



Australian Capital Territory

Sentencing Legislation Amendment Act 2018

A2018-43

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Australian Capital Territory

Sentencing Legislation Amendment Act 2018

A2018-43

An Act to amend legislation about sentencing, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Sentencing Legislation Amendment Act 2018*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Crimes (Sentence Administration) Act 2005* and the *Crimes (Sentencing) Act 2005*.

Note This Act also amends other legislation (see sch 1).

Part 2 Crimes (Sentence Administration) Act 2005

4 New section 48A

insert

48A Intensive correction orders—community service work—therapy and education program limit

Participation in a program for therapy or education must not make up more than 25% of the total number of hours of community service work required to be performed by an offender subject to a community service condition under an intensive correction order.

5 Cancellation of intensive correction order on further conviction etc Section 65 (2) and (3)

substitute

- (2) The sentencing court must, as soon as practicable—
 - (a) cancel the intensive correction order, unless cancellation is not in the interests of justice; and
 - (b) if the court cancels the intensive correction order—order that the remainder of the offender's sentence be served by full-time detention.
- (3) If the court makes an order under subsection (2) (b), the court—
 - (a) must state when the period of full-time detention starts and ends; and
 - (b) may set a nonparole period for the period of full-time detention if—
 - (i) the sentence of imprisonment for which the intensive correction order was made is more than 12 months; and

- (ii) the period of full-time detention is more than 30 days.
- (4) To remove any doubt, the *Crimes (Sentencing) Act 2005*, part 5.2, applies to a nonparole period set under subsection (3) (b) as if the nonparole period had been set under that part.

Note The *Crimes (Sentencing) Act 2005*, pt 5.2 deals with setting and review of nonparole periods.

- (5) If the court decides that it is not in the interests of justice to cancel the intensive correction order, the court must give reasons for the decision.

6 Cancellation of intensive correction order—offender may apply for order to be reinstated
Section 73 (2) (b) (ii)

omit

(an *intensive correction assessment*)

7 New section 78A

insert

78A Intensive correction order cancellation by court—official notice of sentence

- (1) This section applies if a court makes an order under section 65 (a *cancellation order*) cancelling an offender's intensive correction order.
- (2) As soon as practicable (but no later than 10 working days) after the day the 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—
- (a) the offender; and
 - (b) the director-general; and

- (c) if the court sets a nonparole period for any part of the remainder of the offender's sentence—the secretary of the sentence administration board.
- (3) The notice must include the following information:
- (a) when the period of full-time detention starts or is taken to have started;
 - (b) when the period of full-time detention ends;
 - (c) if a nonparole period is set for the period of full-time detention—the nonparole period and when it starts and ends;
 - (d) the earliest day (on the basis of the information currently available to the court) that the offender will—
 - (i) become entitled to be released from full-time detention; and
 - (ii) if the offender's sentence includes a nonparole period—be eligible to be released on parole.
- (4) Failure to comply with this section does not invalidate the cancellation order.

8 Section 80

substitute

80 Intensive correction orders—outstanding warrants

- (1) This section applies if a warrant is issued for an offender's arrest under this chapter.
- (2) Any period for which the warrant is outstanding and the offender is not in custody does not count as part of the offender's term of imprisonment by intensive correction.

(3) In this section:

in custody means:

- (a) remanded in custody under a territory law or a law of the Commonwealth or a State; or
- (b) detained at a place under the *Mental Health Act 2015*.

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

9 New section 93A

insert

93A Good behaviour orders—community service work—therapy and education program limit

Participation in a program for therapy or education must not make up more than 25% of the total number of hours of community service work required to be performed by an offender subject to a community service condition under a good behaviour order.

10 New section 212A

in part 9.2, insert

212A Board hearing—outstanding warrants

- (1) This section applies if a warrant is issued under section 206 (2) for the arrest of an offender, because—
 - (a) the offender failed to appear before the board in accordance with a notice under section 63 (Notice of inquiry—breach of intensive correction order obligations); or
 - (b) a judicial member of the board considers that an offender will not appear before the board in accordance with a notice under section 63.

(2) Any period for which the warrant is outstanding and the offender is not in custody does not count as part of the offender's term of imprisonment by intensive correction.

(3) In this section:

in custody means:

- (a) remanded in custody under a territory law or a law of the Commonwealth or a State; or
- (b) detained at a place under the [Mental Health Act 2015](#).

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

11 Section 316

substitute

316 Meaning of *community service work*

(1) *Community service work* includes any of the following prescribed by regulation:

- (a) work;
- (b) community service programs.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) If an offender who is subject to a community service order attends a program for therapy or education in accordance with the directions of the director-general, the attendance at the program is taken to be ***community service work***.

Note The number of hours of attendance at a program for therapy or education which may count toward the performance of a community service condition is limited under—

- (a) if the condition forms part of an intensive correction order—s 48A;
or
- (b) if the condition forms part of a good behaviour order—s 93A.

12 Dictionary, new definition of *intensive correction assessment*

insert

intensive correction assessment, for chapter 5 (Intensive correction orders)—see section 40.

Part 3 Crimes (Sentencing) Act 2005

13 Meaning of *offender* Section 8, definition of *offender*, paragraph (b)

substitute

(b) for—

- (i) part 4.2 (Pre-sentence reports)—see section 40; and
- (ii) part 4.2A (Intensive correction assessments)—see section 46B.

14 New section 39A

in part 4.2, insert

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).

15 Pre-sentence reports—order Section 41 (8)

omit

16 New part 4.2A

insert

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.

**17 Application—pt 5.2
Section 64 (1)**

substitute

- (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.

18 New division 5.4.1A heading

before division 5.4.1, insert

Division 5.4.1A General**19 Application—pt 5.4
Section 76**

relocate to division 5.4.1A

**20 Intensive correction orders—suitability
Section 78 (1) and (2)**

substitute

- (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).

21 Section 78 (5)

omit

table 79

substitute

table 46D

22 Section 78 (9)

omit

**23 Intensive correction orders—intensive correction assessment matters
Section 79**

omit

**24 Intensive correction order—community service—suitability
Section 80D (1)**

substitute

- (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.

**25 Intensive correction orders—rehabilitation programs—suitability
Section 80J (1) (a)**

substitute

- (a) an intensive correction assessment that addresses whether a rehabilitation program condition is suitable for the offender is given to the court; or

26 Dictionary, note 2

insert

- Magistrates Court
- Supreme Court

27 Dictionary, definition of *assessor*

substitute

assessor—

- (a) for part 4.2 (Pre-sentence reports)—see section 39A; and
- (b) for part 4.2A (Intensive correction assessments)—see section 46A.

28 Dictionary, new definition of *intensive correction assessment*

insert

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.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Crimes Act 1900

[1.1] Dictionary, definition of *lawful custody*

omit

Part 1.2 Road Transport (General) Act 1999

[1.2] Section 61A, definition of *automatic disqualification provision*, new paragraph (i)

insert

- (i) *Road Transport (Driver Licensing) Act 1999*, section 32 (6) (which is about automatic disqualification for an offence of either driving while suspended, or applying for a driver licence while suspended and omitting disclosure of the suspension).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 September 2018.

2 Notification

Notified under the [Legislation Act](#) on 8 November 2018.

3 Republications of amended laws

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

I certify that the above is a true copy of the Sentencing Legislation Amendment Bill 2018, which was passed by the Legislative Assembly on 1 November 2018.

Clerk of the Legislative Assembly

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