

Serial 167
Justice (Corrections) and Other Legislation Amendment Bill 2011
Mr McCarthy

A Bill for an Act to amend the *Bail Act*, *Parole of Prisoners Act*, *Prisons (Correctional Services) Act*, *Sentencing Act* and other legislation

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE (CORRECTIONS) AND OTHER LEGISLATION AMENDMENT
ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Bail Act*, *Parole of Prisoners Act*, *Prisons (Correctional Services) Act*, *Sentencing Act* and other legislation

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice (Corrections) and Other Legislation Amendment Act 2011*.

2 Commencement

- (1) The following provisions commence on the day on which the Administrator's assent to this Act is declared:
 - (a) sections 3, 9 and 10;
 - (b) sections 11 and 15;
 - (c) sections 16, 17, 19 and 20;
 - (d) sections 24 and 33;
 - (e) section 42;
 - (f) Schedules 1 and 2, Schedule 4, Part 1 and Schedule 5.

- (2) The remaining provisions of this Act commence on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Bail Act

3 Act amended

This Part amends the *Bail Act*.

4 Section 3 amended

- (1) Section 3(1), definition *conduct agreement*

omit

- (2) Section 3(1)

insert (in alphabetical order)

approved monitoring device, see section 5 of the *Prisons (Correctional Services) Act*.

approved voice recognition system, see section 5 of the *Prisons (Correctional Services) Act*.

conduct agreement, see section 27(2)(a).

surveillance officer, see section 5 of the *Prisons (Correctional Services) Act*.

5 Section 27 amended

Section 27(2)(a), after "agreement"

insert

(a *conduct agreement*)

6 Section 27A amended

After section 27A(1)(i)

insert

- (ia) for bail granted by a court other than the Youth Justice Court – require the accused person:

- (i) to wear or have attached an approved monitoring device while on bail or the lesser period ordered by the court; and

- (ii) to allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device; or
- (ib) for bail granted by a court other than the Youth Justice Court – require the accused person:
 - (i) to give a sample of the accused person's voice for use with an approved voice recognition system; and
 - (ii) to comply with the reasonable directions of a surveillance officer in the use of the system for the effective monitoring of the accused person's activities while on bail; or

7 Section 27B inserted

After section 27A

insert

27B Monitoring compliance with certain conduct agreements

- (1) This section applies if:
 - (a) a conduct agreement is in force for an accused person; and
 - (b) the agreement is subject to the conditions mentioned in section 27A(1)(ia) or (ib).
- (2) While the conditions are in force, Part 27, Division 1 of the *Prisons (Correctional Services) Act* applies in relation to the accused person as if a reference:
 - (a) to a person for whom a monitoring order is in force were a reference to the accused person; and
 - (b) to a monitoring order were a reference to the conduct agreement.

Note for section 27B

Accordingly, Part 27, Division 1 of the Prisons (Correctional Services) Act as applied by this section provides powers for surveillance officers for ensuring the accused person is complying with the conduct agreement.

8 Section 28 amended

After section 28(2)

insert

- (3) In addition, a court may impose a condition that the accused person enter into a conduct agreement containing the conditions mentioned in section 27A(1)(ia) or (ib) only if satisfied, after considering a report by the Director of Correctional Services, the accused person is a suitable person for the conditions.

9 Section 53 amended

Section 53(3)

omit

10 Act further amended

Schedule 1 has effect.

Part 3 Amendment of Parole of Prisoners Act

11 Act amended

This Part amends the *Parole of Prisoners Act*.

12 Section 3 amended

Section 3(1)

insert (in alphabetical order)

approved monitoring device, see section 5 of the *Prisons (Correctional Services) Act*.

approved voice recognition system, see section 5 of the *Prisons (Correctional Services) Act*.

13 Section 4 inserted

After section 3R, in Part 2, Division 2

insert

4 Powers of parole officers for monitoring compliance with certain parole orders

- (1) This section applies if:

- (a) a parole order is in force for a person (the *parolee*); and
 - (b) the order is subject to monitoring conditions mentioned in section 5(5C)(a) or (b).
- (2) While the monitoring conditions are in force, Part 27, Division 1 of the *Prisons (Correctional Services) Act* applies in relation to the parolee as if a reference:
- (a) to a person for whom a monitoring order is in force were a reference to the parolee; and
 - (b) to a monitoring order were a reference to the parole order.

Note for section 4

Accordingly, Part 27, Division 1 of the Prisons (Correctional Services) Act as applied by this section provides powers for parole officers for ensuring the parolee is complying with the parole order.

14 Section 5 amended

- (1) Section 5(2), after "offence"
- insert*
- (the *relevant offence*)
- (2) After section 5(5)
- insert*
- (5A) Without limiting subsection (5), the parole order may be subject to either or both of the following conditions:
- (a) the condition that the person to whom the order relates must reside at a specified place;
 - (b) monitoring conditions mentioned in subsection (5C).
- (5B) However, the order must not be subject to monitoring conditions if the person to whom the order relates is not an adult unless the person was found guilty of the relevant offence by the Supreme Court.
- (5C) The following monitoring conditions are for monitoring the person's activities:
- (a) the person to whom the order relates must:

- (i) wear or have attached an approved monitoring device while on parole or the lesser period fixed by the Board; and
 - (ii) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device;
- (b) the person to whom the order relates must:
- (i) give a sample of the person's voice for use with an approved voice recognition system; and
 - (ii) for the effective monitoring of the person's activities while on parole, comply with the reasonable directions of a parole officer in the use of the system.

15 Act further amended

Schedule 2 has effect.

Part 4 Amendment of Prisons (Correctional Services) Act**16 Act amended**

This Part amends the *Prisons (Correctional Services) Act*.

17 Section 4 repealed

Section 4

repeal

18 Section 5 amended

- (1) Section 5, definition *monitoring device*

omit

- (2) Section 5

insert (in alphabetical order)

approved monitoring device means a device approved under section 94BA.

approved voice recognition system means a voice recognition system approved under section 94BA.

community based order, see section 39B(1) of the *Sentencing Act*.

community custody order, see section 48B(1) of the *Sentencing Act*.

monitoring order means any of the following orders:

- (a) a community based order;
- (b) a community custody order;
- (c) a home detention order.

19 Section 7 replaced

Section 7

repeal, insert

7 Delegations

- (1) The Director may delegate any of the Director's powers and functions under this Act to a person.
- (2) The officer in charge of a prison may delegate any of the officer's powers and functions under Part 8 to a person.

20 Section 65G amended

Section 65G

omit

\$10,000

insert

200 penalty units

21 Sections 94B and 94C replaced

Sections 94B and 94C

repeal, insert

94B Appointment of surveillance officers

The Director may appoint a person who is not a probation officer to be a paid or unpaid surveillance officer for ensuring compliance with monitoring orders by persons for whom the orders are made.

94BA Approval of monitoring device and voice recognition system

- (1) The Director may approve a monitoring device or voice recognition system for helping to monitor the activities of persons for whom monitoring orders are made.
- (2) The approval may be given for a monitoring device or voice recognition system whether or not used with another device, machine, equipment or system.
- (3) In this section:

monitoring device means an electronic device attached to, or worn by a person, to enable the person's geographical location to be monitored.

voice recognition system means a system, using computer hardware and software, that is programmed to:

- (a) verify the voice of a particular person; and
- (b) enable the person's geographical location to be monitored.

94C Monitoring compliance with monitoring order

- (1) A surveillance officer may, at any time and without a warrant, exercise the following powers for ensuring a person for whom a monitoring order is made is complying with the order:
 - (a) enter a place where the person is residing in accordance with the order;
 - (b) search the place or person;
 - (c) place on or attach to the person an approved monitoring device;
 - (d) at the place, install, place, inspect or retrieve an approved monitoring device or anything necessary for the effective operation of the device;
 - (e) require the person to submit to one or more monitoring tests.
- (2) For subsection (1)(e), the surveillance officer may exercise the following powers:
 - (a) carry out a breath test;
 - (b) take the person to:

- (i) a police station, and detain the person there, for a breath test or breath analysis (or both) to be carried out; or
 - (ii) a hospital or health centre, and detain the person there, for monitoring tests to be carried out.
- (3) However, if the surveillance officer is appointed under section 94B, the officer may exercise the powers only in accordance with a direction given by the Director.
- (4) If the surveillance officer takes the person to a police station under subsection (2)(b)(i), a police officer may exercise the following powers:
 - (a) detain the person at the police station;
 - (b) carry out a breath test or breath analysis (or both);
 - (c) take the person to a hospital or health centre, and detain the person there, for monitoring tests to be carried out.
- (5) A surveillance officer or police officer may exercise the powers under this section with the force and help that is necessary and reasonable.
- (6) A person who carries out a monitoring test at a hospital or health centre is not civilly or criminally liable for anything reasonably done by the person in carrying out the test.
- (7) In any legal proceeding, a certificate signed by a prescribed person stating matters relating to a monitoring test is evidence of:
 - (a) the matters stated in the certificate; and
 - (b) the facts on which the matters are based.
- (8) A regulation may provide for the following:
 - (a) the carrying out of monitoring tests;
 - (b) the arrest of persons to enable monitoring tests to be carried out;
 - (c) the effect of a person's failure to submit to a monitoring test.
- (9) In this section:

blood test, see section 3(1) of the *Traffic Act*.

breath analysis, see section 3(1) of the *Traffic Act*.

breath test, see section 3(1) of the *Traffic Act*.

monitoring test includes a breath test, breath analysis, blood test, urine test and saliva test.

prescribed person means a person prescribed by regulation.

22 Section 101 amended

Section 101(3)

omit, insert

- (3) A regulation may deal with the following:
- (a) prescribing the powers and functions of surveillance officers and supervising officers;
 - (b) regulating the conduct of persons subject to a monitoring order or community work order;
 - (c) providing for the effect of a breach of a monitoring order or community work order;
 - (d) providing for the health and safety of:
 - (i) surveillance officers and supervising officers; and
 - (ii) persons who are subject to a monitoring order or community work order;
 - (e) providing for travel and transport arrangements to be made for persons subject to a community work order or community based order;
 - (f) providing for the effect on a community work order or community based order of an injury to, or illness of, the person subject to the order;
 - (g) prescribing the periods to be taken into account when calculating the hours during which work has been carried out under a community work order or community based order;
 - (h) prescribing the powers and functions of advisory committees and regulating the holding of their meetings and the procedures they are to observe at those meetings.

23 Act further amended

Schedule 3 has effect.

Part 5 Amendment of Sentencing Act

24 Act amended

This Part amends the *Sentencing Act*.

25 Section 3 amended

(1) Section 3(1), definition *monitoring device*

omit

(2) Section 3(1)

insert (in alphabetical order)

approved monitoring device, see section 5 of the *Prisons (Correctional Services) Act*.

approved voice recognition system, see section 5 of the *Prisons (Correctional Services) Act*.

community based order, see section 39B(1).

community custody order, see section 48B(1).

prescribed program, for a community based order or community custody order, means a course, training, education or similar activity prescribed by regulation for the order.

pre-sentence report, for Part 3, Division 4A and Part 3, Division 5, Subdivision 2A, means a report by the Director under section 103 or 105.

26 Section 5 amended

Section 5(2)(k)

omit, insert

(k) time spent in custody by the offender for the offence before being sentenced, including time the offender resided at a specified place in accordance with a conduct agreement under the *Bail Act* that was subject to the condition mentioned in section 27A(1)(ia) of that Act; and

27 Section 7 amended

(1) Section 7(f)

omit, insert

(f) with or without recording a conviction, make a community work order or community based order for the offender;

(2) Section 7(j)

omit, insert

(j) record a conviction and order the offender serve a term of imprisonment, including by way of a community custody order;

28 Part 3, Division 4A inserted

After section 39

insert

Division 4A Community based orders

39A Application of Division

(1) This Division applies if a court, other than the Youth Justice Court, convicts an offender of an offence other than one of the following:

(a) a sexual offence;

(b) a violent offence;

(c) an offence against section 188(1) of the Criminal Code if a circumstance of aggravation specified in section 188(2) of the Criminal Code exists;

(d) another offence prescribed by regulation.

(2) In this section:

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act*.

violent offence means an offence involving the use, or threatened use, of violence.

39B When court may make order

- (1) The court may make an order under this Division (a *community based order*) for an offender only if it receives a pre-sentence report.
- (2) The court may make the order in addition to imposing a fine on the offender but not in addition to a sentence of a term of imprisonment.

39C Copy of order to be given to offender and Director

The court must give a copy of the community based order to the offender and Director.

39D Duration of order

The period the community based order is in force must not exceed 2 years.

39E Statutory conditions of order

- (1) The community based order is subject to the following conditions:
 - (a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;
 - (b) the offender is under the ongoing supervision of a probation officer and must report to a probation officer at a specified place within 2 clear working days after the order comes into force;
 - (c) the offender must tell a probation officer of any change of address or employment within 2 clear working days after the change;
 - (d) the offender must not leave the Territory except with the permission of a probation officer;
 - (e) the offender must:
 - (i) give a sample of the offender's voice for use with an approved voice recognition system for the period specified in the order; and
 - (ii) comply with the reasonable directions of a probation officer in the use of the system for the effective monitoring of the offender's activities;

- (f) the offender must comply with:
 - (i) regulations made for this Division; and
 - (ii) all lawful directions of the Director and probation officers.
- (2) Without limiting subsection (1)(f)(ii), the Director may, by written notice given to the offender, require the offender to:
 - (a) reside at a specified place; and
 - (b) wear or have attached an approved monitoring device for the period specified in the notice (the *temporary monitoring period*); and
 - (c) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (3) However, the Director may give the notice only if:
 - (a) the order is not subject to the conditions imposed by the court under section 39F(2) for the temporary monitoring period; and
 - (b) the Director is satisfied there is a material risk the offender will not comply with another lawful direction relating to the offender's activities.
- (4) In addition, the temporary monitoring period must not be more than 14 days.

39F Conditions of order imposed by court – general

- (1) The court must impose at least one (but may impose more than one) of the following conditions on the order:
 - (a) the offender must undertake prescribed programs as directed by the Director for a period of not less than one month or more than one year;
 - (b) the offender must:
 - (i) undergo assessment and treatment for misuse of alcohol or drugs; or
 - (ii) submit to medical, psychological or psychiatric assessment and treatment as directed by the Director;
 - (c) the offender must not consume or purchase alcohol or a drug (other than as prescribed by a medical practitioner or other health practitioner).

- (2) In addition, the court may impose all of the following conditions on the order:
 - (a) the offender must reside at a specified place;
 - (b) the offender must wear or have attached an approved monitoring device for the period the order is in force or the lesser period ordered by the court;
 - (c) the offender must allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (3) Also, the court may impose another condition the court considers necessary or desirable, other than a condition about the making of restitution or the payment of compensation, costs or damages.
- (4) A prescribed program specified in the order must be designed to address the personal factors that contribute to the offender's criminal behaviour.
- (5) Also, a prescribed program may be residential or community-based.

39G Condition of order imposed by court – community work

- (1) The court may impose a condition on the order that the offender must perform community work (within the meaning of Division 4) as directed by the Director.
- (2) The purpose of imposing the condition requiring the offender to perform community work is to allow for the adequate punishment of the offender in the community.
- (3) The number of hours for which the offender may be required to perform community work must not exceed 250 hours for each year the order is in force.
- (4) The total number of hours to be worked in any period of 7 days must not exceed 20.
- (5) Despite subsection (4), the offender may work up to 40 hours in a period of 7 days if the offender:
 - (a) asks to do so; and
 - (b) signs a consent to working the extra number of hours.

39H Orders for more than one offence

- (1) If the court makes separate community based orders for 2 or more offences committed by the offender, the conditions of the orders are concurrent unless the court otherwise directs.
- (2) The conditions of the community based order made for the offender are, unless the court otherwise directs, concurrent with those of another community based order already in force for the offender.
- (3) The court must not give a direction under this section that would result in the offender being required to perform more than the number of hours of community work specified in section 39G.

39J Director may change reporting requirement

- (1) If, because the offender has changed his or her place of residence or for another reason, it is not convenient for the offender to report at the place specified in the community based order, the Director may direct the offender to report at another place.
- (2) The offender must report as directed and the order has effect as if the other place had been specified in it.

39K Suspension of order

- (1) If requested by the offender, the Director may suspend the operation of the community based order, or any condition of the order, for a period if the Director is satisfied:
 - (a) the offender is ill; or
 - (b) other exceptional circumstances exist.
- (2) The period of the suspension must not be taken into account in working out the period for which the order is to remain in force.

39L Review of order on application of Director or offender

- (1) On the application of the Director or offender, the court may do either of the following if the court is satisfied a circumstance in subsection (2) applies:
 - (a) revoke the community based order and deal with the offender as if the offender had come before the court for sentence for the offence for which the order was made;
 - (b) vary the conditions of the community based order.

- (2) For subsection (1), the circumstances are:
- (a) the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances; or
 - (b) material information was not presented to the Director for preparing the pre-sentence report given to the court.
- (3) If the Director makes the application:
- (a) the court must summons the offender to appear before the court at a specified time and place for hearing the application; and
 - (b) if the offender does not appear in answer to the summons – the court may issue a warrant for the offender's arrest.
- (4) If the offender makes the application, the court must give notice to the Director of:
- (a) the application; and
 - (b) the time and place fixed for hearing the application.
- (5) In deciding how to deal with the offender under subsection (1)(a), the court must take into account:
- (a) the extent to which the offender has complied with the order; and
 - (b) any fine imposed when the order was made; and
 - (c) any report of the Director.
- (6) In addition, in making an order under subsection (1), the court may take court may take into account:
- (a) whether the offender is in custody on a charge for another offence; and
 - (b) whether the offender's behaviour is such that the offender's compliance with the terms of the order is impracticable.

39M Summons and warrant for arrest of offender if order breached

- (1) This section applies if a Justice is satisfied on information on oath:
- (a) the offender has breached a condition of the community based order that is still in force; or

- (b) within 2 years after the community based order ceases to be in force, the offender breached a condition of the order when it was in force (even if a certificate of discharge of the order is issued under section 39R).
- (2) The Justice may:
 - (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Division; or
 - (b) if the Justice is satisfied proceedings against the offender by summons might not be effective – issue a warrant for the arrest of the offender.
 - (3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.
 - (4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.
 - (5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.
 - (6) For sections 137 and 138 of the *Police Administration Act*, a breach of the order is taken to be an offence.

39N Court orders following breach

- (1) This section applies if the court is satisfied the offender breached a condition of the community based order.
- (2) If the order is still in force, the court may:
 - (a) confirm the order; or
 - (b) vary the conditions of the order; or
 - (c) revoke the order.
- (3) If the order is no longer in force, the court may:
 - (a) deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence; or
 - (b) confirm the discharge of the order and take no further action.

- (4) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act* for the offender (the *MVA order*), the court may revoke the MVA order.
- (5) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act* because of an application made under the MVA order:
- (a) the licence is cancelled; and
 - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and
 - (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act*:
 - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and
 - (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (6) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.
- (7) If the court revokes the order, the court may deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence.
- (8) In deciding how to deal with the offender under subsection (3)(a) or (7), the court must take into account:
- (a) the extent to which the offender had complied with the order before its revocation; and
 - (b) any fine imposed when the order was made; and
 - (c) any report of the Director.

39P Records as evidence

A matter contained in the following records produced to a court in a proceeding under this Division is, as far as it is applicable, evidence of the offender's activities:

- (a) records generated by or through an approved monitoring device or approved voice recognition system;
- (b) records comprising the notebooks or diaries of a surveillance officer.

39Q Certain costs recoverable by Territory

If the offender destroys or damages an approved monitoring device or associated device, machine or equipment:

- (a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and
- (b) the costs may be recovered from the offender as a debt payable to the Territory.

39R Discharge of order

- (1) If the Director is satisfied the offender has complied with the conditions of the community based order the Director must issue a certificate that the order is discharged.
- (2) On the issue of the certificate, the order is discharged.

29 Part 3, Division 5, Subdivision 2A inserted

After section 48

insert

Subdivision 2A Community custody orders**48A Application of Subdivision**

- (1) This Subdivision applies if a court other than the Youth Justice Court:
 - (a) convicts an offender of an offence other than one of the following:
 - (i) a sexual offence;
 - (ii) a violent offence;

-
- (iii) an offence against section 188(1) of the Criminal Code if a circumstance of aggravation specified in section 188(2) of the Criminal Code exists;
 - (iv) another offence prescribed by regulation; and
- (b) decides to impose a sentence of imprisonment on the offender of not more than 12 months.

(2) In this section:

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act*.

violent offence means an offence involving the use, or threatened use, of violence.

48B When court may make order

- (1) The court may order the sentence of imprisonment be served by way of an order under this Subdivision (a **community custody order**) only if it receives a pre-sentence report.
- (2) However, the court must not make the order if the court makes an order suspending the sentence.
- (3) In addition, if the offender is convicted of more than one offence in the same proceeding, the court may make the order only if the total period of imprisonment imposed for all the offences does not exceed 12 months.
- (4) Also, the court may make the order in addition to imposing a fine on the offender.

48C Copy of order to be given to offender and Director

The court must give a copy of the community custody order to the offender and Director.

48D Duration of order

The period the community custody order is in force is the period of the term of imprisonment imposed under section 48A(1)(b).

48E Statutory conditions of order

- (1) The community custody order is subject to the following conditions:
 - (a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;

- (b) the community work and program condition mentioned in subsection (2);
 - (c) the offender must report to a probation officer at a specified place within 2 clear working days after the order comes into force;
 - (d) the offender must report to, and receive visits from, a probation officer at least twice during each week the order is in force or the shorter period specified in the order;
 - (e) the offender must tell a probation officer of any change of address or employment within 2 clear working days after the change;
 - (f) the offender must not leave the Territory except with the permission of a probation officer;
 - (g) the offender must:
 - (i) give a sample of the offender's voice for use with an approved voice recognition system for the period specified in the order; and
 - (ii) comply with the reasonable directions of a probation officer in the use of the system for the effective monitoring of the offender's activities;
 - (h) the offender must comply with:
 - (i) regulations made for this Subdivision; and
 - (ii) all lawful directions of the Director and probation officers.
- (2) Subject to subsection (3), the offender must, for 12 hours during each week the order is in force, attend at the place specified in the order, or as otherwise directed by a probation officer, for:
- (a) performing community work (within the meaning of Division 4) for not less than 8 of the hours but no more than 8 hours in a day; and
 - (b) spending any balance of the hours undertaking a prescribed program, or undergoing counselling or treatment, as directed by the Director.
- (3) The Director may at any time, by written notice given to the offender, increase the 12 hours mentioned in subsection (2) to a maximum of 20 hours.

- (4) However, the Director may give the notice only:
- (a) if satisfied it is appropriate having regard to the offender's circumstances (including, for example, whether the offender is unemployed); and
 - (b) to require the offender to perform community work, or undertake a prescribed program targeting employment skills, as specified in the notice.
- (5) For subsection (2)(b), the counselling or treatment must relate to:
- (a) the offender's psychological or psychiatric problem; or
 - (b) the offender's misuse of alcohol or drugs.
- (6) Without limiting subsection (1)(h)(ii), the Director may, by written notice given to the offender, require the offender to:
- (a) reside at a specified place; and
 - (b) wear or have attached an approved monitoring device for the period specified in the notice (the *temporary monitoring period*); and
 - (c) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (7) However, the Director may give the notice only if:
- (a) the order is not subject to the conditions imposed by the court under section 48F(2) for the temporary monitoring period; and
 - (b) the Director is satisfied there is a material risk the offender will not comply with another lawful direction relating to the offender's activities.
- (8) In addition, the temporary monitoring period must not be more than 14 days.

48F Conditions of order imposed by court

- (1) The court making a community custody order may impose either or both of the following conditions on the order:
- (a) the offender must undertake one, or more than one, specified prescribed programs during the period the order is in force, or a shorter period specified in the order, if the pre-sentence report recommends the court impose a condition of that kind

for a specified purpose;

- (b) the offender must not consume or purchase alcohol or a drug (other than as prescribed by a medical practitioner or other health practitioner).
- (2) In addition, the court may impose all of the following conditions on the order:
- (a) the offender must reside at a specified place;
 - (b) the offender must wear or have attached an approved monitoring device for the period the order is in force or the lesser period ordered by the court;
 - (c) the offender must allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (3) A prescribed program specified in the order must be designed to address the personal factors that contribute to the offender's criminal behaviour.
- (4) Also, a prescribed program may be residential or community-based.

48G Director may change reporting requirement

- (1) If, because the offender has changed his or her place of residence or for another reason, it is not convenient for the offender to report at a particular place, the Director may direct the offender to report at another place.
- (2) The offender must report as directed and the community custody order has effect as if the other place had been specified in it.

48H Suspension of order

- (1) If requested by the offender, the Director may suspend the operation of the community custody order, or any condition of the order, for a period if the Director is satisfied:
 - (a) the offender is ill; or
 - (b) other exceptional circumstances exist.
- (2) The period of the suspension must not be taken into account in working out the period for which:
 - (a) the order is to remain in force; or
 - (b) a condition is to be complied with.

48J Review of order on application of Director or offender

- (1) On the application of the Director or offender, the court may do either of the following if the court is satisfied a circumstance in subsection (2) applies:
 - (a) revoke the community custody order, order the sentence of imprisonment be quashed and deal with the offender as if the offender had come before the court for sentence for the offence for which the community custody order was made;
 - (b) vary the conditions of the community custody order.
- (2) For subsection (1), the circumstances are:
 - (a) the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances;
or
 - (b) material information was not presented to the Director for preparing the pre-sentence report given to the court.
- (3) If the Director makes the application:
 - (a) the court must summons the offender to appear before the court at a specified time and place for hearing the application;
and
 - (b) if the offender does not appear in answer to the summons – the court may issue a warrant for the offender's arrest.
- (4) If the offender makes the application, the court must give notice to the Director of:
 - (a) the application; and
 - (b) the time and place fixed for hearing the application.
- (5) In deciding how to deal with the offender under subsection (1)(a), the court must take into account:
 - (a) the extent to which the offender has complied with the order before its revocation; and
 - (b) any fine imposed when the order was made; and
 - (c) any report of the Director.

48K Summons and warrant for arrest of offender if order breached

- (1) This section applies if a Justice is satisfied on information on oath:
 - (a) the offender has breached a condition of the community custody order that is still in force; or
 - (b) within 2 years after the community custody order ceases to be in force, the offender breached a condition of the order when it was in force (even if a certificate of discharge of the order is issued under section 48Q).
- (2) The Justice may:
 - (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Subdivision; or
 - (b) if the Justice is satisfied proceedings against the offender by summons might not be effective – issue a warrant for the arrest of the offender.
- (3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.
- (4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.
- (5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.
- (6) For sections 137 and 138 of the *Police Administration Act*, a breach of the order is taken to be an offence.

48L Court orders following breach – commission of offence

- (1) This section applies if the court is satisfied the offender breached the condition of the community custody order mentioned in section 48E(1)(a).
- (2) Unless the court is satisfied it would be unjust to do so because of exceptional circumstances that have arisen since the order was made, the court must:
 - (a) revoke the order if it is still in force; and

- (b) whether or not the order is still in force, sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition.
- (3) In addition, if the court had made an order under section 25M or 25R of the *Motor Vehicles Act* for the offender (the **MVA order**), the court must revoke the MVA order.
- (4) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act* because of an application made under the MVA order:
 - (a) the licence is cancelled; and
 - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and
 - (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act*:
 - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and
 - (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (5) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.
- (6) If the court sentences the offender to serve the unexpired term of imprisonment, the term must:
 - (a) be served immediately; and
 - (b) be served cumulatively on another term of imprisonment previously imposed on the offender by any court.
- (7) If the court is satisfied there are exceptional circumstances that have arisen since the order was made, the court may:
 - (a) if the order is still in force – confirm it or vary its conditions; or

- (b) otherwise – confirm the order is discharged and take no further action.

48M Court orders following another breach

- (1) This section applies if the court is satisfied the offender breached a condition of the community custody order other than the condition mentioned in section 48E(1)(a).
- (2) If the order is still in force, the court may:
 - (a) confirm the order; or
 - (b) vary the conditions of the order; or
 - (c) revoke the order and sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition.
- (3) If the order is no longer in force, the court may:
 - (a) sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition; or
 - (b) confirm the discharge of the order and take no further action.
- (4) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act* for the offender (the **MVA order**), the court may revoke the MVA order.
- (5) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act* because of an application made under the MVA order:
 - (a) the licence is cancelled; and
 - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and
 - (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act*:
 - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and

- (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (6) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.
- (7) If the court sentences the offender to serve the unexpired term of imprisonment, the term must:
 - (a) be served immediately; and
 - (b) be served cumulatively on another term of imprisonment previously imposed on the offender by any court.

48N Records as evidence

A matter contained in the following records produced to a court in a proceeding under this Subdivision is, as far as it is applicable, evidence of the offender's activities:

- (a) records generated by or through an approved monitoring device or approved voice recognition system;
- (b) records comprising the notebooks or diaries of a surveillance officer.

48P Certain costs recoverable by Territory

If the offender destroys or damages an approved monitoring device or associated device, machine or equipment:

- (a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and
- (b) the costs may be recovered from the offender as a debt payable to the Territory.

48Q End of sentence and discharge of order

- (1) If the Director is satisfied the offender has complied with the conditions of the community custody order the Director must issue a certificate that the order is discharged.
- (2) On the issue of the certificate:

-
- (a) the offender is taken to have served the sentence of imprisonment; and
 - (b) the order is discharged.

30 Section 102A amended

Section 102A(1)

omit, insert

- (1) This section applies to the following orders:
 - (a) an order made under section 11, 13, 40 or 78K;
 - (b) a community work order;
 - (c) a community based order;
 - (d) a home detention order;
 - (e) a community custody order;
 - (f) an order varying or confirming an order mentioned in paragraphs (a) to (e).

31 Section 127 repealed

Section 127

repeal

32 Part 12, Division 4 inserted

After section 131

insert

Division 4 Transitional matters for Justice (Corrections) and Other Legislation Amendment Act 2011**132 Community based orders and community custody orders for pre-commencement offences**

To avoid doubt, a court may make a community based order or community custody order for an offender for an offence committed before the commencement of this section.

33 Act further amended

Schedule 4 has effect.

Part 6 Amendment of other laws

Division 1 Motor Vehicles Act

34 Act amended

This Division amends the *Motor Vehicles Act*.

35 Section 5 amended

Section 5(1)

insert (in alphabetical order)

community order, for Part 2A, see section 25J.

driving program, for Part 2A, see section 25J.

licence disqualification, for Part 2A, see section 25J.

licensed driver, for Part 2A, see section 25J.

offender, for Part 2A, see section 25K(1)(a).

previously licensed offender, for Part 2A, see section 25L(1)(a).

unlicensed offender, for Part 2A, see section 25L(1)(b).

36 Part 2A inserted

After section 25H

insert

Part 2A Special provisions for licence disqualifications for offenders under community orders

Division 1 Preliminary matters

25J Definitions

In this Part:

community order means:

- (a) a community based order under Part 3, Division 4A of the *Sentencing Act*, or

- (b) a community custody order under Part 3, Division 5, Subdivision 2A of the *Sentencing Act*.

driving program, for a community order, means a prescribed program as defined in section 3(1) of the *Sentencing Act* that requires the offender for whom the order is made to undertake a program relating to:

- (a) driving, including rehabilitation for drink or drug driving; or
(b) road safety.

licence disqualification, for an offender, means a disqualification applying to the offender in relation to holding a licence or the offender's ability to apply for a licence or renewal of a licence.

licensed driver, for a class of motor vehicle, means a person who holds:

- (a) a licence to drive a motor vehicle of the class other than a learner licence or licence that is provisional under section 10A; or
(b) an equivalent licence granted in a State or another Territory.

offender, see section 25K(1)(a).

previously licensed offender, see section 25L(1)(a).

unlicensed offender, see section 25L(1)(b).

25K Application of Part

- (1) This Part applies if:
- (a) a person (the ***offender***) has been found guilty of an offence against the *Traffic Act*; and
- (b) because of the finding of guilt the offender incurs a licence disqualification under the *Traffic Act*; and
- (c) all of the offender's unexpired licence disqualifications total less than 5 years; and
- (d) a community order was made for the offender for the offence (regardless of whether the order was also made for another offence); and
- (e) the community order requires the offender to undertake a driving program.

- (2) This Part applies despite a provision of the *Traffic Act* that provides for:
- (a) the cancellation or suspension of the offender's licence; or
 - (b) a licence disqualification applying to the offender.

Note for subsection (2)

If a person is found guilty of an offence against Part V, Division 2 of the Traffic Act, the person's licence to drive is automatically cancelled and the person is disqualified from obtaining a licence for certain periods. Also, under section 41 of that Act, a court may disqualify a person from holding another licence for a period fixed by it.

Division 2 Provision for orders for licence while community order in force

25L Application for court order for licence

- (1) To permit the offender to undertake practical training as part of the driving program under the community order, the offender may apply for a court order that the Registrar:
- (a) if the offender held, in the Territory or elsewhere, a licence to drive a motor vehicle when the offender's licence disqualification mentioned in section 25K(1)(b) took effect (a ***previously licensed offender***) – grant the offender a licence to drive a motor vehicle of a stated class while the community order is in force; or
 - (b) if the offender did not hold, in the Territory or elsewhere, a licence to drive a motor vehicle when the offender's licence disqualification mentioned in section 25K(1)(b) took effect (an ***unlicensed offender***) – accept and deal with an application by the offender for a learner licence to drive a motor vehicle of a stated class while the community order is in force.
- (2) However, the application cannot be made for a licence to drive a commercial passenger vehicle or motor cycle.
- (3) The application must be made to the court that made the community order for the offender.
- (4) The clerk or Registrar of the court must immediately give written notice of the application to the Director of Correctional Services.

25M Decision on application

The court may make the order sought only if satisfied it is appropriate in the circumstances to make the order for the offender.

Note for section 25M

For provisions about the revocation of the order and the effects of its revocation, see sections 39N, 48L and 48M of the Sentencing Act.

25N Effect of order – previously licensed offender

- (1) This section applies if:
 - (a) the offender is a previously licensed offender; and
 - (b) the court makes the order sought on the offender's application.
- (2) The Registrar must grant the offender a licence to drive a motor vehicle of the class stated in the order.
- (3) The licence is in force for the period the community order is in force.
- (4) The licence is subject to the condition that the offender may drive a motor vehicle of the stated class only while under the direct supervision of a licensed driver for the class of motor vehicle:
 - (a) for undertaking practical driver training as part of the driving program under the community order; and
 - (b) after successfully completing the driving program, for undertaking further practical driver training during the remaining period the licence is in force.

25P Effect of order – unlicensed offender

- (1) This section applies if:
 - (a) the offender is an unlicensed offender; and
 - (b) the court makes the order sought on the offender's application.
- (2) The Registrar must:
 - (a) accept an application from the offender for a learner licence to drive a motor vehicle of the class stated in the order; and

- (b) deal with the application under this Act.

Note for subsection (2)(b)

In particular, sections 9, 102 and 102AA are relevant to the Registrar's dealing with the application and to the grant of a licence.

- (3) If the Registrar grants a learner licence to the offender, the licence is in force for the period the community order is in force.
- (4) Subsection (3) applies despite section 9(2).
- (5) The learner licence is subject to the condition that the offender may drive a motor vehicle of the stated class only while under the direct supervision of a licensed driver for the class of motor vehicle:
 - (a) for undertaking practical driver training as part of the driving program under the community order; and
 - (b) after successfully completing the driving program, for undertaking further practical driver training during the remaining period the learner licence is in force.

Division 3 Provision for orders for licence application after community order discharged

25Q Application for court order for licence

- (1) To permit the offender to obtain a licence to drive a motor vehicle on the discharge of the community order, the offender may apply for a court order that the Registrar accept and deal with an application by the offender for a licence to drive a motor vehicle of a stated class.
- (2) The application must be made to the court that made the community order for the offender.
- (3) The clerk or Registrar of the court must immediately give written notice of the application to the Director of Correctional Services.

25R Decision on application

- (1) The court may make the order sought only if:
 - (a) satisfied it is appropriate in the circumstances to make the order for the offender; and
 - (b) a certificate of discharge has been given under section 39R or 48Q of the *Sentencing Act* for the community order; and

- (c) a statement has been given to the court by the provider of the driving program undertaken by the offender that the offender successfully completed the program.
- (2) Without limiting subsection (1)(a), the court must have regard to the following:
- (a) the type and seriousness of the offence for which the offender is disqualified from obtaining a licence;
 - (b) the safety of the community, including matters relating to the offender's rehabilitation;
 - (c) the offender's need for a licence to drive a motor vehicle of the class stated in the application:
 - (i) in the course of the offender's employment; or
 - (ii) to get to the offender's place of employment;
 - (d) the offender's employment prospects if the offender has a licence to drive a motor vehicle of the class stated in the application.
- (3) However, if under Part V of the *Traffic Act*, the offender is disqualified from obtaining a licence other than an AIL licence, the court may make the order only in relation to an application for an AIL licence.

Note for subsection (3)

Section 10(4A) to (4D) deals with an application for an AIL licence.

- (4) In addition, if the offender is an unlicensed offender, the court may make the order only in relation to an application for a learner licence.
- (5) Also, the court must refuse to make the order if, under section 102AA, the Registrar would be required to refuse to grant an application by the offender for the licence.

Note for section 25R

For provisions about the revocation of the order and the effects of its revocation, see sections 39N, 48L and 48M of the Sentencing Act.

25S Effect of order

- (1) If the court makes the order sought:
- (a) subject to subsection (2), all licence disqualifications applying to the offender cease to have effect; and

- (b) demerit points entered in the register against the offender's name for offences committed in the Territory cease to be active demerit points for Part 3; and
- (c) the Registrar must:
 - (i) subject to section 25T, accept an application from the offender for a licence to drive a motor vehicle of the class stated in the order; and
 - (ii) subject to subsections (3) to (5), deal with the application under this Act.

Note for subsection (1)(b)

If the order is revoked under section 39N(4), 48L(3) or 48M(4) of the Sentencing Act, the demerit points again become active demerit points under section 39N(5)(c)(ii), 48L(4)(c)(ii) or 48M(5)(c)(ii) of that Act.

Note for subsection (1)(c)(ii)

In particular, sections 10, 102 and 102AA are relevant to the Registrar's dealing with the application and to the grant of a licence.

- (2) A licence disqualification applying to the offender does not cease to have effect to the extent it disqualifies the offender from holding a licence, or applying for a licence or renewal of a licence, other than an AIL licence.
- (3) If the offender held a learner licence granted on an application mentioned in section 25P(2), the offender is, for section 9(4), taken to understand the laws in force relating to the regulation of road traffic.
- (4) Subsection (5) applies if:
 - (a) the offender held a learner licence granted on an application mentioned in section 25P(2) (the **former licence**); and
 - (b) the Registrar is satisfied that, after successfully completing the driving program under the community order, the offender undertook further practical driver training during the remaining period the learner licence was in force; and
 - (c) the Registrar grants a learner licence on an application made under this section (the **new licence**); and
 - (d) the former licence and new licence have effect for a continuous period.
- (5) The period the former licence had effect must be taken into account for working out the continuous period mentioned in section 10(1A).

25T Undertaking to be of good driving behaviour

- (1) If the licence disqualification mentioned in section 25K(1)(b) applies to the offender because of a demerit points offence under Part 3, the offender must lodge with the offender's application for a licence an undertaking to be of good driving behaviour for 1 year (the *good driving period*).
- (2) The undertaking must be in the approved form.
- (3) If the Registrar grants a licence on the application, the good driving period starts on the day the licence starts.
- (4) If the offender incurs 2 or more demerit points during the good driving period, the Registrar must serve on the offender a suspension notice specifying a suspension period that is double the period specified in the suspension notice for the offence mentioned in subsection (1).

37 Section 28 amended

- (1) Section 28(2), note

omit, insert

Notes for subsection (2)

1 *Because substantial delay is possible between the date points are incurred and the date they are entered in the register, some points can remain active for more than 3 years.*

2 *Demerit points also cease to be active under section 25S(1)(b).*

- (2) After section 28(2)

insert

- (3) This section has effect subject to sections 39N(5)(c)(ii), 48L(4)(c)(ii) and 48M(5)(c)(ii) of the *Sentencing Act*.

Division 2 Workers Rehabilitation and Compensation Act

38 Act amended

This Division amends the *Workers Rehabilitation and Compensation Act*.

39 Section 3 amended

(1) Section 3(4)

omit

all words from "work order" to "*Youth Justice Act*"

insert

court order

(2) After section 3(4)

insert

(4A) For subsection (4), each of the following is a community court order:

(a) a community work order under the *Fines and Penalties (Recovery) Act*, *Sentencing Act* or *Youth Justice Act*,

(b) a community custody order or community based order under the *Sentencing Act*.

Division 3 Youth Justice Act

40 Act amended

This Division amends the *Youth Justice Act*.

41 Section 83 amended

Section 83(1)(m), after "offence"

insert

other than a community based order or community custody order under the *Sentencing Act*

Division 4 Other laws

42 Other laws amended

Schedule 5 amends the laws mentioned in it.

Part 7 Expiry of Act

43 Expiry

This Act expires on the day after it commences.

Schedule 1 Bail Act further amended

section 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part I, heading	Part I	Part 1
section 3(1), definitions <i>bail offence</i> and <i>original offence</i>	Part VII	Part 7
Part II, heading	Part II	Part 2
Part III, heading	Part III	Part 3
Part IV, heading	Part IV	Part 4
Part V, heading	Part V	Part 5
section 27A(1)(h)	alcoholic liquor	alcohol
Part VI, heading	Part VI	Part 6
Part VII, heading	Part VII	Part 7
Part VIII, heading	Part VIII	Part 8

Schedule 2 Parole of Prisoners Act further amended

section 15

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
before section 1		Part 1 Preliminary matters
section 3(1), definition <i>constable</i>	whole definition	
section 3(1)		<i>(in alphabetical order)</i> <i>police officer</i> means: (a) a member of the Police Force of the Territory; or (b) a member of the Australian Federal Police.
after section 3		Part 2 Administrative matters Division 1 Parole Board
section 3A	whole heading	3A Parole Board established
after section 3K		Division 2 Parole officers
section 3P, heading	whole heading	3P Appointment of parole officers
after section 4		Part 3 Parole orders
sections 5(9), (9A) and (10) and 6(1)	constable <i>(all references)</i>	police officer
after section 15		Part 4 Miscellaneous matters
section 16(b)	a Territory	the Territory

Schedule 3 Prisons (Correctional Services) Act further amended

section 23

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 27, heading	whole heading	Part 27 Powers, procedures and related matters for orders under Sentencing Act and Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act
Part 27, Division 1, heading	whole heading	Division 1 Monitoring orders
section 94D(3)	a monitoring	an approved monitoring
section 94E(3)	and must have such	, community based order or community custody order and has the
section 94G(1)(a) and (b)	home detention order	monitoring order

Schedule 4 Sentencing Act further amended

section 33

Part 1 Amendments commencing on assent

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 39(1)(f)	whole paragraph	
section 102A(3)	member	police officer

Part 2 Amendments commencing on later day

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 44(3)(b)	a monitoring (<i>first reference</i>)	an approved monitoring
section 48(1)(c), (8)(a) and (12)	a monitoring	an approved monitoring

Schedule 5 Other laws amended

section 42

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Bail Regulations</i>		
regulation 4(2)	Division 2 of Part VI	Part 6, Division 2
regulation 5(1A)	Part VI	Part 6
regulation 5(1)	Division 2 of Part VI	Part 6, Division 2
<i>Supreme Court Rules</i>		
rule 86.27(1)	Part VII	Part 7
rule 93.02(2)	Part IV	Part 4
