition;
 - (c) that the offender comply with a reparation order, a non-association order or place restriction order;
 - (d) a condition prescribed by regulation;
 - (e) any other condition, not inconsistent with this Act or the *Crimes (Sentence Administration) Act 2005*, that the court considers appropriate.

Examples—conditions for s (5) (e)

- 1 that the offender undertake medical treatment and supervision (eg by taking medication and cooperating with medical assessments)
- 2 that the offender supply samples of blood, breath, hair, saliva or urine for alcohol or drug testing if required by a corrections officer
- 3 that the offender attend educational, vocational, psychological, psychiatric or other programs or counselling
- 4 that the offender not drive a motor vehicle or consume alcohol or non-prescription drugs or medications
- 5 that the offender regularly attend alcohol or drug management programs

Note For core conditions of an intensive correction order, see the *Crimes (Sentence Administration) Act 2005*, s 42.

- (6) An intensive correction order may also include a curfew condition if the court is satisfied that each adult who is living at the curfew place or has parental responsibility or guardianship for a person who is living at the curfew place consents to the curfew.
- (7) This section is subject to chapter 5 (Imprisonment).

12 Suspended sentences

- (1) This section applies if—
 - (a) an offender is convicted of an offence; and
 - (b) the court sentences the offender to imprisonment for the offence.
- (2) The court may make an order (a *suspended sentence order*) suspending all or part of the sentence of imprisonment.
- (3) If the court makes a suspended sentence order, the court must also make a good behaviour order for the period during which the sentence is suspended or for any longer period that the court considers appropriate.

Note A suspended sentence order may be part of a combination sentence together with other sentencing options (see pt 3.6).

- (4) If the court makes a suspended sentence order fully suspending the sentence of imprisonment, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note 1 For notice of a partly suspended sentence of imprisonment, see s 84.

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (5) Failure to comply with subsection (4) does not invalidate the suspended sentence order.
- (6) This section is subject to the following provisions:
 - (a) section 13 (Good behaviour orders);
 - (b) chapter 5 (Imprisonment);
 - (c) chapter 6 (Good behaviour orders).
- (7) To avoid doubt, a sentence of imprisonment suspended under the custodial part of a drug and alcohol treatment order is not a suspended sentence order.

12A Drug and alcohol treatment orders

(1) This section applies if—

(a) an offender pleads guilty to an eligible offence; and

Note A reference to an offender in this section does not include a young offender (see s 8 (1) (b)).

(b) the Supreme Court convicts the offender of the offence and imposes a sentence of imprisonment of at least 1 year but not more than 4 years; and

(c) the offender is not subject to a sentencing order for another offence.

(2) The court may make an order (a ***drug and alcohol treatment order***) that fully suspends a sentence of imprisonment for an eligible offence on condition that the offender agrees to complete a treatment program, but only if—

(a) the court is satisfied on the balance of probabilities that—

(i) the offender is dependent on alcohol or a controlled drug; and

(ii) the offender's dependency substantially contributed to the commission of the offence; and

(iii) the offender will live in the ACT for the term of the sentence except as directed by the court; and

(b) the court considers the order appropriate, taking into account—

(i) the relevant sentencing considerations applying to the offender; and

(ii) any information given to the court relating to the concerns of a victim about the victim's safety or welfare; and

- (iii) the matters set out under section 80O; and

Note Section 80O sets out the object of a drug and alcohol treatment order.

- (c) the offender gives informed consent to the order being made after the offender is given—

- (i) a clear explanation of the treatment order that contains sufficient information to enable the offender to make a balanced judgement about whether or not to consent to serve the sentence under the order; and
- (ii) an opportunity to ask any questions about the order, and those questions have been answered and the offender appears to have understood the answers.

- (3) If the court makes a treatment order for an offence (the ***primary offence***), the court may extend the order to an associated offence, but only if the total period of imprisonment liable to be served under any consecutive sentences imposed for all offences to which the order relates, is not more than 4 years.

- (4) To remove any doubt—

- (a) if the court extends a treatment order to an associated offence, the offender must not be subject to more than 1 treatment order for all offences at any particular time; and
- (b) an associated offence to which the court extends a treatment order may be an offence for which the court imposes a sentence of imprisonment of less than 1 year; and
- (c) sentences for multiple offences may be served concurrently or consecutively (or partly concurrently and partly consecutively), subject to subsection (3).

Note Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).

- (5) The court must not impose a lesser sentence of imprisonment on the offender than the circumstances of the offence would ordinarily require only to allow the court to make a treatment order.
- (6) If the court makes a treatment order, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.
- (7) Failure to comply with subsection (6) does not invalidate the treatment order.
- (8) This section is subject to part 5.4A (Drug and alcohol treatment orders).

Note A treatment order may not be made in relation to an offender who is under 18 years old (see s 46I).

- (9) In this section:

associated offence, for an extended treatment order, means an eligible offence—

- (a) to which the offender pleads guilty; and
- (b) for which the offender is sentenced to imprisonment; and
- (c) dealt with in the same sentencing proceeding as the primary offence.

eligible offence means an offence that is not—

- (a) a serious violence offence; or
- (b) a sexual offence.

sentencing order means any of the following:

- (a) an order for imprisonment by full-time detention;
- (b) a suspended sentence order;
- (c) an intensive correction order;
- (d) a deferred sentence order;

- (e) a parole order;
- (f) an order under a law in force in Australia that corresponds to an order mentioned in paragraphs (a) to (e).

serious violence offence means an offence against any of the following provisions of the *Crimes Act 1900*:

- (a) section 12 (Murder);
- (b) section 15 (Manslaughter);
- (c) section 19 (Intentionally inflicting grievous bodily harm);
- (d) section 20 (Recklessly inflicting grievous bodily harm).

sexual offence means an offence against the *Crimes Act 1900*, part 3.

Part 3.3 Non-custodial sentences

13 Good behaviour orders

- (1) This section applies if an offender is convicted or found guilty of an offence.

Note If a good behaviour order is made without convicting the offender (see s 17), it is also a non-conviction order (see s 17 (2)).

- (2) The court may make an order (a **good behaviour order**) requiring the offender to sign an undertaking to comply with the offender's good behaviour obligations under the *Crimes (Sentence Administration) Act 2005* for a stated period.

- (3) A good behaviour order may include 1 or more of the following conditions:

- (a) that the offender give security for a stated amount, with or without sureties, for compliance with the order;

Note This paragraph does not apply to a young offender (see s 133M).

- (b) a community service condition;

Note A community service condition must not be included in the order unless the offender is convicted of the offence (see s 87).

- (c) a rehabilitation program condition;

Note A good behaviour order that includes a rehabilitation program condition must also include a probation condition or supervision condition (see s 95 and s 133V).

- (d) a probation condition;

- (e) that the offender comply with a reparation order;

- (f) a condition prescribed by regulation for this paragraph;

- (g) any other condition, not inconsistent with this Act or the *Crimes (Sentence Administration) Act 2005*, that the court considers appropriate.

Examples of conditions for par (g)

- 1 that the offender undertake medical treatment and supervision (eg by taking medication and cooperating with medical assessments)
- 2 that the offender supply samples of blood, breath, hair, saliva or urine for alcohol or drug testing if required by a corrections officer
- 3 that the offender attend educational, vocational, psychological, psychiatric or other programs or counselling
- 4 that the offender not drive a motor vehicle or consume alcohol or non-prescription drugs or medications
- 5 that the offender regularly attend alcohol or drug management programs

Note See s 133M for additional conditions available for young offenders (education and training conditions and supervision conditions).

- (4) If the offence is punishable by imprisonment, a good behaviour order—
- (a) may be made instead of imposing a sentence of imprisonment or as part of a combination sentence that includes imprisonment; and
 - (b) may apply to all or part of the term of the sentence.
- (5) Subsection (4) does not, by implication, limit the sentences that a court may impose under this Act or another territory law.
- (6) If the good behaviour order includes a community service condition, it is a community service order.
- (7) If the good behaviour order includes a rehabilitation program condition, it is a rehabilitation program order.
- (8) This section is subject to chapter 6 (Good behaviour orders).

14 Fines—orders to pay

- (1) This section applies if an offender is convicted of an offence that is punishable by a fine.
- (2) The court may make an order (a ***fine order***) directing that the offender pay a fine for the offence.

Note The [Legislation Act](#), s 133, s 135 and s 136 deal with penalty units and the effect of the statement of a penalty for an offence in a territory law.

- (3) The court is not required to inquire into the offender's financial circumstances before making a fine order but must consider any facts established by the offender about the offender's financial circumstances.

Note Section 33 (1) (n) requires the court, in deciding how to sentence an offender, to consider the offender's financial circumstances if relevant and known to the court.

- (4) The court may make a fine order for the offender whether or not the offence is punishable by a fine otherwise than under this part.
- (5) If a court makes a fine order, the court must state in the order—
 - (a) the amount of the fine; and
 - (b) how the fine is to be paid (for example, by stated instalments at stated times).

Note The [Victims of Crime Act 1994](#), s 25 (1) requires the amount of the victims services levy payable by a person (in relation to an offence to which that Act, pt 5 applies), to be stated on a fine order and on any notice or copy of the fine order given to the person.

- (6) If the Magistrates Court imposes a fine on an offender for an offence and the summons for the offence was served in accordance with the [Magistrates Court Act 1930](#), section 116B (Service of summons for prescribed offence), the court must allow the offender at least 14 days for payment.

- (7) As soon as practicable after the court makes a fine order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note 1 If the order is part of a combination sentence, a single notice may be given for the sentences (see [Legislation Act](#), s 49).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (8) Failure to comply with subsection (7) does not invalidate the fine order.

15 Fines—maximum amounts

The maximum fine that a court may impose for an offence is—

- (a) if the offence is punishable by a fine otherwise than under this part—the maximum amount fixed for the fine; or
- (b) in any other case—
 - (i) if the Supreme Court makes the order—\$10 000; or
 - (ii) if the Magistrates Court makes the order—\$2 000.

15A Fines—security for payment

- (1) If a court makes a fine order, the court may, in addition to allowing time for payment of an amount under the order, direct that the offender liable to pay the amount give security, to the satisfaction of the person specified by the court, with or without sureties, for payment of the amount.
- (2) The security must be given, and may be enforced, in the way provided by the [Magistrates Court Act 1930](#), part 3.12 (Securities in criminal matters).

16 Driver licence disqualification orders—motor vehicle theft

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence against a territory law involving the theft of a motor vehicle; or
 - (b) an offender is convicted or found guilty of an offence against the [Criminal Code](#), section 318 (Taking etc motor vehicle without consent).

Example for par (a)

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

- s 308 (Theft)
- s 309 (Robbery)
- s 310 (Aggravated robbery)
- s 311 (Burglary)
- s 312 (Aggravated burglary)

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

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

- (3) To remove any doubt, this section is additional to the court's other powers under this Act or any other territory law, including, for example, the road transport legislation.
- (4) As soon as practicable after the court makes a driver licence disqualification order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and

(b) the road transport authority.

Note 1 If the order is part of a combination sentence, a single notice may be given to the offender for the sentences (see [Legislation Act](#), s 49).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

(5) Failure to comply with subsection (4) does not invalidate the driver licence disqualification order.

(6) In this section:

motor vehicle—see the [Criminal Code](#), section 318 (3).

road transport legislation—see the [Road Transport \(General\) Act 1999](#), section 6.

17 Non-conviction orders—general

(1) This section applies if an offender is found guilty of an offence.

(2) Without convicting the offender of the offence, the court may make either of the following orders (each of which is a **non-conviction order**):

(a) an order directing that the charge be dismissed, if the court is satisfied that it is not appropriate to impose any punishment (other than nominal punishment) on the offender;

(b) a good behaviour order under section 13.

Note A good behaviour order for a non-conviction order cannot include a community service condition because the offender is not convicted of the offence (see s 87).

(3) In deciding whether to make a non-conviction order for the offender, the court must consider the following:

(a) the offender's character, antecedents, age, health and mental condition;

(b) the seriousness of the offence;

- (c) any extenuating circumstances in which the offence was committed.
- (4) The court may also consider anything else the court considers relevant.

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

- (5) If the court makes a non-conviction order under subsection (2) (a) for the offender, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note 1 For notice of a good behaviour order under s (2) (b), see s 103.

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (6) Failure to comply with subsection (5) does not invalidate the non-conviction order.
- (7) If the court makes a non-conviction order under subsection (2) (b), the good behaviour order must be for a term of no longer than 3 years.
- (8) This section (other than subsection (7)) is subject to section 13 and chapter 6 (Good behaviour orders).

18 Non-conviction orders—ancillary orders

- (1) This section applies if the court makes a non-conviction order for an offender for an offence.
- (2) The court may make any ancillary order that it could have made if it had convicted the offender of the offence.

- (3) The offender has the same rights of appeal in relation to the making of the ancillary order as the offender would have had if the order had been made on the conviction of the offender for the offence.
- (4) This section is subject to section 134 (Operation of ancillary and restitution orders).
- (5) In this section:

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

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

Examples

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

19 **Reparation orders—losses and expenses generally**

- (1) This section applies if—
 - (a) an offender is convicted or found guilty of an offence against a territory law; and
 - (b) a person (the ***injured person***) suffers loss or incurs expense (including any out-of-pocket expense) as a direct result of the commission of the offence.

Note Certain victims of crimes may claim financial assistance under the [*Victims of Crime \(Financial Assistance\) Act 2016*](#).

- (2) Before the court sentences the offender or makes a non-conviction order for the offender, the director of public prosecutions may apply to the court for an order under this section.
- (3) On application under subsection (2), or its own initiative, the court may make an order (a **reparation order**) requiring the offender to make reparation to the injured person, by way of a payment of money or otherwise, for the loss or expense.

Note If the offence relates to stolen property, a reparation order may also be made under s 20 (see s 111).

- (4) This section is subject to chapter 7 (Reparation orders) and section 134 (Operation of ancillary and restitution orders).
- (5) In this section:
loss—see the [Criminal Code](#), section 300.

20 **Reparation orders—stolen property**

- (1) This section applies if an offender is convicted or found guilty of an offence against a territory law in relation to stolen property.
- (2) Before the court sentences the offender or makes a non-conviction order for the offender, the director of public prosecutions may apply to the court for 1 or more orders under this section.
- (3) On application under subsection (2), or its own initiative, the court may make the following orders (each of which is a **reparation order**):
 - (a) an order that a person having custody or possession of the stolen property restore it to someone entitled to recover it from the person;

- (b) an order that the offender pay the value of the stolen property to a person who, if the stolen property were in the custody or possession of the offender, would be entitled to recover it from the offender.

Note A reparation order may also be made under s 19 for the same offence (see s 111).

- (4) If the court makes an order under subsection (3) (a), the court, on application under subsection (2), or its own initiative, may also make either or both the following orders (each of which is also a **reparation order**):
 - (a) if the court considers that the offender has sold the property to a purchaser who was acting honestly—an order that the offender pay the purchaser an amount not exceeding the amount paid by the purchaser;
 - (b) if the court considers that the offender has borrowed money on the security of the property from a lender acting honestly—an order that the offender pay the lender an amount not exceeding the amount owed to the lender under the loan.
- (5) This section is subject to chapter 7 (Reparation orders) and section 134 (Operation of ancillary and restitution orders).
- (6) In this section:

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

Note Under the [Criminal Code](#), stolen property includes tainted property. Tainted property is the proceeds of the sale of stolen property, or property that is exchanged for stolen property.

Part 3.4 Non-association and place restriction orders

21 Definitions—pt 3.4

In this Act:

non-association order means an order prohibiting an offender from—

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

place restriction order means an order prohibiting an offender from being in, or within a stated distance of, a named place or area or attempting to be in, or within the stated distance, of the place or area.

22 Application—pt 3.4

This part applies if a court makes any of the following orders for an offender in relation to an offence:

- (a) an intensive correction order;
- (b) a drug and alcohol treatment order;
- (c) a good behaviour order.

23 Non-association and place restriction orders—when may be made

- (1) The court may make a non-association order or place restriction order for the offender if—
 - (a) the offence is a relevant offence; and

- (b) the court is satisfied that it is necessary and reasonable to make the order for 1 or more of the following purposes:
 - (i) preventing the offender from harassing anyone or endangering the safety or welfare of anyone;
 - (ii) preventing the offender from committing further offences (including a relevant offence);
 - (iii) assisting the offender to manage things that may make the offender more likely to commit further offences (including a relevant offence) if not managed.

Note See s 133I for an additional consideration that applies in sentencing a young offender.

- (2) The restriction imposed on the offender by a non-association order or place restriction order, and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.
- (3) To remove any doubt, this section is additional to the court's other powers under this Act or any other territory law.
- (4) In this section:

harm—see the [Criminal Code](#), dictionary.

personal violence offence means—

- (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
- (b) a family violence offence.

relevant offence means—

- (a) an offence against the [Criminal Code](#), part 4.1 (Property damage offences) that is punishable by imprisonment for 5 years or more; or
- (b) an offence against the [Criminal Code](#), chapter 6 (Serious drug offences); or
- (c) an offence against the [Criminal Code](#), chapter 7 (Administration of justice offences) that is punishable by imprisonment for 5 years or more; or
- (d) an offence against the [Firearms Act 1996](#) that is punishable by imprisonment for 20 years or more; or
- (e) an offence against the [Crimes Act 1900](#), section 114B (Money laundering); or
- (f) a personal violence offence; or
- (g) an offence prescribed by regulation.

Note A reference to an offence includes a reference to a related ancillary offence, eg attempt and conspiracy (see [Legislation Act](#), s 189).

24 Non-association and place restriction orders—maximum period

- (1) A non-association order or place restriction order—
 - (a) must be for a period not longer than—
 - (i) if the order is made with an intensive correction order or a drug and alcohol treatment order—24 months; or
 - (ii) in any other case—12 months; and
 - (b) must state when it starts and the period for which it operates.

- (2) To remove any doubt, the period of a non-association order or place restriction order is not limited by the term of any other sentence imposed for the offence for which the order is made.

Example

Sean is convicted of an offence. The court decides that the appropriate penalty is 6 months imprisonment served by intensive correction and a place restriction order. The place restriction order may be for longer than 6 months (but not longer than 24 months).

**25 Non-association and place restriction orders—
explanation and official notice**

- (1) If a court makes a non-association order or place restriction order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
- (a) the nature of the order; and
 - (b) the offender's obligations under the order; and
 - (c) the consequences if the offender breaches the obligations.

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

- (2) As soon as practicable after the court makes the non-association order or place restriction order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (3) Failure to comply with this section does not invalidate the non-association order or place restriction order.

26 Non-association order—disclosure of identifying information

- (1) A person commits an offence if the person publishes—
- (a) the fact that a person is someone (other than the offender) to whom a non-association order relates; or
 - (b) any information that could reasonably identify someone (other than the offender) to whom a non-association order relates.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the publication is—
- (a) to a relevant person (see subsection (5)); or
 - (b) to a named person by, or in accordance with, a direction of a court; or
 - (c) part of an official report of a court proceeding and the publication is relevant to the proceeding.
- (3) However, a court must not give a direction under subsection (2) (b) unless it is satisfied that the publication is in the interests of justice.
- (4) An offence against this section is a strict liability offence.
- (5) In this section:

relevant person means any of the following:

- (a) the offender;
- (b) a person (other than the offender) to whom the order relates;
- (c) a police officer;
- (d) anyone involved in the administration of the order, or any other penalty to which the offender is subject in relation to the offence for which the order was made;

- (e) anyone involved in a proceeding for failure to comply with the non-association order;
- (f) anyone stated in the non-association order as someone to whom the information may be published;
- (g) anyone else to whom the information is required or allowed to be published under a law of the Territory, the Commonwealth, a State or another Territory.

Part 3.5 Deferred sentence orders

27 Deferred sentence orders—making

- (1) This section applies if—
 - (a) an offender has been convicted or found guilty by a court of an offence punishable by imprisonment; and
 - (b) the court has not sentenced the offender for the offence; and
 - (c) the offender is neither serving, nor liable to serve, a term of imprisonment for another offence; and
 - (d) the court considers the offender should be given an opportunity to address his or her criminal behaviour, and anything that has contributed to the behaviour, before the court sentences the offender for the offence; and
 - (e) the court is satisfied that it may release the offender on bail under the *Bail Act 1992*.
- (2) The court may make an order (a *deferred sentence order*) requiring the offender to appear before the court at the time and place stated in the order to be sentenced for the offence.

Note The maximum period of the order is 12 months (see s 122 (1)).
- (3) If the court makes a deferred sentence order for the offender, the court must release the offender on bail under the *Bail Act 1992*.
- (4) A deferred sentence order applies to all offences for which the court may sentence the offender, whether or not they are punishable by imprisonment.

- (5) A deferred sentence order may include any condition the court considers appropriate for subsection (1) (d).

Examples

see the examples to section 13 (3) (g) (Good behaviour orders)

Note Bail may be granted subject to conditions (see [Bail Act 1992](#), s 25).

- (6) This section is subject to chapter 8 (Deferred sentence orders).

Part 3.6 Combination sentences

28 Application—pt 3.6

This part applies if an offender is convicted of an offence.

29 Combination sentences—offences punishable by imprisonment

- (1) If the offence is punishable by imprisonment, the court sentencing the offender may impose a sentence (a *combination sentence*) consisting of 2 or more of the following orders:

- (a) an order sentencing the offender to imprisonment as full-time detention;

Note A sentence of imprisonment must be served by full-time detention at a correctional centre or detention place unless the court otherwise orders, or the offender is released from detention under this Act or another territory law (see s 10 (3) and s 133H).

- (b) an intensive correction order (but not in combination with a sentence of full-time imprisonment, a suspended sentence of imprisonment or a good behaviour order);

- (c) a suspended sentence order;

- (d) a good behaviour order;

Note A good behaviour order may not be set to start at a time when the offender may be serving full-time detention or be on parole (see s 31 (2)).

- (e) a fine order;

- (f) a driver licence disqualification order;

- (g) a reparation order;

- (h) a non-association order;

- (i) a place restriction order;

- (j) an order (however described) imposing another penalty available under any other territory law.

Examples

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

- 1 a sentence of 18 months as follows:
 - an order for imprisonment for 1 year with no nonparole period
 - a fine order directing payment of \$500 by stated instalments
 - a good behaviour order for 6 months (the remainder of the term of the sentence)
 - a driver licence disqualification order for all of the sentence
- 2 a sentence of 3 years and 6 months as follows:
 - an order for 3 years imprisonment with no nonparole period
 - a good behaviour order for 6 months (the remainder of the term of the sentence) and a concurrent non-association order

- (2) However, the court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

30 Combination sentences—offences punishable by fine

- (1) If the offence is not punishable by imprisonment (except in default of payment of a fine), the court sentencing the offender may impose a sentence (also a *combination sentence*) consisting of 2 or more of the following orders:
- (a) a good behaviour order;
 - (b) a fine order;
 - (c) a driver licence disqualification order;
 - (d) a reparation order;
 - (e) a non-association order;
 - (f) a place restriction order;

- (g) an order (however described) imposing another penalty available under any other territory law.
- (2) However, the court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

31 Combination sentences—start and end

- (1) For a combination sentence, a court may set the start or end of the period of any part of the sentence, or of any order forming part of the sentence, by reference to anything the court considers appropriate, including, for example—
 - (a) a stated day; or
 - (b) the lapse of a stated period of time; or
 - (c) whenever a stated event happens, or whenever the earlier or later of 2 or more stated events happens.

Example for par (c)

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

- an order for imprisonment for 3 years with a 2-year nonparole period
 - a good behaviour order for 2 years stated to start at the end of the sentence of imprisonment
 - a place restriction order for 1 year stated to start at the end of the sentence of imprisonment
- (2) However, the court must not set the start of the period of any part of the sentence that is a good behaviour order on a day when the offender may be serving a period of full-time detention or may be on parole.

Chapter 4 Sentencing procedures generally

Part 4.1 General principles

32 Power to reduce penalties

- (1) If, under a territory law, an offender is liable to imprisonment for life, a court may nevertheless impose a sentence of imprisonment for a stated term.
- (2) If, under a territory law, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.
- (3) If, under a territory law, an offender is liable to a fine of a stated amount, a court may nevertheless make a fine order for a lesser amount.
- (4) This section—
 - (a) is not limited by any other provision of this chapter; and
 - (b) does not limit any discretion the court has, apart from this section, about the imposition of penalties.

33 Sentencing—relevant considerations

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court:
 - (a) the nature and circumstances of the offence;
 - (b) any other offences required or allowed to be taken into account;
 - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—the course of conduct;

- (d) if the personal circumstances of any victim of the offence were known to the offender when the offence was committed—the circumstances;
- (e) any injury, loss or damage resulting from the offence;
- (f) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement;

Note 1 For who may make a victim impact statement, see s 49.

Note 2 The court must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence (see s 53 (1) (b)).

- (g) if a victim of the offence was a pregnant woman—
 - (i) whether the offender knew, or ought reasonably to have known, that the woman was pregnant; and
 - (ii) whether the offender intended to cause, or was reckless about causing, loss of or harm to the pregnancy; and
 - (iii) the loss of or harm to the pregnancy; and
 - (iv) whether the offender intended to cause, or was reckless about causing, the death of or harm to a child born alive as a result of the pregnancy; and
 - (v) the death of or harm to a child born alive as a result of the pregnancy;
- (h) any action the offender may have taken to make reparation for any injury, loss or damage resulting from the offence;
- (i) the degree of responsibility of the offender for the commission of the offence;
- (j) a plea of guilty by the offender (see section 35);
- (k) any assistance by the defence in the administration of justice (see section 35A);

- (l) any assistance by the offender to law enforcement authorities (see section 36);
- (m) the cultural background, character, antecedents, age and physical or mental condition of the offender;
- (n) the financial circumstances of the offender;
- (o) the probable effect that any sentence or order under consideration would have on any of the offender's family or dependants;
- (p) whether the offender was affected by alcohol or a controlled drug when the offence was committed and the circumstances in which the offender became affected;
- (q) the degree to which the offence was the result of provocation, duress or entrapment;
- (r) whether the recording of a conviction or the imposition of a particular penalty would be likely to cause particular hardship to the offender;
- (s) any jury recommendation for mercy;
- (t) whether the offender is voluntarily seeking treatment for any physical or mental condition that may have contributed to the commission of the offence;
- (u) whether the offender was in a position of trust or authority when the offence was committed;
- (v) the reason or reasons why the offender committed the offence;
- (w) whether the offender has demonstrated remorse;
- (x) if the offender has complied with an order for assessment, treatment, referral or monitoring by the court alcohol and drug assessment service under section 40B (2)—that fact;
- (y) if the *Crimes (Restorative Justice) Act 2004*, section 19 (1) (b) (i) applies to the offender—that fact;

- (z) whether the offender has paid the prescribed penalty in accordance with any infringement notice served on the offender for the offence;

Note For when an infringement notice may be withdrawn after it has been paid, see the [Magistrates Court Act 1930](#), s 127 and the [Road Transport \(General\) Act 1999](#), s 36.

- (za) current sentencing practice.

Note See s 133D for additional considerations that apply in sentencing a young offender.

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

34 Sentencing—irrelevant considerations

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must not increase the severity of the sentence it would otherwise have imposed because of any of the following:
 - (a) a law that has not commenced;
 - (b) any alleged offences that the offender has not admitted in accordance with section 57 (Outstanding additional offences taken into account in sentencing);
 - (c) that the offender chose not to give evidence on oath;
 - (d) that the offender may have committed perjury or been guilty of contempt of court during the proceeding;
 - (e) the offender's behaviour in court;
 - (f) that the offender chose to plead not guilty;
 - (g) that the offender did not comply with an order for assessment, treatment, referral or monitoring by the court alcohol and drug assessment service under section 40B (2);
 - (h) that the offender chose not to take part, or chose not to continue to take part, in restorative justice for the offence under the *Crimes (Restorative Justice) Act 2004*.
- (2) In deciding how an offender should be sentenced for an offence, a court must not reduce the severity of a sentence it would otherwise have imposed because—
 - (a) the offence is a family violence offence; or
 - (b) a family violence order under the *Family Violence Act 2016* or a protection order under the *Domestic Violence and Protection Orders Act 2008* (repealed) is in force against the offender in relation to the family violence offence; or

- (c) of an automatic forfeiture of property, a forfeiture order, or a penalty order under the [Confiscation of Criminal Assets Act 2003](#).

34A Sentencing—sexual offences against children

For a sexual offence against a child, a court—

- (a) must sentence the offender in accordance with sentencing practice, including sentencing patterns, at the time of sentencing; and
- (b) must not reduce the severity of a sentence it would otherwise have imposed on an offender because the offender has good character, to the extent that the offender's good character enabled the offender to commit the offence.

Examples—par (b)

- 1 The offender's good character was one reason the offender was selected to supervise children on a camp. The offender began to establish a relationship with children at the camp to obtain their compliance in acts of a sexual nature.
- 2 A child's parents trusted the offender to care for the child because of the offender's authority in their community. The offender held authority in the community in part because of the offender's good character. The offender sexually abused the child including while the child was in the offender's care.

Note A sentence is limited to the maximum sentence that applied to the offence when it was committed (see [Human Rights Act 2004](#), s 25 (2)).

35 Reduction of sentence—guilty plea

- (1) This section applies if—
 - (a) an offender pleads guilty to an offence; and
 - (b) based on the information currently available to the court, the court considers that there is a real likelihood that it will sentence the offender to imprisonment.

- (2) In deciding how the offender should be sentenced (if at all) for the offence, the court must consider the following matters:
- (a) the fact that the offender pleaded guilty;
 - (b) when the offender pleaded guilty, or indicated an intention to plead guilty;
 - (c) whether the guilty plea was related to negotiations between the prosecution and defence about the charge to which the offender pleaded guilty;
 - (d) the seriousness of the offence;
 - (e) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement.

Note For who may make a victim impact statement, see s 49.

- (3) The court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed if the offender had not pleaded guilty to the offence.
- (4) However, in deciding any lesser penalty, the court must not make any significant reduction for the fact that the offender pleaded guilty if, based on established facts, the court considers that the prosecution's case for the offence was overwhelmingly strong.
- (5) For subsection (2) (b), the earlier in the proceeding that the guilty plea is made, or indication is given that it will be made, the lesser the penalty the court may impose.
- (6) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.

(7) In this section:

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

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

defence means—

- (a) the offender; or
- (b) any lawyer representing the offender.

established facts means facts established by—

- (a) evidence given at the trial; or
- (b) available documents; or
- (c) admissions by the offender; or
- (d) submissions made by the prosecution or defence.

35A Reduction of sentence—assistance in administration of justice

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence; and
 - (b) before or after the conviction or finding of guilt, the defence assisted in the administration of justice for the offence.

Example—par (b)

an admission made by the defence pre-trial or during a trial

- (2) A court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed having regard to the degree of assistance provided in the administration of justice.
- (3) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.
- (4) For this section, *assistance in the administration of justice*—
- (a) includes a pre-trial disclosure by the defence; but
 - (b) does not include assistance—
 - (i) consisting only of a plea of guilty under section 35; or
 - (ii) given to law enforcement authorities under section 36.
- (5) In this section:
- defence* means—
- (a) the offender; or
 - (b) any lawyer representing the offender.

36 Reduction of sentence—assistance to law enforcement authorities

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence; and
 - (b) the offender assisted, or undertook to assist, law enforcement authorities in—
 - (i) preventing, detecting or investigating the offence or any other offence; or
 - (ii) a proceeding in relation to the offence or any other offence.

- (2) A court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed having regard to the degree of assistance provided, or undertaken to be provided, to law enforcement authorities.

Note The DPP may appeal against the reduced sentence if the offender does not comply with the undertaking (see s 137).

- (3) In deciding whether to impose a lesser penalty for the offence, and the nature and extent of the penalty to be imposed, the court must consider the following matters:

- (a) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement;

Note For who may make a victim impact statement, see s 49.

- (b) the significance and usefulness of the offender's assistance to law enforcement authorities, taking into account any evaluation by the authorities of the assistance provided or undertaken to be provided;
- (c) the truthfulness, completeness and reliability of any information or evidence provided by the offender;

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

37 Reduction of sentence—statement by court about penalty

- (1) This section applies if a court imposes a lesser penalty for an offence under section 35 (Reduction of sentence—guilty plea), section 35A (Reduction of sentence—assistance in administration of justice) or section 36 (Reduction of sentence—assistance to law enforcement authorities).
- (2) The court must state—
 - (a) the penalty (including any shorter nonparole period) it would otherwise have imposed; and
 - (b) if the lesser penalty is imposed under section 35A or section 36—the reason for the imposition of the lesser penalty.

38 Sentences of imprisonment and uncompleted young offender orders

- (1) This section applies in relation to an adult offender if, at the time of sentencing—
 - (a) the adult offender is serving a sentence that was imposed on the person as a young offender (the *previous sentence*); and
 - (b) the court is imposing a sentence that would be likely to bring the offender into contact with other adult offenders.
- (2) The court—
 - (a) must, in deciding the term of the sentence, consider any remaining period during which the previous sentence would remain in force if not discharged under paragraph (b); and
 - (b) may, if appropriate, discharge the previous sentence.

39 Judgment after sentence deferred

- (1) If an offender is convicted of an offence and sentence is deferred, the court before which the offender was tried, or the Supreme Court, may sentence the offender for the offence at any time afterwards.
- (2) This section does not apply if the court has made a deferred sentence order.

Note Under a deferred sentence order, sentencing is deferred to a stated time (see s 27) unless the order is cancelled (see s 133).

Part 4.2 Pre-sentence reports

39A Meaning of *assessor*—pt 4.2

In this part:

assessor means—

- (a) a public servant whose functions include preparing pre-sentence reports; or
- (b) a person with similar functions under the law of a State.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

40 Application—pt 4.2

This part applies if either of the following applies to a person (the *offender*):

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

40A Pre-sentence report matters

For this part, each of the following is a *pre-sentence report matter* in relation to the offender:

- (a) the offender's age;
- (b) the offender's social history and background (including cultural background);
- (c) the offender's medical and psychiatric history;
- (d) the offender's educational background;
- (e) the offender's employment history;
- (f) the extent to which the offender is complying, or has complied, with any sentence;

- (g) the offender's financial circumstances;
- (h) any special needs of the offender;
- (i) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which the offender may benefit;
- (j) any risk assessments made of the likelihood that the offender will commit further offences or of things (including circumstances) that may make the offender more likely to commit further offences;
- (k) whether the offender—
 - (i) is addicted to, or misuses, alcohol or a controlled drug; and
 - (ii) has been assessed, treated or monitored by the court alcohol and drug assessment service under section 40B;
- (l) the opinion of the assessor preparing a pre-sentence report for the offender in relation to an offence, and the basis for the opinion, about the following:
 - (i) the offender's attitude to the offence;
 - (ii) the need to protect victims of the offence from violence or harassment by the offender;
 - (iii) anything that may make the offender more likely to commit further offences;
Examples—par (iii)
 - 1 dependence on alcohol or a controlled drug
 - 2 a gambling addiction
 - 3 association with particular people
 - (iv) the likelihood that the offender may commit further offences;

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

Note See s 133E for additional pre-sentence report matters for young offenders.

40B Pre-sentence report matters—court alcohol and drug assessment service

- (1) This section applies if the offender is addicted to, or misuses, alcohol or a controlled drug.
- (2) Before sentencing the offender, a court may order that the offender—
 - (a) be assessed by the court alcohol and drug assessment service (*CADAS*); and
 - (b) comply with any treatment, referral to treatment or monitoring by CADAS as a result of the assessment.
- (3) A court must not make an order under subsection (2) without the offender's consent.
- (4) In making an order under subsection (2), the court may also order that the offender comply with any reasonable direction given by the director-general of the administrative unit responsible for the administration of the *Corrections Management Act 2007* in relation to the assessment, treatment, referral or monitoring.
- (5) If the court makes an order under subsection (2), the court may make an order requiring a clinician from CADAS to appear before the court at the time and place stated in the order for the sentencing of the offender.

41 Pre-sentence reports—order

- (1) This section applies if—
- (a) the Magistrates Court—
 - (i) finds an offender guilty of an offence in a proceeding before the court; or
 - (ii) accepts an offender's guilty plea for an offence; or
 - (b) the Magistrates Court commits an offender to the Supreme Court for sentence; or
- Note* The Magistrates Court may commit a person to the Supreme Court for sentence under the [Magistrates Court Act 1930](#), s 92A.
- (c) the Supreme Court—
 - (i) finds an offender guilty of an offence in a proceeding before the court; or
 - (ii) accepts an offender's guilty plea for an offence.
- (2) If subsection (1) (b) applies—the Magistrates Court may—
- (a) order a pre-sentence report in relation to the offender; and
 - (b) order the director-general to provide a copy of the report to the Supreme Court or any other person.
- (3) If subsection (1) (a) or (c) applies—the court may—
- (a) order a pre-sentence report in relation to the offender; and
 - (b) adjourn the proceeding for the report to be prepared; and
 - (c) order the director general to provide a copy of the report to the court or any other person.

Note If a form is approved under the [Court Procedures Act 2004](#) for an order under this section, the form must be used (see that [Act](#), s 8 (2)).

- (4) However, the court must order the director-general to prepare a pre-sentence report before sentencing the offender to serve all or any part of a sentence by—
 - (a) community service work under a good behaviour order; or
 - (b) undertaking a rehabilitation program under a good behaviour order.
- (5) The court order for the preparation of a pre-sentence report may state 1 or more pre-sentence report matters, or any other matter, that the report must address.
- (6) Subsection (4) (b) does not apply if relevant sentencing information, under section 97 (Good behaviour orders—rehabilitation programs—suitability), is already before the court.
- (7) The director-general must arrange for an assessor to prepare a pre-sentence report ordered by the court.
- (8) In this section:
director-general means—
 - (a) for a report about a young offender—the CYP director-general; and
 - (b) for any other report—the director-general responsible for this Act.

42 Pre-sentence reports by assessors

- (1) A pre-sentence report must address—
 - (a) each pre-sentence report matter, or any other matter, stated in the court order for the report; and
 - (b) any other pre-sentence report matter, or any other matter, that, on investigation, appears to the assessor to be relevant.

- (2) If a court order directs that a pre-sentence report deal with an offender's suitability for a deferred sentence, the report must also—
 - (a) address the matters mentioned in section 116 (1) (Deferred sentence orders—eligibility); and
 - (b) include the assessor's recommendation about—
 - (i) the offender's suitability for a deferred sentence; and
 - (ii) any condition that might be included in a deferred sentence order.
- (3) If a court order directs that a pre-sentence report deal with an offender's suitability for serving all, or any part, of a sentence by community service work under a good behaviour order, the report must also—
 - (a) address the matters mentioned in section 90 (Good behaviour orders—community service—pre-sentence report matters); and
 - (b) include the assessor's recommendation about—
 - (i) the offender's suitability for serving all or any part of a sentence by community service work under a good behaviour order; and
 - (ii) any condition that might be appropriate for a community service condition.
- (4) If a court order directs that a pre-sentence report deal with an offender's suitability for serving all, or any part, of a sentence by undertaking a rehabilitation program under a good behaviour order, the report must also—
 - (a) address the matters mentioned in section 98 (Good behaviour orders—rehabilitation programs—pre-sentence report matters); and

- (b) include the assessor's recommendation about—
 - (i) the offender's suitability for serving all or any part of a sentence by undertaking a rehabilitation program under a good behaviour order; and
 - (ii) any condition that might be appropriate for a rehabilitation program condition.

43 Pre-sentence reports—powers of assessors

- (1) In preparing the pre-sentence report for the offender, the assessor—
 - (a) may conduct any investigation the assessor considers appropriate; and
 - (b) may ask any of the following to provide information:
 - (i) an administrative unit;
 - (ii) a territory authority;
 - (iii) a statutory office-holder;
 - (iv) for a report for a young offender—a parent or anyone else who has parental responsibility for the young offender under the *Children and Young People Act 2008*;
 - (v) for a report for an offender to be sentenced for a family violence offence—an approved crisis support organisation under the *Domestic Violence Agencies Act 1986*;
 - (vi) a victim of the offence;
 - (vii) any other entity.
- (2) However, an assessor may make a request under subsection (1) (b) (iv) in relation to a young offender who is an adult only with the young offender's consent.

- (3) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to provide information, the entity must promptly comply with the request.
- (4) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
 - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
 - (b) a ground for a civil proceeding for defamation, malicious prosecution or conspiracy.
- (5) This section does not limit any other power of the assessor to obtain information for the purposes of the pre-sentence report.
- (6) A regulation may make provision in relation to—
 - (a) the preparation and provision of pre-sentence reports; and
 - (b) the conduct of assessments of an offender's suitability for a deferred sentence order or to serve a particular kind of sentence (including a kind mentioned in section 41 (4) (Pre-sentence reports—order)).
- (7) In this section:
information includes a document.

44 Pre-sentence reports—provision to court

The pre-sentence report may be given to the court either orally or in writing.

46 Pre-sentence reports—cross-examination

- (1) The prosecutor and the defence may cross-examine the assessor on the pre-sentence report given to the court by the assessor.
- (2) In this section:
defence means—
 - (a) any lawyer representing the offender; or
 - (b) if the offender is not legally represented—the offender.

Part 4.2A Intensive correction assessments

46A Meaning of *assessor*—pt 4.2A

In this part:

assessor means—

- (a) a public servant whose functions include preparing intensive correction assessments; or
- (b) a person with similar functions under the law of a State.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

46B Application—pt 4.2A

This part applies if either of the following applies to a person (the *offender*):

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

46C Intensive correction assessments—order

(1) This section applies if—

- (a) the Magistrates Court—
 - (i) finds an offender guilty of an offence in a proceeding before the court; or
 - (ii) accepts an offender's guilty plea for an offence; or
- (b) the Magistrates Court commits an offender to the Supreme Court for sentence; or

Note The Magistrates Court may commit a person to the Supreme Court for sentence under the [Magistrates Court Act 1930](#), s 92A.

- (c) the Supreme Court—
 - (i) finds an offender guilty of an offence in a proceeding before the court; or
 - (ii) accepts an offender's guilty plea for an offence.
- (2) If subsection (1) (b) applies, the Magistrates Court may—
 - (a) order an intensive correction assessment in relation to the offender; and
 - (b) order the director-general to provide a copy of the assessment to the Supreme Court or any other person.
- (3) If subsection (1) (a) or (c) applies, the court may—
 - (a) order an intensive correction assessment in relation to the offender; and
 - (b) adjourn the proceeding for the assessment to be prepared; and
 - (c) order the director-general to provide a copy of the assessment to the court or any other person.
- (4) However, the court must order the director-general to prepare an intensive correction assessment before sentencing the offender to a sentence of imprisonment by intensive correction.
- (5) The director-general must arrange for an assessor to prepare an intensive correction assessment ordered by the court.
- (6) The intensive correction assessment must address the matters mentioned in section 46D.

46D Intensive correction orders—intensive correction assessment matters

For section 46C (6), the matters for assessing the offender's suitability to serve a sentence by intensive correction order are the matters mentioned in table 46D, column 2.

Table 46D Assessment of suitability—intensive correction order

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to comply with an intensive correction order
4	criminal record and response to previous court orders	serious criminal record or substantial noncompliance with previous court orders
5	employment and personal circumstances	potential impracticability of compliance with intensive correction order
6	participation and degree of compliance with intensive correction assessment	substantial noncompliance with assessment
7	living circumstances of the offender	member of offender's household does not consent to living with the offender while the offender is serving intensive correction someone with parental responsibility or guardianship for a person who is a member of the offender's household does not consent to the person living with the offender while the offender is serving intensive correction

46E Intensive correction assessments—powers of assessors

- (1) In preparing the intensive correction assessment for the offender, the assessor may—
 - (a) conduct any investigation the assessor considers appropriate; and
 - (b) ask any of the following to provide information:
 - (i) an administrative unit;
 - (ii) a territory authority;
 - (iii) a statutory office-holder;
 - (iv) for an assessment for an offender to be sentenced for a family violence offence—an approved crisis support organisation under the *Domestic Violence Agencies Act 1986*;
 - (v) a victim of the offence;
 - (vi) any other entity.
- (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to provide information, the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
 - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
 - (b) a ground for a civil proceeding for defamation, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the assessor to obtain information for the purpose of the intensive correction assessment.

(5) A regulation may make provision in relation to the preparation and provision of intensive correction assessments.

(6) In this section:

information includes a document.

46F Intensive correction assessments—provision to court

The intensive correction assessment may be given to the court either orally or in writing.

46G Intensive correction assessments—cross-examination

(1) The prosecutor and the defence may cross-examine the assessor on the intensive correction assessment given to the court by the assessor.

(2) In this section:

defence means—

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

Part 4.2B Drug and alcohol treatment assessments

46H Meaning of *assessor*—pt 4.2B

In this part:

assessor means—

- (a) a public servant whose functions include preparing drug and alcohol treatment assessments; or
- (b) a person with similar functions under the law of a State.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

46I Application—pt 4.2B

- (1) This part applies if—

- (a) either of the following applies to a person who is an adult (the *offender*):
 - (i) the offender pleads guilty to an offence;
 - (ii) the offender indicates to the court an intention to plead guilty to an offence; and
- (b) the offence is an eligible offence.

- (2) In this section:

eligible offence—see section 12A (9).

46J Drug and alcohol treatment assessments—order

- (1) This section applies if the court is considering whether to make a drug and alcohol treatment order for an offender.
- (2) The court may—
 - (a) order an assessment of the offender (a *drug and alcohol treatment assessment*); and
 - (b) adjourn the proceeding for the assessment to be prepared; and
 - (c) order the responsible director-general to provide a copy of the assessment to the court or any other person.
- (3) However, the court must order the responsible director-general to prepare the drug and alcohol treatment assessment before making a drug and alcohol treatment order.
- (4) The responsible director-general must arrange for an assessor to prepare a drug and alcohol treatment assessment ordered by the court.
- (5) The drug and alcohol treatment assessment must address the matters mentioned in section 46K.
- (6) In this section:
responsible director-general means 1 or both of the following:
 - (a) the health director-general;
 - (b) the director-general responsible for this Act.

46K Drug and alcohol treatment assessments—drug and alcohol treatment assessment matters

For section 46J (5), the matters for assessing the offender's suitability to comply with a drug and alcohol treatment order are the matters mentioned in table 46K, column 2.

Table 46K Assessment of suitability—drug and alcohol treatment order

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug unlikely to change under drug and alcohol treatment order
2	psychiatric or psychological condition	major psychiatric or psychological disorder likely to prevent compliance with a drug and alcohol treatment order
3	medical condition	medical condition likely to prevent compliance with a drug and alcohol treatment order
4	criminal record and response to previous court orders	serious criminal record or substantial noncompliance with previous court orders
5	employment and personal circumstances	potential impracticability of compliance with a drug and alcohol treatment order
6	participation and degree of compliance with drug and alcohol treatment assessment	substantial noncompliance with assessment
7	living circumstances of the offender	inability or refusal to live in ACT member of offender's household does not consent to living with the offender while the offender is subject to a drug and alcohol treatment order

46L Drug and alcohol treatment assessments—powers of assessors

- (1) In preparing the drug and alcohol treatment assessment for the offender, the assessor may—
 - (a) investigate any matter the assessor considers appropriate; and
 - (b) ask any of the following to provide information for the purpose of the assessment:
 - (i) an administrative unit;
 - (ii) a territory authority;
 - (iii) a statutory office-holder;
 - (iv) for an assessment for an offender to be sentenced for a family violence offence—an approved crisis support organisation under the *Domestic Violence Agencies Act 1986*;
 - (v) a victim of the offence;
 - (vi) any other entity.
- (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to provide information, the entity must comply with the request as soon as practicable.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
 - (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
 - (b) a ground for a civil proceeding for defamation, malicious prosecution or conspiracy.

- (4) This section does not limit any other power of the assessor to obtain information for the purpose of the drug and alcohol treatment assessment.
- (5) A regulation may make provision in relation to the preparation and provision of drug and alcohol treatment assessments.
- (6) In this section:
information includes a document.

46M Drug and alcohol treatment assessments—provision to court

The drug and alcohol treatment assessment may be given to the court either orally or in writing.

46N Drug and alcohol treatment assessments—cross-examination

- (1) The prosecutor and the defence may cross-examine the assessor who prepared the drug and alcohol treatment assessment given to the court.
- (2) In this section:
defence means—
 - (a) any lawyer representing an offender; or
 - (b) if the offender is not legally represented—the offender.

Part 4.3 Victim impact statements

47 Definitions—pt 4.3

In this part:

because of, an offence, means—

- (a) as a result of, or in the course of, the commission of the offence;
or
- (b) in the course of assisting a police officer in the exercise of the officer's power to arrest a person for the offence or to take action to prevent the offence.

harm includes—

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

victim, of an offence, means—

- (a) a person (a *primary victim*) who suffers harm because of the offence; or
- (b) if a primary victim dies because of the offence—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.

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

48 Application—pt 4.3

This part applies in relation to an offence if the offence is—

- (a) an offence punishable by imprisonment for longer than 1 year;
or
- (b) another offence prescribed by regulation.

49 Victim impact statements—who may make

- (1) The following people may make a victim impact statement for the offence:

- (a) a victim of the offence;
- (b) a person who has parental responsibility for a victim of the offence;
- (c) a close family member of a victim of the offence;
- (d) a carer for a victim of the offence;
- (e) a person with an intimate personal relationship with a victim of the offence.

- (2) In this section:

parental responsibility—see the *Children and Young People Act 2008*, division 1.3.2.

50 Victim impact statements—oral or written

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

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

51 Victim impact statements—form and contents

- (1) A victim impact statement for the offence must identify the victim to whom it relates.
- (2) The statement must include the full name of the person who makes the statement.
- (3) If the person who makes the statement is not the victim (or the victim's representative)—
 - (a) the statement must indicate that the victim does not object to the statement being made to the court; and
 - (b) if practicable, the victim (or representative) must sign the statement, or make a separate written or oral statement to the court, to verify that the victim does not object.
- (4) If the victim to whom the statement relates is not a primary victim, the statement must identify the primary victim and state the nature and length of the victim's relationship with the primary victim.
- (5) If the statement is made by a person who is not the victim, the statement must indicate the nature and length of the person's relationship with the victim.
- (6) The statement may contain photographs, drawings or other images.
- (7) The statement must not contain anything that is offensive, threatening, intimidating or harassing.
- (8) This section does not prevent a victim impact statement being made by or for more than 1 victim.

52 Victim impact statements—use in court

- (1) A victim impact statement may be—
 - (a) tendered to the court; or
 - (b) made orally in court; or

- (c) read out in court by the person who made the statement or someone else (whether or not the statement is tendered to the court).
- (2) The statement may be given when the court considers appropriate—
 - (a) after any of the following:
 - (i) the offender has pleaded guilty to the offence;
 - (ii) the court has found the offence proved;
 - (iii) the offender has been found guilty or convicted of the offence; and
 - (b) before the offender is sentenced.
- (3) The court must allow the statement to be read out in court if the maker of the statement wishes the statement to be given to the court in that way.
- (4) Subsection (5) applies to a maker of a statement, if a special requirement for giving evidence—
 - (a) applied to the maker giving evidence in the proceeding to which the statement relates; or
 - (b) would have applied to the maker had the maker given evidence in the proceeding.
- (5) If the maker of the statement wishes, the special requirement applies to the maker reading out the maker's statement in court as if the maker were a witness giving evidence in the proceeding.
- (6) In this section:
special requirement, for giving evidence, means any of the following provisions under the *Evidence (Miscellaneous Provisions) Act 1991*:
 - (a) part 2.2 (Evidence of children—audiovisual links);
 - (b) division 4.3.2 (Special requirements—general);

- (c) division 4.3.5 (Giving evidence by audiovisual link);
- (d) section 101 (Child or witness with disability may have support person in court);
- (e) section 102 (Witness with vulnerability may give evidence in closed court).

53 Victim impact statements—effect

- (1) In deciding how the offender should be sentenced (if at all) for the offence, the court—
 - (a) must consider any victim impact statement given to the court in relation to the offence; and
 - (b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence.
- (2) A victim impact statement must not be given in writing to the court unless—
 - (a) the statement is made in accordance with section 51 (Victim impact statements—form and contents); and
 - (b) a copy of the statement has been given to the defence.
- (3) The defence may cross-examine a person who makes a victim impact statement on the contents of the statement.
- (4) However, if the offender is not legally represented, the offender may cross-examine the person only if—
 - (a) the offender has indicated to the court the nature of the proposed cross-examination; and
 - (b) the court gives the offender leave to cross-examine the person.

(5) In this section:

defence means—

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

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

Part 4.4 Taking additional offences into account

54 Definitions—pt 4.4

In this part:

additional offence—see section 55.

list of additional offences—see section 55.

principal offence—see section 55.

sentence-related order—see section 55.

55 Application—pt 4.4

- (1) This part applies if—
 - (a) an offender has been convicted or found guilty of an offence (the *principal offence*); and
 - (b) none of the following orders (each of which is a *sentence-related order*) have been made for the offence:
 - (i) an order imposing a penalty on the offender;
 - (ii) a deferred sentence order;
 - (iii) a non-conviction order;
 - (iv) a suspended sentence order; and
 - (c) the prosecutor files in the court sentencing the offender a document (the *list of additional offences*) that lists other offences (each of which is an *additional offence*) allegedly committed by the offender.
- (2) However, this part does not apply in relation to an offence punishable by life imprisonment.

56 List of additional offences

- (1) The list of additional offences must—
 - (a) indicate that the offences listed are offences that the offender wants the court to take into account in making a sentence-related order for the principal offence; and
 - (b) be signed by the director of public prosecutions and the offender.
- (2) A copy of the list of additional offences must be given to the offender.

57 Outstanding additional offences taken into account in sentencing

- (1) Before making a sentence-related order for the principal offence, the court must ask the offender whether the offender wants the court to take any of the additional offences into account in relation to the principal offence.
- (2) The court may take an additional offence into account in making a sentence-related order for the principal offence if—
 - (a) the offender admits guilt to the additional offence; and
 - (b) the offender confirms that the offender wants the additional offence to be taken into account by the court in relation to the principal offence; and
 - (c) the prosecutor consents to the additional offence being taken into account.
- (3) If the court takes an additional offence into account in relation to the principal offence, any penalty imposed for the principal offence must not exceed the maximum penalty the court could have imposed for the principal offence if the additional offence had not been taken into account.

- (4) The court may not take an additional offence into account if the court does not have jurisdiction to make a sentence-related order for the offence.
- (5) For subsection (4), the court is taken to have jurisdiction to make a sentence-related order for an additional offence even if the jurisdiction may only be exercised with the offender's consent.
- (6) To remove any doubt, subsection (4) does not prevent the Supreme Court from taking a summary offence into account.

58 Ancillary orders relating to offences taken into account in sentencing

- (1) This section applies if the court takes an additional offence into account in making a sentence-related order for the offender for the principal offence.
- (2) The court may make any ancillary order that it could have made if it had convicted the offender of the additional offence when it took the offence into account.
- (3) To remove any doubt, the court may not make a separate sentence-related order for the additional offence.
- (4) The offender has the same rights of appeal in relation to the making of the ancillary order as the offender would have had if the order had been made on the conviction of the offender for the additional offence.
- (5) This section is subject to section 134 (Operation of ancillary and restitution orders).
- (6) In this section:
ancillary order—see section 18 (5).

59 Consequences of taking offences into account in sentencing

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

60 Evidence of offences taken into account in sentencing

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

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

Part 4.5 Correction and adjustment of penalties

61 Reopening proceedings to correct penalty errors

- (1) This section applies to a criminal proceeding (including a proceeding on appeal) in which a court has—
 - (a) made a sentence-related order that is contrary to law; or
 - (b) failed to make a sentence-related order that is required to be made by law.
- (2) This section applies whether or not anyone has been convicted or found guilty of an offence in the proceeding.
- (3) The court may reopen the proceeding (on the application of a party to the proceeding, or on its own initiative) and may, after giving the parties an opportunity to be heard, do either or both of the following:
 - (a) make a sentence-related order that is in accordance with law;
 - (b) amend any relevant finding of guilt, conviction, sentence or order.
- (4) For this section, the court may issue a warrant for the arrest of a person charged in the proceeding if—
 - (a) the court considers that the person will not appear unless the warrant is issued; or
 - (b) the person fails to appear when the court calls on the person to appear.
- (5) For an appeal under any Act against a sentence-related order made under this section, the time within which the appeal must be made starts on the day the order is made.
- (6) However, this section does not otherwise affect any right of appeal.

(7) In this section:

sentence-related order—

- (a) see section 55 (Application—pt 4.4); and
- (b) includes an ancillary order within the meaning of section 58 (Ancillary orders relating to offences taken into account in sentencing).

Chapter 5 Imprisonment

Part 5.1 Imprisonment—start and end of sentences

62 Start and end of sentences—general rule

- (1) A sentence of imprisonment starts—
 - (a) on the day the sentence is imposed; or
 - (b) if an offender is not in custody—on the day the offender becomes subject to lawful custody.
- (2) However, subsection (1) is subject to—
 - (a) the following provisions of this Act:
 - (i) section 31 (Combination sentences—start and end);
 - (ii) section 63 (Start of sentences—backdated sentences);
 - (iii) part 5.3 (Imprisonment—concurrent and consecutive sentences); and
 - (b) the *Crimes (Sentence Administration) Act 2005*.
- (3) A sentence of imprisonment that starts on a day starts at the beginning of that day.
- (4) A sentence of imprisonment that ends on a day ends at the end of that day.
- (5) In this section:
sentence of imprisonment does not include a sentence of imprisonment that is fully suspended.

63 Start of sentences—backdated sentences

- (1) The court may direct that a sentence of imprisonment is taken to have started on a day before the day the sentence is imposed.
- (2) For subsection (1), the court must take into account any period during which the offender has already been held in custody in relation to the offence.
- (3) However, subsection (2) does not apply to—
 - (a) a period of custody of less than 1 day; or
 - (b) a sentence of imprisonment of less than 1 day; or
 - (c) a sentence of imprisonment that is fully suspended; or
 - (d) the suspended part of a partly suspended sentence of imprisonment.
- (4) If the offender is charged with a series of offences committed on different occasions and has been in custody continuously since arrest, the period of custody for subsection (2) must be worked out from the time of the offender's arrest.
- (5) Subsection (4) applies even if the offender is not convicted or found guilty of—
 - (a) the offence for which the offender was first arrested; or
 - (b) any particular offence or offences in the series.

Part 5.2 Imprisonment—nonparole periods

64 Application—pt 5.2

(1) This part applies to the following:

- (a) a sentence of imprisonment imposed by a court on an offender for an offence, other than an excluded sentence of imprisonment;
- (b) full-time detention ordered under the *Crimes (Sentence Administration) Act 2005*, section 65 (2) (b).

Note Under the *Crimes (Sentence Administration) Act 2005*, s 65 (2), an offender's intensive correction order may be cancelled, and a court may order any remaining sentence of the offender to be served by full-time detention.

(2) In this section:

excluded sentence of imprisonment means—

- (a) a sentence of imprisonment that is fully suspended; or
- (b) a sentence of imprisonment suspended under the custodial part of a drug and alcohol treatment order; or
- (c) a sentence of imprisonment to be served by intensive correction; or
- (d) a sentence of imprisonment imposed in default of payment of a fine; or
- (e) a sentence of imprisonment imposed for an offence committed while in lawful custody; or
- (f) a sentence of life imprisonment; or
- (g) a sentence of imprisonment imposed on a young offender.

fine—see the [Crimes \(Sentence Administration\) Act 2005](#), section 116A.

65 Nonparole periods—court to set

- (1) This section applies if the court sentences the offender to a term of imprisonment of 1 year or longer, or 2 or more terms of imprisonment that total 1 year or longer.

- (2) The court must set a period (a ***nonparole period***) during which the offender is not eligible to be released on parole.

Note If the offender is released on parole, the sentence is not discharged unless the parole is completed without the parole order being cancelled (see [Crimes \(Sentence Administration\) Act 2005](#), s 140 and s 160).

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

Note A sentence may be backdated to account for time already held in custody (see s 63).

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

66 Nonparole periods—setting if sentence currently being served

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

Note Pt 5.3 deals with whether the primary sentence is to be served concurrently or consecutively (or partly concurrently and partly consecutively) with the existing sentence.

- (2) Section 65 (Nonparole periods—court to set) applies as if the court that imposes the primary sentence had sentenced the person to imprisonment for a term equal to the total of the terms of the existing sentence and the primary sentence.
- (3) The imposition of the primary sentence automatically cancels any nonparole period set for the existing sentence.
- (4) Any nonparole period set for the primary sentence must not make the offender eligible to be released on parole earlier than if the primary sentence had not been imposed.

67 Nonparole periods—recommended conditions

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

Note The sentence administration board must have regard to any condition recommended by the sentencing court (see [Crimes \(Sentence Administration\) Act 2005](#), s 130 (3)).

68 Nonparole periods—review of decision on nonparole period

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

Part 5.3 Imprisonment—concurrent and consecutive sentences

69 Definitions—pt 5.3

In this part:

existing sentence—see section 70 (1).

fine—see the [Crimes \(Sentence Administration\) Act 2005](#), section 116A.

primary sentence—see section 70 (1).

70 Application—pt 5.3

- (1) This part applies to a sentence of imprisonment (a *primary sentence*) imposed by a court on an offender if—
 - (a) any of the following apply in relation to the offender:
 - (i) when the primary sentence is imposed, the offender is serving another sentence of imprisonment (an *existing sentence*);
 - (ii) the offender has been sentenced to another sentence of imprisonment (also an *existing sentence*) but, when the primary sentence is imposed, the other sentence has not yet started;
 - (iii) the offender is sentenced to another sentence of imprisonment (also an *existing sentence*) in the same proceeding; and
 - (b) the existing sentence is for an offence against a territory law; and
 - (c) the primary sentence is not fully suspended.

- (2) In this section:

sentence of imprisonment does not include any nonparole period that has been set for the primary sentence.

71 Concurrent and consecutive sentences—general rule

- (1) In the absence of a direction under subsection (2), the primary sentence must be served concurrently with the existing sentence.
- (2) The court may direct that the primary sentence be served consecutively (or partly concurrently and partly consecutively) with the existing sentence.
- (3) This section is subject to the following provisions:
 - (a) section 38 (Sentences of imprisonment and uncompleted young offender orders);
 - (b) section 72 (Concurrent and consecutive sentences—offences while in custody or unlawfully absent);
 - (c) section 73 (Concurrent and consecutive sentences—fine default offences);
 - (d) section 80 (Intensive correction orders—concurrent and consecutive periods).

72 Concurrent and consecutive sentences—offences while in custody or unlawfully absent

- (1) This section applies if the primary sentence is imposed on the offender for any of the following offences:
 - (a) an offence committed while the offender was in lawful custody;
 - (b) an offence committed while the offender was unlawfully absent from a correctional centre or other place during the term of the offender's sentence of imprisonment;

- (c) an offence involving an escape from lawful custody.

Example of unlawful absence for par (b)

the offender fails to return to a correctional centre as required after community service work or approved leave

- (2) In the absence of a direction under subsection (3), the primary sentence must be served consecutively with the existing sentence of imprisonment.
- (3) The court may direct that the primary sentence be served concurrently (or partly concurrently and partly consecutively) with the existing sentence.
- (4) Unless the court considers that special circumstances apply, the court must not give a direction under subsection (3) if the primary sentence is an offence that involves causing harm, or threatening to cause harm, to a corrections officer.

73 Concurrent and consecutive sentences—fine default offences

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

74 Amendment of start of sentences on setting aside or amending other sentences

- (1) If a court sets aside or amends a sentence of imprisonment imposed on the offender (whether on appeal or otherwise), the court may amend the starting day of any other sentence that has been imposed on the offender by the court or another court.
- (2) If the offender is subject to 2 or more sentences, this section applies to each of them.
- (3) The court may amend the starting day of a sentence under this section on its own initiative, or the application of a party to the proceeding on the setting aside or amendment of the other sentence.
- (4) An appeal does not lie only because the starting day of a sentence is amended under this section.
- (5) The term of a sentence, or the nonparole period of a sentence, must not be amended under this section.

75 Previous sentences to be noted in new sentence

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

Part 5.4 Intensive correction orders

Division 5.4.1A General

76 Application—pt 5.4

This part applies if a court is considering whether to make an intensive correction order for an offender for an offence.

Division 5.4.1 Intensive correction orders—eligibility and suitability

77 Intensive correction orders—eligibility

- (1) The court must not make an intensive correction order for the offender unless satisfied that—
 - (a) an intensive correction order is suitable for the offender under section 78; and
 - (b) it is appropriate for the offender to serve the sentence by intensive correction; and
 - (c) the offender has given informed consent to serving the sentence by intensive correction.
- (2) An offender gives informed consent for subsection (1) (c) if the offender consents after the offender is given—
 - (a) a clear explanation of the intensive correction order that contains sufficient information to enable the offender to make a balanced judgment about whether or not to consent to serve the sentence by intensive correction; and
 - (b) an opportunity to ask any questions about the order, and those questions have been answered and the offender appears to have understood the answers.

Note An intensive correction order may not be made for a young offender (see s 11).

78 Intensive correction orders—suitability

- (1) The court must not make an intensive correction order for the offender unless the court has considered—
 - (a) a pre-sentence report, if any, prepared for the offender in the proceeding and is satisfied, having considered possible alternatives, that only a term of imprisonment of not more than 4 years is appropriate for the offender; and
 - (b) an intensive correction assessment for the offender.

Note The court cannot make an intensive correction order if the court sentences the offender to a term of imprisonment of more than 4 years (see s 11).

- (2) In deciding whether to make an intensive correction order for the offender, the court must consider the following:
 - (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) In considering the intensive correction assessment, the court must consider any indicators of unsuitability mentioned in table 46D, column 3 that are stated in the assessment to apply to the offender.
- (5) The court may make, or decline to make, an intensive correction order for the offender despite—
 - (a) any recommendation in the intensive correction assessment; or
 - (b) any evidence given by the person who prepared the intensive correction assessment or a corrections officer.

- (6) The court must record reasons for its decision to make, or decline to make, an intensive correction order for the offender if the intensive correction assessment recommends that the offender—
 - (a) is suitable but the court decides not to make an intensive correction order for the offender; or
 - (b) is not suitable but the court decides to make an intensive correction order for the offender.
- (7) Failure to comply with subsection (6) does not invalidate the intensive correction order.

80 Intensive correction orders—concurrent and consecutive periods

- (1) A court must not make an intensive correction order with intensive correction to be served concurrently or consecutively with a sentence of full-time imprisonment, a suspended sentence of imprisonment, a sentence of default imprisonment or a good behaviour order.
- (2) However, a court may make an intensive correction order with intensive correction to be served concurrently with a good behaviour order if—
 - (a) an offender is under a good behaviour order but not under a suspended sentence order; and
 - (b) the offender is convicted of an offence that was committed before the offence to which the order relates.
- (3) If subsection (2) applies, the sentencing court may sentence the offender to serve a term of imprisonment by intensive correction to be served concurrently with the offender's good behaviour order.
- (4) A court may also make an intensive correction order if—
 - (a) an offender is under a suspended sentence order but not in full-time detention; and

- (b) the offender is convicted of an offence that was committed before the offence to which the order relates.
- (5) If the sentencing court makes an order under subsection (4), the court must cancel the offender's suspended sentence order and re-sentence the offender to serve a term of imprisonment by intensive correction.

Division 5.4.2 Intensive correction orders— community service conditions

80A Meaning of *community service condition*—div 5.4.2

In this division:

community service condition, of an intensive correction order for an offender, means a condition included in the order that the offender perform community service work.

80B Application—div 5.4.2

This division applies if a court is considering whether to include a community service condition in an intensive correction order for an offender.

80C Intensive correction orders—community service— eligibility

- (1) The court must not include a community service condition in the intensive correction order unless satisfied that—
 - (a) community service work is suitable for the offender under section 80D; and
 - (b) it is appropriate that the offender be required to perform community service work.

- (2) The court may decline to include a community service condition in the intensive correction order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender fails to comply with the direction.

80D Intensive correction order—community service—suitability

- (1) The court must not include a community service condition in the intensive correction order unless an intensive correction assessment that addresses whether a community service condition is suitable for the offender is given to the court.
- (2) In deciding whether to include a community service condition in the intensive correction order, the court must consider the following:
 - (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters the court may consider.
- (4) In considering the intensive correction assessment, the court must consider any of the following indicators of unsuitability that are stated in the assessment to apply to the offender:
 - (a) any major problem with alcohol or a controlled drug;
 - (b) any major psychiatric or psychological disorder;
 - (c) any serious criminal record;
 - (d) any potential impracticability of regular reporting for community service work;

- (e) any potential unfitness to perform community service work.
- (5) The court may include, or decline to include, a community service condition in an intensive correction order for the offender despite—
 - (a) any recommendation in the intensive correction assessment about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work; or
 - (b) any evidence given by the person who prepared the intensive correction assessment or a corrections officer.
- (6) The court must record reasons for its decision to include, or decline to include, a community service condition in the intensive correction order if the intensive correction assessment recommends that the offender—
 - (a) is suitable but the court decides not to include a community service condition; or
 - (b) is not suitable but the court decides to include a community service condition.
- (7) Failure to comply with subsection (6) does not invalidate the intensive correction order.

80E Intensive correction orders—community service—hours to be performed

- (1) The number of hours of community service work required to be performed for a community service condition in the intensive correction order must be at least 20 hours and not more than 500 hours.
- (2) The period during which the community service work is required to be completed under the community service condition must be at least—
 - (a) if less than 125 hours work is required—6 months; or

- (b) if 125 or more hours work but less than 250 hours work is required—12 months; or
- (c) if 250 or more hours work is required—24 months.

**80F Intensive correction orders—community service—
concurrent and consecutive orders**

- (1) This section applies if the offender is currently subject to a community service condition under an intensive correction order or a good behaviour order (an *existing order*).
- (2) If the court makes a further intensive correction order that includes a community service condition (a *new order*), the court may direct that the hours of community service work to be performed by the offender under the new order run concurrently or consecutively, or partly concurrently and partly consecutively, with the hours of community service work remaining to be performed under the existing order.
- (3) However, the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 500.

**Division 5.4.3 Intensive correction orders—
rehabilitation program conditions**

80G Definitions—div 5.4.3

In this division:

rehabilitation program, for an intensive correction order, means a program prescribed by regulation for the rehabilitation of offenders.

rehabilitation program condition, of an intensive correction order for an offender, means a condition included in the order that the offender undertake a rehabilitation program.

80H Application—div 5.4.3

This division applies if a court is considering whether to include a rehabilitation program condition in an intensive correction order for an offender.

80I Intensive correction orders—rehabilitation programs—eligibility

- (1) The court must not include a rehabilitation program condition in the intensive correction order unless satisfied that—
 - (a) a rehabilitation program of a particular kind is suitable for the offender; and
 - (b) it is appropriate that the offender undertake a rehabilitation program of that kind; and
 - (c) a place for the offender in a program of that kind is available or will become available within a reasonable time.
- (2) The court may decline to include a rehabilitation program condition in the intensive correction order if—
 - (a) the court directs the offender to undergo a medical examination by a doctor; and
 - (b) the offender does not undergo the examination in accordance with the direction.

80J Intensive correction orders—rehabilitation programs—suitability

- (1) The court must not include a rehabilitation program condition in the intensive correction order unless—
 - (a) an intensive correction assessment that addresses whether a rehabilitation program condition is suitable for the offender is given to the court; or

- (b) there is some other information (***relevant sentencing information***) before the court about the nature of the program and its suitability for the offender that justifies including the condition in the intensive correction order.

Note For an example of relevant sentencing information, see s 97 (1) (b) (Good behaviour orders—rehabilitation programs—suitability).

- (2) In deciding whether to include a rehabilitation program condition in the intensive correction order, the court must consider the following:
 - (a) the intensive correction assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the intensive correction assessment;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) The court may include, or decline to include, a rehabilitation program condition in the intensive correction order despite—
 - (a) any recommendation in the intensive correction assessment about the offender’s suitability to serve a sentence (or part of a sentence) by taking part in a rehabilitation program; or
 - (b) any evidence given by the person who prepared the intensive correction assessment for the offender or who gave relevant sentencing information to the court; or
 - (c) any evidence given by a corrections officer.
- (5) The court must record reasons for its decisions to include, or decline to include, a rehabilitation program condition in the intensive correction order if the intensive correction assessment recommends that the offender—
 - (a) is suitable but the court decides not to include a rehabilitation program condition; or

- (b) is not suitable but the court decides to include a rehabilitation program condition.
- (6) Failure to comply with subsection (5) does not invalidate the intensive correction order.

80K Intensive correction orders—rehabilitation programs—maximum period

A rehabilitation program condition included in the intensive correction order must not require the offender to take part in a rehabilitation program for longer than 2 years.

80L Intensive correction orders—rehabilitation programs—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a rehabilitation condition under an intensive correction order or a good behaviour order (an *existing order*).
- (2) If the court makes a further intensive correction order that includes a rehabilitation program condition (a *new order*), the court may direct that the new order operate concurrently or consecutively, or partly concurrently and partly consecutively, with the existing order.
- (3) However, the new order must not be stated to end later than 2 years after the day the new order is made, irrespective of when the order is to take effect.

Part 5.4A Drug and alcohol treatment orders

Division 5.4A.1 Preliminary

80M Definitions—pt 5.4A

In this part:

core conditions, of a treatment order—see section 80Y.

member means—

- (a) in relation to the treatment and supervision team—an entity included in the team; and
- (b) in relation to the treatment order team—an entity included in the team.

treatment and supervision team means the following entities:

- (a) the court;
- (b) the health director-general;
- (c) the director-general responsible for this Act;
- (d) an entity prescribed by regulation.

treatment order obligations, of an offender subject to a treatment order—see section 80P.

treatment order team means the following entities:

- (a) the court;
- (b) the director-general;
- (c) the health director-general;
- (d) the director of public prosecutions;
- (e) the legal aid commission;

- (f) the chief police officer;
- (g) an entity the court considers necessary to include in the team for a particular treatment order;
- (h) an entity prescribed by regulation.

Examples of entity for par (g)

- 1 the director-general responsible for the [Housing Assistance Act 2007](#)
- 2 an Aboriginal and Torres Strait Islander representative
- 3 an entity that administers or provides services in relation to drug and alcohol treatment assessments or treatment orders
- 4 if the offender subject to a treatment order is legally represented other than as a result of a grant of legal aid—the lawyer representing the offender

treatment program conditions, of a treatment order—see section 80Z.

80N Application—pt 5.4A

This part applies if the court is considering making, or makes, a treatment order for an offender.

80O Objects of drug and alcohol treatment orders

The objects of making a treatment order in relation to an offender is to—

- (a) facilitate the rehabilitation of the offender by providing a judicially supervised, therapeutically oriented and integrated treatment regime; and
- (b) reduce the offender's dependency on alcohol or a controlled drug; and
- (c) reduce the health risks associated with the offender's dependency on alcohol or controlled drugs; and
- (d) assist with the offender's integration into the community; and

- (e) promote community safety by reducing the level of criminal activity caused by alcohol or controlled drug dependence in offenders.

Division 5.4A.2 Drug and alcohol treatment orders— general

80P Drug and alcohol treatment orders—offender obligations

The obligations of an offender subject to a treatment order (the *treatment order obligations*) are to comply with—

- (a) the core conditions and treatment program conditions of the order; and
- (b) an obligation created by any other order made by the court in relation to the treatment order.

80Q Court may make ancillary orders to achieve object of treatment order

- (1) The court may make any order that is not inconsistent with this Act or the [Crimes \(Sentence Administration\) Act 2005](#), that the court considers appropriate to achieve the object of a treatment order.
- (2) Without limiting subsection (1), the court may make an order—
 - (a) rewarding the offender in 1 or more of the following ways:
 - (i) decreasing how often the offender must undergo counselling, treatment or other supervision under the treatment order;
 - (ii) decreasing how often the offender must be tested for alcohol or drugs under the treatment order;
 - (iii) another way prescribed by regulation; or

- (b) sanctioning the offender in 1 or more of the following ways:
- (i) increasing how often the offender must undergo counselling, treatment or other supervision under the treatment order;
 - (ii) increasing how often the offender must be tested for alcohol or drugs under the treatment order;
 - (iii) another way prescribed by regulation.

Division 5.4A.3 Drug and alcohol treatment orders— eligibility and suitability

80R Application—div 5.4A.3

This division applies if the court is considering whether to make a treatment order when sentencing an offender for an offence.

80S Drug and alcohol treatment orders—eligibility

The court must not make a treatment order for an offender unless satisfied that—

- (a) a treatment order is suitable for the offender under section 80T; and
- (b) it is appropriate for the offender to serve a sentence suspended in accordance with a treatment order; and
- (c) appropriate arrangements for the administration of a treatment order are practicable.

Note A treatment order may not be made for a young offender (see s 8 and s 12A).

80T Drug and alcohol treatment orders—suitability

- (1) The court must not make a treatment order for an offender unless the court has considered—
 - (a) a pre-sentence report, if any, prepared for the offender in the proceeding; and
 - (b) a drug and alcohol treatment assessment for the offender.

Note The court cannot make a treatment order if the court sentences the offender to a term of imprisonment of less than 1 year or more than 4 years (see s 12A).

- (2) In deciding whether to make a treatment order for the offender, the court must consider the following:
 - (a) any recommendations in the drug and alcohol treatment assessment;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by an assessor who prepared the drug and alcohol treatment assessment;
 - (d) any evidence given, or submission made, by a member of the treatment order team about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) In considering the drug and alcohol treatment assessment, the court must consider any indicators of unsuitability mentioned in table 46K, column 3 that are stated in the assessment to apply to the offender.
- (5) The court may make, or decline to make, a treatment order for the offender despite—
 - (a) any recommendation in the drug and alcohol treatment assessment; or
 - (b) any evidence given by the person who prepared the drug and alcohol treatment assessment; or

- (c) any evidence given, or submission made, by a member of the treatment order team.
- (6) The court must record reasons for its decision to make, or decline to make, a treatment order for the offender if the drug and alcohol treatment assessment recommends that the offender—
 - (a) is suitable but the court decides not to make a treatment order for the offender; or
 - (b) is not suitable but the court decides to make a treatment order for the offender.
- (7) Failure to comply with subsection (6) does not invalidate the treatment order.

80U Court may remit proceeding

- (1) This section applies if—
 - (a) the court declines to make a treatment order for a particular offender; and
 - (b) the offence for which the offender is to be sentenced could have been dealt with summarily by the Magistrates Court; and
 - (c) the offender was committed to the court only because the offender refused consent to the offence being dealt with summarily by the Magistrates Court.
- (2) The offender or the director of public prosecutions may apply to the court for an order to remit the proceeding for the offence to the Magistrates Court.
- (3) The court must make the order if it is satisfied that the offender refused consent to the offence being dealt with summarily for the purpose of seeking assessment for a treatment order.
- (4) The court may otherwise make the order if it is satisfied the order is in the interests of justice.

- (5) If the court makes an order under this section, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) any other person who the court considers should receive the notice.
- (6) Failure to comply with subsection (5) does not invalidate the order.

Division 5.4A.4 Drug and alcohol treatment orders— content

80V Content of treatment orders

A treatment order must—

- (a) state the offence to which the order relates; and
- (b) record the offender's conviction for the offence; and
- (c) state the total period for which the order is in force; and
- (d) include—
 - (i) a custodial part; and
 - (ii) a treatment and supervision part; and
- (e) require the offender to sign an undertaking to comply with the order and any other obligations under the *Crimes (Sentence Administration) Act 2005* for the period the order is in force.

Note Words in the singular number include the plural (see *Legislation Act*, s 145 (b)).

Division 5.4A.5 Drug and alcohol treatment orders— custodial part

80W Custodial part of treatment orders

- (1) A treatment order must include a part (the *custodial part*) that—
 - (a) imposes a sentence of imprisonment of at least 1 year but not more than 4 years; and
 - (b) fully suspends the sentence of imprisonment, unless the court under this part either provisionally cancels the suspension or cancels the treatment order.
- (2) Despite section 65 (Nonparole periods—court to set), the court must not set a nonparole period for a sentence of imprisonment imposed on an offender under the custodial part of the treatment order.

- (3) A sentence of imprisonment suspended under the custodial part is to be served by full-time detention at a correctional centre only if the court makes an order under this part cancelling the treatment order and imposing the sentence of imprisonment.

Note The court may cancel a treatment order and sentence an offender to full-time detention or decide to resentence an offender to a different sentence including full-time detention (see s 80ZB, s 80ZD and s 80ZE).

- (4) If the court makes an order under this part cancelling the treatment order and imposing a sentence of imprisonment, the court—
 - (a) must state when the period of full-time detention starts and ends; and
 - (b) despite section 65, may set a nonparole period for the period of full-time detention if the period of full-time detention is more than 30 days.

- (5) Part 5.2 (Imprisonment—nonparole periods) applies to a nonparole period set under paragraph (4) (b) as if the nonparole period had been set under that part.

Note Pt 5.2 deals with setting and review of nonparole periods.

Division 5.4A.6 Drug and alcohol treatment orders— treatment and supervision part

80X Treatment and supervision part of treatment orders

- (1) A treatment order must include a part (the *treatment and supervision part*) that imposes the order's—
 - (a) core conditions; and
 - (b) treatment program conditions.
- (2) The treatment and supervision part of a treatment order is in force for the period that—
 - (a) starts when the treatment order is made; and
 - (b) ends—
 - (i) on a day stated by the court; or
 - (ii) if the order is earlier cancelled by the court under this part—on the day the court cancels the order.
- (3) However, the treatment and supervision part of a treatment order must not end later than the day the custodial part of the order ends.

80Y Core conditions

- (1) The *core conditions*, of a treatment order, while the treatment and supervision part of the order is in force, are that an offender subject to the order—
 - (a) must not commit another offence against a law in force in Australia or elsewhere; and
 - (b) if the offender is charged with an offence against a law in force in Australia or elsewhere—must tell the responsible director-general about the charge as soon as possible, but within 2 days after the day the offender becomes aware of the charge; and
 - (c) must report to a member of the treatment and supervision team for the treatment order at the places and times directed by a member of the team; and
 - (d) must receive visits from a member of the treatment and supervision team for the treatment order at the times directed by a member of the team; and
 - (e) if the offender's contact details change—must tell the responsible director-general about the change as soon as possible, but not later than 1 day after the day the offender becomes aware of the change of details; and
 - (f) must not—
 - (i) leave or stay outside the ACT without the permission of the court for a continuous period of more than 24 hours; and
 - (ii) if the court grants the offender permission to leave or stay outside the ACT—fail to comply with any condition of the court's permission; and

- (g) must—
 - (i) appear before the court at the times directed by the court; and
 - (ii) comply with the directions of the court; and
- (h) must comply with any other reasonable direction of—
 - (i) a member of the treatment and supervision team for the order; or
 - (ii) a person prescribed by regulation.
- (2) The court must not amend a condition mentioned in subsection (1).
- (3) In this section:
 - contact details*, of an offender, means the offender’s—
 - (a) home address or phone number; and
 - (b) work address or phone number; and
 - (c) mobile phone number.
 - positive*, for a test sample—see the [Corrections Management Act 2007](#), dictionary.
 - responsible director-general* means 1 or both of the following:
 - (a) the health director-general;
 - (b) the director-general responsible for this Act.

80Z Treatment program conditions

- (1) The *treatment program conditions* of a treatment order, while the treatment and supervision part of the order is in force, are that an offender subject to the order—
 - (a) must complete a program of treatment in relation to the alcohol or drug dependency of the offender (a *treatment program*); and

- (b) must comply with any other condition imposed by the court as necessary to achieve the purpose of the treatment program.
- (2) Without limiting subsection (1) (b), the court may impose 1 or more of the following conditions, requiring the offender to:
 - (a) submit to medical, psychiatric or psychological treatment that is relevant to the offender's alcohol or drug dependency;
 - (b) submit to detoxification at a stated facility that is not a correctional centre;
 - (c) participate in counselling or programs for treatment relevant to—
 - (i) the offender's alcohol or drug dependency; or
 - (ii) the offending behaviour of the offender;
 - (d) attend meetings with a stated person or class of person for the treatment order;
 - (e) participate in vocational, educational or employment programs or courses;
 - (f) submit to alcohol and drug testing;
 - (g) not return a positive test sample under alcohol and drug testing;
 - (h) wear a device that detects alcohol or drug usage by the offender;
 - (i) install a device or equipment at the offender's home address;
 - (j) live at a stated place for a stated period.

80ZA Good behaviour order to apply after treatment and supervision part ends

If the treatment and supervision part of a treatment order ends before the end of the sentence of imprisonment suspended under the custodial part, the court must make a good behaviour order that—

- (a) begins on the day after the treatment and supervision part ends; and
- (b) ends on the day the custodial part ends.

Division 5.4A.7 Drug and alcohol treatment orders—breaches

80ZB Breach of treatment order—other than commission of offence

- (1) If the court is satisfied on the balance of probabilities that an offender subject to a treatment order has breached a condition of the treatment order, other than by the commission of an offence, the court must make 1 or more of the following orders:
 - (a) confirming the treatment and supervision part of the order with no further action to be taken on the breach;
 - (b) give the offender a warning about the need to comply with the offender's treatment order obligations;
 - (c) amending the treatment and supervision part in accordance with subsection (2);
 - (d) requiring the offender to comply with 1 or more of the following conditions:
 - (i) stay at a stated place, other than a correctional centre, for a stated period of up to 14 days;
 - (ii) stay at the stated place between stated hours for a stated period;

- (iii) surrender a firearm in the offender's possession or control;
 - (iv) not acquire a firearm;
 - (v) not consume alcohol or take drugs;
 - (vi) not drive a motor vehicle under particular circumstances, or at all;
 - (e) provisionally cancelling the suspension of the sentence of imprisonment under the custodial part, for a period of at least 3 days but not more than 14 days, and reinstating the suspension at the end of the period;
 - (f) cancelling the treatment order and imposing, in full or in part, the sentence of imprisonment that was suspended under the custodial part of the treatment order;
 - (g) cancelling the treatment order and resentencing the offender for each offence in relation to which the treatment order was made in any way in which the court could deal with the offender if, at the time of resentencing, it had convicted the offender of each offence, other than by making an order under section 12A (Drug and alcohol treatment orders).
- (2) The treatment and supervision part of the order may be amended by adding, modifying or removing treatment program conditions.

Examples—treatment program condition

- 1 frequency of treatment
 - 2 degree of supervision
 - 3 frequency of drug and alcohol testing
- (3) If the court is satisfied on the balance of probabilities that an offender who is subject to an order made under subsection (1) has breached the order, the court must—
- (a) confirm or amend the order; or
 - (b) cancel the order and make another order under subsection (1).

- (4) The court may make an order under this section on its own initiative or on application by—
 - (a) the offender; or
 - (b) the director of public prosecutions; or
 - (c) a member of the treatment and supervision team; or
 - (d) a person prescribed by regulation.
- (5) If the court makes an order under this section, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the offender; and
 - (b) any other person who the court considers should receive the notice.
- (6) Failure to comply with subsection (5) does not invalidate the treatment order.
- (7) In this section:
 - firearm*—see the *Firearms Act 1996*, section 6.
 - motor vehicle*—see the *Road Transport (General) Act 1999*, dictionary.

80ZC Provisional breach of treatment order—offender in custody

- (1) This section applies if the court is satisfied that an offender to whom a treatment order applies—
 - (a) has been charged with an offence against a law in force in Australia or elsewhere; and
 - (b) is in custody waiting for criminal proceedings for the offence to be decided.

- (2) The court must make an order provisionally suspending the treatment and supervision part of the order until—
 - (a) the offender is no longer in custody for the offence; or
 - (b) the court makes an order under this division cancelling the treatment order.
- (3) Time served by the offender on remand for the offence counts toward the sentence imposed under the custodial part of the treatment order.

Note The court may review a treatment order at any time and for any reason if it is in the interests of justice (see s 80ZH).

- (4) In this section:

in custody means—

- (a) remanded in custody under a law in force in Australia or elsewhere; or
- (b) detained at a place under the [Mental Health Act 2015](#), or a corresponding law in force in Australia or elsewhere.

80ZD Breach of treatment order—commission of offence

- (1) This section applies if the court—
 - (a) convicts an offender subject to a treatment order of an offence punishable by imprisonment (a *further offence*); or
 - (b) is satisfied that an offender subject to a treatment order was convicted by another court, in the ACT or elsewhere, of an offence punishable by imprisonment (also a *further offence*).
- (2) If the sentence imposed on the offender for the further offence is not a sentence of imprisonment, the court may—
 - (a) make no order in relation to the treatment order; or
 - (b) give the offender a warning about the need to comply with the offender's treatment order obligations; or

- (c) make an order amending the treatment and supervision part of the order; or
 - (d) make an order cancelling the treatment order and either—
 - (i) impose the sentence of imprisonment that was suspended under the custodial part of the treatment order; or
 - (ii) if the court considers it appropriate in the circumstances—resentence the offender for each offence in relation to which the treatment order was made and in any way in which the court could deal with the offender if it had convicted the offender of each offence at the time of resentencing, other than by making an order under section 12A (Drug and alcohol treatment orders).
 - (3) If the sentence imposed on the offender for the further offence is a sentence of imprisonment, the court must make an order cancelling the treatment order and imposing the sentence of imprisonment that was suspended under the custodial part of the treatment order.
- Note* A sentence of imprisonment suspended under a treatment order is not part of a suspended sentence order (see s 12 (7)).
- (4) If the court orders the imposition of a sentence of imprisonment under this section, the court—
 - (a) must order that the offender serve all or part of the sentence by full-time detention at a correctional centre; and
 - (b) may reduce the sentence by any period served in custody under the treatment and supervision part of the treatment order, taking into account the extent to which the offender complied with that part of the order.
 - (5) The court may make an order under this section on its own initiative or on application by—
 - (a) the offender; or
 - (b) the director of public prosecutions; or

- (c) a member of the treatment and supervision team; or
 - (d) a person prescribed by regulation.
- (6) If the court makes an order under this section, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) any other person the court considers should receive the notice.
- (7) Failure to comply with subsection (6) does not invalidate the treatment order.

80ZE Cancellation of treatment order—unsatisfactory circumstances

- (1) The court may cancel a treatment order if it is satisfied on the balance of probabilities that—
- (a) before the order was made, inaccurate or misleading information about the offender or the offender's circumstances was given to the court or an assessor who prepared a drug and alcohol treatment assessment in relation to the offender, and as a result of the information, the making of the order was inappropriate; or
 - (b) the offender will not be able to comply with a condition of the offender's treatment order because the circumstances of the offender have materially changed since the order was made; or
 - (c) the offender is unwilling or unlikely to comply with a condition of the offender's treatment order; or
 - (d) the continuation of the treatment and supervision part of the order is not likely to achieve the objects of the order; or
 - (e) the offender withdraws the offender's consent to the treatment order; or

- (f) the offender poses an unacceptable risk to the safety or welfare of a person.
- (2) If the court decides to cancel a treatment order under subsection (1) the court must make an order cancelling the treatment order and, taking into account the extent to which the offender has complied with the treatment and supervision part of the order, either—
 - (a) impose the sentence of imprisonment that was suspended under the custodial part of the treatment order; or
 - (b) if the court considers it appropriate in the circumstances—resentence the offender for each offence in relation to which the treatment order was made and in any way in which the court could deal with the offender if it had convicted the offender of each offence at the time of resentencing, other than by making an order under section 12A (Drug and alcohol treatment orders).
- (3) If the court orders the imposition of a sentence of imprisonment under this section, the court—
 - (a) must order whether the offender is to serve all or part of the sentence by full-time detention at a correctional centre; and
 - (b) may reduce the sentence by any period served in custody under the treatment and supervision part of the treatment order, taking into account the extent to which the offender complied with that part of the order.
- (4) The court may make an order under this section on its own initiative or on application by—
 - (a) the offender; or
 - (b) the director of public prosecutions; or
 - (c) a member of the treatment and supervision team; or
 - (d) a person prescribed by regulation.
- (5) This section applies in addition to section 80ZB and section 80ZD.

- (6) If the court makes an order under this section, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the offender; and
 - (b) any other person the court considers should receive the notice.
- (7) Failure to comply with subsection (6) does not invalidate the order.

80ZF Cancellation of treatment order—satisfactory circumstances

- (1) The court may, on its own initiative, make an order cancelling the treatment and supervision part of a treatment order if it is satisfied on the balance of probabilities that—
 - (a) the offender has fully or substantially complied with the conditions of the offender's treatment order; and
 - (b) the continuation of the treatment order is no longer necessary to achieve the objects of the order.
- (2) To avoid doubt, a treatment order that is only made up of a custodial part because of an order of the court under subsection (1) is taken to be a treatment order for this part.
- (3) If the court makes an order under this section, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.
- (4) Failure to comply with subsection (3) does not invalidate the order.

Note The court must make a good behaviour order in relation to an offender who is the subject of a treatment order if the treatment and supervision part of the order ends before the sentence of imprisonment suspended under the custodial part of the order (see s 80ZA).

Division 5.4A.8 Drug and alcohol treatment orders— review by court

80ZG Application—pt 5.4A.8

This division applies to the review of a treatment order.

80ZH Drug and alcohol treatment orders—review

- (1) The court may review a treatment order for an offender at any time and for any reason if it is satisfied the review is in the interests of justice.

Note The court may also review the offender's bail at any time, see the [Bail Act 1992](#), s 41A.

- (2) The court may review a treatment order—
- (a) on its own initiative; or
 - (b) on application by—
 - (i) the defence; or
 - (ii) any other member of the treatment order team.
- (3) The court may carry out a review under this division in any way it considers appropriate.
- (4) However, the court must conduct a hearing for a review in which the court is considering making an order under—
- (a) section 80ZB (1) (e) provisionally cancelling the suspension of a sentence under a treatment order; or
 - (b) section 80ZB (1) (f), section 80ZD (2) (d) (i) or section 80ZE (2) (a) cancelling the treatment order; or
 - (c) section 80ZB (1) (g), section 80ZD (2) (d) (ii) or section 80ZE (2) (b) cancelling the treatment order and resentencing the offender.

- (5) An entity mentioned in subsection (2) (b) may appear at a hearing of the review.
- (6) The court may, on the review, confirm or amend the order as the court considers appropriate.
- (7) If the court amends the order, the court must, as soon as practicable, ensure that written notice of the review decision, together with a copy of the amended treatment order is given to—
 - (a) the offender; and
 - (b) any other person who the court considers should receive the notice.
- (8) Failure to comply with subsection (7) does not invalidate the order as amended.
- (9) In this section:
defence means—
 - (a) any lawyer representing an offender; or
 - (b) if the offender is not legally represented—the offender.

80ZI Drug and alcohol treatment orders—notice of review

- (1) The court must, as far as practicable, give written notice of a proposed review of the offender's treatment order to the defence and the other members of the treatment order team.
- (2) The notice must set out—
 - (a) the reasons for the review; and
 - (b) if a hearing for the review is to be conducted—the time and place for the review.
- (3) Failure to comply with this section does not invalidate the review.

(4) In this section:

defence means—

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

Division 5.4A.9 Drug and alcohol treatment orders— miscellaneous

80ZJ Arrest warrant—breach of treatment order obligations

- (1) A judge may issue an arrest warrant if satisfied, by information on oath, that an offender subject to a treatment order has failed to comply, or will fail to comply, with the offender’s treatment order obligations.
- (2) The warrant must—
 - (a) be in writing signed by the judge; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and
 - (d) order the offender’s arrest and bringing the offender before the court.
- (3) A police officer who arrests the offender under the warrant must, as soon as practicable, bring the offender before the court.

80ZK Arrest without warrant—breach of treatment order obligations

- (1) This section applies if a police officer believes, on reasonable grounds, that—
 - (a) an offender has failed to comply, or will fail to comply, with any of the offender’s treatment order obligations; and
 - (b) it is not practicable under the circumstances for the officer to obtain a warrant under section 80ZJ.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must, as soon as practicable, bring the offender before the court.

80ZL Drug and alcohol treatment orders—outstanding warrants

- (1) This section applies if a warrant is issued for an offender’s arrest under this division.
- (2) Any period for which the warrant is outstanding and the offender is not in custody does not count toward the sentence imposed under the custodial part of the order.
- (3) In this section:

in custody means—

- (a) remanded in custody under a law in force in Australia or elsewhere; or
- (b) detained at a place under the [Mental Health Act 2015](#), or a corresponding law in force in Australia or elsewhere.

80ZM Immunity from criminal liability

- (1) An offender's admission of guilt in relation to a relevant drug offence is not admissible in evidence in a proceeding in relation to that offence if the admission was made during—
 - (a) the preparation of a drug and alcohol treatment assessment of the offender; or
 - (b) administering a treatment order for the offender.
- (2) The admission, and any evidence obtained as a result of the admission, is not admissible in a criminal proceeding against the offender for the relevant drug offence.
- (3) However, subsections (1) and (2) do not prevent a criminal proceeding against the offender for the relevant drug offence if evidence of the offence exists in a form other than the admission made by the offender or the evidence obtained as a result of the admission.
- (4) In this section:

relevant drug offence means the following:

- (a) an offence against the [Criminal Code](#), section 618;
- (b) an offence against the [Drugs of Dependence Act 1989](#), section 162, section 164, section 169 or section 171;
- (c) an offence against the [Medicines, Poisons and Therapeutic Goods Act 2008](#), section 26 (2), section 34 (1) or (2), section 37 (2) or section 43 (3);
- (d) an offence prescribed by regulation.

80ZN No appeal against particular decisions

- (1) No appeal may be made against a decision of the court—
 - (a) not to order a drug and alcohol treatment assessment; or
 - (b) not to make a treatment order; or
 - (c) that an offender breached a condition of a treatment order; or
 - (d) to amend the treatment and supervision part of a treatment order.
- (2) Subsection (1) applies despite any other territory law.

80ZO Evidentiary certificates

- (1) A certificate that appears to be signed by or for any of the following and which states any matter relevant to anything done or not done under this part in relation to a person, is evidence of the matter:
 - (a) the director-general;
 - (b) the health director-general;
 - (c) the director-general responsible for the *Corrections Management Act 2007*;
 - (d) an analyst.
- (2) The court must accept a certificate mentioned in subsection (1) as proof of the matters stated in it if there is no evidence to the contrary.
- (3) The director-general may appoint analysts for this part.

Note For the making of appointments (including acting appointments), see the *Legislation Act*, pt 19.3.
- (4) An appointment under subsection (3) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act*.
- (5) In this section:

analyst means a person who is appointed as an analyst under subsection (3).

80ZP Information exchanges—treatment order team

- (1) This section applies to personal information about an offender held by a member of the treatment order team that was obtained as a result of a drug and alcohol treatment assessment, or the administration or making of a treatment order for the offender.
- (2) A member of the treatment order team may give the information to another member of the treatment order team for the purposes of the other member.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a member of the treatment order team.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (4) In this section:

personal information, about an offender, means any information or opinion relating to the offender, whether true or not, and whether recorded in a document or not.

80ZQ Review of drug and alcohol treatment order provisions

- (1) The Minister must—
 - (a) review the operation and effectiveness of provisions of this Act and any other territory law relating to drug and alcohol treatment orders, as soon as practicable after the end of 3 years after this section commences; and
 - (b) present a report of the review to the Legislative Assembly before the end of the section's 4th year of operation.
- (2) This section expires 5 years after the day it commences.

Part 5.5 Imprisonment—explanation and information

81 Application—pt 5.5

This part applies if—

- (a) an offender is convicted of an offence; and
- (b) a court sentences the offender to imprisonment for the offence; and
- (c) the sentence of imprisonment is not fully suspended.

82 Imprisonment—explanation to offender

- (1) The court must ensure that reasonable steps are taken to explain to the offender (and in language the offender can readily understand)—
 - (a) the reason why the sentence of imprisonment is imposed, and why no penalty other than imprisonment is appropriate; and
 - (b) the purpose of the sentence; and
 - (c) if the offender is to serve all or part of the sentence by full-time detention at a correctional centre or detention place—in general terms, the offender’s obligations as a full-time detainee under the *Crimes (Sentence Administration) Act 2005* and the consequences if the offender breaches the obligations; and

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

- (d) if the court makes an intensive correction order—in general terms, the offender’s obligations under the *Crimes (Sentence Administration) Act 2005* and the consequences if the offender breaches the obligations; and

- (e) the day when the sentence starts or is taken to have started; and

Note For examples of the operation of this paragraph, see the end of this subsection.

- (f) if a suspended sentence order is made for the offender suspending the sentence in part—in general terms, the effect of the suspension of the sentence; and

Note Explanations for the offender and any surety of the effect of entering into a good behaviour order are required under pt 6.3.

- (g) the earliest day (on the basis of the information currently available to the court) that the offender will become entitled to be released from detention or be eligible to be released on parole, having regard to—

- (i) each sentence of imprisonment to which the offender is subject; and

- (ii) any applicable nonparole period; and

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

Examples for par (e)

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

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

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

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

- 3 On 1 July 2004, Colleen began serving a 2-year sentence of imprisonment for an offence. The nonparole period for the sentence was 18 months (Colleen would be eligible to be released on parole on 1 January 2006). Colleen is later convicted of another offence, with a further sentence of 2 years to start from 1 January 2005, to be served partly concurrently and partly consecutively with the first sentence (under s 71 (Concurrent and consecutive sentences—general rule)). The court cancels the first nonparole period and sets a new nonparole period of 18 months from 1 January 2005 (under s 66 (Nonparole periods—setting if sentence currently being served)).

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

- (2) Failure to comply with this section does not invalidate the sentence of imprisonment.

83 Imprisonment—written record of explanation

- (1) The court must ensure that a written record of the explanation under section 82 is given to the offender or the offender's lawyer as soon as practicable after (but no later than 10 working days after the day) the explanation is given under that section.

Example of written record

a copy of the transcript of the explanation

- (2) Failure to comply with this section does not invalidate the sentence of imprisonment.

84 Imprisonment—official notice of sentence

- (1) As soon as practicable after (but no later than 10 working days after the day) the court makes the order sentencing the offender to imprisonment, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) the director-general; and

- (c) if the court sets a nonparole period for the sentence—the secretary of the sentence administration board.

Note 1 If a form is approved under the [Court Procedures Act 2004](#) for this provision, the form must be used (see that Act, s 8 (2)).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

Note 3 If the order is part of a combination sentence, a single notice may be given for the sentences (see [Legislation Act](#), s 49).

- (2) The notice must include the following information:
- (a) when the sentence starts or is taken to have started;
 - (b) when the sentence ends;
 - (c) whether the sentence is to be served as full-time detention or by intensive correction;
 - (d) if the sentence includes more than 1 kind of imprisonment—when each kind of imprisonment starts and ends;
 - (e) if a suspended sentence order is made for a part of the sentence—when the suspended part of the sentence starts and ends;
 - (f) if the court makes an intensive correction order—any conditions made by the court for the intensive correction order;
 - (g) if a nonparole period is set for the sentence—the nonparole period and when it starts and ends;
 - (h) the earliest day (on the basis of the information currently available to the court) that the offender will become entitled to be released from detention or be eligible to be released on parole.
- (3) If the court makes an intensive correction order for the offender, the court may remand the offender in custody until the offender is given the notice.

- (4) Failure to comply with this section does not invalidate the sentence of imprisonment.
- (5) In this section:
 - director-general* means—
 - (a) for an order made for a young offender—the CYP director-general; and
 - (b) for any other order—the director-general responsible for this Act.

Chapter 6 Good behaviour orders

Part 6.1 Good behaviour orders— community service conditions

85 Good behaviour orders—meaning of *community service condition*

In this Act:

community service condition, of a good behaviour order for an offender, means a condition included in the order that the offender perform community service work.

Note 1 The number of hours that may be required to be performed for a community service condition is at least 20 hours and not more than 500 hours or, for a young offender, not more than 200 hours (see s 91 and s 133L).

Note 2 *Community service work* is work declared by regulation under the [Crimes \(Sentence Administration\) Act 2005](#) (see that Act, s 316).

86 Application—pt 6.1

This part applies if a court is considering whether to include a community service condition in a good behaviour order for an offender.

87 Good behaviour orders—community service—convicted offenders only

The court must not include a community service condition in the good behaviour order unless the offender is convicted of the offence for which the order is made.

Note A good behaviour order under s 17 (2) (b) (Non-conviction orders—general) cannot include a community service condition because the offender is found guilty, but not convicted, of the offence.

88 Good behaviour orders—community service—eligibility

- (1) The court must not include a community service condition in the good behaviour order unless satisfied that—
 - (a) community service work is suitable for the offender (see section 89); and
 - (b) it is appropriate that the offender be required to perform community service work.
- (2) The court may decline to include a community service condition in the good behaviour order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender does not undergo the examination in accordance with the direction.

89 Good behaviour orders—community service—suitability

- (1) The court must not include a community service condition in the good behaviour order unless a pre-sentence report is given to the court about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work.
- (2) In deciding whether to include a community service condition in the good behaviour order, the court must consider the following:
 - (a) the pre-sentence report;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the pre-sentence report;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.

- (4) In considering the pre-sentence report, the court must consider any indicators of unsuitability mentioned in table 90, column 3 that are stated in the report to apply to the offender.
- (5) The court may include, or decline to include, a community service condition in a good behaviour order for the offender despite—
 - (a) any recommendation in the pre-sentence report about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work; or
 - (b) any evidence given by the person who prepared the pre-sentence report or a corrections officer.
- (6) The court must record reasons for its decision to include, or decline to include, a community service condition in the good behaviour order if—
 - (a) the pre-sentence report recommends that the offender is suitable but the court decides not to include a community service condition; or
 - (b) the pre-sentence report recommends that the offender is not suitable but the court decides to include a community service condition.
- (7) Failure to comply with subsection (6) does not invalidate the good behaviour order.

90 Good behaviour orders—community service— pre-sentence report matters

For section 42 (3) (Pre-sentence reports by assessors), the matters for assessing the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work are the matters mentioned in table 90, column 2.

Table 90 column 1 item	Assessment of suitability—community service work column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to perform community service work
4	criminal record	serious criminal record
5	employment and personal circumstances	potential impracticability of regular reporting for community service work

91 Good behaviour orders—community service—hours to be performed

- (1) The number of hours of community service work required to be performed for a community service condition in the good behaviour order must be at least 20 hours and not more than 500 hours.

Note For a young offender, the maximum is 200 hours (see s 133L).

- (2) The period during which the community service work is required to be completed under the community service condition must be at least—
- (a) if fewer than 250 hours work is required—12 months; or
 - (b) if 250 or more hours work is required—24 months.

92 Good behaviour orders—community service—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a community service condition under a good behaviour order (an *existing order*).
- (2) If the court makes a further good behaviour order that includes a community service condition (a *new order*), the court may direct that the hours of community service work to be performed by the offender under the new order run concurrently or consecutively, or partly concurrently and partly consecutively, with the hours of community service work remaining to be performed under the existing order.
- (3) However, the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 500.

Note For a young offender, the maximum is 200 hours (see s 133L).

Part 6.2 Good behaviour orders— rehabilitation program conditions

93 Definitions—pt 6.2

In this Act:

rehabilitation program, for a good behaviour order, means a program prescribed by regulation for the rehabilitation of offenders.

rehabilitation program condition, of a good behaviour order for an offender, means a condition included in the order that an offender undertake a rehabilitation program.

94 Application—pt 6.2

This part applies if a court is considering whether to include a rehabilitation program condition in a good behaviour order for an offender.

95 Good behaviour orders—rehabilitation programs— probation condition required

- (1) If the court includes a rehabilitation program condition in the good behaviour order, the court must also include a probation condition in the order.
- (2) Subsection (1) does not apply to a good behaviour order for a young offender if a supervision condition is included in the order under section 133V (Supervision conditions—when required).

96 Good behaviour orders—rehabilitation programs— eligibility

- (1) The court must not include a rehabilitation program condition in the good behaviour order unless satisfied that—
 - (a) a rehabilitation program of a particular kind is suitable for the offender; and

- (b) it is appropriate that the offender undertake a rehabilitation program of that kind; and
 - (c) a place for the offender in a program of that kind is available or will become available within a reasonable time.
- (2) The court may decline to include a rehabilitation program condition in the good behaviour order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender does not undergo the examination in accordance with the direction.

97 Good behaviour orders—rehabilitation programs—suitability

- (1) The court must not include a rehabilitation program condition in the good behaviour order unless—
 - (a) a pre-sentence report is given to the court about the offender's suitability to take part in a rehabilitation program; or
 - (b) there is some other information (*relevant sentencing information*) before the court about the nature of the program and its suitability for the offender that justifies including the condition in the good behaviour order.

Example of relevant sentencing information that may justify making an order

a letter offering the offender a place in a rehabilitation program that explains the nature of the program and why it would be suitable for the offender

- (2) In deciding whether to include a rehabilitation program condition in the good behaviour order, the court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the offender given to the court;
 - (b) any medical report about the offender given to the court;

- (c) any evidence given by the person who prepared a pre-sentence report for the offender or who gave relevant sentencing information to the court;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) The court may include, or decline to include, a rehabilitation program condition in the good behaviour order despite—
 - (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the offender's suitability to serve a sentence (or a part of a sentence) by taking part in a rehabilitation program; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the offender or who gave relevant sentencing information to the court; or
 - (c) any evidence given by a corrections officer.
- (5) The court must record reasons for its decision to include, or decline to include, a rehabilitation program condition in the good behaviour order if—
 - (a) any pre-sentence report recommends, or relevant sentencing information indicates, that the offender is suitable but the court decides not to include a rehabilitation program condition; or
 - (b) any pre-sentence report recommends, or relevant sentencing information indicates, that the offender is not suitable but the court decides to include a rehabilitation program condition.
- (6) Failure to comply with subsection (5) does not invalidate the good behaviour order.

98 Good behaviour orders—rehabilitation programs—pre-sentence report matters

For section 42 (4) (Pre-sentence reports by assessors), the matters for assessing the offender's suitability to serve a sentence (or a part of a sentence) by taking part in a rehabilitation program are whether the offender was—

- (a) under the influence of alcohol or a controlled drug when the offence was committed; or
- (b) motivated to commit the offence by a desire—
 - (i) to administer a controlled drug to himself or herself; or
 - (ii) to obtain a controlled drug for self-administration; or
 - (iii) to obtain resources to enable the offender to obtain a controlled drug for self-administration.

99 Good behaviour orders—rehabilitation programs—maximum period

A rehabilitation program condition included in the good behaviour order must not require the offender to take part in a rehabilitation program for longer than 3 years.

100 Good behaviour orders—rehabilitation programs—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a rehabilitation program condition under a good behaviour order (an *existing order*).
- (2) If the court makes a further good behaviour order that includes a rehabilitation program condition (a *new order*), the court may direct that the new order operate concurrently or consecutively, or partly concurrently and partly consecutively, with the existing order.

- (3) However, the new order must not be stated to end later than 3 years after the day the new order is made, irrespective of when the order is to take effect.

Part 6.3 Good behaviour orders— explanations and official notice

101 Application—pt 6.3

This part applies if a court makes a good behaviour order for an offender.

102 Good behaviour orders—explanation to offenders

- (1) The court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
 - (a) the nature and conditions of the good behaviour order; and
 - (b) the offender's good behaviour obligations under the *Crimes (Sentence Administration) Act 2005*; and
 - (c) the consequences if the offender breaches the obligations.

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

- (2) Failure to comply with this section does not invalidate the good behaviour order.

103 Good behaviour orders—official notice of order

- (1) As soon as practicable after the court makes the good behaviour order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the offender; and

- (b) if the order includes a community service condition, probation condition or rehabilitation program condition—the director-general.

Note 1 If the order is part of a combination sentence, a single notice may be given for the sentences (see [Legislation Act](#), s 49).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (2) The notice must include the following information:
 - (a) the term of the good behaviour order;
 - (b) if the good behaviour order includes a community service condition—
 - (i) the number of hours of community service work the offender is to perform; and
 - (ii) the period during which the work is to be completed; and
 - (iii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iv) when, or the period within which, the offender must present;
 - (c) if the good behaviour order includes a probation condition—
 - (i) the probation supervisor for the offender; and
 - (ii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iii) when, or the period within which, the offender must present;

- (d) if the good behaviour order includes a rehabilitation program condition—
 - (i) the rehabilitation program the offender is to take part in; and
 - (ii) the period for which the offender is to take part in the program; and
 - (iii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iv) when or the period within which the offender must present;
- (e) any other conditions included in the good behaviour order.
- (3) Failure to comply with this section does not invalidate the good behaviour order.
- (4) In this section:
director-general means—
 - (a) for an order made for a young offender—the CYP director-general; and
 - (b) for any other order—the director-general responsible for this Act.

104 Good behaviour orders—explanation and notice to sureties

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

- (b) the offender's good behaviour obligations under the *Crimes (Sentence Administration) Act 2005*; and
- (c) the consequences for the offender and the surety if the offender breaches the obligations.

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

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

Part 6.4 Good behaviour orders—other provisions

105 Good behaviour—consequences of failure to sign undertaking

- (1) This section applies if an offender fails to sign the undertaking mentioned in section 13 (2) for a good behaviour order made in relation to the offender.
- (2) The court that made the good behaviour order may re-sentence the offender, or convict and sentence the offender, as if the order had not been made.
- (3) To remove any doubt, if the offender is re-sentenced by the court under this section, the offender has the same rights of appeal as the offender would have had if the good behaviour order had not been made.

106 Good behaviour—maximum amount of security

- (1) The maximum amount of security that may be required to be given by an offender or a surety under a good behaviour order is—
 - (a) if the offence is punishable by a fine—the maximum fine that may be imposed for the offence; or
 - (b) if the offence is not punishable by a fine—
 - (i) for the Supreme Court—\$10 000; or
 - (ii) for the Magistrates Court—\$2 000.

- (2) However, a good behaviour order made by the Magistrates Court must not include a condition that the offender or a surety give security unless—
- (a) the offence is punishable by imprisonment for longer than 6 months; or
 - (b) a suspended sentence order has been made for the offence.

Chapter 7 Reparation orders

107 Application—ch 7

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

108 Reparation orders—no agreement about amount of loss etc

- (1) If the offender and the director of public prosecutions (or any other applicant for the reparation order) do not agree about the amount the offender is to be ordered to pay under the reparation order, the court must decide the amount.
- (2) To remove any doubt, section 110 (Reparation orders—evidential basis for orders) applies in relation to facts about the amount the offender is to be ordered to pay under the reparation order.

109 Reparation orders—payment by instalments

If the court makes a reparation order for the payment of money, the court may, in addition, order that—

- (a) the amount be paid by stated instalments; and
- (b) the offender give security, with or without sureties, to the satisfaction of a stated officer of the court for the payment of the amount or of each instalment of the amount.

110 Reparation orders—evidential basis for orders

- (1) A reparation order must not be made for the offence unless the court considers that the order should be made on the basis of facts established by—
 - (a) evidence given at the trial; or
 - (b) available documents; or

- (c) admissions by the offender; or
- (d) submissions made by or for anyone (including the director of public prosecutions).

(2) In this section:

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

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

Example for par (d)

If the value of an object, or the cost of its repair, is relevant to the proceeding for the reparation order, an affidavit by a valuer or repairer about the value of the object or the cost of its repair would be a relevant written document.

110A Reparation orders—enforcing non-money order

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

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

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

111 Reparation orders—power to make other orders etc

To remove any doubt, the power to make a reparation order under a provision of this Act is additional to the court's other powers under this Act or any other territory law, including its power to make a reparation order under another provision of this Act or any other territory law.

Example

Stan broke into Alice's house and stole property belonging to Alice. None of the property was recovered. Stan is convicted of the theft of the property. The court may make reparation orders ordering Stan to pay Alice—

- the value of the stolen property (see s 20); and
- the costs of repairing the damage caused during the break-in (see s 19).

112 Reparation orders—Confiscation of Criminal Assets Act

- (1) The court must not order the offender to make reparation to a person only because the person's property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003* (the *Confiscation Act*).
- (2) To remove any doubt—
 - (a) an amount payable under a reparation order cannot be recovered from property that has been restrained or forfeited under the *Confiscation Act*; and
 - (b) a reparation order for the restoration of property cannot be made for property that has been restrained or forfeited under the *Confiscation Act*.

Note 1 Restrained property may be dealt with only in accordance with the *Confiscation Act* (see that Act, s 19, def *restraining order* and s 33 (1)). For the exclusion of restrained property from forfeiture, see the *Confiscation Act*, pt 6.

Note 2 For applications by a person who had an interest in forfeited property for the property's return or for compensation, see the *Confiscation Act*, div 9.5.

- (3) In this section:

restrained—property that has been *restrained* under the [Confiscation Act](#) includes—

- (a) property in relation to which an application for a restraining order has been made under that Act; and
- (b) property in relation to which an application for a conviction forfeiture order has been made under that Act; and
- (c) property subject to forfeiture under that Act.

113 Reparation orders—official notice of order

- (1) This section applies if the court makes a reparation order for the offender.
- (2) As soon as practicable after the court makes the reparation order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the offender; and
 - (b) the person in whose favour the order is made.

Note 1 If the order is part of a combination sentence, a single notice may be given for the sentences (see [Legislation Act](#), s 49).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (3) Failure to comply with this section does not invalidate the reparation order.

Chapter 8 Deferred sentence orders

Part 8.1 Deferred sentence orders— making

114 Application—pt 8.1

This chapter applies if a court is considering whether to make, or makes, a deferred sentence order for an offender.

115 Meaning of *deferred sentence obligations*

In this Act:

deferred sentence obligations, for an offender—see section 120 (Deferred sentence orders—obligations).

116 Deferred sentence orders—eligibility

- (1) The court must not make a deferred sentence order for the offender unless it considers that—
 - (a) releasing the offender on bail would allow the offender to address his or her criminal behaviour and anything that has contributed to the behaviour; and
 - (b) if the offender were to comply with the order, and any bail conditions, the court might not impose as severe a sentence for the offence.
- (2) The court may make a deferred sentence order whether or not it considers that the seriousness of the offence justifies a sentence of imprisonment.

117 Deferred sentence orders—suitability

- (1) In deciding whether to make a deferred sentence order for the offender, the court must consider the following:
 - (a) any pre-sentence report about the offender;
Note The court may order a pre-sentence report under s 41.
 - (b) any evidence given by the person who prepared a pre-sentence report for the offender;
 - (c) any evidence given by a corrections officer about the offender.
- (2) Subsection (1) does not limit the matters that the court may consider.
- (3) The court may make, or decline to make, a deferred sentence order despite—
 - (a) any recommendation in any pre-sentence report about the offender's suitability for a deferred sentence order; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the offender or a corrections officer.
- (4) The court must record reasons for its decision to make a deferred sentence order if—
 - (a) any pre-sentence report recommends that the offender is suitable but the court decides not to make a deferred sentence order; or
 - (b) any pre-sentence report recommends that the offender is not suitable but the court decides to make a deferred sentence order.
- (5) Failure to comply with subsection (4) does not invalidate a deferred sentence order.

118 Deferred sentence orders—indication of penalties

If the court makes a deferred sentence order for the offender, the court must state, in general terms—

- (a) the penalty that the offender might receive if the offender complies with the order and any bail conditions; and
- (b) the penalty that the offender might receive if the offender does not comply with the order or a bail condition.

119 Deferred sentence orders—review requirements in orders

If the court makes a deferred sentence order for the offender, the court may require the offender to appear before the court at the times (before the time stated in the order under section 27 (2)), and at the places, stated in the order for the purpose of reviewing the offender's compliance with the order.

Note The court may also review the offender's bail at any time, see the [Bail Act 1992](#), s 41A.

120 Deferred sentence orders—obligations

The offender's obligations (the *deferred sentence obligations*) while subject to a deferred sentence order are—

- (a) to comply with the order (including any conditions of the order); and
- (b) to comply with the offender's bail conditions.

121 Deferred sentence orders—explanation and official notice

- (1) If the court makes a deferred sentence order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
 - (a) the nature and conditions of the order and the offender's bail under the [Bail Act 1992](#); and

- (b) the offender's obligations under the order and the [Bail Act 1992](#); and
- (c) the consequences if the offender breaches the obligations.

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

- (2) As soon as practicable after the court makes the deferred sentence order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note 1 The offender must also be given written notice of any bail conditions (see [Bail Act 1992](#), s 34).

Note 2 For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (3) Failure to comply with this section does not invalidate the deferred sentence order.

122 Deferred sentence orders—period of effect

- (1) A deferred sentence order must not state a time (the **sentencing time**) under section 27 (2) (Deferred sentence orders—making) that is more than 12 months after the day the order is made.
- (2) A deferred sentence order—
 - (a) starts on the day it is made; and
 - (b) ends—
 - (i) at the sentencing time; or
 - (ii) if the order is earlier cancelled under section 128 (Deferred sentence orders—court's powers on review) or section 132 (Deferred sentence orders—automatic cancellation on bail revocation)—on the day the court cancels it.

Part 8.2 Deferred sentence orders— supervision

123 Application—pt 8.2

This part applies if a court (the *sentencing court*) makes a deferred sentence order for an offender.

124 Deferred sentence orders—arrest without warrant

- (1) This section applies if a police officer believes, on reasonable grounds, that the offender has breached the offender's deferred sentence obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must bring the offender before—
 - (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

125 Deferred sentence orders—arrest warrant

- (1) If a judge or magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, the offender's deferred sentence obligations, the judge or magistrate may issue a warrant for the offender's arrest.

Note For the arrest of an offender who breaches bail, see the [Bail Act 1992](#), s 56A and s 56B.

- (2) The warrant must—
 - (a) be in writing signed by the judge or magistrate; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and

- (d) order the offender's arrest and bringing the offender before the sentencing court.
- (3) If a police officer arrests the offender under this section, the police officer must, as soon as practicable, bring the offender before—
 - (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

126 Deferred sentence orders—review

- (1) The sentencing court may review the offender's deferred sentence order at any time.

Note The court may also review the offender's bail at any time, see the [Bail Act 1992](#), s 41A.
- (2) Without limiting subsection (1), the sentencing court may review the deferred sentence order to consider whether the offender has breached, or may breach, the offender's deferred sentence obligations.
- (3) The sentencing court may review the deferred sentence order—
 - (a) on its own initiative; or
 - (b) on application by—
 - (i) the offender; or
 - (ii) the director-general; or
 - (iii) the director of public prosecutions.
- (4) A person mentioned in subsection (3) (b) may appear at a review.

- (5) In this section:

director-general means—

- (a) if the offender is under 18 years old when the application is made—the CYP director-general; and
- (b) in any other case—the director-general responsible for this Act.

127 Deferred sentence orders—notice of review

- (1) The sentencing court must give a written notice of a proposed review of the offender's deferred sentence order to the offender, the director-general and the director of public prosecutions.

- (2) The notice must set out—

- (a) the reasons for the review; and
- (b) the time and place fixed for the review.

- (3) In this section:

director-general means—

- (a) if the offender is under 18 years old when the notice is given—the CYP director-general; and
- (b) in any other case—the director-general responsible for this Act.

Part 8.3 Deferred sentence orders— amendment or cancellation

128 Deferred sentence orders—court's powers on review

After reviewing the offender's deferred sentence order, the sentencing court may do any of the following:

- (a) take no further action;
- (b) give the offender a warning about the need to comply with the offender's deferred sentence obligations (including any bail conditions);
- (c) by order, amend any of the deferred sentence order's conditions;
- (d) by order, cancel the deferred sentence order if—
 - (i) the offender has applied for its cancellation; or
 - (ii) the court is satisfied that the offender has breached the offender's deferred sentence obligations.

129 Deferred sentence orders—when amendments take effect

- (1) This section applies if the sentencing court makes an order (an ***amendment order***) under section 128 (1) (c) amending the offender's deferred sentence order's conditions.
- (2) The court must record its reasons for the decision.
- (3) The amendment order must state when it takes effect.
- (4) The date of effect must be—
 - (a) the date when the sentencing court gives the offender written notice of the amendment order; or
 - (b) if a later date of effect is stated in the amendment order—the date stated.

- (5) As soon as practicable after the sentencing court makes the amendment order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender, the director-general and the director of public prosecutions.

Note For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (6) Failure to comply with subsection (5) does not invalidate the amendment order.
- (7) In this section:

director-general means—

- (a) if the offender is under 18 years old when the amendment order is made—the CYP director-general; and
- (b) in any other case—the director-general responsible for this Act.

130 Deferred sentence orders—when cancellation takes effect

- (1) This section applies if the sentencing court makes an order (a ***cancellation order***) under section 128 (Deferred sentence orders—court’s powers on review) cancelling the offender’s deferred sentence order.
- (2) The court must record its reasons for the decision.
- (3) The cancellation order takes effect on the day it is made.
- (4) As soon as practicable after the sentencing court makes the cancellation order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender, the director-general and the director of public prosecutions.

Note For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

- (5) Failure to comply with subsection (4) does not invalidate the cancellation order.
- (6) In this section:
 - director-general* means—
 - (a) if the offender is under 18 years old when the cancellation order is made—the CYP director-general; and
 - (b) in any other case—the director-general responsible for this Act.

131 Deferred sentence orders—effect of cancellation

- (1) This section applies if the sentencing court makes an order (a *cancellation order*) under section 128 (Deferred sentence orders—court’s powers on review) cancelling the offender’s deferred sentence order.
- (2) The offender’s bail in relation to which the deferred sentence order was made is automatically revoked on the making of the cancellation order.
- (3) The sentencing court must sentence the offender for all offences for which the court may sentence the offender, whether or not they are punishable by imprisonment.

Part 8.4 Deferred sentence orders—other provisions

132 Deferred sentence orders—automatic cancellation on bail revocation

The offender's deferred sentence order is automatically cancelled if the offender's bail in relation to which the order was made is revoked.

133 Deferred sentence orders—relationship with Bail Act

- (1) A requirement in a deferred sentence order under section 27 (2) (Deferred sentence orders—making) or section 119 (Deferred sentence orders—review requirements in orders) for an offender to appear before the sentencing court—
 - (a) does not affect a court's power under the *Bail Act 1992* to require the offender to appear before the court under that Act; and
 - (b) applies to the offender despite the *Bail Act 1992*, section 6 (2) (b) (Rights following grant of bail).

Note The *Bail Act 1992*, s 6 (2) (b) provides a bailed person is entitled to remain at liberty in relation to the offence until required to appear before a court in accordance with the person's undertaking to appear under that Act.

- (2) To remove any doubt, section 27 (5) does not limit, and is not limited by, the *Bail Act 1992*, section 25 (Conditions on which bail may be granted to adults).
- (3) To remove any doubt, section 128 (1) (c) (Deferred sentence orders—court's powers on review) does not limit, and is not limited by, any provision of the *Bail Act 1992* about varying an offender's bail conditions.

- (4) To remove any doubt, section 126 (Deferred sentence orders—review) does not limit, and is not limited by, any provision of the *Bail Act 1992*, part 6 (Review of bail decisions) about review of an offender's bail.

Chapter 8A Sentencing young offenders

Part 8A.1 General

133A Purpose—ch 8A

- (1) The purpose of this chapter is to set out particular provisions that apply to the sentencing of young offenders.
- (2) Except as provided in this chapter or otherwise in this Act, this Act applies to young offenders in the same way as it applies to other offenders.

133B Meaning of *young offender*

In this Act:

young offender means a person who—

- (a) has been convicted or found guilty of an offence by a court; and
- (b) was under 18 years old when the offence was committed.

133C Young offenders—purposes of sentencing

- (1) Despite section 7 (2), in sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes stated in section 7 (1).
- (2) Also, in sentencing a young offender, a court must have particular regard to the common law principle of individualised justice.

133D Young offenders—sentencing—additional relevant considerations

- (1) In deciding how a young offender should be sentenced (if at all) for an offence, a court must consider the following matters:
 - (a) the young offender's culpability for the offence having regard to his or her maturity;
 - (b) the young offender's state of development;
 - (c) the past and present family circumstances of the young offender.
- (2) This section applies in addition to section 33 (Sentencing—relevant considerations).

133E Young offenders—pre-sentence report matters

- (1) Each of the following is a *pre-sentence report matter* in relation to a young offender:
 - (a) the young offender's culpability for the offence having regard to his or her maturity;
 - (b) the young offender's state of development;
 - (c) the past and present family circumstances of the young offender.
- (2) This section applies in addition to section 40A (Pre-sentence report matters).

133F Young offenders—director-general may give court information about availability of resources

The CYP director-general may give the court information about the availability of resources that would be needed to give effect to an order the court may make in relation to a young offender under this Act.

133G Young offenders—sentences of imprisonment

- (1) This section applies if a court is sentencing a young offender to imprisonment under section 10.

Note Section 10 allows a court to sentence an offender to imprisonment if satisfied that no other penalty is appropriate.

- (2) The sentence of imprisonment must be a last resort and for the shortest appropriate term.
- (3) The court must consider making a combination sentence consisting of—
- (a) the sentence of imprisonment; and
 - (b) a good behaviour order with a supervision condition.

Note There is no provision for the setting of a nonparole period for a sentence of imprisonment imposed on a young offender (see s 64 (2), def *excluded sentence of imprisonment*).

- (4) The court must not sentence the young offender to imprisonment for life.

133H Young offenders—imprisonment to be at detention place

- (1) This section applies (instead of section 10 (3)) if a court sentences a young offender to imprisonment and the young offender is under 21 years old when the sentence is imposed.
- (2) The sentence must be served by full-time detention at a detention place unless the young offender is—
- (a) released from full-time detention under this Act or another territory law; or
 - (b) transferred to a correctional centre under the *Children and Young People Act 2008*.

133I Young offenders—non-association and place restriction orders

A court must not make a non-association order or place restriction order for a young offender unless satisfied that the order would not—

- (a) interfere with the young offender's access to appropriate education or training; or
- (b) disproportionately interfere with the young offender's access to public transport or accommodation.

Note Pt 3.4 makes provision for non-association orders and place restriction orders for offenders.

133J Young offenders—notice of orders to parent etc

- (1) This section applies if written notice of an order and a copy of the order is required to be given to a young offender under any of the following:
 - (a) section 12 (4) (Suspended sentences);
 - (b) section 14 (7) (Fines—orders to pay);
 - (c) section 16 (4) (Driver licence disqualification orders—motor vehicle theft);
 - (d) section 17 (5) (Non-conviction orders—general);
 - (e) section 25 (2) (Non-association and place restriction orders—explanation and official notice);
 - (f) section 84 (1) (Imprisonment—official notice of sentence);
 - (g) section 103 (1) (Good behaviour orders—official notice of order);
 - (h) section 113 (2) (Reparation orders—official notice of order);
 - (i) section 121 (2) (Deferred sentence orders—explanation and official notice of effect);

- (j) section 129 (5) (Deferred sentence orders—when amendments take effect);
 - (k) section 130 (4) (Deferred sentence orders—when cancellation takes effect).
- (2) If the young offender is under 18 years old, the court must ensure that the notice and a copy of the order is also given to a parent of the young offender and anyone else who has parental responsibility for the young offender under the *Children and Young People Act 2008*.

133K Young offenders—references to corrections officer

A reference in this Act to a corrections officer is, in relation to a young offender, a reference to a youth detention officer under the *Children and Young People Act 2008*.

Part 8A.2 Young offenders—good behaviour orders

Division 8A.2.1 Young offenders—good behaviour orders generally

133L Young offenders—community service—hours to be performed

- (1) The number of hours of community service work required to be performed for a community service condition in a good behaviour order for a young offender—
 - (a) must be at least 20 hours and not more than 200 hours; and
 - (b) must not interfere with the young offender's access to appropriate education or training.
- (2) The period during which the community service work is required to be completed under the community service condition must be not longer than 12 months.
- (3) Section 92 (3) (Good behaviour orders—community service—concurrent and consecutive orders) applies in relation to a young offender as if the reference to 500 hours were a reference to 200 hours.

133M Young offenders—good behaviour orders—conditions

- (1) A good behaviour order for a young offender must not include a condition mentioned in section 13 (3) (a) (which is about giving security for compliance with an order).

(2) In addition to the conditions mentioned in section 13 (3) (b) to (g), a good behaviour order for a young offender may include—

(a) an education and training condition; and

Note An education and training condition must not be included in the order unless the young offender is convicted or found guilty of the offence (see s 133P).

(b) a supervision condition.

Division 8A.2.2 Good behaviour orders—education and training conditions

133N Meaning of *education and training condition*

In this Act:

education and training condition, of a good behaviour order for a young offender, means a condition included in the order that the young offender undertake education or training.

133O Application—div 8A.2.2

This division applies if a court is considering whether to include an education and training condition in a good behaviour order for a young offender.

133P Education and training conditions—for young offenders convicted or found guilty

A good behaviour order cannot include an education and training condition unless the young offender has been convicted or found guilty of the offence for which the order is made.

133Q Education and training conditions—eligibility

The court must not include an education and training condition in the good behaviour order unless satisfied that—

- (a) education or training of a particular kind is suitable for the young offender; and
- (b) it is appropriate that the young offender undertake education or training of that kind; and
- (c) a place for the young offender in education or training of that kind is available or will become available within a reasonable time.

133R Education and training conditions—suitability

- (1) In deciding whether to include an education and training condition in the good behaviour order, the court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the young offender given to the court;
 - (b) any medical report about the young offender given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the young offender or who gave relevant sentencing information to the court;
 - (d) any evidence given by the CYP director-general about the young offender.
- (2) Subsection (1) does not limit the matters that the court may consider.

- (3) The court may include, or decline to include, an education and training condition in the good behaviour order for the young offender despite—
- (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the suitability of the young offender to serve a sentence (or a part of a sentence) by taking part in education or training; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the young offender or who gave relevant sentencing information to the court; or
 - (c) any evidence given by the CYP director-general about the young offender.
- (4) The court must record reasons for its decision to include, or not include, an education and training condition in the good behaviour order if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that the young offender is suitable but the court decides not to include an education and training condition; or
 - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that the young offender is not suitable but the court decides to include an education and training condition.
- (5) Failure to comply with subsection (4) does not invalidate the good behaviour order.

133S Education and training conditions—maximum period

An education and training condition included in the good behaviour order must not require the young offender take part in education or training for longer than 3 years.

133T Education and training conditions—2 or more good behaviour orders

- (1) This section applies if—
 - (a) a young offender is currently subject to an education and training condition under a good behaviour order (an *existing order*); and
 - (b) the court makes a further good behaviour order that includes an education and training condition (a *new order*).
- (2) The court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the young offender to undergo education or training as stated in the order for more than 3 years.

Division 8A.2.3 Good behaviour orders—supervision conditions

133U Meaning of *supervision condition*

- (1) In this Act:

supervision condition, of a good behaviour order for a young offender, means a condition included in the order that—

 - (a) requires the young offender to comply with all reasonable directions given by the director-general; and
 - (b) allows the director-general to require information from entities directly supervising the young offender.
- (2) In this section:

director-general means—

 - (a) if the offender is under 18 years old when the direction is given or the requirement is made—the CYP director-general; and

- (b) in any other case—the director-general responsible, under the *Crimes (Sentence Administration) Act 2005*, for the administration of the good behaviour order to which the direction relates.

133V Supervision conditions—when required

- (1) A court must include a supervision condition in a good behaviour order for a young offender if the court has made, or proposes to make, a good behaviour order that includes—
- (a) a community service condition; or
 - (b) a rehabilitation program condition; or
 - (c) an education and training condition.
- (2) Subsection (1) does not limit the circumstances in which the court may include a supervision condition in a good behaviour order.

133W Supervision conditions—maximum period

A supervision condition included in the good behaviour order must not require the young offender to comply with all reasonable directions given by the director-general for longer than 3 years.

133X Supervision conditions—2 or more good behaviour orders

- (1) This section applies if—
- (a) a young offender is currently subject to a supervision condition under a good behaviour order (an *existing order*); and
 - (b) the court makes a further good behaviour order that includes a supervision condition (a *new order*).

- (2) The court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the young offender to be supervised as stated in the order for longer than 3 years.

Part 8A.3 Young offenders— accommodation orders

133Y **Meaning of *accommodation order***

(1) In this Act:

accommodation order, in relation to a young offender, means an order made by a court requiring the young offender to live at the place or with the person, whether within or outside the ACT—

- (a) stated in the order; or
- (b) that the director-general from time to time directs.

(2) In this section:

director-general means—

- (a) if the offender is under 18 years old when the direction is given—the CYP director-general; and
- (b) in any other case—the director-general responsible, under the *Crimes (Sentence Administration) Act 2005*, for the young offender to whom the direction relates.

133Z **Accommodation orders—for young offenders convicted or found guilty**

If a young offender has been convicted or found guilty of an offence, the court may make an accommodation order for the young offender.

133ZA **Accommodation orders—eligibility**

The court must not make an accommodation order for a young offender unless satisfied that—

- (a) the order would be suitable for the young offender; and

- (b) if the order states that the young offender is to live at a place—the person in charge of the place agrees to accommodate the young offender at the place; and
- (c) if the order states that the child is to live with a person—
 - (i) the person is a suitable person to accommodate the young offender; and
 - (ii) the person agrees to the young offender living with the person.

133ZB Accommodation orders—suitability

- (1) In deciding whether to make an accommodation order for a young offender, the court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the young offender given to the court;
 - (b) any medical report about the young offender given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the young offender or who gave relevant sentencing information to the court;
 - (d) any evidence given by the CYP director-general about the young offender.
- (2) Subsection (1) does not limit the matters that the court may consider.
- (3) The Court may make, or decline to make, an accommodation order, for a young offender despite—
 - (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the appropriateness of an accommodation order for the young offender; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the young offender or who gave relevant sentencing information to the court; or

- (c) any evidence given by the CYP director-general about the young offender.
- (4) The Court must record reasons for its decision in relation to a young offender if—
 - (a) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order be made for the young offender but the court does not make an accommodation order; or
 - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order not be made for the young offender but the court makes an accommodation order.
- (5) Failure to comply with subsection (4) does not invalidate the accommodation order.

133ZC Accommodation orders—maximum period

An accommodation order must not be longer than 3 years.

133ZD Accommodation orders—2 or more orders

- (1) This section applies if—
 - (a) a young offender is currently subject to an accommodation order (an *existing order*); and
 - (b) the court makes a further accommodation order (a *new order*).
- (2) The court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the young offender to be accommodated as stated in the order for longer than 3 years.

Chapter 9 Miscellaneous

134 Operation of ancillary and restitution orders

(1) In this section:

finalised—proceedings in relation to an appeal are *finalised* if—

- (a) the appeal is dismissed, withdrawn or struck out or ends without a retrial being ordered and the period for making any further appeal against that decision ends; or
- (b) if a retrial is ordered—the proceedings on the retrial are finalised within the meaning of paragraph (a).

relevant order means—

- (a) an ancillary order under—
 - (i) section 18 (Non-conviction orders—ancillary orders); or
 - (ii) section 58 (Ancillary orders relating to offences taken into account in sentencing); or
- (b) a reparation order.

(2) A relevant order takes effect on the day after—

- (a) the end of the period for appealing against the conviction or finding of guilt to which the relevant order relates; or
- (b) if an appeal in relation to the conviction or finding of guilt is made within the period for making the appeal—the day proceedings in relation to the appeal are finalised.

(3) However, an appeal court may, on application or its own initiative, if satisfied it is in the interests of justice, order that a relevant order take effect on a stated day earlier than the day fixed under subsection (2).

- (4) A court may, on application or its own initiative, by order, give such directions as it considers appropriate for—
 - (a) the custody of property to which a relevant order relates; or
 - (b) the giving of security, with or without sureties, for payment of an amount under a relevant order.
- (5) If a conviction or finding of guilt is set aside—
 - (a) any relevant order to which the conviction or finding of guilt relates is set aside; and
 - (b) an appeal court may make any order it considers appropriate in the interests of justice consequent on any order given under subsection (4).
- (6) An application under this section may be made by the director of public prosecutions or a person whose interests are affected by a relevant order.
- (7) This section is subject to section 61 (Reopening proceedings to correct penalty errors).

135 Reparation—other actions for recovery

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

136 Information exchanges between criminal justice entities

- (1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a criminal justice entity, including information about—
 - (a) a person charged with the offence; and
 - (b) a victim of the offence; and
 - (c) a person convicted or found guilty of the offence.
- (2) The criminal justice entity may give the information to another criminal justice entity for the purposes of the other entity.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a criminal justice entity.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (4) In this section:
criminal justice entity means any of the following:
 - (a) the Supreme Court;
 - (b) the Magistrates Court;
 - (c) the director-general responsible for this Act;
 - (d) the CYP director-general;
 - (e) the sentence administration board;
 - (f) the director of public prosecutions;
 - (g) the chief police officer;
 - (h) the victims of crime commissioner;
 - (i) any other entity prescribed by regulation.

victim, of an offence—see section 47.

137 Reduction of sentence—appeal if assistance undertaking breached

- (1) This section applies if a court imposed a lesser penalty (including a shorter nonparole period) on an offender under section 36 (Reduction of sentence—assistance to law enforcement authorities) having regard to assistance undertaken to be provided by the offender to law enforcement authorities.
- (2) If, after the sentence is imposed, the offender does not assist law enforcement authorities in accordance with the undertaking, the director of public prosecutions may, at any time during the term of the sentence, appeal against the inadequacy of the sentence.
- (3) The director of public prosecutions must not appeal unless the director is of the opinion that the appeal is in the interests of the administration of justice.
- (4) If the court hearing the appeal is satisfied that the offender has completely failed to assist law enforcement authorities in accordance with the undertaking, the court must substitute for the reduced sentence the sentence that it would otherwise have imposed.
- (5) If the court hearing the appeal is satisfied that the offender has partly failed to assist law enforcement authorities in accordance with the undertaking, the court may substitute for the reduced sentence the sentence it considers appropriate.
- (6) The sentence that may be substituted under subsection (5) must not exceed the sentence that may be substituted under subsection (4) if the offender had completely failed to assist law enforcement authorities in accordance with the undertaking.

138 Effect of failure to comply with Act

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

139 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1 defines the following terms:

- administrative unit
- adult
- director-general (see s 163)
- director of public prosecutions
- doctor
- entity
- found guilty
- head of service
- law (of the Territory)
- lawyer
- Magistrates Court
- may (see s 146)
- must (see s 146)
- oath
- police officer
- road transport authority
- sentence administration board
- statutory office-holder
- Supreme Court
- territory authority
- victims of crime commissioner
- working day.

accommodation order—see section 133Y.

additional offence, for part 4.4 (Taking additional offences into account)—see section 55.

assessor—

- (a) for part 4.2 (Pre-sentence reports)—see section 39A; and
- (b) for part 4.2A (Intensive correction assessments)—see section 46A; and
- (c) for part 4.2B (Drug and alcohol treatment assessments)—see section 46H.

at, in relation to a correctional centre or detention place, includes in the correctional centre or detention place.

bail condition—see the [Bail Act 1992](#), dictionary.

because of, an offence, for part 4.3 (Victim impact statements)—see section 47.

combination sentence—see section 29 (1) (Combination sentences—offences punishable by imprisonment) and section 30 (1) (Combination sentences—offences punishable by fine).

community service condition—

- (a) of a good behaviour order for an offender, for this Act generally—see section 85; and
- (b) of an intensive correction order for an offender, for division 5.4.2 (Intensive correction orders—community service conditions)—see section 80A.

community service work—see the [Crimes \(Sentence Administration\) Act 2005](#), section 316.

controlled drug means a controlled drug under the [Criminal Code](#), chapter 6 (Serious drug offences).

core conditions, of a treatment order, for part 5.4A (Drug and alcohol treatment orders)—see section 80Y.

correctional centre means—

- (a) a correctional centre under the [Corrections Management Act 2007](#); or
- (b) a NSW correctional centre.

corrections officer—see the [Corrections Management Act 2007](#), section 20.

court means—

- (a) for this Act generally, if a ***court*** has sentenced an offender, made an order or given a direction—the same court, however constituted; and
- (b) for part 4.2B (Drug and alcohol treatment assessments) and part 5.4A (Drug and alcohol treatment orders)—the Supreme Court.

custodial part, of a treatment order—see section 80W.

CYP director-general means the director-general responsible for the [Children and Young People Act 2008](#).

deferred sentence obligations, for an offender—see section 120.

deferred sentence order—see section 27 (2).

detention place means a detention place under the [Children and Young People Act 2008](#).

driver licence disqualification order—see section 16 (2).

drug and alcohol treatment assessment—see section 46J.

drug and alcohol treatment order—see section 12A.

education and training condition—see section 133N.

existing sentence, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 70 (1).

family violence offence—see the [Family Violence Act 2016](#), dictionary.

fine, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 69.

fine order—see section 14 (2).

good behaviour order—see section 13 (2).

harm, for part 4.3 (Victim impact statements)—see section 47.

health director-general means the director-general responsible for the [Health Records \(Privacy and Access\) Act 1997](#).

intensive correction means intensive correction in the community under an intensive correction order.

intensive correction assessment means an assessment prepared under part 4.2A by the director-general about whether an intensive correction order is suitable for an offender.

intensive correction order—see section 11.

list of additional offences, for part 4.4 (Taking additional offences into account)—see section 55.

member—

- (a) in relation to the treatment and supervision team, for part 5.4A (Drug and alcohol treatment orders)—see section 80M; and
- (b) in relation to the treatment order team, for part 5.4A (Drug and alcohol treatment orders)—see section 80M.

non-association order—see section 21.

non-conviction order—see section 17 (2).

nonparole period, for a sentence of imprisonment—

- (a) see section 65 (2) (Nonparole periods—court to set); and
- (b) if the nonparole period of the sentence is amended—means the nonparole period as amended.

offender—see section 8.

parole order—see the *Crimes (Sentence Administration) Act 2005*, section 117.

place restriction order—see section 21.

pre-sentence report means a report—

- (a) for use in a criminal proceeding; and
- (b) prepared by the director-general.

pre-sentence report matter—

- (a) for part 4.2 (Pre-sentence reports)—see section 40A; and
- (b) for a young offender—see section 133E.

primary sentence, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 70 (1).

primary victim, for part 4.3 (Victim impact statements)—see section 47, definition of *victim*, paragraph (a).

principal offence, for part 4.4 (Taking additional offences into account)—see section 55.

probation condition, of a good behaviour order for an offender, means a condition included in the order that, during the period of the order, or for a part of that period stated in the order, the offender is—

- (a) to be on probation subject to the supervision of a person appointed under the order; and
- (b) to obey all reasonable directions of the appointed person.

Example of directions for par (b)

that the offender comply with a condition mentioned in section 13 (3) (g), examples, even if the condition is not a condition of the order

rehabilitation program—

- (a) for a good behaviour order, for this Act generally—see section 93; and
- (b) for an intensive correction order, for division 5.4.3 (Intensive correction orders—rehabilitation program conditions)—see section 80G.

rehabilitation program condition—

- (a) of a good behaviour order for an offender, for this Act generally—see section 93; and
- (b) of an intensive correction order for an offender, for division 5.4.3 (Intensive correction orders—rehabilitation program conditions)—see section 80G.

reparation order means an order under—

- (a) section 19 (3) (Reparation orders—losses and expenses generally); or
- (b) section 20 (3) or (4) (Reparation orders—stolen property).

sentence means—

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

sentence of imprisonment includes—

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

sentence-related order, for part 4.4 (Taking additional offences into account)—see section 55.

sentencing court, for part 8.2 (Deferred sentence orders—supervision) and part 8.3 (Deferred sentence orders—amendment or cancellation)—see section 123.

supervision condition—see section 133U.

surety, for a good behaviour order for an offender, means a person other than the offender who gives security for complying with the order.

suspended sentence order—see section 12 (2).

term—if the term of a sentence is amended under the [Crimes \(Sentence Administration\) Act 2005](#), the ***term*** of the sentence as amended.

treatment and supervision part, of a treatment order—see section 80X.

treatment and supervision team, for part 5.4A (Drug and alcohol treatment orders)—see section 80M.

treatment order, means a drug and alcohol treatment order.

treatment order obligations, of an offender subject to a treatment order, for part 5.4A (Drug and alcohol treatment orders)—see section 80P.

treatment order team, for part 5.4A (Drug and alcohol treatment orders)—see section 80M.

treatment program, for part 5.4A (Drug and alcohol treatment orders)—see section 80Z.

treatment program conditions, of a treatment order, for part 5.4A (Drug and alcohol treatment orders)—see section 80Z.

victim, of an offence, for part 4.3 (Victim impact statements)—see section 47.

victim impact statement, for an offence, for part 4.3 (Victim impact statements)—see section 47.

young offender—see section 133B.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Crimes (Sentencing) Act 2005 A2005-58

notified LR 2 December 2005

s 1, s 2 commenced 2 December 2005 (LA s 75 (1))

remainder commenced 2 June 2006 (s 2 and LA s 79)

as amended by

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.11

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.11 commenced 2 June 2006 (s 2 (1) and see [Crimes \(Sentence Administration\) Act 2005 A2005-59 s 2](#), Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

as modified by

Crimes (Sentencing) Regulation 2006 SL2006-22 sch 1 (as am by SL2006-25 s 8)

taken to have been notified LR 18 May 2006 ([A2006-23](#), s 4 (3) (a))

s 1 taken to have commenced 18 May 2006 (LA s 75 (1))

sch 1 commenced 2 June 2006 ([A2006-23](#) s 4 (3) (b) and see Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Crimes (Sentencing) Amendment Regulation 2006 (No 1) SL2006-25 s 8

notified LR 1 June 2006

s 1, s 2 commenced 1 June 2006 (LA s 75 (1))

s 8 commenced 2 June 2006 (s 2 and see Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Note This regulation only amends the [Crimes \(Sentencing\) Regulation 2006](#) SL2006-22.

as amended by

Corrections Management Act 2007 A2007-15 sch 1 pt 1.2

notified LR 18 June 2007

s 1, s 2 commenced 18 June 2007 (LA s 75 (1))

s 230 commenced 1 August 2007 (LA s 75AA)

sch 1 pt 1.2 commenced 1 August 2007 (s 2 and [CN2007-6](#))

Endnotes

Victims of Crime Amendment Act 2007 A2007-44 sch 1 pt 1.1

notified LR 13 December 2007

s 1, s 2 commenced 13 December 2007 (LA s 75 (1))

sch 1 pt 1.1 commenced 20 December 2007 (s 2)

Children and Young People Act 2008 A2008-19 sch 1 pt 1.5

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

sch 1 pt 1.5 commenced 27 February 2009 (s 2 and [CN2008-17](#) (and see [CN2008-13](#)))

Children and Young People (Consequential Amendments) Act 2008

A2008-20 sch 1 pt 1.4, sch 3 pt 3.10, sch 4 pt 4.12

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 1 pt 1.4, sch 4 pt 4.12 commenced 27 February 2009 (s 2 (5) and see [Children and Young People Act 2008 A2008-19](#), s 2 and [CN2008-13](#))

sch 3 pt 3.10 commenced 27 October 2008 (s 2 (4) and see [Children and Young People Act 2008 A2008-19](#), s 2 and [CN2008-17](#) (and see [CN2008-13](#)))

Justice and Community Safety Legislation Amendment Act 2008

(No 2) A2008-22 sch 1 pt 1.4

notified LR 8 July 2008

s 1, s 2 commenced 8 July 2008 (LA s 75 (1))

sch 1 pt 1.4 commenced 29 July 2008 (s 2)

Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.5

notified LR 9 September 2008

s 1, s 2 commenced 9 September 2008 (LA s 75 (1))

sch 1 pt 1.5 commenced 30 May 2009 (s 2 and [CN2009-4](#))

Domestic Violence and Protection Orders Act 2008 A2008-46 sch 3 pt 3.6

notified LR 10 September 2008

s 1, s 2 commenced 10 September 2008 (LA s 75 (1))

sch 3 pt 3.6 commenced 30 March 2009 (s 2)

Justice and Community Safety Legislation Amendment Act 2009**A2009-7 sch 1 pt 1.4**

notified LR 5 March 2009
s 1, s 2 commenced 5 March 2009 (LA s 75 (1))
sch 1 pt 1.4 commenced 6 March 2009 (s 2 (3))

Crimes Legislation Amendment Act 2009 A2009-24 sch 1 pt 1.5

notified LR 3 September 2009
s 1, s 2 commenced 3 September 2009 (LA s 75 (1))
sch 1 pt 1.5 commenced 4 September 2009 (s 2)

Justice and Community Safety Legislation Amendment Act 2009**(No 3) A2009-44 sch 1 pt 1.6**

notified LR 24 November 2009
s 1, s 2 commenced 24 November 2009 (LA s 75 (1))
sch 1 pt 1.6 commenced 25 November 2009 (s 2 (1))

Health Legislation Amendment Act 2010 A2010-2 sch 1 pt 1.3

notified LR 16 February 2010
s 1, s 2 commenced 16 February 2010 (LA s 75 (1))
sch 1 pt 1.3 commenced 16 August 2010 (s 2 and LA s 79)

Crimes (Sentence Administration) Amendment Act 2010 A2010-21**sch 1 pt 1.4**

notified LR 30 June 2010
s 1, s 2 commenced 30 June 2010 (LA s 75 (1))
sch 1 pt 1.4 commenced 1 July 2010 (s 2)

Victims of Crime Amendment Act 2010 A2010-29 sch 1 pt 1.1

notified LR 31 August 2010
s 1, s 2 commenced 31 August 2010 (LA s 75 (1))
sch 1 pt 1.1 commenced 28 February 2011 (s 2 and LA s 79)

Crimes Legislation Amendment Act 2011 A2011-7 pt 3

notified LR 16 March 2011
s 1, s 2 commenced 16 March 2011 (LA s 75 (1))
pt 3 commenced 17 March 2011 (s 2)

Courts Legislation Amendment Act 2011 A2011-13 sch 1 pt 1.3

notified LR 11 May 2011
s 1, s 2 commenced 11 May 2011 (LA s 75 (1))
sch 1 pt 1.3 commenced 25 July 2011 (s 2 and [CN2011-8](#))

Endnotes

Administrative (One ACT Public Service Miscellaneous Amendments)

Act 2011 A2011-22 sch 1 pt 1.46

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.46 commenced 1 July 2011 (s 2 (1))

Corrections and Sentencing Legislation Amendment Act 2011

A2011-57 pt 4

notified LR 14 December 2011
s 1, s 2 commenced 14 December 2011 (LA s 75 (1))
pt 4 commenced 15 December 2011 (s 2)

Courts Legislation Amendment Act 2012 A2012-29 sch 1 pt 1.1

notified LR 13 June 2012
s 1, s 2 commenced 13 June 2012 (LA s 75 (1))
amdt 1.3 commenced 13 June 2013 (s 2)
sch 1 pt 1.1 remainder commenced 13 August 2012 (s 2 and
[CN2012-14](#))

Crimes Legislation Amendment Act 2013 A2013-12 pt 4

notified LR 17 April 2013
s 1, s 2 commenced 17 April 2013 (LA s 75 (1))
pt 4 commenced 24 April 2013 (s 2)

Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.9

notified LR 24 May 2013
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))
sch 3 pt 3.9 commenced 14 June 2013 (s 2)

Crimes (Sentencing) Amendment Act 2013 A2013-36

notified LR 24 September 2013
s 1, s 2 commenced 24 September 2013 (LA s 75 (1))
remainder commenced 25 September 2013 (s 2)

Crimes (Sentencing) Amendment Act 2014 A2014-58

notified LR 4 December 2014
s 1, s 2 commenced 4 December 2014 (LA s 75 (1))
remainder commenced 5 December 2014 (s 2)

Crimes Legislation Amendment Act 2015 A2015-3 pt 6

notified LR 2 March 2015
s 1, s 2 commenced 2 March 2015 (LA s 75 (1))
pt 6 commenced 3 March 2015 (s 2 (1))

Crimes (Domestic and Family Violence) Legislation Amendment Act 2015 A2015-40 sch 1 pt 1.7

notified LR 4 November 2015
s 1, s 2 commenced 4 November 2015 (LA s 75 (1))
sch 1 pt 1.7 commenced 4 May 2016 (s 2 (2))

Crimes (Sentencing and Restorative Justice) Amendment Act 2016 A2016-4 pt 2

notified LR 24 February 2016
s 1, s 2 commenced 24 February 2016 (LA s 75 (1))
pt 2 commenced 2 March 2016 (s 2 (1))

Victims of Crime (Financial Assistance) Act 2016 A2016-12 sch 3 pt 3.2

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 3 pt 3.2 commenced 1 July 2016 (s 2 (1) (a))

Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.16

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.16 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016 A2016-1 s 2](#))

Family Violence Act 2016 A2016-42 sch 2 pt 2.3, sch 3 pt 3.8 (as am by A2017-10 s 7)

notified LR 18 August 2016
s 1, s 2 commenced 18 August 2016 (LA s 75 (1))
sch 2 pt 2.3, sch 3 pt 3.8 commenced 1 May 2017 (s 2 (2) as am by [A2017-10 s 7](#))

Crimes (Serious and Organised Crime) Legislation Amendment Act 2016 A2016-48 pt 7

notified LR 23 August 2016
s 1, s 2 commenced 23 August 2016 (LA s 75 (1))
pt 7 commenced 24 August 2016 (s 2 (1))

Endnotes

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.19

notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.19 commenced 1 September 2016 (s 2)

Crimes Legislation Amendment Act 2017 A2017-6 pt 3

notified LR 20 February 2017
s 1, s 2 commenced 20 February 2017 (LA s 75 (1))
pt 3 commenced 21 February 2017 (s 2)

Crimes Legislation Amendment Act 2017 (No 2) A2017-9 pt 4

notified LR 5 April 2017
s 1, s 2 commenced 5 April 2017 (LA s 75 (1))
pt 4 commenced 6 April 2017 (s 2)

Family and Personal Violence Legislation Amendment Act 2017 A2017-10 s 7

notified LR 6 April 2017
s 1, s 2 commenced 6 April 2017 (LA s 75 (1))
s 7 commenced 30 April 2017 (s 2 (1))

Note This Act only amends the Family Violence Act 2016 A2016-42.

Crimes Legislation Amendment Act 2018 A2018-6 pt 3

notified LR 1 March 2018
s 1, s 2 commenced 1 March 2018 (LA s 75 (1))
pt 3 commenced 2 March 2018 (s 2 (1))

Crimes (Restorative Justice) Amendment Act 2018 A2018-34 sch 1

notified LR 26 September 2018
s 1, s 2 commenced 26 September 2018 (LA s 75 (1))
sch 1 commenced 1 October 2018 (s 2)

Sentencing Legislation Amendment Act 2018 A2018-43 pt 3

notified LR 8 November 2018
s 1, s 2 commenced 8 November 2018 (LA s 75 (1))
pt 3 commenced 9 November 2018 (s 2)

Royal Commission Criminal Justice Legislation Amendment Act 2018**A2018-46 pt 3, sch 1 pt 1.3**

notified LR 4 December 2018

s 1, s 2 commenced 4 December 2018 (LA s 75 (1))

pt 3, sch 1 pt 1.3 commenced 5 December 2018 (s 2)

Royal Commission Criminal Justice Legislation Amendment Act 2019**A2019-6 pt 4**

notified LR 27 March 2019

s 1, s 2 commenced 27 March 2019 (LA s 75 (1))

s 3 commenced 28 March 2019 (LA s 75AA)

pt 4 commenced 1 September 2019 (s 2 (2) and [CN2019-15](#))

Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019 A2019-31 pt 6

notified LR 9 October 2019

s 1, s 2 commenced 9 October 2019 (LA s 75 (1))

pt 6 commenced 3 December 2019 (s 2 (1) and [CN2019-19](#))

Statute Law Amendment Act 2019 A2019-42 sch 3 pt 3.9

notified LR 31 October 2019

s 1, s 2 commenced 31 October 2019 (LA s 75 (1))

sch 3 pt 3.9 commenced 14 November 2019 (s 2 (1))

Endnotes

4 Amendment history

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Dictionary

s 3 am [A2008-46](#) amdt 3.15; [A2016-42](#) amdt 3.44

Purposes of sentencing

s 7 am [A2008-19](#) amdt 1.36

Meaning of offender

s 8 am [A2008-19](#) amdt 1.37; [A2018-43](#) s 13; [A2019-31](#) s 12, s 13

Imposition of penalties

s 9 am [A2006-23](#) amdt 1.136; [A2008-19](#) amdt 1.38, amdt 1.39;
[A2016-4](#) s 4, s 5

Imprisonment

s 10 am [A2006-23](#) amdt 1.136; [A2008-19](#) amdt 1.40, amdt 1.41;
[A2014-58](#) s 4; [A2016-4](#) s 5

Intensive correction orders

s 11 am [A2006-23](#) amdt 1.104; [A2014-58](#) s 5
sub [A2016-4](#) s 7

Suspended sentences

s 12 am [A2008-19](#) amdt 1.42; [A2019-31](#) s 14

Drug and alcohol treatment orders

s 12A ins [A2019-31](#) s 15

Good behaviour orders

s 13 am [A2006-23](#) amdt 1.105; [A2008-19](#) amdt 1.43, amdt 1.44;
[A2009-7](#) amdt 1.9; [A2010-2](#) amdt 1.4; [A2013-19](#) amdt 3.63

Fines—orders to pay

s 14 am [A2007-44](#) amdt 1.1; [A2008-19](#) amdt 1.45; [A2010-21](#)
amdt 1.5; ss renum R14 LA

Fines—security for payment

s 15A ins [A2010-21](#) amdt 1.6

Driver licence disqualification orders—motor vehicle theft

s 16 am [A2008-19](#) amdt 1.46; [A2013-19](#) amdt 3.64

Non-conviction orders—general

s 17 am [A2008-19](#) amdt 1.47

Non-conviction orders—ancillary orders

s 18 am [A2006-23](#) amdt 1.106

Reparation orders—losses and expenses generally

s 19 am [A2013-19](#) amdt 3.64; [A2016-12](#) amdt 3.2

Definitions—pt 3.4

s 21 def *non-association order* am [A2016-4](#) s 8

Application—pt 3.4

s 22 am [A2016-4](#) s 9, s 10
sub [A2019-31](#) s 16

Non-association and place restriction orders—when may be made

s 23 am [A2008-19](#) amdt 1.48; [A2016-48](#) s 30, s 31; [A2017-9](#) s 6;
pars renum R39 LA; [A2016-42](#) amdt 3.45

Non-association and place restriction orders—maximum period

s 24 am [A2016-4](#) s 11, s 12; [A2019-31](#) s 17

Non-association and place restriction orders—explanation and official notice

s 25 am [A2008-19](#) amdt 1.49

Combination sentences—offences punishable by imprisonment

s 29 am [A2006-23](#) amdt 1.136; [A2008-19](#) amdt 1.50, amdt 1.51;
[A2010-2](#) amdt 1.5; [A2014-58](#) ss 6-8; [A2016-4](#) ss 13-16; pars
renum R30 LA; [A2018-6](#) s 12, s 13

Combination sentences—start and end

s 31 am [A2006-23](#) amdt 1.136; [A2008-19](#) amdt 1.52; [A2018-6](#) s 14,
s 15

Sentencing—relevant considerations

s 33 am [A2008-19](#) amdt 1.53; [A2013-12](#) s 18; pars renum R23 LA;
[A2013-19](#) amdt 3.65; [A2013-36](#) s 4; [A2018-34](#) amdt 1.1

Sentencing—irrelevant considerations

s 34 am [A2013-12](#) s 19; pars renum R23 LA; [A2016-42](#) amdt 2.3;
[A2018-6](#) s 16; [A2018-46](#) s 7

Sentencing—sexual offences against children

s 34A ins [A2018-46](#) s 8

Reduction of sentence—guilty plea

s 35 am [A2012-29](#) amdt 1.1

Reduction of sentence—assistance in administration of justice

s 35A ins [A2013-36](#) s 5

Reduction of sentence—statement by court about penalty

s 37 am [A2013-36](#) s 6, s 7

Sentences of imprisonment and uncompleted young offender orders

s 38 sub [A2008-20](#) amdt 4.34

Meaning of assessor—pt 4.2

s 39A ins [A2018-43](#) s 14

Endnotes

4 Amendment history

Pre-sentence report matters

s 40A ins [A2007-15](#) amdt 1.2
am [A2008-19](#) amdt 1.54; [A2013-12](#) s 20; pars renum R23 LA

Pre-sentence report matters—court alcohol and drug assessment service

s 40B ins [A2013-12](#) s 21

Pre-sentence reports—order

s 41 sub [A2007-15](#) amdt 1.2
am [A2008-19](#) amdt 1.55; [A2011-22](#) amdt 1.145, amdt 1.149;
[A2011-57](#) s 14; [A2012-29](#) amdt 1.2; ss renum R22 LA;
[A2016-4](#) s 17, s 18; pars renum R30 LA; [A2018-43](#) s 15;
ss renum R43 LA

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s 42 am [A2006-23](#) amdt 1.107; pars renum [A2006-23](#) amdt 1.108
sub [A2007-15](#) amdt 1.2; [A2016-4](#) ss 19-21; ss renum R30 LA

Pre-sentence reports—powers of assessors

s 43 am [A2007-15](#) amdt 1.3; [A2008-19](#) amdt 1.56, amdt 1.57;
pars and ss renum R8 LA; [A2011-13](#) amdt 1.3, amdt 1.4;
pars renum R20 LA; [A2016-42](#) amdt 3.46, amdt 3.47

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s 45 am [A2011-57](#) s 15
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amdt 1.12; [A2018-46](#) amdt 1.3; [A2019-6](#) s 11**Start and end of sentences—general rule**s 62 am [A2016-4](#) s 22; pars renum R30 LA**Application—pt 5.2**s 64 am [A2008-19](#) amdt 1.58; [A2014-58](#) s 9; [A2016-4](#) s 23, s 24; ss
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s 78 am [A2006-23](#) amdt 1.115

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am [A2018-43](#) ss 20-22; ss renum R43 LA

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s 79 am [A2007-15](#) amdt 1.4

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s 85 am [A2006-23](#) amdt 1.116; [A2008-19](#) amdt 1.63

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s 96 hdg sub [A2016-4](#) s 41

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s 97 hdg sub [A2016-4](#) s 42

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s 99 hdg sub [A2016-4](#) s 44

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s 100 hdg sub [A2016-4](#) s 45

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s 103 am [A2008-19](#) amdt 1.66, amdt 1.67; [A2011-22](#) amdt 1.145, amdt 1.149

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s 113 am [A2008-19](#) amdt 1.68, amdt 1.69

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s 115 hdg sub [A2013-19](#) amdt 3.66

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s 121 am [A2008-19](#) amdt 1.70

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s 126 am [A2008-19](#) amdt 1.71; [A2011-22](#) amdt 1.145, amdt 1.149

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s 129 am [A2008-19](#) amdt 1.73, amdt 1.74; [A2011-22](#) amdt 1.145, amdt 1.149

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s 130 am [A2008-19](#) amdt 1.75, amdt 1.76; [A2011-22](#) amdt 1.145, amdt 1.149

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s 133B hdg sub [A2013-19](#) amdt 3.66
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div 8A.2.2 hdg ins [A2008-19](#) amdt 1.77

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s 133N hdg sub [A2013-19](#) amdt 3.66
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s 133Z hdg sub [A2009-24](#) amdt 1.17
s 133Z ins [A2008-19](#) amdt 1.77

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s 133ZA ins [A2008-19](#) amdt 1.77

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am [A2011-22](#) amdt 1.149

Accommodation orders—maximum period

s 133ZC ins [A2008-19](#) amdt 1.77

Accommodation orders—2 or more orders

s 133ZD ins [A2008-19](#) amdt 1.77

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s 134 am [A2006-23](#) amdt 1.119; [A2007-15](#) amdt 1.7

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s 136 am [A2006-23](#) amdt 1.120, amdt 1.121; [A2008-19](#) amdt 1.78;
pars renum R8 LA; [A2010-29](#) amdt 1.1; [A2011-22](#)
amdt 1.145, amdt 1.149; [A2016-13](#) amdt 1.50

Transitional

ch 10 hdg exp 2 June 2011 (s 147 (1))

Application of Act to offenders charged before and after commencement

s 140 hdg sub [A2006-23](#) amdt 1.122
s 140 am [A2006-23](#) amdt 1.123, amdt 1.124
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

References to *charge*—s 140

s 140A ins as mod [SL2006-25](#) mod 1.1
exp 18 December 2007 (see [SL2006-22](#) s 3 (2))
ins [A2008-22](#) amdt 1.22
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

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

s 141 am [A2006-23](#) amdt 1.125-1.127
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

Reparation orders—Crimes Act, s 350

s 142 am [A2006-23](#) amdt 1.127
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

Transitional regulations

s 143 am [A2006-23](#) amdt 1.128
exp 2 June 2008 (s 143 (4))

Common law disabilities of convictions abolished

s 144 ins [A2006-23](#) amdt 1.129
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

Construction of outdated references

s 145 ins [A2006-23](#) amdt 1.129
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

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s 146 ins [A2006-23](#) amdt 1.129
exp 2 June 2011 (s 147 (1) (LA s 88 declaration applies))

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s 147 ins [A2006-23](#) amdt 1.129
exp 2 June 2011 (s 147 (1))

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exp 27 February 2014 (s 203 (1) (LA s 88 declaration applies))

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s 200 ins [A2008-20](#) amdt 1.4
exp 27 February 2014 (s 203 (1) (LA s 88 declaration applies))

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exp 27 February 2014 (s 203 (1) (LA s 88 declaration applies))

Transitional regulations

s 202 ins [A2008-20](#) amdt 1.4
exp 27 February 2011 (s 202 (4))

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s 203 ins [A2008-20](#) amdt 1.4
exp 27 February 2014 (s 203 (1) (LA s 88 declaration applies))

Transitional—Crimes (Sentencing) Amendment Act 2014

ch 12 hdg ins [A2014-58](#) s 11
exp 1 July 2016 (s 205)

Application of amendments

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exp 1 July 2016 (s 205)

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exp 1 July 2016 (s 205)

Delegation

ch 13 hdg ins [A2017-6](#) s 5
exp 21 February 2017 (s 207)

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ins [A2017-6](#) s 5
exp 21 February 2017 (s 207)

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s 207

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Dictionary

dict

am [A2011-22](#) amdt 1.146; [A2013-19](#) amdt 3.67; [A2016-13](#) amdt 1.51; [A2016-52](#) amdt 1.60; [A2018-43](#) s 26
def **accommodation order** ins [A2008-19](#) amdt 1.79
def **assessor** am [A2007-15](#) amdt 1.8
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def **at** ins [A2006-23](#) amdt 1.130
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def **correctional centre** am [A2013-19](#) amdt 3.68
def **chief executive (CYP)** ins [A2008-19](#) amdt 1.81
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def **community service condition** sub [A2016-4](#) s 47
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def **core conditions** ins [A2019-31](#) s 22
def **corrections officer** sub [A2006-23](#) amdt 1.132
def **court** sub [A2019-31](#) s 23
def **custodial part** ins [A2019-31](#) s 24
def **CYP director-general** ins [A2011-22](#) amdt 1.148
def **deferred sentence obligations** sub [A2013-19](#) amdt 3.69
def **detention place** ins [A2008-19](#) amdt 1.81
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def **family violence offence** ins [A2016-42](#) amdt 3.49
def **health director-general** ins [A2019-31](#) s 24
def **intensive correction** ins [A2016-4](#) s 48
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def **member** ins [A2019-31](#) s 24
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def **pre-sentence report matter** ins [A2007-15](#) amdt 1.9
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def **supervision condition** ins [A2008-19](#) amdt 1.83
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5 Earlier republishings

5 Earlier republishings

Some earlier republishings were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republishings have also been published in printed format. These republishings are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 2 June 2006	2 June 2006– 31 July 2007	SL2006-25	new Act, amendments by A2006-23 and modifications by SL2006-22 as amended by SL2006-25
R2 1 Aug 2007	1 Aug 2007– 18 Dec 2007	A2007-15	amendments by A2007-15
R3 19 Dec 2007	19 Dec 2007– 19 Dec 2007	A2007-44	commenced expiry
R4 20 Dec 2007	20 Dec 2007– 2 June 2008	A2007-44	amendments by A2007-44
R5 3 June 2008	3 June 2008– 28 July 2008	A2007-44	commenced expiry
R6 29 July 2008	29 July 2008– 26 Oct 2008	A2008-22	amendments by A2008-22
R7 27 Oct 2008	27 Oct 2008– 26 Feb 2009	A2008-46	amendments by A2008-20
R8 27 Feb 2009	27 Feb 2009– 5 Mar 2009	A2008-46	amendments by A2008-19 and A2008-20
R9 6 Mar 2009	6 Mar 2009– 29 Mar 2009	A2009-7	amendments by A2009-7
R10 30 Mar 2009	30 Mar 2009– 29 May 2009	A2009-7	amendments by A2008-46

Republication No and date	Effective	Last amendment made by	Republication for
R11* 30 May 2009	30 May 2009– 3 Sept 2009	A2009-7	amendments by A2008-44
R12 4 Sept 2009	4 Sept 2009– 24 Nov 2009	A2009-24	amendments by A2009-24
R13 25 Nov 2009	25 Nov 2009– 30 June 2010	A2009-44	amendments by A2009-44
R14 1 July 2010	1 July 2010– 15 Aug 2010	A2010-21	amendments by A2010-21
R15 16 Aug 2010	16 Aug 2010– 27 Feb 2011	A2010-21	amendments by A2010-2
R16 28 Feb 2011	28 Feb 2011– 16 Mar 2011	A2010-29	amendments by A2010-29 and expiry of provision (s 202)
R17 17 Mar 2011	17 Mar 2011– 2 June 2011	A2011-7	amendments by A2011-7
R18 3 June 2011	3 June 2011– 30 June 2011	A2011-13	expiry of transitional provisions (ch 10)
R19 1 July 2011	1 July 2011– 24 July 2011	A2011-22	amendments by A2011-22
R20* 25 July 2011	25 July 2011– 14 Dec 2011	A2011-22	amendments by A2011-13
R21 15 Dec 2011	15 Dec 2011– 12 Aug 2012	A2011-57	amendments by A2011-57
R22 13 Aug 2012	13 Aug 2012– 23 Apr 2013	A2012-29	amendments by A2012-29
R23 24 Apr 2013	24 Apr 2013– 12 June 2013	A2013-12	amendments by A2013-12
R24 13 June 2013	13 June 2013– 13 June 2013	A2013-12	amendments by A2012-29
R25 14 June 2013	14 June 2013– 24 Sept 2013	A2013-19	amendments by A2013-19

Endnotes

5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R26 25 Sept 2013	25 Sept 2013– 27 Feb 2014	A2013-36	amendments by A2013-36
R27 28 Feb 2014	28 Feb 2014– 4 Dec 2014	A2013-36	expiry of transitional provisions (ch 11)
R28 5 Dec 2014	5 Dec 2014– 2 Mar 2015	A2014-58	amendments by A2014-58
R29 3 Mar 2015	3 Mar 2015– 1 Mar 2016	A2015-3	amendments by A2015-3
R30 2 Mar 2016	2 Mar 2016– 31 Mar 2016	A2016-4	amendments by A2016-4
R31 1 Apr 2016	1 Apr 2016– 3 May 2016	A2016-13	amendments by A2016-13
R32 4 May 2016	4 May 2016– 30 June 2016	A2016-13	amendments by A2015-40
R33 1 July 2016	1 July 2016– 1 July 2016	A2016-13	amendments by A2016-12
R34 2 July 2016	2 July 2016– 23 Aug 2016	A2016-13	expiry of transitional provisions (ch 12)
R35 24 Aug 2016	24 Aug 2016– 31 Aug 2016	A2016-48	amendments by A2016-48
R36 1 Sept 2016	1 Sept 2016– 20 Feb 2017	A2016-52	amendments by A2016-52
R37 21 Feb 2017	21 Feb 2017– 21 Feb 2017	A2017-6	amendments by A2017-6
R38 22 Feb 2017	22 Feb 2017– 5 Apr 2017	A2017-6	expiry of provisions (ch 13)
R39 6 Apr 2017	6 Apr 2017– 30 Apr 2017	A2017-9	amendments by A2017-9
R40 1 May 2017	1 May 2017– 1 Mar 2018	A2017-10	amendments by A2016-42 as amended by A2017-10

Republication No and date	Effective	Last amendment made by	Republication for
R41 2 Mar 2018	2 Mar 2018– 30 Sept 2018	A2018-6	amendments by A2018-6
R42 1 Oct 2018	1 Oct 2018– 8 Nov 2018	A2018-34	amendments by A2018-34
R43 9 Nov 2018	9 Nov 2018– 4 Dec 2018	A2018-43	amendments by A2018-43
R44 5 Dec 2018	5 Dec 2018– 31 Aug 2019	A2018-46	amendments by A2018-46
R45 1 Sept 2019	1 Sept 2019– 13 Nov 2019	A2019-6	amendments by A2019-6
R46 14 Nov 2019	14 Nov 2019– 2 Dec 2019	A2019-42	A2019-42

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.