



New South Wales

Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017

Crimes (High Risk Offenders) Amendment Bill 2017

Overview of Bill

The object of this Bill is to improve the availability and nature of community-based sentencing options that are among the options for courts when sentencing offenders.

In dealing with sentencing options, the Bill:

- (a) abolishes suspended sentences, good behaviour bonds, community service orders and home detention orders, and
- (b) enhances intensive correction orders (including permitting home detention conditions to be imposed), and
- (c) creates community correction orders and conditional release orders (to replace community service orders and good behaviour bonds).

The Bill also contains provisions about sentencing domestic violence offenders, and other matters, including savings and transitional provisions and consequential amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act by proclamation.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—principal amendments

Abolition of suspended sentences

This is achieved by the proposed repeal of section 12 by **Schedule 1 [14]**.

Abolition of good behaviour bonds

This is achieved by the proposed repeal of sections 9 and 12 and the substitution of section 10 (1) (b) by **Schedule 1 [9], [14] and [10]**, respectively.

Abolition of home detention orders

This is achieved by the proposed repeal of section 6 and Part 6 by **Schedule 1 [6] and [30]**, respectively.

Intensive correction orders

An intensive correction order may be imposed by a court that has sentenced an offender to imprisonment but which enables the offender to serve the sentence in the community under strict conditions (including home detention if the court so orders).

The enhancement of intensive correction orders is achieved by the proposed substitution of section 7 and Part 5 by **Schedule 1 [7] and [29]**, respectively. Proposed section 7 authorises the making of intensive correction orders, and is subject to proposed Part 5.

Proposed Part 5 (inserted by **Schedule 1 [29]**) contains provisions relating to the making of intensive correction orders and providing for their duration and commencement, the conditions to which they are subject and other matters. These provisions include the following:

Proposed section 66 provides that community safety is the paramount consideration when a court is deciding whether to make an intensive correction order and gives guidance as to the consideration by the court of community safety and other matters.

Proposed section 67 provides that an intensive correction order cannot be made for specified offences, including murder, manslaughter, certain sexual offences, terrorism offences, and offences involving the discharge of a firearm.

Proposed section 68 provides that an intensive correction order can only be made in respect of imprisonment where the sentence of imprisonment does not exceed 2 years (or 3 years in the case of imprisonment for multiple offences).

Proposed section 69 requires the sentencing court to consider an assessment report and other evidence from a community corrections officer when considering the suitability of an offender for an intensive correction order.

Proposed section 70 provides that the term of an intensive correction order is the same as the term or terms of imprisonment in respect of which the order is made, unless the order is sooner revoked. Revocation could be effected on appeal or by the State Parole Authority following a breach of the order by the offender.

Proposed section 71 provides for the commencement of intensive correction orders.

Proposed section 72 deals generally with conditions on intensive correction orders.

Conditions are intended to be stricter than those for community correction orders and conditional release orders. Conditions are of the following kinds:

- **Standard conditions** (see proposed section 73). Standard conditions require the offender not to commit any offence and require the offender to submit to supervision.
- **Additional conditions** (see proposed section 73A), at least 1 of which must be imposed. Additional conditions can relate to home detention, electronic monitoring, curfew (with no specific limit on hours), community service work (not exceeding 750 hours in total), rehabilitation or treatment, abstention from alcohol or drugs, non-association with particular persons, or place restriction.

- **Further conditions** (see proposed section 73B). Further conditions may be imposed but must not be inconsistent with standard or additional conditions.

Conditions may also be imposed by the State Parole Authority under the *Crimes (Administration of Sentences) Act 1999* (see sections 81A and 164 of that Act as proposed to be inserted by **Schedule 3 [5] and [19]**, respectively).

Conditions relating to supervision, curfew, non-association and place restriction are subject to suspension under proposed section 82A of the *Crimes (Administration of Sentences) Act 1999* (see **Schedule 3 [5]**).

Community correction orders

A community correction order may be made by the sentencing court as an alternative to imposing imprisonment.

The creation of community correction orders is achieved by the proposed substitution of section 8 and Part 7 by **Schedule 1 [8] and [31]**, respectively. Proposed section 8 authorises the making of community correction orders, and is subject to proposed Part 7.

Proposed Part 7 (inserted by **Schedule 1 [31]**) contains provisions relating to the duration of community correction orders and their commencement and the conditions to which they are subject. It contains sections 84–91. These provisions include the following:

Proposed section 84 states that the Part applies where a court is considering, or has made, a community correction order.

Proposed section 85 provides that the maximum term of a community correction order is 3 years.

Proposed section 86 provides that a community correction order commences on the date on which it is made.

Proposed section 87 deals generally with conditions on community correction orders.

Conditions on community correction orders are intended to be less strict than those for intensive correction orders but stricter than those for conditional release orders. Conditions are of the following kinds:

- **Standard conditions** (see proposed section 88). Standard conditions require the offender not to commit any offence and require the offender to appear before the court if called on to do so.
- **Additional conditions** (see proposed section 89). Additional conditions can relate to curfew (not exceeding 12 hours in 24 hours), community service work (not exceeding 500 hours in total), rehabilitation or treatment, abstention from alcohol or drugs, non-association with particular persons, place restriction, or supervision. Additional conditions cannot relate to home detention, electronic monitoring or curfew.
- **Further conditions** (see proposed section 90). Further conditions may be imposed but must not be inconsistent with standard or additional conditions.

Conditions relating to supervision, curfew, non-association and place restriction are subject to suspension under proposed section 107E of the *Crimes (Administration of Sentences) Act 1999* (see **Schedule 3 [13]**).

Proposed section 91 sets out some powers in connection with applications made by the offender for the imposition, variation or revocation of additional or further conditions.

Conditional release orders

A conditional release order may be made by a court where the offence is relatively trivial and the court has considered the offender's antecedents and other matters.

The creation of conditional release orders is achieved by the proposed substitution of section 9 and Part 8 by **Schedule 1 [9] and [31]**, respectively. Proposed section 9 authorises the making of conditional release orders, and is subject to proposed Part 8. A conditional release order may also be made for an offence expressed to be punishable only by a fine.

Proposed section 9 (1) provides that a conditional release order may be made if either:

- the court proceeds to conviction—this aspect is consistent with existing section 9 as regards good behaviour bonds imposed under that section as an alternative to imprisonment, or
- the court does not proceed to conviction but makes an order under proposed paragraph (b) of section 10 (1)—this aspect is consistent with existing section 10 (1) (b) as regards good behaviour bonds imposed under section 10.

Proposed Part 8 (inserted by **Schedule 1 [31]**) contains provisions relating to the duration of conditional release orders and their commencement and the conditions to which they are subject. It contains sections 94–100. These provisions include the following:

Proposed section 94 states that the Part applies where a court is considering, or has made, a conditional release order.

Proposed section 95 provides that the maximum term of a conditional release order is 2 years.

Proposed section 96 provides that a conditional release order commences on the date on which it is made.

Proposed section 97 deals generally with conditions on conditional release orders.

Conditions on conditional release orders are intended to be less strict than those for intensive correction orders and community correction orders. Conditions are of the following kinds:

- **Standard conditions** (see proposed section 98). Standard conditions require the offender not to commit any offence and require the offender to appear before the court if called on to do so.
- **Additional conditions** (see proposed section 99). Additional conditions can relate to rehabilitation or treatment, abstention from alcohol or drugs, non-association with particular persons, place restriction, or supervision. Additional conditions cannot relate to home detention, electronic monitoring, curfew or community service work.
- **Further conditions** (see proposed section 99A). Further conditions may be imposed but must not be inconsistent with standard or additional conditions.

Conditions relating to suspension, non-association and place restriction are subject to suspension under proposed section 108E of the *Crimes (Administration of Sentences) Act 1999* (see **Schedule 3 [13]**).

Proposed section 100 sets out some powers in connection with applications made by the offender for the imposition, variation or revocation of additional or further conditions.

Domestic violence offenders

Schedule 1 [4] inserts proposed sections 4A and 4B.

Proposed section 4A provides a presumption that a court must impose a sentence of full-time detention or make a supervised order in respect of a domestic violence offender. A supervised order is an intensive correction order, community correction order or conditional release order that is subject to a condition requiring the offender to submit to supervision.

Proposed section 4B contains provisions to be observed by courts when considering:

- whether to make an intensive correction order, community correction order or conditional release order in respect of a domestic violence offender, and
- whether to impose a home detention condition on an intensive correction order in respect of a domestic violence offender.

Assessment reports

Proposed Division 4B of Part 2 deals with assessment reports (see **Schedule 1 [17]**). The purpose of an assessment report is to assist a sentencing court to determine the appropriate sentence and conditions to impose on the offender during sentencing proceedings. An assessment report is to be made by a community corrections officer or juvenile justice officer.

Multiple orders

Proposed Division 4C of Part 2 deals with circumstances where more than 1 relevant order is potentially in force at the same time in respect of an offender (see **Schedule 1 [17]**). The term **relevant orders** is defined in proposed section 17E to mean intensive correction orders, community correction orders or conditional release orders (or any combination of 1 or more of them).

Proposed section 17F (1) provides that only 1 relevant order can be in force at the same time in respect of the same offence in relation to the same offender. Subject to that, proposed section 17F (2) provides that, if 2 or more offences are involved, then 2 or more relevant orders can be in force. The section goes on to provide guidance as to which kind of order prevails over other kinds of orders.

Proposed section 17G deals with circumstances where multiple orders made in respect of an offender impose community service work conditions for hours that exceed the relevant totals contemplated by the *Crimes (Sentencing Procedure) Act 1999* as proposed to be amended (a maximum of 750 hours is contemplated for such a condition imposed on an intensive correction order, and a maximum of 500 hours is contemplated for such a condition imposed on a community correction order). The proposed section gives guidance as to how any excess is to be managed.

Proposed section 17H deals with circumstances where multiple orders made in respect of an offender impose curfew conditions. If all the orders are intensive correction orders, the proposed section does not affect the curfew conditions, as the *Crimes (Sentencing Procedure) Act 1999* as proposed to be amended does not have a specific limit on the curfew hours. If the orders are all community correction orders, or are a combination of 1 or more intensive correction orders and 1 or more community correction orders, the proposed section gives guidance as to the maximum number of curfew hours that are to be observed and as to how any excess is to be managed.

Explanation to offender of order and notice of order to be given

Proposed section 17I (see **Schedule 1 [17]**) requires the court to take reasonable steps to explain (in language that the offender can readily understand) the offender's obligations under an intensive correction order, community correction order or conditional release order made in respect of the offender and the consequences of failing to comply with those obligations.

Proposed section 17J (see **Schedule 1 [17]**) requires notice of an intensive correction order, community correction order or conditional release order to be given to the offender and Corrective Services NSW. Notice need not be given to Corrective Services NSW unless the order is subject to a supervision condition or a community service work condition.

Other amendments

The Bill makes other amendments to the *Crimes (Sentencing Procedure) Act 1999* of a minor, ancillary or consequential nature.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92—savings and transitional provisions

Savings and transitional provisions (referred to as “clauses”) are proposed to be inserted in Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999*. The clauses deal with existing matters that are in force at the commencement of the proposed legislation. The following is a summary:

- (a) existing home detention orders are converted to intensive correction orders each of which is subject to a home detention condition (see proposed clause 71),
- (b) existing intensive correction orders continue in operation but with revised conditions (see proposed clause 72),
- (c) existing community service orders are converted to community correction orders (see proposed clause 73),

- (d) existing good behaviour bonds under section 9 are converted to community correction orders (see proposed clause 74),
- (e) existing good behaviour bonds under section 10 (1) (b) are converted to conditional release orders (see proposed clause 75),
- (f) existing suspended sentence orders and good behaviour bonds under section 12 continue in operation for a maximum of 3 years (see proposed clause 76),
- (g) special provision is made for any existing periodic detention orders under former legislation that are still in force (see proposed clauses 79–82).

Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Administration of intensive correction orders

Provisions relating to intensive correction orders are currently set out in Part 3 of the *Crimes (Administration of Sentences) Act 1999*, which consists of sections 80–93. Schedule 3 proposes amendments to Part 3.

Section 81 is proposed to be substituted by **Schedule 3 [5]**, which states that conditions are imposed under the *Crimes (Sentencing Procedure) Act 1999* or by the State Parole Authority under the *Crimes (Administration of Sentences) Act 1999*.

Proposed section 81A is inserted by **Schedule 3 [5]** and authorises the State Parole Authority to impose conditions on intensive correction orders. These conditions are additional to those imposed by courts at the time of sentence.

Section 82 is proposed to be substituted by **Schedule 3 [5]**, which provides that the administration of intensive correction orders is to be as prescribed by the regulations, and that the obligations of an offender under an intensive correction order, including a condition of an order, are to be as so prescribed.

Proposed section 82A is inserted by **Schedule 3 [5]** and provides that a condition of an intensive correction order relating to supervision, curfew, non-association and place restriction is subject to suspension (either for a specified period or indefinitely, and either conditionally or unconditionally).

Section 83 is proposed to be substituted by **Schedule 3 [6]**, which provides that an intensive correction order expires at the end of the sentence or sentences to which it relates, unless it is sooner revoked.

Provisions relating to breaches of intensive correction orders are contained in proposed substitutions of sections 163 and 164 (see **Schedule 3 [19]**). Proposed section 163 deals with actions that may be taken by a community corrections officer for a breach, and proposed section 164 deals with actions that may be taken by the State Parole Authority for a breach.

Proposed sections 163 and 164 provide a hierarchy of actions that can be taken in the event of a failure by an offender to comply with an intensive correction order. Under these provisions:

- (a) A community corrections officer may record the non-compliance with no further action, give an informal warning, give or arrange for a formal warning, give a reasonable direction about the non-compliant behaviour or impose a curfew.
- (b) If the failure to comply is more serious, the Commissioner or a community corrections officer may refer the matter to the State Parole Authority.
- (c) The State Parole Authority may deal with a breach of an intensive correction order by recording the breach with no further action, giving a formal warning, changing the conditions of the order or revoking the order. Express authority is conferred to impose a condition of home detention, a requirement to submit to the use of an electronic monitoring device and other ancillary related conditions.

Administration of community correction orders

Proposed Part 4B, which deals with the administration of community correction orders, is inserted by **Schedule 3 [13]**. It contains sections 107A–107E.

Proposed section 107A states that the conditions of a community correction order are imposed under the *Crimes (Sentencing Procedure) Act 1999* or under section 107D.

Proposed section 107B provides that the administration of community correction orders is to be as prescribed by the regulations, and that the obligations of an offender under a community correction order, including a condition of an order, are to be as so prescribed.

Proposed section 107C deals with a breach of a community correction order. A breach can be dealt with by the court that made the order, any other court of like jurisdiction or (with the offender's consent) any other court of superior jurisdiction. The court may decide to take no further action, vary the condition of the order, impose new conditions on the order or revoke the order.

Proposed section 107D provides that if a court revokes a community correction order, the court may re-sentence the offender.

Proposed section 107E provides that a condition of a community correction order relating to supervision, curfew, non-association and place restriction is subject to suspension (either for a specified period or indefinitely, and either conditionally or unconditionally).

Administration of conditional release orders

Proposed Part 4C, which deals with the administration of conditional release orders, is inserted by **Schedule 3 [13]**. It contains sections 108A–108E.

Proposed section 108A states that the conditions of a conditional release order are imposed under the *Crimes (Sentencing Procedure) Act 1999* or under section 108D.

Proposed section 108B provides that the administration of conditional release orders is to be as prescribed by the regulations, and that the obligations of an offender under a conditional release order, including a condition of an order, are to be as so prescribed.

Proposed section 108C deals with a breach of a conditional release order. A breach can be dealt with by the court that made the order, any other court of like jurisdiction or (with the offender's consent) any other court of superior jurisdiction. The court may decide to take no further action, vary the condition of the order, impose new conditions on the order or revoke the order.

Proposed section 108D provides that if a court revokes a conditional release order, the court may re-sentence the offender.

Proposed section 108E provides that a conditional release order relating to supervision, curfew, non-association and place restriction is subject to suspension (either for a specified period or indefinitely, and either conditionally or unconditionally).

Omission of provisions relating to superseded orders and bonds

Part 4, which currently relates to imprisonment by way of home detention under home detention orders, is repealed by **Schedule 3 [12]**. Other provisions relating to, or references to, home detention orders, community service orders and good behaviour bonds are deleted by Schedule 3.

ICO Management Committee

Provisions relating to the establishment and functions of the Intensive Correction Orders Management Committee are repealed (see **Schedule 3 [10] and [45]**).

Other amendments

The Bill makes other amendments to the *Crimes (Administration of Sentences) Act 1999* of a minor, consequential or transitional nature.

Schedule 4 Amendment of other legislation

A number of other Acts and statutory instruments are amended, to make consequential amendments arising from amendments made by Schedules 1–3, arising in particular from:

- (a) the proposed abolition of home detention orders, community service orders and good behaviour bonds, and
- (b) the enhancement of intensive correction orders, and
- (c) the creation of community correction orders and conditional release orders.

The following are proposed to be amended:

Anzac Memorial (Building) Act 1923 No 27

Bail Act 2013 No 26

Births, Deaths and Marriages Registration Act 1995 No 62

Child Protection (Offenders Registration) Act 2000 No 42

Child Protection (Offenders Registration) Regulation 2015

Child Protection (Working with Children) Act 2012 No 51

Children (Criminal Proceedings) Act 1987 No 55

Civil Liability Act 2002 No 22

Crimes Act 1900 No 40

Crimes (Appeal and Review) Act 2001 No 120

Crimes (Forensic Procedures) Act 2000 No 59

Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72

Criminal Appeal Act 1912 No 16

Criminal Procedure Act 1986 No 209

Criminal Records Act 1991 No 8

Dangerous Goods (Road and Rail Transport) Act 2008 No 95

Drug Court Act 1998 No 150

Education Act 1990 No 8

Fines Act 1996 No 99

Fisheries Management Act 1994 No 38

Graffiti Control Act 2008 No 100

Jury Act 1977 No 18

Motor Dealers and Repairers Regulation 2014

Privacy Code of Practice (General) 2003

Security Industry Regulation 2016

Summary Offences Act 1988 No 25

Supreme Court Act 1970 No 52

Tow Truck Industry Regulation 2008