

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

Sentencing Legislation Amendment Bill 2018

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Crimes (Sentence Administration) Act 2005	
4	New section 48A	3
5	Cancellation of intensive correction order on further conviction etc Section 65 (2) and (3)	3

	Page	
6	Cancellation of intensive correction order—offender may apply for order to be reinstated Section 73 (2) (b) (ii)	4
7	New section 78A	4
8	Section 80	5
9	New section 93A	6
10	New section 212A	6
11	Section 316	7
12	Dictionary, new definition of <i>intensive correction assessment</i>	8
Part 3	Crimes (Sentencing) Act 2005	
13	Meaning of <i>offender</i> Section 8, definition of <i>offender</i> , paragraph (b)	9
14	New section 39A	9
15	Pre-sentence reports—order Section 41 (8)	9
16	New part 4.2A	10
17	Application—pt 5.2 Section 64 (1)	14
18	New division 5.4.1A heading	15
19	Application—pt 5.4 Section 76	15
20	Intensive correction orders—suitability Section 78 (1) and (2)	15
21	Section 78 (5)	15
22	Section 78 (9)	16
23	Intensive correction orders—intensive correction assessment matters Section 79	16
24	Intensive correction order—community service— suitability Section 80D (1)	16
25	Intensive correction orders—rehabilitation programs— suitability Section 80J (1) (a)	16
26	Dictionary, note 2	16
27	Dictionary, definition of <i>assessor</i>	17
28	Dictionary, new definition of <i>intensive correction assessment</i>	17

Contents

		Page
Schedule 1	Other amendments	18
Part 1.1	Crimes Act 1900	18
Part 1.2	Road Transport (General) Act 1999	18

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

Sentencing Legislation Amendment Bill 2018

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Legislation amended**

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

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

1 **Part 2** **Crimes (Sentence**
2 **Administration) Act 2005**

3 **4** **New section 48A**

4 *insert*

5 **48A** **Intensive correction orders—community service work—**
6 **therapy and education program limit**

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

11 **5** **Cancellation of intensive correction order on further**
12 **conviction etc**
13 **Section 65 (2) and (3)**

14 *substitute*

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

- 1 (ii) the period of full-time detention is more than 30 days.
- 2 (4) To remove any doubt, the *Crimes (Sentencing) Act 2005*, part 5.2,
3 applies to a nonparole period set under subsection (3) (b) as if the
4 nonparole period had been set under that part.
- 5 *Note* The *Crimes (Sentencing) Act 2005*, pt 5.2 deals with setting and review
6 of nonparole periods.
- 7 (5) If the court decides that it is not in the interests of justice to cancel the
8 intensive correction order, the court must give reasons for the
9 decision.

10 **6 Cancellation of intensive correction order—offender may**
11 **apply for order to be reinstated**
12 **Section 73 (2) (b) (ii)**

13 *omit*

14 (an *intensive correction assessment*)

15 **7 New section 78A**

16 *insert*

17 **78A Intensive correction order cancellation by court—official**
18 **notice of sentence**

- 19 (1) This section applies if a court makes an order under section 65 (a
20 *cancellation order*) cancelling an offender's intensive correction
21 order.
- 22 (2) As soon as practicable (but no later than 10 working days) after the
23 day the court makes the cancellation order, the court must ensure that
24 written notice of the order, together with a copy of the order, is given
25 to—
- 26 (a) the offender; and
27 (b) the director-general; and

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

18 **8 Section 80**

19 *substitute*

20 **80 Intensive correction orders—outstanding warrants**

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

- 1 (3) In this section:
2 *in custody* means:
3 (a) remanded in custody under a territory law or a law of the
4 Commonwealth or a State; or
5 (b) detained at a place under the *Mental Health Act 2015*.
6 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

7 **9 New section 93A**

8 *insert*

9 **93A Good behaviour orders—community service work—
10 therapy and education program limit**

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

15 **10 New section 212A**

16 *in part 9.2, insert*

17 **212A Board hearing—outstanding warrants**

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

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

4 (3) In this section:

5 *in custody* means:

6 (a) remanded in custody under a territory law or a law of the
7 Commonwealth or a State; or

8 (b) detained at a place under the *Mental Health Act 2015*.

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

10 **11 Section 316**

11 *substitute*

12 **316 Meaning of *community service work***

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

15 (a) work;

16 (b) community service programs.

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

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

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

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

11 **12 Dictionary, new definition of *intensive correction***
12 ***assessment***

13 *insert*

14 ***intensive correction assessment***, for chapter 5 (Intensive correction
15 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

1 **16 New part 4.2A**

2 *insert*

3 **Part 4.2A Intensive correction**
4 **assessments**

5 **46A Meaning of assessor—pt 4.2A**

6 In this part:

7 *assessor* means—

8 (a) a public servant whose functions include preparing intensive
9 correction assessments; or

10 (b) a person with similar functions under the law of a State.

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

12 **46B Application—pt 4.2A**

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

15 (a) a court finds the offender guilty of an offence;

16 (b) the offender indicates to a court an intention to plead guilty to
17 an offence.

18 **46C Intensive correction assessments—order**

19 (1) This section applies if—

20 (a) the Magistrates Court—

21 (i) finds an offender guilty of an offence in a proceeding
22 before the court; or

23 (ii) accepts an offender's guilty plea for an offence; or

- 1 (b) the Magistrates Court commits an offender to the Supreme
2 Court for sentence; or
- 3 *Note* The Magistrates Court may commit a person to the Supreme Court
4 for sentence under the *Magistrates Court Act 1930*, s 92A.
- 5 (c) the Supreme Court—
- 6 (i) finds an offender guilty of an offence in a proceeding
7 before the court; or
- 8 (ii) accepts an offender's guilty plea for an offence.
- 9 (2) If subsection (1) (b) applies, the Magistrates Court may—
- 10 (a) order an intensive correction assessment in relation to the
11 offender; and
- 12 (b) order the director-general to provide a copy of the assessment to
13 the Supreme Court or any other person.
- 14 (3) If subsection (1) (a) or (c) applies, the court may—
- 15 (a) order an intensive correction assessment in relation to the
16 offender; and
- 17 (b) adjourn the proceeding for the assessment to be prepared; and
- 18 (c) order the director-general to provide a copy of the assessment to
19 the court or any other person.
- 20 (4) However, the court must order the director-general to prepare an
21 intensive correction assessment before sentencing the offender to a
22 sentence of imprisonment by intensive correction.
- 23 (5) The director-general must arrange for an assessor to prepare an
24 intensive correction assessment ordered by the court.
- 25 (6) The intensive correction assessment must address the matters
26 mentioned in section 46D.

1 **46D Intensive correction orders—intensive correction**
 2 **assessment matters**

3 For section 46C (6), the matters for assessing the offender's
 4 suitability to serve a sentence by intensive correction order are the
 5 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

- 1 **46E Intensive correction assessments—powers of assessors**
- 2 (1) In preparing the intensive correction assessment for the offender, the
- 3 assessor may—
- 4 (a) conduct any investigation the assessor considers appropriate;
- 5 and
- 6 (b) ask any of the following to provide information:
- 7 (i) an administrative unit;
- 8 (ii) a territory authority;
- 9 (iii) a statutory office-holder;
- 10 (iv) for an assessment for an offender to be sentenced for a
- 11 family violence offence—an approved crisis support
- 12 organisation under the *Domestic Violence Agencies*
- 13 *Act 1986*;
- 14 (v) a victim of the offence;
- 15 (vi) any other entity.
- 16 (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to
- 17 provide information, the entity must promptly comply with the
- 18 request.
- 19 (3) If an entity gives information honestly and with reasonable care in
- 20 response to a request under subsection (1), the giving of the
- 21 information is not—
- 22 (a) a breach of confidence, professional etiquette, ethics or a rule of
- 23 professional misconduct; or
- 24 (b) a ground for a civil proceeding for defamation, malicious
- 25 prosecution or conspiracy.
- 26 (4) This section does not limit any other power of the assessor to obtain
- 27 information for the purpose of the intensive correction assessment.

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

3 (6) In this section:
4 *information* includes a document.

5 **46F Intensive correction assessments—provision to court**

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

8 **46G Intensive correction assessments—cross-examination**

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

11 (2) In this section:

12 *defence* means—

13 (a) any lawyer representing the offender; or

14 (b) if the offender is not legally represented—the offender.

15 **17 Application—pt 5.2**
16 **Section 64 (1)**

17 *substitute*

18 (1) This part applies to the following:

19 (a) a sentence of imprisonment imposed by a court on an offender
20 for an offence, other than an excluded sentence of
21 imprisonment;

22 (b) full-time detention ordered under the *Crimes (Sentence*
23 *Administration) Act 2005*, section 65 (2) (b).

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

1 **18 New division 5.4.1A heading**

2 *before division 5.4.1, insert*

3 **Division 5.4.1A General**

4 **19 Application—pt 5.4**
5 **Section 76**

6 *relocate to division 5.4.1A*

7 **20 Intensive correction orders—suitability**
8 **Section 78 (1) and (2)**

9 *substitute*

10 (1) The court must not make an intensive correction order for the
11 offender unless the court has considered—

12 (a) a pre-sentence report, if any, prepared for the offender in the
13 proceeding and is satisfied, having considered possible
14 alternatives, that only a term of imprisonment of not more than
15 4 years is appropriate for the offender; and

16 (b) an intensive correction assessment for the offender.

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

19 **21 Section 78 (5)**

20 *omit*

21 table 79

22 *substitute*

23 table 46D

1 **22 Section 78 (9)**

2 *omit*

3 **23 Intensive correction orders—intensive correction**
4 **assessment matters**
5 **Section 79**

6 *omit*

7 **24 Intensive correction order—community service—**
8 **suitability**
9 **Section 80D (1)**

10 *substitute*

11 (1) The court must not include a community service condition in the
12 intensive correction order unless an intensive correction assessment
13 that addresses whether a community service condition is suitable for
14 the offender is given to the court.

15 **25 Intensive correction orders—rehabilitation programs—**
16 **suitability**
17 **Section 80J (1) (a)**

18 *substitute*

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

22 **26 Dictionary, note 2**

23 *insert*

- 24 • Magistrates Court
25 • Supreme Court

1 **27 Dictionary, definition of *assessor***

2 *substitute*

3 *assessor*—

4 (a) for part 4.2 (Pre-sentence reports)—see section 39A; and

5 (b) for part 4.2A (Intensive correction assessments)—see
6 section 46A.

7 **28 Dictionary, new definition of *intensive correction***
8 ***assessment***

9 *insert*

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

1 **Schedule 1 Other amendments**

2 (see s 3)

3 **Part 1.1 Crimes Act 1900**

4 **[1.1] Dictionary, definition of *lawful custody***

5 *omit*

6 **Part 1.2 Road Transport (General)**
7 **Act 1999**

8 **[1.2] Section 61A, definition of *automatic disqualification***
9 ***provision*, new paragraph (i)**

10 *insert*

- 11 (i) *Road Transport (Driver Licensing) Act 1999*, section 32 (6)
12 (which is about automatic disqualification for an offence of
13 either driving while suspended, or applying for a driver licence
14 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 2018.

3 Republications of amended laws

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