

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

Crimes (Restorative Justice) Amendment Bill 2018

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(Minister for Justice, Consumer Affairs and Road Safety)

Crimes (Restorative Justice) Amendment Bill 2018

A Bill for

An Act to amend the *Crimes (Restorative Justice) Act 2004*, and for other purposes

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

1 **1 Name of Act**

2 This Act is the *Crimes (Restorative Justice) Amendment Act 2018*.

3 **2 Commencement**

4 This Act commences on 1 October 2018.

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

7 **3 Legislation amended**

8 This Act amends the *Crimes (Restorative Justice) Act 2004*.

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

10 **4 Eligible victims**
11 **Section 17 (1) (c) and (2) (c), except note**

12 *omit*

13 **5 Eligible parents**
14 **Section 18 (1) (c)**

15 *omit*

16 **6 Eligible offenders**
17 **Section 19 (1) (b)**

18 *substitute*

19 (b) the offender—

20 (i) either—

21 (A) accepts responsibility for the commission of the
22 offence; or

23 (B) if the offender is a young offender and the offence is
24 a less serious offence—does not deny responsibility
25 for the commission of the offence; and

- 1 (ii) was at least 10 years old when the offence was committed,
2 or was allegedly committed; and
3 (iii) agrees to take part in restorative justice.

4 **7 Section 20**

5 *substitute*

6 **20 Accepting or not denying responsibility for offences**

- 7 (1) This Act does not prevent an offender from pleading not guilty to an
8 offence only because section 19 (1) (b) (i) applies to the offender.
9 (2) A court is not required to reduce the severity of any sentence it may
10 impose on an offender or young offender because the court is aware
11 section 19 (1) (b) (i) applies to the offender.

12 *Note 1* To be eligible to take part in restorative justice, an offender must accept
13 responsibility for the commission of the offence or, if the offender is a
14 young offender and the offence is a less serious offence, must not deny
15 responsibility for the commission of the offence (see s 19).

16 *Note 2* The *Crimes (Sentencing) Act 2005*, section 33 (1) (y) provides that, in
17 deciding how an offender or young offender should be sentenced (if at
18 all) for an offence, the matters known to the court that it must consider
19 include whether this Act, s 19 (1) (b) (i) applies to the offender.
20 However, the *Crimes (Sentencing) Act 2005*, section 34 (1) (h) provides
21 that a court must not increase the severity of the sentence that it would
22 otherwise impose on a person for an offence because the offender
23 (including a young offender) has chosen not to take part, or to continue
24 to take part, in restorative justice for the offence.

- 1 **8 Referring entities**
2 **Table 22, item 3, column 3, paragraph (b)**
- 3 *omit*
4 case management hearing
- 5 *substitute*
6 pre-hearing mention
- 7 **9 Referral power**
8 **Section 24 (3) (b)**
- 9 *substitute*
10 (b) section 27 (Referral during court proceeding—before offender
11 enters plea).
- 12 **10 New section 24 (4)**
- 13 *insert*
14 (4) This section does not apply to a referral under section 28A (Referrals
15 not requiring offender notification—post-sentence stage).
- 16 **11 Explanation of restorative justice**
17 **Section 25 (e)**
- 18 *substitute*
19 (e) if the offender has not entered a plea in relation to the offence—
20 that the offender is not prevented from pleading not guilty to the
21 offence only because section 19 (1) (b) (i) applies to the
22 offender; and

- 1 **12 Section 25 (f) (i)**
- 2 *substitute*
- 3 (i) may consider whether section 19 (1) (b) (i) applies to the
- 4 offender, but is not required to reduce the severity of any
- 5 sentence as a result; and
- 6 **13 Section 27 heading**
- 7 *substitute*
- 8 **27 Referral during court proceeding—before offender enters**
- 9 **plea**
- 10 **14 Section 27 (3)**
- 11 *substitute*
- 12 (3) The court must ensure that a copy of the court referral order is given
- 13 to—
- 14 (a) the director-general (restorative justice); and
- 15 (b) the director of public prosecutions; and
- 16 (c) any lawyer representing the offender.
- 17 (3A) The director-general (restorative justice) must ensure that a copy of
- 18 the court referral order received under section (3) (a) is given to—
- 19 (a) each person who could be an eligible victim or eligible parent in
- 20 relation to the offence; and
- 21 (b) the offender.

1 **15 Court referral orders—reports**
2 **Section 28 (3)**

3 *substitute*

4 (3) The report must include a statement of the following:

5 (a) whether the director-general is satisfied that, in relation to the
6 offence—

7 (i) there is an eligible victim or eligible parent in relation to
8 the offence; and

9 (ii) there is an eligible offender in relation to the offence; and

10 (iii) the offence is a suitable offence for restorative justice;

11 (b) whether a restorative justice conference was held;

12 (c) if a restorative justice conference was held—

13 (i) the extent to which the conference met the objects of this
14 Act; and

15 (ii) whether a restorative justice agreement was reached at the
16 conference.

17 **16 Section 28 (5)**

18 *substitute*

19 (5) The director-general must give a copy of the report to—

20 (a) each person who is a required participant in a restorative justice
21 conference under section 42 (Required participants); and

22 (b) the director of public prosecutions; and

23 (c) any lawyer representing the offender.

17 New division 6.4*insert***Division 6.4 Referrals not requiring offender notification****28A Referrals not requiring offender notification—
post-sentence stage**

- (1) A post-sentence referring entity may refer an offence for restorative justice if—
- (a) the entity is satisfied there is an eligible victim or eligible parent in relation to the offence; and
 - (b) the offender—
 - (i) was at least 10 years old when the offence was committed; and
 - (ii) is in the post-sentence stage in relation to the offence; and
 - (c) the entity is satisfied, having regard to the objects of this Act, that it is not appropriate, or it is not reasonably practicable in the circumstances, to notify the offender that the offence is being considered for restorative justice.

Note For a referral under this section, the referring entity is not required to be satisfied the offender is an eligible offender. However, the director-general must be satisfied of that before deciding the offence is suitable for restorative justice (see s 30 (b)).

- (2) The restorative justice guidelines may prescribe procedures for how a post-sentence referring entity must make decisions about referrals under subsection (1).

- (3) In this section:

post-sentence referring entity means an entity mentioned in table 22, item 5, column 2.

1 *post-sentence stage*, in relation to an offence for which the offender
2 is found guilty, means—

3 (a) after a court has made a sentence-related order for the offender;
4 and

5 (b) before the end of the term of the sentence-related order or the
6 sentence (if any) of which it forms part (whichever is later).

7 **18 Section 29**

8 *substitute*

9 **29 Meaning of *personal characteristics***

10 In this Act:

11 *personal characteristics*, of a victim, or a parent of a child victim, or
12 offender, means personal characteristics of the victim, parent or
13 offender that might affect—

14 (a) the capability of the victim, parent or offender to agree to take
15 part in restorative justice; or

16 (b) the outcome of restorative justice for the relevant offence.

17 **Examples**

- 18 • age
19 • gender
20 • social or cultural background

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

1 **19 Finding of eligibility by referring entity**
2 **Section 31 (1)**

3 *after*

4 section 23 (Referral—procedure)

5 *insert*

6 or section 28A (Referrals not requiring offender notification—
7 post-sentence stage)

8 **20 Section 31 (1), new note**

9 *insert*

10 *Note* For a referral under s 28A, the referring entity is not required to be
11 satisfied that the offender is an eligible offender.

12 **21 Suitability—decision**
13 **New section 32 (4)**

14 *after the note, insert*

15 (4) In this section:

16 **written consent** includes oral or other consent, if a written record of
17 the consent is made by a person who was with the person giving the
18 consent when it was given.

19 **Example**

20 Royce is an eligible victim who has an acquired brain injury that limits his ability
21 to write and speak. Royce is able to indicate his consent by using a communication
22 board. Royce's mother is with Royce when he consents and makes a written record
23 of his actions.

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

1 **22 Explanation of restorative justice—before consent**
2 **Section 32A (e)**

3 *substitute*

4 (e) if the offender has not entered a plea in relation to the offence—
5 that the offender is not prevented from pleading not guilty to the
6 offence only because section 19 (1) (b) (i) applies to the
7 offender; and

8 **23 Section 32A (f) (i)**

9 *substitute*

10 (i) may consider whether section 19 (1) (b) (i) applies to the
11 offender, but is not required to reduce the severity of any
12 sentence as a result; and

13 **24 Explanation for participants**
14 **Section 45 (e)**

15 *substitute*

16 (e) if the offender has not entered a plea in relation to the offence—
17 that the offender is not prevented from pleading not guilty to the
18 offence only because section 19 (1) (b) (i) applies to the
19 offender; and

20 **25 Section 45 (f) (i)**

21 *substitute*

22 (i) may consider whether section 19 (1) (b) (i) applies to the
23 offender, but is not required to reduce the severity of any
24 sentence as a result; and

1 **26 Form of agreement**
2 **New section 52 (3)**

3 *after the note, insert*

- 4 (3) If a required participant is not able to sign a restorative justice
5 agreement but has given oral or other consent to the agreement, the
6 director-general must ensure that a written record of the consent is—
- 7 (a) made by a person who was with the person giving the consent
8 when it was given; and
- 9 (b) kept with the restorative justice agreement.

10 **27 Explanation of effect of agreement**
11 **Section 53 (d)**

12 *substitute*

- 13 (d) if the offender has not entered a plea in relation to the offence—
14 that the offender is not prevented from pleading not guilty to the
15 offence only because section 19 (1) (b) (i) applies to the
16 offender; and

17 **28 Section 53 (e) (i)**

18 *substitute*

- 19 (i) may consider whether section 19 (1) (b) (i) applies to the
20 offender, but is not required to reduce the severity of any
21 sentence as a result; and

- 1 **29** **Secrecy**
2 **Section 64 (1), definition of *protected information*,**
3 **paragraph (b)**
- 4 *substitute*
- 5 (b) does not include—
- 6 (i) information in a restorative justice agreement; or
- 7 (ii) information disclosing who attended a restorative justice
- 8 conference; or
- 9 (iii) a written record of consent made under section 52 (3).
- 10 **30** **Dictionary, definition of *personal characteristics***
- 11 *substitute*
- 12 ***personal characteristics***, of a victim, or a parent of a child victim, or
- 13 offender—see section 29.

