

Serial 69
Sentencing and Other Legislation Amendment Bill 2022
Mr Paech

A Bill for an Act to amend the *Sentencing Act 1995*, the *Sentencing Regulations 1996*, the *Domestic and Family Violence Act 2007*, the *Misuse of Drugs Act 1990* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AND OTHER LEGISLATION AMENDMENT ACT 2022

Act No. [] of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the *Sentencing Act 1995*, the *Sentencing Regulations 1996*, the *Domestic and Family Violence Act 2007*, the *Misuse of Drugs Act 1990* and for related purposes

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Sentencing and Other Legislation Amendment Act 2022*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 9 October 2024, it commences on that day.

Part 2 Amendment of sentencing legislation

Division 1 Sentencing Act 1995

3 Act amended

This Division amends the *Sentencing Act 1995*.

4 Section 3 amended (Interpretation)

- (1) Section 3(1), definitions ***community based order, community custody order, community work order, home detention order, level 1 offence, level 2 offence, level 3 offence, level 4 offence, level 5 offence*** and ***violent offence***

omit

- (2) Section 3(1)

insert

community correction order means a community correction order made under Part 3, Division 4.

domestic relationship, see section 9 of the *Domestic and Family Violence Act 2007*.

domestic violence, see section 5 of the *Domestic and Family Violence Act 2007*.

domestic violence order means an order made in the nature of a domestic violence order under the *Domestic and Family Violence Act 2007*.

family relationship, see section 10 of the *Domestic and Family Violence Act 2007*.

home detention condition means a condition in an intensive community correction order that an offender must:

- (a) reside or remain in premises or a place specified in the order for:
- (i) a period of at least 12 hours per day for each day the order is in force; or
- (ii) a period of time per day for each day the order is in force as determined by the Commissioner; and
- (b) not leave the premises or place specified in the order for the period mentioned in paragraph (a) except at the times and for the periods as specified in the order or as otherwise permitted by the Commissioner or a probation and parole officer; and
- (c) obey the reasonable directions of the Commissioner.

intensive community correction order means an intensive community correction order made under Part 3, Division 5, Subdivision 2.

offensive weapon, for Part 3, Division 6A, see section 78C.

rehabilitation program in relation to domestic and family violence means a program declared under section 85A(1) of the *Domestic and Family Violence Act 2007*.

violent offence means the following:

- (a) for sections 65, 67, 68 and 74 – see section 65(1);
- (b) for section 52 and Part 3, Division 6A – see section 78C.

- (3) Section 3(1), definition **impose a minimum sentence**

omit

section 78DH

insert

section 78CA

- (4) Section 3(1), definition **impose a term of actual imprisonment**

omit

section 78DG

insert

section 78CB

- (5) Section 3(1), definition **prescribed program**

omit

community based order or community custody order

insert

community correction order or an intensive community correction order

(6) Section 3(1), definition ***pre-sentence report***

omit

Division 4A and Part 3, Division 5, Subdivision 2A

insert

Division 4 and Part 3, Division 5, Subdivision 2

5 Section 5 amended (Sentencing guidelines)

(1) Section 5(1), at the end

insert

Note for subsection (1)(e)

This includes the protection of any person who is in a family relationship or a domestic relationship with the offender.

(2) Section 5(2)(q)

omit

work order

insert

correction order or an intensive community correction order

(3) After section 5(4)

insert

- (5) In addition to subsections (2) and (4), in sentencing an offender in relation to an offence that involves domestic violence, a court must have regard to whether there is an unacceptable risk that the offender may commit domestic violence against a person.
- (6) If the court is satisfied there is an unacceptable risk that the offender may commit domestic violence against a person, in sentencing the offender in relation to the offence that involves domestic violence, the court must:
- (a) have regard to whether making an order in relation to the offender, including whether a condition of the order, would mitigate any unacceptable risk of the offender committing domestic violence against a person; and

- (b) have regard to whether a domestic violence order should be made against the offender to mitigate any unacceptable risk of the offender committing domestic violence against a person; and
- (c) if the court makes a domestic violence order against the offender – ensure any order or a condition of the order is consistent with any conditions of the domestic violence order; and
- (d) if a domestic violence order is in force against the offender at the time of the sentencing:
 - (i) have regard to whether any conditions or the duration of the order should be varied; and
 - (ii) ensure any order or a condition of the order is consistent with any conditions of the domestic violence order.

6 Section 7 amended (Sentencing and other orders)

- (1) Section 7(f)

omit, insert

- (f) with or without recording a conviction, make a community correction order for the offender;
- (fa) with or without recording a conviction, make a community correction order for the offender and order the offender to pay a fine;

- (2) Section 7(h) and (j)

omit, insert

- (h) record a conviction and make an intensive community correction for the offender.

7 Part 3, Division 2 heading amended

Part 3, Division 2, heading

omit

, discharges and bonds

insert

and discharges

8 Part 3, Division 2, Subdivisions 1 and 2 headings omitted

Part 3, Division 2, Subdivisions 1 and 2, headings

omit

9 Section 11 repealed (Release on bond without conviction)

Section 11

repeal

10 Part 3, Division 2, Subdivision 3 heading omitted

Part 3, Division 2, Subdivision 3, heading

omit

**11 Section 13 and Part 3, Division 2, Subdivision 4 repealed
(Provisions in relation to bonds)**

Section 13 and Part 3, Division 2, Subdivision 4

repeal

12 Part 3, Divisions 4 and 4A replaced

Part 3, Divisions 4 and 4A

repeal, insert

Division 4 Community correction orders

30 Purpose of community correction orders

A community correction order may be made under this Division to allow for flexibility in the sentencing of an offender by imposing a sentence that provides for the offender to be based in the community.

31 When court may make order

- (1) A court may make a community correction order under this Division for an offender if the court considers it appropriate.
- (2) The court may make the community correction order in addition to imposing a fine on the offender but not in addition to a sentence of a term of imprisonment.

32 Duration of order and day order commences

- (1) A community correction order commences on the day it is made.
- (2) The period a community correction order is in force must not exceed 2 years.

33 Statutory conditions of order

A community correction 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 must be of good behaviour for the period the order is in force.

34 Conditions of order imposed by court

- (1) Subject to this section and section 35, a court may impose conditions on a community correction order, including the following:
 - (a) subject to section 36 – the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer;
 - (b) the offender must satisfactorily complete a rehabilitation program in relation to domestic and family violence;
 - (c) another condition prescribed by regulation;
 - (d) any other condition the court considers appropriate.

Note for subsection (1)(b)

Section 5(5) and (6) sets out the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.

- (2) Despite section 101, the court may impose the condition mentioned in subsection (1)(b) without the offender's consent.
- (3) The regulations may make provision about matters in relation to the condition mentioned in subsection (1)(b).
- (4) The court must not impose a home detention condition on a community correction order.

35 Condition requiring monitoring

- (1) A court must not make a community correction order in relation to an offender subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition unless the court has had regard to a pre-sentence report in relation to the offender.
- (2) A report under subsection (1) may be in writing or given orally to the court.
- (3) If the court makes an order subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition, the offender must comply with Chapter 4 of the *Correctional Services Act 2014* and any regulations made for that Chapter.

36 Condition to participate in approved project

A court must not make a community correction order in relation to an offender subject to the condition mentioned in section 34(1)(a) unless the court:

- (a) has been notified by the Commissioner that arrangements have been or will be made for the offender to participate in an approved project under the order; and
- (b) is satisfied that:
 - (i) the offender is a suitable person to participate in the approved project; and
 - (ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.

37 Copy of order to be given to offender and Commissioner

A court must give a copy of a community correction order to the following:

- (a) the offender to whom it applies;
- (b) if the order is subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition – the Commissioner.

38 Orders for more than one offence

- (1) If a court makes separate community correction 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 correction order made for the offender are, unless the court otherwise directs, concurrent with those of any other community correction order already in force for the offender.

39 Revocation or variation of order on application

- (1) A court which has made a community correction order in relation to an offender may, on application by the Commissioner or offender:
 - (a) revoke the community correction 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; or
 - (b) vary the conditions of the community correction order; or
 - (c) confirm the community correction order.
- (2) If the Commissioner 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.
- (3) If the offender makes the application, the court may only make an order under subsection (1) if the court is satisfied that the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances.
- (4) If the offender makes the application, the court must give notice to the Commissioner 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 Commissioner.
- (6) In addition, in making an order under subsection (1), the 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.

39A Breach of community correction order

- (1) If a justice of the peace is satisfied on information on oath that an offender has breached a condition of a community correction order, the justice of the peace may:
- (a) issue to the offender a summons to appear before a 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 of the peace is satisfied that the offender may not appear before the court in response to a summons – issue a warrant for the arrest of the offender.
- (2) The justice of the peace may issue the summons or warrant under subsection (1):
- (a) if the offender has breached a condition of the community correction order that is still in force; or
 - (b) within 2 years after the community correction order ceases to be in force, if the offender had breached a condition of the order when it was in force.
- (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 1978*, a breach of a condition of the order is taken to be an offence.

39B Court orders following breach

- (1) If a court is satisfied that an offender breached a condition of a community correction order, the court may:
 - (a) if the order is still in force:
 - (i) confirm the order; or
 - (ii) vary the conditions of the order; or
 - (iii) revoke the order and 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
 - (iv) subject to subsection (2) – extend the period of the order; or
 - (v) confirm the discharge of the order and take no further action; or
 - (b) if the order is no longer in force:
 - (i) 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
 - (ii) confirm the discharge of the order and take no further action.
- (2) For subsection (1)(a)(iv), the court may only extend the period of the order to provide for the order to be in force for no longer than 2 years in total.
- (3) For subsection (1)(b)(i), the court may, in dealing with the offender, take into account the extent to which the offender had complied with the order before the offender breached the condition of the order.
- (4) If an offender has breached a condition of a community correction order because the offender committed domestic violence, the court must take into account the matters mentioned in section 5(5) and (6) when considering the breach as if the court is sentencing the offender for an offence that involves domestic violence.
- (5) 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 1949* for the offender (the **MVA order**), the court may revoke the MVA order.

- (6) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* 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 1949*:
 - (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.
- (7) 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.

39C 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 an offender's activities:

- (a) records generated by or through an approved monitoring device;
- (b) records comprising the notebooks or diaries of a probation and parole officer.

39D Certain costs recoverable by Territory

If an 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.

13 Section 40 amended (Suspended sentence of imprisonment)

Section 40(2), at the end

insert

Note for subsection (2)

For example, the order could be subject to a condition mentioned in the Regulations for a community correction order or an intensive community correction order.

14 Section 42 amended (Variation of order conditionally suspending sentence)

(1) Section 42(1), all words after "satisfied"

omit, insert

that a circumstance in subsection (2) applies:

- (a) cancel the 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; or
- (b) vary the conditions of the order; or
- (c) confirm the order.

(2) Section 42(2)

omit, insert

(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) the offender has failed or is no longer willing to comply with a condition of the order.

(3) After section 42(5)

insert

(6) In deciding how to deal with the offender under subsection (1)(a), the court must take into account the extent to which the offender has complied with the order.

15 Part 3, Division 5, Subdivisions 2 and 2A replaced

Part 3, Division 5, Subdivisions 2 and 2A

repeal, insert

Subdivision 2 Intensive community correction orders

44 Purpose of intensive community correction orders

An intensive community correction order may be made under this Subdivision to provide for an offender to serve a term of imprisonment in the community and, in doing so:

- (a) ensure that a person who commits an offence is held accountable; and
- (b) address the personal factors that contribute to the offender's criminal behaviour.

45 When court may make order

- (1) A court that sentences an offender to a term of imprisonment may order the sentence of imprisonment be served by way of an intensive community correction order if the court considers it appropriate.
- (2) The court must not make an intensive community correction order in relation to an offender unless the court has had regard to a pre-sentence report in relation to the offender.
- (3) A report under subsection (2) may be in writing or given orally to the court.
- (4) The court must not fix a non-parole period in relation to a sentence of imprisonment served by way of an intensive community correction order.

46 Duration of order and day order commences

- (1) An intensive community correction order commences:
 - (a) on the day that the order is made; or
 - (b) if the order is made at the same time another sentence of imprisonment for another offence is imposed on the offender – on the day after the day on which the offender has served that other sentence.

- (2) An intensive community correction order may not commence on a day before the order is made.
- (3) The period an intensive community correction order is in force must not exceed 2 years.
- (4) A court may consider any period of time the offender was remanded in custody for the offence in determining the period the order is in force.

47 Statutory conditions of order

- (1) An intensive community correction 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 must be of good behaviour for the period the order is in force;
 - (c) the offender:
 - (i) is under the ongoing supervision of a probation and parole officer; and
 - (ii) must report to a probation and parole officer at a specified place within 2 business days after the order comes into force; and
 - (iii) must comply with Chapter 4 of the *Correctional Services Act 2014* and any regulations made for that Chapter;
 - (d) if the Commissioner has reasonable grounds to do so – the offender may be required, by the Commissioner, to:
 - (i) reside at a specified place for the period specified in the notice; and
 - (ii) wear or have attached an approved monitoring device for the period specified in the notice (the **temporary monitoring period**); and
 - (iii) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (2) For subsection (1)(d), the temporary monitoring period must not be more than 14 days.

48 Conditions of order imposed by court

- (1) A court may impose conditions on an intensive community correction order, including the following:
- (a) subject to section 48A – a home detention condition;
 - (b) subject to section 48B – the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer;
 - (c) the offender must satisfactorily complete a rehabilitation program in relation to domestic and family violence;
 - (d) another condition prescribed by regulation;
 - (e) any other condition the court considers appropriate.

Note for subsection (1)(c)

Section 5(5) and (6) sets out the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.

- (2) Despite section 101, the court may impose the condition mentioned in subsection (1)(c) without the offender's consent.
- (3) The regulations may make provision about matters in relation to the condition mentioned in subsection (1)(c).

48A Home detention condition

A court must not make an intensive community correction order in relation to an offender subject to a home detention condition unless the court is satisfied that:

- (a) suitable arrangements are available for the offender to reside at premises or a place; and
- (b) the premises or place is suitable for the purposes of the order subject to the condition; and
- (c) the making of the order subject to the condition is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally.

Notes for section 48A(c)

1 *This includes the protection of any person who is in a family relationship or a domestic relationship with the offender.*

2 *See section 5(5) and (6) for the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.*

48B Condition to participate in approved project

A court must not make an intensive community correction order in relation to an offender subject to the condition mentioned in section 48(1)(b) unless the court:

- (a) has been notified by the Commissioner that arrangements have been or will be made for the offender to participate in an approved project under the order; and
- (b) is satisfied that:
 - (i) the offender is a suitable person to participate in the approved project; and
 - (ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.

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

A court must give a copy of an intensive community correction order to the offender to whom it applies and the Commissioner.

48D Orders for more than one offence

- (1) If the court makes separate intensive community correction 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 intensive community correction order made for the offender are, unless the court otherwise directs, concurrent with those of any other intensive community correction order already in force for the offender.

48E Revocation or variation of order on application

- (1) A court which has made an intensive community correction order in relation to an offender may, on application by the Commissioner or offender:
 - (a) revoke the intensive community correction 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; or
 - (b) vary the conditions of the intensive community correction order; or
 - (c) confirm the intensive community correction order.

- (2) If the Commissioner 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.
- (3) If the offender makes the application, the court may only make an order under subsection (1) if the court is satisfied that the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances.
- (4) If the offender makes the application, the court must give notice to the Commissioner 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 report of the Commissioner.
- (6) In addition, in making an order under subsection (1), the 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.

48F Breach of intensive community correction order

- (1) If a justice of the peace is satisfied on information on oath that an offender has breached a condition of an intensive community correction order, the justice of the peace may:
 - (a) issue to the offender a summons to appear before a 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 of the peace is satisfied that the offender may not appear before the court in response to a summons – issue a warrant for the arrest of the offender.
- (2) The justice of the peace may issue the summons or warrant under subsection (1):
 - (a) if the offender has breached a condition of the intensive community correction order that is still in force; or
 - (b) within 3 years after the intensive community correction order ceases to be in force, if the offender had breached a condition of the order when it was in force.
- (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 1978*, a breach of a condition of the order is taken to be an offence.

48G Court orders following breach

- (1) If a court is satisfied that an offender breached a condition of an intensive community correction order, the court may:
 - (a) if the order is still in force:
 - (i) confirm the order; or
 - (ii) vary the conditions of the order; or
 - (iii) revoke the order and 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
 - (iv) sentence the offender to imprisonment for the unexpired term of the order at the date of the breach of the condition; or
 - (v) confirm the discharge of the order and take no further action; or

- (b) if the order is no longer in force:
 - (i) 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
 - (ii) confirm the discharge of the order and take no further action.
- (2) For subsection (1)(b)(i), the court may, in dealing with the offender, take into account the extent to which the offender had complied with the order before the offender breached the condition of the order.
- (3) If an offender has breached a condition of an intensive community correction order because the offender committed domestic violence, the court must take into account the matters mentioned in section 5(5) and (6) when considering the breach as if the court is sentencing the offender for an offence that involves domestic violence.
- (4) If the court sentences the offender to imprisonment for the unexpired term of the order, the term of imprisonment must, unless the court orders otherwise, be served:
 - (a) immediately; and
 - (b) concurrently with any other term of imprisonment previously imposed on the offender by that or any other court.
- (5) 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 1949* for the offender (the **MVA order**), the court may revoke the MVA order.
- (6) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* 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 1949*:
 - (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.
- (7) 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.

48H 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;
- (b) records comprising the notebooks or diaries of a probation and parole officer.

48J Certain costs recoverable by Territory

If an 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.

16 Section 53 amended (Fixing of non-parole period by sentencing court)

Section 53(1)

omit

and 55A, where

insert

, 55A and 148, if

17 Section 54 replaced

Section 54

repeal, insert

54 Fixed non-parole period for certain offences

- (1) This section applies to the sentencing of an offender:
 - (a) who has committed an offence that is:
 - (i) an offence against the *Misuse of Drugs Act 1990*; or
 - (ii) an offence against section 120(1) of the *Domestic and Family Violence Act 2007*; or
 - (b) to whom Part 3, Division 6A applies.
- (2) If a court sentences the offender to be imprisoned for 12 months or longer that is not suspended in whole or in part for the offence, the court may fix a period under section 53(1) of 50% of the period of imprisonment that the offender is to serve under the sentence.
- (3) If the court fixes a period of less or more than the period specified in subsection (2), the court must give reasons for doing so.

18 Section 55 amended (Minimum non-parole period for certain sexual offences and drug offences)

- (1) Section 55, heading

omit

certain sexual offences and drug offences

insert

offence of sexual intercourse without consent

- (2) Section 55(1)

omit

a specified offence

insert

an offence against section 192(3) of the Criminal Code

(3) Section 55(3)

omit

19 Section 55A amended (Fixed non-parole periods for offences against persons under 16 years)

Section 55A(1)(a)

omit

181, 184, 186, 186B, 188

insert

184

20 Section 57 amended (Fixing of new non-parole period in respect of multiple sentences)

Section 57(2)(c)

omit

or 55A

insert

, 55A or 148

21 Section 64 amended (Further sentence if person on parole)

Section 64(1)(a)

omit

, or is committed to prison under section 15(4),

22 Section 78B amended (Aggravated property offences)

(1) Section 78B(2) and (3)

omit, insert

(2) Unless there are exceptional circumstances in relation to the offence or the offender, a court that records a conviction against an offender found guilty of an aggravated property offence must:

(a) order the offender to serve a term of imprisonment that is not suspended in whole or in part; or

- (b) make an intensive community correction order in relation to the offender and make the order subject to a home detention condition; or
 - (c) make a community correction order or an intensive community correction order in relation to the offender and make the order subject to a condition that the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer.
- (2) Section 78B(4), after "Act"
- insert*
- , including a community correction order or an intensive community correction order subject to other conditions in addition to the conditions mentioned in subsection (2),

23 Part 3, Division 6A replaced

Part 3, Division 6A

repeal, insert

Division 6A Mandatory imprisonment for certain offences

Subdivision 1 Preliminary matters

78C Definitions

In this Division:

impose a minimum sentence, see section 78CA.

impose a term of actual imprisonment, see section 78CB.

offensive weapon, see section 1 of the Criminal Code.

physical harm, in relation to a person, means a physical injury that interferes with the person's health.

violent offence means:

- (a) an offence against a provision of the Criminal Code listed in Schedule 2; or

- (b) an offence substantially corresponding to an offence mentioned in paragraph (a) against:
 - (i) a law that has been repealed; or
 - (ii) a law of another jurisdiction (including a jurisdiction outside Australia).

78CA Imposition of minimum sentence

- (1) If a court is required to ***impose a minimum sentence*** of a specified period of actual imprisonment in relation to an offender, the court:
 - (a) must record a conviction against the offender; and
 - (b) must sentence the offender to a term of imprisonment of not less than the specified period; and
 - (c) must not make an order under section 40 in relation to the term of imprisonment; and
 - (d) must not make an intensive community correction order in relation to the offender.
- (2) Despite subsection (1), if the offender is a youth:
 - (a) a provision of Subdivision 2 requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
 - (b) the court must instead comply with section 78CB as if that section applied to the case.
- (3) In this section:
youth, see section 6 of the *Youth Justice Act 2005*.

78CB Imposition of term of actual imprisonment

- (1) If a court is required to ***impose a term of actual imprisonment*** in relation to an offender the court must:
 - (a) record a conviction against the offender; and
 - (b) sentence the offender to a term of imprisonment.
- (2) In addition to subsection (1), the court may:
 - (a) make an order under section 40 in relation to part, but not the whole of, the term of imprisonment; or

- (b) make an intensive community correction order, subject to a home detention condition, in relation to the offender.

Subdivision 2 Mandatory imprisonment

78D Offence against section 155A of Criminal Code

A court must impose a term of actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 155A of the Criminal Code; and
- (b) the offender has previously been convicted of a violent offence (whenever committed).

78DA Offence against section 188A or 189A of Criminal Code – second or subsequent offence

A court must impose a term of actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 188A or 189A of the Criminal Code; and
- (b) the offender has previously been convicted of a violent offence (whenever committed).

78DB Offence against section 188A or 189A of Criminal Code – physical harm

A court must impose a minimum sentence of 3 months actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 188A or 189A of the Criminal Code; and
- (b) the victim suffers physical harm as a result of the offence.

Note for section 78DB

It is irrelevant whether the offender has previously been convicted of a violent offence.

78DC Offence against section 188A or 189A of Criminal Code – offensive weapon and physical harm

A court must impose a minimum sentence of 3 months actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 188A or 189A of the Criminal Code; and
- (b) the commission of the offence involves the actual or threatened use of an offensive weapon; and
- (c) the victim suffers physical harm as a result of the offence; and
- (d) the offender has not previously been convicted of a violent offence.

78DD Offence against section 188A or 189A of Criminal Code – offensive weapon, physical harm and second or subsequent offence

A court must impose a minimum sentence of 12 months actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 188A or 189A of the Criminal Code; and
- (b) the commission of the offence involves the actual or threatened use of an offensive weapon; and
- (c) the victim suffers physical harm as a result of the offence; and
- (d) the offender has previously been convicted of a violent offence (whenever committed).

78DE Offence against section 188A or 189A of Criminal Code – offensive weapon and second or subsequent offence

A court must impose a term of actual imprisonment in relation to an offender if:

- (a) the court finds the offender guilty of an offence against section 188A or 189A of the Criminal Code; and
- (b) the commission of the offence involves the actual or threatened use of an offensive weapon; and
- (c) the offender has previously been convicted of a violent offence (whenever committed).

78DF Exceptional circumstances exemption

- (1) If a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence and the court is satisfied that the circumstances of the case are exceptional:
 - (a) a provision of this Subdivision requiring the court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
 - (b) the court must instead comply with section 78CB as if that section applied to the case.
- (2) In deciding whether it is satisfied that circumstances of a case are exceptional, the court may have regard to:
 - (a) any victim impact statement or victim report presented to the court under section 106B; and
 - (b) any other matter the court considers relevant.
- (3) The following do not constitute exceptional circumstances of a case:
 - (a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;
 - (b) that another person:
 - (i) was involved in the commission of the offence; or
 - (ii) coerced the person to commit the offence.

24 Part 3, Division 8 repealed (Perpetrators' program orders)

Part 3, Division 8

repeal

25 Section 97A amended (When court may make order)

Section 97A(6)

omit

13(1)(c) or

26 Section 102A amended (Signing of orders)

- (1) Section 102A(1)(a)
omit
11, 13, 40 or 78K
insert
40
- (2) Section 102A(1)(b), (c), (d) and (e)
omit, insert
(b) a community correction order;
(c) an intensive community correction order;
- (3) Section 102A(1)(f)
omit
paragraphs (a) to (e)
insert
paragraph (a), (b) or (c)

27 Part 12, Division 10 inserted

After section 141

insert

**Division 10 Transitional matters for Sentencing and Other
Legislation Amendment Act 2022**

142 Definition

In this Division:

commencement means the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

143 Community correction orders and intensive community correction orders

- (1) A court may make a community correction order or an intensive community correction order in relation to an offender:
 - (a) for an offence committed before the commencement if the court had not imposed a sentence on the offender in relation to the offence before the commencement; and
 - (b) for an offence committed after the commencement.
- (2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

144 Mandatory sentencing before and after commencement

- (1) This section applies:
 - (a) to an offender:
 - (i) who committed an offence before the commencement; and
 - (ii) to whom Part 3, Division 6A, as in force before the commencement, applies; and
 - (b) if a court had not imposed a sentence on the offender in relation to the offence before the commencement.
- (2) Subject to section 148, the Act as in force after the commencement applies in relation to the sentence the court must impose on the offender in relation to the offence.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

145 Breach of order before and after commencement

- (1) The repealed provisions apply in relation to a breach of a sentence if:
 - (a) a court imposed a sentence before the commencement on an offender in relation to an offence; and
 - (b) the offender has breached the sentence:
 - (i) after the commencement; or

- (ii) before the commencement and the court had not made an order in relation to the breach before the commencement.
- (2) For this section, if any of the conduct constituting the breach occurred before the commencement, the breach is taken to have been committed before the commencement.
- (3) In this section:

repealed provisions means the following provisions as in force before the commencement:

 - (a) section 11;
 - (b) section 13;
 - (c) Part 3, Division 2, Subdivision 4;
 - (d) Part 3, Divisions 4 and 4A;
 - (e) Part 3, Division 5, Subdivisions 2 and 2A;
 - (f) Part 3, Division 8.

146 Application of section 5

- (1) Section 5, as amended by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to:
 - (a) the sentencing of an offender in relation to an offence committed before the commencement if the court had not imposed a sentence on the offender before the commencement; and
 - (b) the sentencing of an offender in relation to an offence committed after the commencement.
- (2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

147 Application of section 42

- (1) Section 42, as amended by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to an order wholly or partially suspending a sentence of imprisonment made after the commencement.

- (2) Section 42, as in force before the commencement, applies in relation to an order wholly or partially suspending a sentence of imprisonment made before the commencement.

148 Non-parole period for offences committed before the commencement

- (1) This section applies:
- (a) to the sentencing of an offender:
 - (i) who committed an offence against the *Misuse of Drugs Act 1990* or an offence against section 120(1) of the *Domestic and Family Violence Act 2007* before the commencement; or
 - (ii) to whom Part 3, Division 6A, as in force before the commencement, applied; and
 - (b) if a court had not imposed the sentence on the offender in relation to the offence before the commencement.
- (2) If a court sentences the offender to be imprisoned for 12 months or longer that is not suspended in whole or in part for the offence, the court must fix a period under section 53(1) of not less than 50% of the period of imprisonment that the offender is to serve under the sentence.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Division 2 Sentencing Regulations 1996

28 Regulations amended

This Division amends the *Sentencing Regulations 1996*.

29 Part 1 heading inserted

Before regulation 1

insert

Part 1 Preliminary matters

30 Part 2 heading inserted

After regulation 1

insert

Part 2 General matters

31 Regulation 2 amended (Prescribed program and undertaking)

Regulation 2(1)

omit

based order or community custody order

insert

correction order or an intensive community correction order

32 Regulation 4 amended (Prescribed persons)

(1) Regulation 4(1)

omit

14(3)(b), 15(1),

(2) Regulation 4(2)

omit

sections 15(1) and

insert

section

33 Regulations 4A and 5 replaced

Regulations 4A and 5

repeal, insert

5 Prescribed conditions

- (1) For section 34(1)(c) of the Act, the following conditions are prescribed:
- (a) the offender:
 - (i) is under the ongoing supervision of a probation and parole officer; and
 - (ii) must report to a probation and parole officer at a specified place within 2 business days after the order comes into force;
 - (b) the offender must remain in the offender's residence for a specified period of time of the day;
 - (c) the offender must wear or have attached an approved monitoring device;
 - (d) 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;
 - (e) the offender must participate in a prescribed program, designed to address the personal factors that contribute to the offender's criminal behaviour, as directed by the Commissioner;
 - (f) the offender must participate in any other program, course or service the court considers appropriate;
 - (g) the offender must not consume or purchase alcohol or a drug (other than as prescribed by a medical practitioner or other health practitioner);
 - (h) the offender must submit to a breath test, breath analysis or blood or urine test at the request of a probation and parole officer or police officer;
 - (i) the offender must not:
 - (i) be in company with one or more specified persons; or

- (ii) communicate in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons;
 - (j) the offender must not, except as provided in the order, visit one or more specified places (including a district or specific location).
- (2) For section 48(1)(d) of the Act, the conditions specified in subregulation (1)(b) to (j) are prescribed.

34 Part 3 inserted

After regulation 13

insert

**Part 3 Rehabilitation program in relation to domestic
and family violence**

14 Definition

In this Part:

order, in relation to an offender, means a community correction order or an intensive community correction order subject to the condition that the offender satisfactorily complete a rehabilitation program in relation to domestic and family violence.

15 Application of Part

For sections 34(3) and 48(3) of the Act, this Part applies.

16 Notification obligations of program facilitator

- (1) A program facilitator for a rehabilitation program in relation to domestic and family violence must notify both the police and a probation and parole officer if the facilitator:
 - (a) becomes aware of an offender committing domestic violence while the offender is subject to an order; or
 - (b) becomes aware of an offender engaging in conduct that contravenes a DVO while the offender is subject to an order; or
 - (c) believes on reasonable grounds that an offender may present an unacceptable risk to the safety or welfare of a protected person or any other person.

- (2) The notice must be in writing and include the particulars of the offender's conduct of which the program facilitator is aware.
- (3) A program facilitator for a rehabilitation program in relation to domestic and family violence must provide the following to a probation and parole officer:
 - (a) if an offender satisfactorily completes the requirements of the program – a completion notice;
 - (b) if an offender fails to comply with a requirement of the program – a non-compliance notice.

Note for subregulation (3)(b)

A failure to comply with a requirement of the program may constitute a breach of the order – see sections 39A and 39B or sections 48F and 48G of the Act for the consequences of breaching an order.

- (4) If requested by a court, a program facilitator for a rehabilitation program in relation to domestic and family violence must provide a participation notice to the court summarising an offender's participation in the program.

17 Bringing offender before court for review

- (1) The court may require an offender who is subject to an order to appear before it from time to time for a review of the offender's progress in the program.
- (2) The court may request the program facilitator for the program to provide a participation notice under regulation 16(4) for an offender prior to a review under subregulation (1).

18 Satisfactory completion of rehabilitation program in relation to domestic and family violence

An offender subject to an order is considered to have satisfactorily completed a rehabilitation program in relation to domestic and family violence if:

- (a) the offender completes the program; and
- (b) if a DVO in relation to the offender is in force – the offender did not breach the DVO for the duration of the order; and
- (c) the defendant did not commit any domestic violence for the duration of the order; and
- (d) a probation and parole officer receives a completion notice under regulation 16(3)(a).

35 Schedule amended

Schedule, Form 2

omit

Part 3 Amendment of Domestic and Family Violence Act 2007**36 Act amended**

This Part amends the *Domestic and Family Violence Act 2007*.

37 Sections 121 and 122 replaced

Sections 121 and 122

repeal, insert

121 Penalty for contravention of DVO

- (1) Subject to this section, if a person is found guilty of an offence against section 120(1), the person is liable to a maximum penalty of imprisonment for 2 years.
- (2) A person is liable to a maximum penalty of imprisonment for 3 years if:
 - (a) the person is found guilty of at least 3 offences against section 120(1); and
 - (b) the conduct that constituted the offences took place over a period of 28 days; and
 - (c) a court sentences the person for the offences at the same time; and
 - (d) the conduct that constituted the offences did not involve harm or a threat to commit harm to the protected person for whose protection the DVO is in place.
- (3) A person is liable to a maximum penalty of imprisonment for 3 years if:
 - (a) a person is found guilty of an offence against section 120(1); and
 - (b) the person has a prior finding of guilt for a domestic violence offence, a DVO contravention offence or any other offence that involves domestic violence.

- (4) A person is liable to a maximum penalty of imprisonment for 5 years if:
- (a) a person is found guilty of an offence against section 120(1); and
 - (b) the conduct that constituted the offences involved harm or a threat to commit harm to the protected person for whose protection the DVO is in place.

Example of harm for subsections (2) and (4)

Sexual or other assault.

38 Chapter 7, Part 7.7 inserted

After section 146

insert

Part 7.7 Transitional matters for Sentencing and Other Legislation Amendment Act 2022

147 Application of section 121 before and after commencement

- (1) Section 121, as inserted by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to an offence committed after the commencement.
- (2) Sections 121 and 122, as in force before the commencement, apply in relation to an offence committed before the commencement, irrespective of whether a court had imposed a penalty on the person in relation to the offence before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this section:

commencement means the commencement of Part 3 of the *Sentencing and Other Legislation Amendment Act 2022*.

Part 4 Amendment of Misuse of Drugs Act 1990

39 Act amended

This Part amends the *Misuse of Drugs Act 1990*.

40 Section 37 amended (Penalty guidelines)

Section 37(1), definitions *aggravating circumstance*, *drug dependent person*, *playground*, *public swimming pool*, *school*, *video facility* and *youth centre*, (2), (3), (5) and (8)

omit

41 Part IV, Division 5 inserted

After section 49

insert

Division 5 Sentencing and Other Legislation Amendment Act 2022**50 Application of section 37 after commencement**

(1) Section 37, as amended by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to:

- (a) an offence committed before the commencement if the court had not sentenced the person for the offence before the commencement; and
- (b) an offence committed after the commencement.

(2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(3) In this section:

commencement means the commencement of Part 4 of the *Sentencing and Other Legislation Amendment Act 2022*.

Part 5 Other laws amended**42 Other laws amended**

The Schedule amends the laws mentioned in it.

Part 6 Repeal of Act**43 Repeal of Act**

This Act is repealed on the day after it commences.

Schedule Other laws amended

section 42

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Correctional Services Act 2014</i>		
section 4, definitions <i>community based order, community custody order, community work order, home detention order</i> and <i>non-custodial work order</i>	whole definition	
section 4		<i>community correction order</i> , see section 165. <i>intensive community correction order</i> , see section 165.
section 165, definitions <i>community based order, community custody order, community work order</i> , and <i>home detention order</i>	whole definition	
section 165		<i>community correction order</i> means a community correction order under Part 3, Division 4 of the <i>Sentencing Act 1995</i> . <i>intensive community correction order</i> means an intensive community correction order under Part 3, Division 5,

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		Subdivision 2 of the <i>Sentencing Act 1995</i> .
section 166(1)(b)	whole paragraph	(b) a community correction order if the order is subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition; (c) an intensive community correction order.
section 166(2)(a), (b) and (c)	whole paragraph	
section 166(2)(d)	11, 13 or	
section 166(3)	whole subsection	
section 197(3)(c)	whole paragraph	
<i>Correctional Services Regulations 2014</i>		
regulation 19A		<i>home detention condition</i> , see section 3(1) of the <i>Sentencing Act 1995</i> .
regulation 19A, definition <i>home detainee</i> , paragraph (a)	who is subject to a home detention order	whose non-custodial order is subject to a home detention condition
regulation 19A, definition <i>supervisor</i>	under a non-custodial work order	

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 19A, definition training program , at the end		<i>Examples for definition training program, paragraph (b)</i> <i>A rehabilitative activity or a reintegration activity.</i>
regulation 19B, note	whole note	<i>Note for regulation 19B</i> <i>See sections 35(3) and 47(1)(c)(iii) of the Sentencing Act 1995.</i>
Part 3A, Division 2, heading	work	
regulation 19C(1),	subject to a non-custodial work order	
regulation 19D(1)	subject to a non-custodial work order (other than a community work order)	
regulation 19D, note	whole note	
regulations 19E(1), 19F(1), 19G(1) and 19H(1)(a)	subject to a non-custodial work order	
regulation 19H(1)(b)	whole paragraph	(b) the supervisor or a probation and parole officer believes on reasonable grounds that the offender is in breach of the non-custodial order in relation to the offender.
regulation 19J(1)(a)	whole paragraph	(a) a non-custodial offender who is required to participate in an approved project

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
		is in breach of the non-custodial order in relation to the offender; and
regulation 19J(4)	work	
regulation 19J(5)	community work under the offender's non-custodial work	participation in the approved project under the offender's non-custodial
regulations 19K(1)(a), 19L(1)(a) and 19M(1)(a)	subject to a non-custodial work order	
regulation 19T	(other than an offender who is subject only to a community work order)	
regulation 19V(1)	home detention	non-custodial
Motor Vehicles Act 1949		
section 25J, definition community order , paragraph (a)	based order under Part 3, Division 4A	correction order under Part 3, Division 4
section 25J, definition community order , paragraph (b)	a community custody order under Part 3, Division 5, Subdivision 2A	an intensive community correction order under Part 3, Division 5, Subdivision 2
section 25M, note	39N, 48L and 48M	39B and 48G
section 25R(1)(b)	a certificate of discharge has been given under section 39R or 48Q of the <i>Sentencing Act 1995</i> for	satisfied the offender has been discharged from

Provision	Amendment
	<i>omit</i> <i>insert</i>
<i>Victims of Crime Rights and Services Act 2006</i>	
after section 22(1)(h)	(ha) the conditions of a community correction order; (hb) the conditions of an intensive community correction order;