

## Authorised Version

# Sentencing Amendment (Community Correction Reform) Act 2011

No. 65 of 2011

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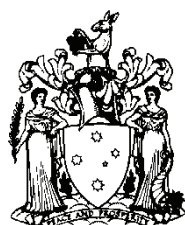
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**Authorised Version**



**Victoria**

**Sentencing Amendment (Community  
Correction Reform) Act 2011<sup>†</sup>**

**No. 65 of 2011**

[Assented to 22 November 2011]

**The Parliament of Victoria enacts:**

**PART 1—PRELIMINARY**

**1 Purposes**

The main purposes of this Act are—

- (a) to amend the **Sentencing Act 1991**, to repeal provisions as to combined custody and treatment orders, intensive correction orders and community-based orders; and

- 
- (b) to amend the **Sentencing Act 1991** to provide for new community correction orders and to provide for other matters in that Act; and
  - (c) to amend the **Sentencing Amendment Act 2010**; and
  - (d) make minor and consequential amendments to other Acts.

## 2 Commencement

- (1) This Part, Part 4 and sections 3(13), 53 and 99 come into operation on the day after the day on which this Act receives the Royal Assent.
  - (2) Section 5(4) comes into operation on 1 January 2012.
  - (3) Subject to subsection (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
  - (4) If a provision referred to in subsection (3) does not come into operation before 30 June 2013, it comes into operation on that day.
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**PART 2—AMENDMENT OF THE SENTENCING ACT 1991**

**3 Definitions**

(1) In section 3(1) of the **Sentencing Act 1991** insert the following definitions—

*"alcohol exclusion condition* means a condition that may be attached to a community correction order under section 48J(1);

*curfew condition* means a condition that may be attached to a community correction order under section 48I(1);

*fine conversion order* means an order made under section 55(1)(d);

*fine default unpaid community work order* means an order made under section 62(10)(a) or section 62A;

*judicial monitoring condition* means a condition that may be attached to a community correction order under section 48K(1);

*justice plan condition* means a condition that may be attached to—

- (a) a community correction order; or
- (b) an order releasing an offender on adjournment with or without recording a conviction—

under section 80(1);

*learner permit* has the same meaning as in the **Road Safety Act 1986**;

*non-association condition* means a condition that may be attached to a community correction order under section 48F(1);

See:  
Act No.  
49/1991.  
Reprint No. 12  
as at  
1 January  
2011  
and  
amending  
Act Nos  
30/2010,  
43/2010,  
53/2010,  
68/2010,  
77/2010,  
9/2011 and  
29/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

***place or area exclusion condition*** means a condition that may be attached to a community correction order under section 48H(1);

***residence restriction or exclusion condition*** means a condition that may be attached to a community correction order under section 48G(1);

***sentencing court***, in relation to an order made under this Act, means the court that made the order;

***treatment and rehabilitation condition*** means a condition that may be attached to a community correction order under section 48D(1);".

- (2) In section 3(1) of the **Sentencing Act 1991**, in the definition of ***approved drug and alcohol assessment agency*** for "section 99E by the Secretary within the meaning of section 3(1) of the **Public Health and Wellbeing Act 2008** for the purposes of Division 2A of Part 6" **substitute** "section 8I by the Secretary to the Department of Health for the purposes of Division 1B of Part 3".
- (3) In section 3(1) of the **Sentencing Act 1991**, for the definition of ***authorised person*** **substitute**—  
***authorised person*** means a person appointed by the Secretary under section 115E;".
- (4) In section 3(1) of the **Sentencing Act 1991**, for the definition of ***contravention summons*** **substitute**—  
***contravention summons*** means a summons issued under section 83AK(1)(a);".
- (5) In section 3(1) of the **Sentencing Act 1991**, in the definition of ***instalment order*** for "Division 4 of Part 3" **substitute** "Division 1 of Part 3B".

- (6) In section 3(1) of the **Sentencing Act 1991**, for the definition of *justice plan substitute*—

*"justice plan* means a plan requested under section 80(3)(c);".

- (7) In section 3(1) of the **Sentencing Act 1991**, in the definition of *licence restoration report* after "section 89(2)" insert "or section 89AE(1)".

- (8) In section 3(1) of the **Sentencing Act 1991**, for the definition of *Regional Manager substitute*—

*"Regional Manager*, in relation to—

- (a) a drug treatment order; or
- (b) a community correction order; or
- (c) a fine default unpaid community work order—

means the person appointed under Part 4 of the **Corrections Act 1986** to be the Regional Manager of the region in which the community corrections centre specified in the order is located;".

- (9) In section 3(1) of the **Sentencing Act 1991**, in the definition of *residential treatment order* for "80(2)(b)" substitute "82AA(1)".

- (10) In section 3(1) of the **Sentencing Act 1991**, for the definition of *Secretary substitute*—

*"Secretary* means the Secretary to the Department of Justice;".

- (11) In section 3(1) of the **Sentencing Act 1991**, for the definition of *supervision condition substitute*—

*"supervision condition* means a condition that may be attached to a community correction order under section 48E(1);".

(12) In section 3(1) of the **Sentencing Act 1991**, for the definition of *unpaid community work condition substitute*—

*"unpaid community work condition* means a condition that may be attached to a community correction order under section 48C(1);".

(13) In section 3(1) of the **Sentencing Act 1991**—

- (a) the definition of *intensive correction management order* is repealed;
- (b) the definition of *intensive correction management order (drug and alcohol)* is repealed;
- (c) the definition of *intensive correction management order (general)* is repealed.

(14) In section 3(1) of the **Sentencing Act 1991**—

- (a) the definition of *combined custody and treatment order* is repealed;
- (b) the definition of *community-based order* is repealed;
- (c) the definition of *community service condition* is repealed;
- (d) the definition of *intensive correction order* is repealed;
- (e) the definition of *personal development condition* is repealed.

#### **4 Sentencing guidelines**

- (1) In section 5(2BE) of the **Sentencing Act 1991** for "Secretary to the Department of Justice" **substitute** "Secretary".
- (2) Section 5(4A) of the **Sentencing Act 1991** is **repealed**.

- 
- (3) In section 5(4B) of the **Sentencing Act 1991**—
- (a) for "drug treatment order" **substitute** "sentence that involves the confinement of the offender";
  - (b) for "an intensive correction order" **substitute** "a drug treatment order".
- (4) In section 5(5) of the **Sentencing Act 1991**—
- (a) for "an intensive correction order" **substitute** "a drug treatment order";
  - (b) for "community-based order" **substitute** "community correction order".
- (5) In section 5(6) of the **Sentencing Act 1991**, for "community-based order" **substitute** "community correction order".

## **5 Sentences**

- (1) Section 7(1)(ab) of the **Sentencing Act 1991** is **repealed**.
- (2) Section 7(1)(b) of the **Sentencing Act 1991** is **repealed**.
- (3) In section 7(1)(e) of the **Sentencing Act 1991**, for "community-based" **substitute** "community correction".
- (4) For section 7(2) of the **Sentencing Act 1991** **substitute**—
  - "(2) If the Magistrates' Court or County Court finds a person guilty of an offence, it may defer sentencing the person in accordance with section 83A."

## **6 Conviction or non-conviction**

In section 8(3)(b)(ii) of the **Sentencing Act 1991** for "breach" **substitute** "contravention".



## **7 New Divisions inserted in Part 3**

After section 8 of the **Sentencing Act 1991**  
**insert—**

### **"Division 1A—Pre-sentence reports**

#### **8A Court may order pre-sentence report**

- (1) If a court finds a person guilty of an offence, before passing sentence the court may order a pre-sentence report in respect of the offender and adjourn the proceeding to enable the report to be prepared.
- (2) A court must order a pre-sentence report if it is considering making a community correction order, a youth justice centre order or a youth residential centre order so that it may—
  - (a) establish the person's suitability for the order being considered; and
  - (b) establish that any necessary facilities exist; and
  - (c) if the order being considered is a community correction order, gain advice concerning the most appropriate condition or conditions to be attached to the order.
- (3) A court is not required to order a pre-sentence report under subsection (2) if it is considering making a community correction order with an unpaid community work condition of up to a maximum of 300 hours as the sole condition attached to the order.

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- (4) If a court orders a pre-sentence report, it must be prepared by—
- (a) the Secretary to the Department of Human Services if the court is considering making a youth justice centre order or a youth residential centre order; or
  - (b) the Secretary in any other case.
- (5) The author of a pre-sentence report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

**8B Contents of pre-sentence report**

- (1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her—
- (a) the age of the offender;
  - (b) the social history and background of the offender;
  - (c) the medical and psychiatric history of the offender;
  - (d) any alcohol, drug and any other substance history disclosed by the offender;
  - (e) the educational background of the offender;
  - (f) the employment history of the offender;
  - (g) the circumstances of any other offences of which the offender has been found guilty and which are known to the court;

- (h) the extent to which the offender is complying with any sentence currently in force in respect of him or her;
  - (i) the financial circumstances of the offender;
  - (j) the ability of the offender to pay a bond;
  - (k) any special needs of the offender;
  - (l) any other services that address the risk of recidivism from which the offender may benefit;
  - (m) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit;
  - (n) the relevance and appropriateness of any proposed condition;
  - (o) the capacity of the offender to perform unpaid community work for any proposed unpaid community work condition;
  - (p) the recommended duration of any intensive compliance period fixed under a community correction order;
  - (q) the appropriateness of confirming an existing order that applies to the offender;
  - (r) any other information that the author believes is relevant and appropriate.
- (2) The author of a pre-sentence report must include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

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**8C Distribution of pre-sentence report**

- (1) A pre-sentence report must be filed with the court no later than the time directed by the court.
- (2) The author of a pre-sentence report must, a reasonable time before sentencing is to take place, provide a copy of the report to—
  - (a) the prosecutor; and
  - (b) any legal practitioner representing the offender; and
  - (c) if the court has so directed, the offender; and
  - (d) any other person that the court considers appropriate.

**8D Disputed pre-sentence report**

- (1) The prosecution or the defence may file with the court a notice of intention to dispute the whole or any part of a pre-sentence report.
- (2) If a notice is filed under subsection (1) before sentencing is to take place, the court must not take the report or the part in dispute (as the case requires) into consideration when determining sentence unless the party that filed the notice has been given the opportunity—
  - (a) to lead evidence on the disputed matters; and
  - (b) to cross-examine the author of the report on its contents.

**Division 1B—Drug and alcohol reports**

**8E Drug and alcohol assessment report**

- (1) If a court is considering making a community correction order the court may order a drug and alcohol assessment report if the court is satisfied that the offender had a drug or alcohol dependency that contributed to the offender's criminal behaviour.
- (2) If a court orders a drug and alcohol assessment report under subsection (1), it must be prepared by an approved drug and alcohol assessment agency.
- (3) The purpose of a drug and alcohol assessment report is—
  - (a) to assess whether the offender has a drug or alcohol dependency; and
  - (b) to make recommendations as to his or her suitability to undergo treatment and rehabilitation under a community correction order.
- (4) A drug and alcohol assessment report may set out any matters which, on investigation, appear to the author of the report to be relevant to the assessment of the offender and are readily ascertainable by him or her.
- (5) The author of a drug and alcohol assessment report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

**8F Distribution of drug and alcohol assessment report**

- (1) A drug and alcohol assessment report must be filed with the court no later than the time directed by the court.

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- (2) The author of a drug and alcohol assessment report must, a reasonable time before sentencing is to take place, provide a copy of the report to—
- (a) the prosecutor; and
  - (b) any legal practitioner representing the offender; and
  - (c) if the court has so directed, the offender; and
  - (d) any other person that the court considers appropriate.

**8G Disputed drug and alcohol assessment report**

- (1) The prosecution or the defence may file with the court a notice of intention to dispute the whole or any part of a drug and alcohol assessment report.
- (2) If a notice is filed under subsection (1) before sentencing is to take place, the court must not take the report or the part in dispute (as the case requires) into consideration when determining sentence unless the party that filed the notice has been given the opportunity—
- (a) to lead evidence on the disputed matters; and
  - (b) to cross-examine the author of the report on its contents.

**8H Drug and alcohol pre-release report**

- (1) A court must order a drug and alcohol pre-release report if—
- (a) the sentencing court received a drug and alcohol assessment report under section 8E; and

- (b) the court is satisfied that the offender has a drug or alcohol dependency; and
  - (c) the offender was sentenced to a term of imprisonment of not more than 3 months in addition to a community correction order to commence on the release of the offender from imprisonment.
- (2) A drug and alcohol pre-release report in respect of an offender must be prepared by an approved drug and alcohol assessment agency.
  - (3) A drug and alcohol pre-release report must specify any treatment for drug or alcohol dependency that the offender is to undergo during the period of the community correction order on release from custody.
  - (4) The author of a drug and alcohol pre-release report must conduct any investigation that he or she thinks appropriate or that is directed by the court.
  - (5) The author of a drug and alcohol pre-release report must, a reasonable time before the offender's release from custody is to take place, provide a copy of the report to—
    - (a) the Secretary; and
    - (b) the offender; and
    - (c) any other person that the court considers appropriate.

#### **8I Approved drug and alcohol assessment agencies**

- (1) A person or body may apply to the Secretary to the Department of Health for approval as a drug and alcohol assessment agency for the purposes of this Division.

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- (2) The Secretary to the Department of Health may approve an applicant under subsection (1) as a drug and alcohol assessment agency subject to any conditions, limitations or restrictions specified in the approval.
- (3) The Secretary to the Department of Health must specify the period during which an approval under subsection (2) continues in force.

### **Division 1C—Victim Impact Statements**

#### **8J Definitions**

In this Division—

*dentist* means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law—
- (i) to practise in the dentistry profession (other than as a student) and;
- (ii) in the dentists division of that profession; or
- (b) a person entitled to practise dentistry in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

*medical expert* means medical practitioner, dentist or psychologist;

*medical matters* includes dental matters and psychological matters;



***medical practitioner*** means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student); or
- (b) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

***medical report*** means a written statement made under section 8M(1);

***psychologist*** means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
- (b) a person who is qualified or registered to practise psychology in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise.

***victim impact statement*** means a statement made by a victim under section 8K(1);

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**8K Victim may make victim impact statement**

- (1) If a court finds a person guilty of an offence, a victim of the offence may make a statement to the court for the purpose of assisting the court in determining sentence.
- (2) A victim impact statement may be made—
  - (a) in writing by statutory declaration; or
  - (b) in writing by statutory declaration and orally by sworn evidence.
- (3) A victim impact statement may be made by another person on behalf of a victim—
  - (a) who is under the age of 18 years; or
  - (b) who the court is satisfied is incapable of making the statement because of mental illness or for any other reason; or
  - (c) that is not an individual.

**8L Contents of victim impact statement**

- (1) A victim impact statement contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence.
- (2) A victim impact statement may include photographs, drawings or poems and other material that relates to the impact of the offence on the victim or to any injury, loss or damage suffered by the victim as a direct result of the offence.
- (3) The court may rule as inadmissible the whole or any part of a victim impact statement, including the whole or any part of a medical report attached to it.

### **8M Medical report**

- (1) A written statement on medical matters concerning the victim may be attached to the victim impact statement.
- (2) The written statement under subsection (1)—
  - (a) must be made and signed by a medical expert; and
  - (b) may include any document which the medical expert intends should be read with the statement whether the document was in existence at the time the statement was made or was a document which the medical expert obtained or caused to be brought into existence subsequently.

### **8N Distribution of written statement**

If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place—

- (a) file a copy with the court; and
- (b) provide a copy to—
  - (i) the offender or the legal practitioner representing the offender; and
  - (ii) the prosecutor—

and the copy must include a copy of any medical report attached to the victim impact statement.

### **8O Examination of victim**

- (1) The court may, at the request of the offender or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on

behalf of a victim, or a medical expert who made a medical report attached to a victim impact statement, to give evidence.

- (2) A victim or other person who gives evidence under subsection (1) may be cross-examined and re-examined.

**8P Witnesses**

- (1) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement or in a medical report attached to it.
- (2) A witness who gives evidence under subsection (1) may be cross-examined and re-examined.
- (3) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement or in a medical report attached to it.

**8Q Reading aloud of victim impact statement**

- (1) A person who has made a victim impact statement may request that any part of that victim impact statement—
- (a) is read aloud or displayed in the course of the sentencing hearing by—
- (i) the person making the request; or
- (ii) a person chosen by the person making the request who consents and who is approved by the court for that purpose; or
- (b) is read aloud in the course of the sentencing hearing by the prosecutor.

- (2) If a request is made under subsection (1) and the person specified in the request is available to do so during the course of the sentencing hearing, the court must ensure that any admissible parts of the victim impact statement that are—
- (a) identified in the request; and
  - (b) appropriate and relevant to sentencing—
- are read aloud or displayed by the person or persons specified in the request in open court in the course of the sentencing hearing.
- (3) For the purposes of subsection (2), the court may direct the person who made the request or the person chosen by that person as to which admissible parts of the victim impact statement are appropriate and relevant to sentencing.
- (4) Nothing in this section prevents the presiding judge or magistrate from reading aloud any admissible part of a victim impact statement in the course of sentencing the offender or at any other time in the course of the sentencing hearing.

**8R Alternative arrangements for reading aloud of victim impact statement**

- (1) On the application of the person who is to read aloud the victim impact statement at a sentencing hearing, on the application of the prosecutor or on its own motion, the court may direct that alternative arrangements be made for the reading aloud of a victim impact statement under section 8Q, including arrangements—

- 
- (a) permitting the victim impact statement to be read aloud from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;
  - (b) using screens to remove the person reading the victim impact statement from the direct line of vision of the offender;
  - (c) permitting a person, chosen by the person reading the victim impact statement and approved by the court for this purpose, to be beside the person reading the victim impact statement while it is read aloud, for the purpose of providing emotional support to the person reading the victim impact statement;
  - (d) permitting only persons specified by the court to be present while the victim impact statement is read aloud;
  - (e) requiring legal practitioners not to robe.
- (2) The court may, on the application of the person who is to read aloud the victim impact statement, on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1).
  - (3) For the purposes of this section, the ***reading aloud*** of a victim impact statement includes the display of material included in the victim impact statement.

**8S Alternative arrangements for examination**

- (1) On the application of a victim or other person who gives evidence under section 8O or 8P, on the application of the prosecutor or on its own motion, the court may direct that alternative arrangements be made for the examination and cross-examination of that person.
- (2) A direction made under subsection (1) may include—
  - (a) permitting the person to be examined and cross-examined from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;
  - (b) using screens to remove the person from the direct line of vision of the offender;
  - (c) permitting a person, chosen by the person being examined and cross-examined and approved by the court for this purpose, to be beside the person being examined and cross-examined during the examination and cross-examination, for the purpose of providing emotional support for the person being examined and cross-examined;
  - (d) permitting only persons specified by the court to be present while the person is being examined and cross-examined;
  - (e) requiring legal practitioners not to robe;
  - (f) requiring legal practitioners to be seated while examining or cross-examining the person.

- (3) The court may, on the application of a person who gives evidence under section 8O or 8P, on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1)."

**8 Fixing of non-parole period otherwise than by sentencing court**

- (1) In section 13(1) of the **Sentencing Act 1991**, for "Secretary to the Department of Justice" **substitute** "Secretary".
- (2) In section 13(3) of the **Sentencing Act 1991**, for "Secretary to the Department of Justice" **substitute** "Secretary".

**9 Time held in custody before trial etc. to be deducted from sentence**

Section 18(2)(ba) of the **Sentencing Act 1991** is **repealed**.

**10 Sentencing hearing**

- (1) In section 18F(ab) of the **Sentencing Act 1991** for "Division 1A of Part 6" **substitute** "Division 1C of Part 3".
- (2) In section 18F(b) of the **Sentencing Act 1991** for "Division 2 of Part 6" **substitute** "Division 1A of Part 3".

**11 Court may order reports**

In section 18I(1) of the **Sentencing Act 1991** for "Secretary to the Department of Justice" **substitute** "Secretary".

**12 Subdivision (1B) of Division 2 of Part 3 repealed**

Subdivision (1B) of Division 2 of Part 3 of the **Sentencing Act 1991** is **repealed**.



**13 Repeal of references to certain orders**

(1) For section 18Z(1)(d)(ii) of the **Sentencing Act 1991** substitute—

"(ii) it would not have suspended the sentence in whole or in part; and".

(2) Section 18Z(2)(b) of the **Sentencing Act 1991** is repealed.

**14 Drug Court to hear and determine certain offences**

(1) For section 18ZO(2)(b) of the **Sentencing Act 1991** substitute—

"(b) the Drug Court does not suspend the sentence in whole or in part; and".

(2) For section 18ZO(3)(b) of the **Sentencing Act 1991** substitute—

"(b) the Drug Court does not suspend the sentence in whole or in part; and".

**15 Subdivision (2) of Division 2 of Part 3 repealed**

Subdivision (2) of Division 2 of Part 3 of the **Sentencing Act 1991** is repealed.

**16 Suspended sentence of imprisonment**

(1) In section 27(7) of the **Sentencing Act 1991**, for "section 31" substitute "section 83AR".

(2) In section 27(9) of the **Sentencing Act 1991**, for "section 31" substitute "section 83AR".

**17 Effect of suspended sentence**

In section 29 of the **Sentencing Act 1991**, for "section 31" substitute "section 83AR".

**18 Consequential repeal of breach procedure for suspended sentences**

Section 31 of the **Sentencing Act 1991** is repealed.

**19 Time held in custody before trial etc. to be deducted from sentence**

In section 35 of the **Sentencing Act 1991**, for "section 31" (wherever occurring) substitute "section 83AR".

**20 Heading to Division 3 of Part 3 repealed**

The heading to Division 3 of Part 3 of the **Sentencing Act 1991** is repealed.

**21 Sections 36 to 48 substituted**

For sections 36 to 48 of the **Sentencing Act 1991** substitute—

"

**PART 3A—SENTENCES—COMMUNITY  
CORRECTION ORDERS**

**Division 1—Preliminary**

**36 Purpose of an order**

The purpose of a community correction order is to provide a community based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender.

**Division 2—General**

**37 Community correction order**

A court may make a community correction order in respect of an offender if—

- (a) the offender has been convicted or found guilty of an offence punishable by more than 5 penalty units; and
- (b) the court has received a pre-sentence report (if required) and has had regard to any recommendations, information or matters identified in the report; and
- (c) the offender consents to the order.

**38 Period and commencement of a community correction order**

- (1) The period of a community correction order is the period determined by the court which must not exceed—
  - (a) in the case of an order made by the Magistrates' Court, 2 years; or
  - (b) in the case of an order made by the County Court or the Supreme Court whichever is greater of—
    - (i) the maximum term of imprisonment for the offence; or
    - (ii) 2 years.
- (2) The court must—
  - (a) fix the date on which a community correction order commences, which must not be more than 3 months after the order is made; or
  - (b) direct that the community correction order commences on the date that the offender is released from imprisonment in accordance with section 44.

### **39 Intensive compliance period**

- (1) If the court is making a community correction order for a period of 6 months or longer, the court may fix a period (being part of the period for which the order is in force) as the intensive compliance period.

#### **Example**

Where a court is making a community correction order that has a period of, for example, 2 years, the intensive compliance period fixed by the court may be for a lesser period of, for example, 8 months.

- (2) A court that fixes an intensive compliance period under subsection (1) must determine that one or more conditions attached to a community correction order are to be completed within the intensive compliance period.
- (3) If—
- (a) a court is sentencing an offender in respect of two or more offences in the same proceeding; and
  - (b) the court makes separate community correction orders in respect of any two or more of the offences, the periods of which are cumulative; and
  - (c) the court fixes intensive compliance periods for the orders that are cumulative—

the intensive compliance periods are to run cumulatively from the commencement of the first order and then the balance of the periods of the orders are to run cumulatively.

**40 Community correction order may cover multiple offences**

- (1) If an offender is convicted or found guilty by a court of two or more offences, which are founded on the same facts or form or are part of a series of offences of the same or a similar character, the court may make one community correction order in respect of those offences in place of separate orders in respect of all or any two or more of them.
- (2) A community correction order that is being made in respect of more than one offence must not exceed the maximum period for which a community correction order may be made under section 38.

**41 Presumption of concurrency**

- (1) If a court makes separate community correction orders in respect of two or more offences committed by an offender, the conditions of those orders are concurrent unless the court otherwise directs.
- (2) The conditions of a community correction order made in respect of an offender are, unless the court otherwise directs, concurrent with those of any other community correction order in force in respect of that offender.

**42 Unpaid community work where there are several orders**

- (1) The number of hours of unpaid community work required to be performed under a relevant order must, unless otherwise directed by the court, be performed—
  - (a) cumulatively on those required to be performed under another relevant order

that is in force in respect of the offender; and

- (b) concurrently with any hours required to be performed under any other community correction order that is in force in respect of the offender—

whether that other order was made before or at the same time as the first-mentioned order.

- (2) In this section, *relevant order* means a fine conversion order or fine default unpaid community work order.

**43 Fine and a community correction order**

A court may impose on an offender a fine authorised by law in addition to making a community correction order.

**44 Imprisonment and a community correction order**

- (1) Subject to subsection (2), a court may make a community correction order in respect of the offender in addition to sentencing the offender to a term of imprisonment of not more than 3 months, if the sentence of imprisonment is not suspended in whole or in part.
- (2) If a court is sentencing an offender for two or more offences in the same proceeding to two or more sentences of imprisonment, the court may not make any community correction order in respect of the offender if the aggregate of those terms of imprisonment is more than 3 months, whether or not the terms of imprisonment are to be served (in whole or in part) concurrently or cumulatively.

- (3) If a court makes a community correction order in respect of an offender in addition to a term of imprisonment, the community correction order commences on the release of the offender from imprisonment.

**Division 3—Making a community correction order**

**45 Terms of a community correction order**

- (1) The following terms are attached to each community correction order—
- (a) the offender must not commit, whether in or outside Victoria, during the period of the order, an offence punishable by imprisonment;
  - (b) the offender must report to, and receive visits from the Secretary during the period of the order;
  - (c) the offender must report to the community corrections centre specified in the order within 2 clear working days after the order coming into force;
  - (d) the offender must notify the Secretary of any change of address or employment within 2 clear working days after the change;
  - (e) the offender must not leave Victoria except with the permission, either generally or in relation to a particular case, of the Secretary;
  - (f) the offender must comply with any direction given by the Secretary that is necessary for the Secretary to give to ensure that the offender complies with the order.

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- (2) A direction may be given by the Secretary under subsection (1)(f) either orally or in writing.

**46 Power of the Secretary to give written directions**

There is attached to each community correction order the term that the offender must comply with any written direction given by the Secretary for or with respect to the following—

- (a) reporting to the Secretary; or
- (b) receiving visits from the Secretary; or
- (c) notifying the Secretary in writing of any change of address or employment; or
- (d) obtaining permission from the Secretary before leaving Victoria; or
- (e) if the order is subject to an unpaid community work condition, performing unpaid community work, including any written direction as to the place, date or time at which the work is to be performed; or
- (f) if the order is subject to a treatment and rehabilitation condition, participating in a treatment or rehabilitation program, including any written direction as to the place, date or time of the participation; or



- (g) if the order is subject to a treatment and rehabilitation condition, undergoing any drug or alcohol assessment or treatment, including any written direction as to—
  - (i) undergoing residential treatment or assessment; or
  - (ii) the place, date or time that the assessment or treatment must be undergone; or
- (h) if the order is subject to a treatment and rehabilitation condition, undergo any drug or alcohol testing, including any written direction as to the place, date or time that the test must be undergone; or
- (i) if the order is subject to a treatment and rehabilitation condition, undergoing any medical assessment or mental health assessment, including any written direction as to the place, date or time that the test must be undergone.

**Note**

It is an offence under section 83AF for an offender to contravene a written direction given by the Secretary.

**47 Court may attach conditions**

- (1) A court that is making a community correction order must attach at least one condition in accordance with subsection (2).
- (2) A court that is making a community correction order may—
  - (a) attach one or more conditions under Division 4; or
  - (b) attach a condition under Division 3 of Part 3B.

#### **48 Residual condition**

- (1) A court that is making a community correction order may attach in addition to a condition attached in accordance with section 47 any other condition to the order that the court thinks fit, other than a condition about making restitution or the payment of compensation, costs or damages.
- (2) A condition attached under subsection (1) to a community correction order must not be about the subject matter of a condition under Division 4 or Division 3 of Part 3B.

#### **48A Matters to be considered when attaching conditions**

The court must attach conditions to a community correction order in accordance with—

- (a) the principle of proportionality; and
- (b) the purposes for which a sentence may be imposed as set out in section 5; and
- (c) the purpose of a community correction order set out in section 36.

#### **Division 4—Conditions**

#### **48B Definition**

In this Division—

*family violence* has the same meaning as in the **Family Violence Protection Act 2008**;

*safety* means safety from family violence, physical or mental harm.

**48C Unpaid community work condition**

- (1) A court which is making a community correction order may attach a condition requiring an offender to perform unpaid community work.
- (2) The purpose for attaching an unpaid community work condition is to adequately punish the offender in the community.
- (3) The offender must perform the number of hours of unpaid community work specified by the court under an unpaid community work condition.
- (4) The total number of hours for which an offender may be required to perform unpaid community work under an unpaid community work condition must be determined by the court and must not exceed 600 hours.
- (5) The total number of hours of unpaid community work that the offender must perform in any 7 day period must not exceed 20.
- (6) An offender may perform an activity for up to 40 hours in a period of 7 days if he or she requests to do so and signs a written consent to performing the extra number of hours.
- (7) If a court attaches an unpaid community work condition as the sole condition under this Division of a community correction order for up to a maximum of 300 hours, the order expires on the satisfactory completion of those hours of work.

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- (8) If an offender is or will be subject to more than one community correction order the court must not make a direction under this Act that causes the time limits that apply under all unpaid community work conditions under the orders to exceed the maximum time limits for the orders under section 38.
- (9) When attaching an unpaid community work condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

**48D Treatment and rehabilitation condition**

- (1) A court which is making a community correction order may attach a condition to the order that requires the offender to undergo treatment and rehabilitation specified by the court and directed by the Secretary unless otherwise directed by the court.
- (2) When attaching a treatment and rehabilitation condition the court must—
- (a) have regard to the need to address the underlying causes of the offending;
  - (b) have regard to the recommendations, information and matters identified in the pre-sentence report in relation to the treatment and rehabilitation of the offender.
- (3) The treatment and rehabilitation that must be specified by the court in a treatment and rehabilitation condition must be any one or more of the following—
- (a) any assessment and treatment (including testing) for drug abuse or dependency;

- (b) any assessment and treatment (including testing) for alcohol abuse or dependency;
- (c) any assessment and treatment (including testing) at a residential facility for—
  - (i) withdrawal from or rehabilitation for alcohol abuse or dependency; or
  - (ii) withdrawal from or rehabilitation for drug abuse or dependency;
- (d) any medical assessment and treatment that may include general or specialist medical treatment or treatment in a hospital or residential facility;
- (e) any mental health assessment and treatment that may include psychological, neuropsychological, psychiatric or treatment in a hospital or residential facility;
- (f) any program that addresses factors related to his or her offending behaviour;
- (g) any other treatment and rehabilitation that the court considers necessary and that is specified in the order that may include employment, educational, cultural and personal development programs that are consistent with the purpose of the treatment and rehabilitation condition.

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- (4) For the purposes of subsection (1) the Secretary may give a direction to the offender—
- (a) to undergo the treatment and rehabilitation or kind of treatment and rehabilitation specified by the Secretary in the direction; and
  - (b) in relation to any aspect of the treatment and rehabilitation that the Secretary has specified, a direction—
    - (i) requiring the attendance of the offender at a specified location; and
    - (ii) requiring the participation of the offender in particular kinds of treatment or rehabilitation.

**48E Supervision condition**

- (1) A court which is making a community correction order may attach a condition to the order that the offender be supervised, monitored and managed as directed by the Secretary.
- (2) The court may attach a supervision condition for the purpose of addressing the need to ensure the compliance of the offender with the order.
- (3) When attaching a supervision condition the court must have regard to the information, matters and recommendations made in the pre-sentence report.
- (4) When attaching a supervision condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

**48F Non-association condition**

- (1) A court which is making a community correction order may attach a condition to the order directing that—
- (a) the offender must not contact or associate with a person specified in the order; or

**Example**

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must not contact or associate with a co-offender or co-offenders.

- (b) the offender must not contact or associate with a class of person specified in the order.

**Example**

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not contact or associate with a member of a specified club or association.

- (2) When attaching a non-association condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a non-association condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

**48G Residence restriction or exclusion condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must—

- (a) reside at a place specified in the order;  
or

**Example**

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must reside at his or her current residential address.

- (b) not reside at a place specified in the order.

**Example**

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not reside at the residence of a co-offender.

- (2) When attaching a residence restriction or exclusion condition the court may—
- (a) have regard to the risk the condition poses to the safety of any person who is likely to reside with the offender under the order; and
- (b) have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a residence restriction or exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (4) An offender to whom a residence restriction or exclusion condition applies must not change his or her place of residence unless the community correction order to which the condition is attached has been varied under section 48M(2)(d) to specify the new place at which the offender must or must not reside.



- (5) The court must not attach a residence restriction or exclusion condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

**48H Place or area exclusion condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must not enter or remain in a specified place or area.

**Example**

The following are examples of directions that may be made under a condition attached under subsection (1)—

- (a) that the offender must not enter or remain in a specified sporting venue in Victoria;
- (b) that the offender must not enter or remain in the central business district of Melbourne.

**Note**

Exclusion from a place or area that is a licensed premises may be a condition of an order under section 48J, alcohol exclusion condition.

- (2) When attaching a place or area exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a place or area exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (4) The court must not attach a place or area exclusion condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

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**48I Curfew condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must remain at the place specified in the order between specified hours of each day for the period specified in the order.

**Example**

An example of a direction that may be made under a condition attached under subsection (1) is a direction that the offender must remain at home between 9pm and 6am each day.

- (2) When attaching a curfew condition the court may—
- (a) have regard to the risk the condition poses to the safety of any person who is likely to reside with the offender under the order;
  - (b) have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) The offender must remain at a place specified by the court under a curfew condition for—
- (a) not less than 2 hours of each day; and
  - (b) not more than 12 hours of each day—
- for the period specified in the order which must not be more than 6 months.
- (4) The court must not attach a curfew condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

**48J Alcohol exclusion condition**

- (1) A court which is making a community correction order may attach a condition directing that the offender comply with the restrictions in subsection (2).
- (2) For the purpose of subsection (1) and subject to subsection (3) the restrictions are as follows—
  - (a) the offender must not enter or remain in any licensed premises characterised as a nightclub, bar, restaurant, cafe, reception centre or function centre; and
  - (b) the offender must not enter or remain in the location of any major event; and
  - (c) the offender must not enter or remain in a bar area of any licensed premises to which paragraph (a) or (b) does not apply; and
  - (d) the offender must not consume liquor in any licensed premises to which paragraph (a) or (b) does not apply.
- (3) When attaching an alcohol exclusion condition a court may specify a licensed premises to which the restrictions under subsection (2)(a), (b) or (c) do not apply.
- (4) The court may attach an alcohol exclusion condition to address the role of alcohol in the offending behaviour.
- (5) When attaching an alcohol exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.

- (6) When attaching an alcohol exclusion condition the court may specify whether the condition applies to the offender for a period of hours of each day or at all times.
- (7) When attaching an alcohol exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (8) In this section—

*bar area* means an area within a licensed premises that is set aside for the service of liquor for consumption on that premises;

*licensed premises* has the same meaning as in the **Liquor Control Reform Act 1998**;

*liquor* has the same meaning as in the **Liquor Control Reform Act 1998**;

*major event* has the same meaning as in the **Liquor Control Reform Act 1998**.

#### **48K Judicial monitoring condition**

- (1) A court which is making a community correction order may attach a condition to the order directing that the offender be monitored by the court, if the court is satisfied that it is necessary for the court to review (during the course of the order) the compliance of the offender with the order.
- (2) The court may make a direction for the following matters in a judicial monitoring condition—
  - (a) a time or times at which the offender must re-appear before the court for a review under section 48L of the

compliance of the offender with the order; and

- (b) any information, report or test that must or may be provided in the course of a review under section 48L.
- (3) A direction in a judicial monitoring condition made by the court under subsection (2)(a) or (b) is not to be taken to empower the medical testing of the offender or the making of a medical report as to the offender without the consent of the offender.
- (4) A judicial monitoring condition attached to an order remains in force for the period specified by the court in the order, or, if no period is specified in the order, for the period of the order.
- (5) Any proceeding where an offender re-appears before the court for review in accordance with a judicial monitoring condition may be conducted by the court constituted by the judicial officer who made the order or by the court constituted by another judicial officer.

**48L Power of court on review under a judicial monitoring condition**

- (1) In any proceeding where an offender re-appears before a court for review of the offender's compliance with the order under a judicial monitoring condition—
  - (a) the court may require the offender, or may invite the offender to answer questions or produce information (including reports or the results of medical examinations or medical tests);

- 
- (b) the court may invite the offender's medical practitioner or any medical practitioner who has examined the offender to produce any medical report about the offender or the results of any medical test about the offender to the court;
- (c) the court may require or invite any of the following persons to provide information to the court either verbally or in any written form—
- (i) the Secretary;
  - (ii) the person or body who prosecuted the offender for the offence;
  - (iii) any other person the court considers appropriate.
- (2) In any proceeding where an offender re-appears before a court for review in accordance with the terms of a judicial monitoring condition the court—
- (a) may—
    - (i) cancel the condition; or
    - (ii) vary the condition, including shortening or extending the condition; or
    - (iii) take no further action in relation to the condition; or
  - (b) may give further directions as to—
    - (i) the time or times at which the offender must re-appear before the court for other reviews under this section of the compliance of the offender with the order; and

- (ii) any information, report or test that must or may be provided in the course of another review under this section.

**Division 5—Variation etc. of order**

**48M Variation etc. of community correction order**

- (1) On an application under section 48N, the court which made a community correction order may decide to deal with the order under subsection (2), if the court is satisfied that—
  - (a) the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or
  - (b) the circumstances of the offender were wrongly stated or were not accurately presented to the court or to the author of a pre-sentence report or drug and alcohol report before the order was made; or
  - (c) the offender no longer consents to the order; or
  - (d) the rehabilitation and reintegration of the offender would be advanced by the making of the decision to deal with the order; or
  - (e) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

- 
- (2) If satisfied of a matter set out in subsection (1), the court may decide to deal with the order in one or more of the following ways—
- (a) by confirming the order or a part of the order; or
  - (b) by cancelling the order and dealing with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found him or her guilty of that offence or those offences; or
  - (c) by cancelling the order and making no further order in respect of the offence or offences with respect to which the order was originally made; or
  - (d) by varying the order; or
  - (e) in relation to a condition of the order, by cancelling, suspending, varying or reducing the condition; or

**Example**

An example of a variation of a condition of the order that may be made under paragraph (e) is a reduction of the number of hours specified under an unpaid community work condition.

- (f) by attaching a new condition on the order; or
- (g) in relation to a program that must be undertaken under the order, by cancelling, suspending, varying or reducing the program; or
- (h) by imposing a new program that must be undertaken under the order.



- (3) The court must make a decision under subsection (2) on the basis of its assessment of the extent to which the offender has complied with the order.
- (4) The Secretary must disclose any direction he or she has given under Division 3 of Part 3C to a court making an assessment under subsection (3).

**48N Application for variation etc. of a community correction order**

- (1) An application for the court to deal with a community correction order under section 48M may be made at any time while the order is in force by—
  - (a) a prescribed person or a member of a prescribed class of person; or
  - (b) the informant or police prosecutor (if the sentencing court was the Magistrates' Court); or
  - (c) the Director of Public Prosecutions; or
  - (d) the offender; or
  - (e) the Secretary.
- (2) Notice of an application under subsection (1) must be given—
  - (a) to the offender, if the application is not made by the offender; and
  - (b) to the Director of Public Prosecutions; and
  - (c) to the informant or police prosecutor, if the sentencing court was the Magistrates' Court; and

- (d) any prescribed person or a member of any prescribed class of person; and
  - (e) the Secretary.
- (3) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

**48O Suspension by Secretary**

- (1) The Secretary may—
- (a) if the offender is ill; or
  - (b) in other exceptional circumstances—
- suspend for a period the operation of a community correction order or any condition of the order.
- (2) If the Secretary suspends the operation of an order or a condition of an order under subsection (1), the period of the suspension does not count in calculating the period for which the order is to remain in force or a condition is to be complied with.

**Division 6—Miscellaneous matters**

**48P Secretary may direct offender to report at another place**

- (1) If, because an offender has changed his or her place of residence or for any other reason it is not convenient that the offender should report at a place or to a person specified in a community correction order, the Secretary may direct the offender to report at another place or to another person.
- (2) An offender must report as directed under subsection (1) as if that place or person had been specified in the order.

#### **48Q Order made by Court of Appeal**

For the purposes of any proceeding under Division 2 of Part 3C, a community correction order made by the Court of Appeal on an appeal must be taken to have been made by the court from whose decision the appeal was brought.

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#### **PART 3B—SENTENCES—OTHER ORDERS".**

#### **22 Heading to Division 4 of Part 3 substituted**

For the heading to Division 4 of Part 3 of the **Sentencing Act 1991 substitute—**

**"Division 1—Fines".**

#### **23 Application for fine conversion order**

- (1) In section 55(1)(d) of the **Sentencing Act 1991**, for "a community-based order" **substitute** "an order".
- (2) In section 55(3) of the **Sentencing Act 1991**, for "a community-based order" **substitute** "an order".

#### **24 Enforcement of fines against natural persons**

- (1) For section 62(1) of the **Sentencing Act 1991 substitute—**
  - "(1) If a natural person defaults in the payment of a fine or of any instalment under an instalment order for a period of more than one month, the sentencing court or the proper officer may issue a warrant to arrest the person.
  - (1A) The court or proper officer must not issue a warrant under subsection (1) if an order has been made by the sentencing court under section 62A."

(2) For section 62(7) of the **Sentencing Act 1991** substitute—

"(7) A warrant under this section must not be executed if, within 7 days after a demand is made on the person in default by a person authorised to execute the warrant—

(a) the fine or instalment and all warrant costs are paid; or

(b) the person in default has obtained an instalment order or time to pay order; or

(c) an order has been made by the sentencing court under section 62A."

(3) Section 62(9) of the **Sentencing Act 1991** is **repealed**.

(4) For section 62(10)(a) of the **Sentencing Act 1991** substitute—

"(a) with the consent of the offender, make an order requiring the offender to perform unpaid community work, as directed by the Regional Manager for the community corrections centre specified in the order, for a number of hours fixed in accordance with section 63(2); or"

(5) For section 62(13) of the **Sentencing Act 1991** substitute—

"(13) Subsections (1A) and (7)(c) do not apply where a fine has been imposed in respect of an offence heard and determined by the Magistrates' Court as a result of the revocation of an enforcement order within the meaning of the **Infringements Act 2006**."

## **25 Insertion of new section 62A**

After section 62 of the **Sentencing Act 1991**  
**insert—**

### **"62A Power to make fine default unpaid community work order**

- (1) For the purposes of section 62(1) and (7), if the amount of a fine or an instalment remaining unpaid by a natural person is not more than an amount equivalent to the value of 100 penalty units, the sentencing court for the person in default may make an order requiring the person to perform unpaid community work, as directed by the Regional Manager for the community corrections centre specified in the order, for a number of hours fixed in accordance with section 63(2).
- (2) An order under subsection (1) may be made on application of the person in default."

## **26 Hours of unpaid work**

In section 63(3) of the **Sentencing Act 1991**,  
after "section 62(10)" **insert** "or section  
62A(1)".

## **27 Insertion of new section 63A**

After section 63 of the **Sentencing Act 1991**  
**insert—**

### **'63A Contravention of fine conversion order or fine default unpaid community work order**

- (1) Part 3C, with the modifications set out in this section, applies to a contravention of a fine conversion order as if—

- 
- (a) in that Part (other than sections 83AE and 83AF) a reference to "community correction order" were a reference to "fine conversion order"; and
- (b) the penalty at the foot of section 83AD(1) were—  
"Penalty: Level 10 fine."
- (2) Part 3C, with the modifications set out in this section, applies to a contravention of a fine default unpaid community work order as if—
- (a) in that Part (other than sections 83AE and 83AF) a reference to "community correction order" were a reference to "fine default unpaid community work order"; and
- (b) the penalty at the foot of section 83AD(1) were—  
"Penalty: Level 10 fine."
- (3) In sentencing a person for a contravention of a fine conversion order or a fine default unpaid community work order, if the court considers that the orders that it may make under Part 3C in respect of the order are not adequate because—
- (a) of the nature of the offence; and
- (b) of the characteristics of the offender; and
- (c) the offender has intentionally refused to pay the fine or instalment and to perform unpaid community work—
- the court may impose a sentence of imprisonment of 1 day for each penalty unit or part of a penalty unit then remaining unpaid up to a maximum of 24 months.

**63B Part payment of fine to reduce unpaid community work**

- (1) If at any time while a fine conversion order or a fine default unpaid community work order is in force, part of the amount then remaining unpaid is paid as required in subsection (2), the number of hours of work which the person is required to perform must be reduced by the number of hours bearing as nearly as possible the same proportion to the total number of hours as the amount paid bears to the whole amount in respect of which the order was made.
- (2) An amount being paid under subsection (1) must be paid, in accordance with the regulations, to the Secretary by or on behalf of the person required to perform unpaid community work.'

**28 Heading to Division 5 of Part 3 substituted**

For the heading to Division 5 of Part 3 of the **Sentencing Act 1991** substitute—

**"Division 2—Dismissals, discharges and adjournments".**

**29 Release on adjournment following conviction**

- (1) In section 72(2)(c) of the **Sentencing Act 1991**—
  - (a) **omit** "special";
  - (b) for "imposed" **substitute** "attached".
- (2) In section 72(3) of the **Sentencing Act 1991** for "Division 6 of Part 3, a court may impose a special" **substitute** "Division 3 of Part 3B, a court may attach a justice plan".

**30 Release on adjournment without conviction**

In section 75(3) of the **Sentencing Act 1991** for "Division 6 of Part 3, a court may impose a special" **substitute** "Division 3 of Part 3B, a court may attach a justice plan".

**31 Heading to Subdivision (4) of Division 5 to Part 3**

In the heading to Subdivision (4) of Division 5 of Part 3 of the **Sentencing Act 1991** omit "and breach".

**32 Variation of order for release on adjournment**

For section 78(2) of the **Sentencing Act 1991** **substitute**—

"(2) A court, in determining how to deal with an offender under subsection (1) must take into account the extent to which the offender has complied with the order."

**33 Section 79 repealed**

Section 79 of the **Sentencing Act 1991** is **repealed**.

**34 Heading to Division 6 of Part 3 substituted**

For the heading to Division 6 of Part 3 of the **Sentencing Act 1991** **substitute**—

**"Division 3—Intellectually disabled offenders"**.

**35 Section 80 substituted**

For section 80 of the **Sentencing Act 1991** **substitute**—

**"80 Justice plan condition**

- (1) A court that is considering—
- (a) making a community correction order;
- or



- (b) releasing an offender on adjournment with or without recording a conviction—
- may attach a condition to the order directing that the offender participate in the services specified in the plan prepared under subsection (3)(c).
- (2) In attaching a condition under subsection (1) the court must—
- (a) consider the plan and the other information requested under subsection (3); and
- (b) have regard to those objectives and principles specified in Part 2 of the **Disability Act 2006**.
- (3) A court which is considering making an order attaching a justice plan condition may request—
- (a) a pre-sentence report under Division 1A of Part 3; and
- (b) a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006**; and
- (c) a plan of available services designed to reduce the likelihood of the offender committing further offences and that is in accordance with the objectives and principles of Part 2 of the **Disability Act 2006**.

- (4) When attaching a justice plan condition, the condition may apply for a period of up to 2 years, as specified by the court or the period of the sentence (whichever is the shorter).
- (5) If a court attaches a justice plan condition it must cause a copy of the order to be supplied to the Secretary to the Department of Human Services."

### **36 Review of justice plan by Secretary**

- (1) In section 81(1) of the **Sentencing Act 1991**, after "The Secretary" **insert** "to the Department of Human Services".
- (2) In section 81(1) of the **Sentencing Act 1991** **omit** "special".
- (3) In section 81(1)(a) of the **Sentencing Act 1991** for "sentence to which it refers" **substitute** "order to which the justice plan condition is attached under section 80".
- (4) In section 81(2) of the **Sentencing Act 1991** after "The Secretary" **insert** "to the Department of Human Services".
- (5) For section 81(2)(b) of the **Sentencing Act 1991** **substitute**—
  - "(b) if the sentence is a community correction order, the Secretary; or".
- (6) In section 81(2)(c) of the **Sentencing Act 1991**, for "5" **substitute** "2".

### **37 Section 82 amended**

Insert the following heading to section 82 of the **Sentencing Act 1991**—

**"Review of justice plan condition by sentencing court".**

### **38 Review of justice plan condition by sentencing court**

- (1) In section 82(1) of the **Sentencing Act 1991**, for "imposed a special condition on a sentence under section 80(2)(a)" **substitute** "attached a justice plan condition to an order under section 80(1)".
- (2) In section 82(1) of the **Sentencing Act 1991**—
  - (a) **omit** "special" (wherever occurring);
  - (b) in paragraph (d) for "justice plan" **substitute** "condition".
- (3) In section 82(2) of the **Sentencing Act 1991** for "special" **substitute** "justice plan".
- (4) In section 82(2) of the **Sentencing Act 1991**—
  - (a) in paragraph (b) for "community-based order, the Secretary to the Department of Justice" **substitute** "community correction order, the Secretary";
  - (b) in paragraph (c) for "5" **substitute** "2";
  - (c) in paragraph (d) after "the Secretary" **insert** "to the Department of Human Services".
- (5) In section 82(5) of the **Sentencing Act 1991** for "special" **substitute** "justice plan".

### **39 New section 82AA inserted**

After section 82 of the **Sentencing Act 1991**  
**insert**—

#### **"82AA Residential treatment order**

- (1) A court may make an order directing that the offender be detained for a period of up to 5 years in a specified residential treatment facility to receive specified treatment if—
  - (a) the offender has been found guilty of a serious offence; or

- (b) the offender has been found guilty of an offence against section 39 of the **Crimes Act 1958** (indecent assault).
- (2) If a court is considering making a residential treatment order the court may request—
  - (a) a pre-sentence report in accordance with Division 1A of Part 3; and
  - (b) a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006**; and
  - (c) a plan of available services.
- (3) A court may only make a residential treatment order if the Secretary to the Department of Human Services has specified—
  - (a) that the person is suitable for admission to a residential treatment facility; and
  - (b) in the plan of available services, that services are available in a residential treatment facility.
- (4) If a court makes a residential treatment order it must cause a copy of the order to be supplied to the Secretary to the Department of Human Services."

#### **40 Review of residential treatment order by sentencing court**

- (1) In section 82A(1) of the **Sentencing Act 1991**, for "section 80(2)(b)" **substitute** "section 82AA".
- (2) For section 82A(2)(b) of the **Sentencing Act 1991** **substitute**—  
"(b) the Secretary; or".

(3) For section 82A(2)(c) of the **Sentencing Act 1991** substitute—

"(c) the Secretary to the Department of Human Services."

**41 Heading to Division 7 of Part 3 substituted**

For the heading to Division 7 of Part 3 of the **Sentencing Act 1991** substitute—

**"Division 4—Deferral of sentencing in the Magistrates' Court or County Court".**

**42 Deferral of sentencing**

In section 83A(3)(b) of the **Sentencing Act 1991** for "section 99" substitute "section 8D".

**43 New Part 3C inserted**

After section 83A of the **Sentencing Act 1991** insert—

**"PART 3C—SENTENCES—CONTRAVENTION OF SENTENCE**

**Division 1—Offences**

**83AB Contravention of suspended sentence**

- (1) If an offender who is subject to a suspended sentence order is convicted or found guilty of an offence punishable by imprisonment, being an offence committed during the period of the order, the offender is guilty of an offence and liable to a penalty not exceeding 3 months imprisonment.
- (2) In this section *suspended sentence order* means an order under section 27 suspending the whole or a part of a sentence to a term of imprisonment.

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**83AC Contravention of order for release on adjournment**

An offender who is subject to an order under section 72 or 75 for release on the adjournment of the proceeding must not contravene that order, unless the offender has a reasonable excuse.

Penalty: Level 10 fine.

**83AD Contravention of community correction order**

- (1) An offender who is subject to a community correction order must not contravene that order, unless the offender has a reasonable excuse.

Penalty: 3 months imprisonment.

- (2) A proceeding is not able to be brought against a person for an offence under subsection (1) in relation to conduct of that person in respect of which that person has been acquitted, convicted or found guilty of an offence under section 83AE or 83AF.

**83AE Particular contraventions of directions of Secretary**

- (1) An offender who is subject to a community correction order and who is attending at a place under a direction given by the Secretary in compliance with section 45(1)(f), must not leave that place unless—
- (a) the offender has first obtained the permission of the Secretary; or
  - (b) the offender has a reasonable excuse.

Penalty: Level 11 fine.

- (2) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f), must, unless the offender has a reasonable excuse, notify the Secretary if he or she is unable to attend as required—
- (a) at least 24 hours before the offender is due to attend the location if the offender has at least 24 hours notice of that inability; or
  - (b) immediately on becoming unable to attend if the offender did not have at least 24 hours notice of his or her inability to attend at the location.

Penalty: Level 11 fine.

- (3) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f), must attend at the place on the required day and time unless—
- (a) the offender has obtained the permission of the Secretary not to attend; or
  - (b) the offender has a reasonable excuse.

Penalty: Level 11 fine.

- (4) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f) must produce a medical certificate, as soon as is practicable, if the offender has not attended because of illness.

Penalty: Level 11 fine.

- 
- (5) An offender who is subject to a community correction order who is required to attend at a community corrections centre under the order must not enter an unauthorised area of the community corrections centre without the permission of the Secretary.

Penalty: Level 11 fine.

- (6) In this section—

*unauthorised area* means an area designated by the Secretary to be an unauthorised area.

- (7) A proceeding is not able to be brought against a person for an offence under this section in relation to conduct of that person in respect of which that person has been acquitted, convicted or found guilty of an offence under section 83AD or 83AF.

**83AF Offence to fail to obey a written direction of Secretary**

- (1) An offender who is subject to a community correction order must not contravene a written direction of the Secretary that is given under section 46 unless that person has a reasonable excuse.

Penalty: Level 11 fine.

- (2) A proceeding is not able to be brought against a person for an offence under subsection (1) in relation to conduct of that person in respect of which that person has been acquitted, convicted or found guilty of an offence under section 83AD or 83AE.



**Division 2—Bringing a proceeding**

**83AG Bringing of proceeding for offence**

- (1) An offender may be proceeded against for an offence under section 83AB, 83AC or 83AD on a charge-sheet.

**Note**

Chapter 2 and Chapter 3 of the **Criminal Procedure Act 2009** apply to a criminal proceeding against an offender for an offence under section 83AE or 83AF.

- (2) A charge-sheet must be filed under subsection (1) in the sentencing court by—
- (a) the Director of Public Prosecutions; or
  - (b) a prescribed person; or
  - (c) the informant or police prosecutor; or
  - (d) a member of a prescribed class of person; or
  - (e) the Secretary—
- as the case requires.

**83AH Time for bringing proceeding**

- (1) A proceeding for an offence under section 83AB, 83AC or 83AD must be commenced—
- (a) if the contravention is constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 6 months after the person is convicted or found guilty of the later offence, subject to subsection (2); or
  - (b) if the contravention is not constituted by the offender committing another offence punishable by imprisonment while the order is in force, within

1 year after the order ceasing to be in force.

- (2) A proceeding for an offence under section 83AB, 83AC or 83AD to which subsection (1)(a) applies must not be commenced more than 2 years after the order ceases to be in force.

**83AI Proceeding where offender before a court**

- (1) If an offender has been convicted or found guilty of an offence (the *first offence*) the fact that the offender has been so convicted or found guilty constitutes a contravention of an order under this Act, and the offender is present before a court for the prosecution of the first offence, if a charge-sheet for an offence under section 83AB, 83AC or 83AD has been filed, the court may do either of the following—
- (a) proceed to hear the proceeding for that offence; or
  - (b) if it is not the sentencing court in relation to the order (in accordance with the regulations) transfer the proceeding for the offence under section 83AB, 83AC or 83AD to the sentencing court.
- (2) For the purpose of transferring a proceeding under subsection (1)(b) the court may, if the offender is not being held in custody in relation to the other offence or for any other reason, grant bail to the offender conditioned for, or remand the offender in custody, pending his or her attendance at the sentencing court.

**83AJ Proceeding where offender not before a court**

- (1) If an offender has been convicted or found guilty of an offence (the *first offence*) the fact that the offender has been so convicted or found guilty constitutes a contravention of an order under this Act, and the offender has not been dealt with under section 83AI, a person who is entitled to file the charge-sheet in relation to that offence may apply to a registrar of the Magistrates' Court at any venue of that Court for the issue of—
  - (a) a contravention summons; or
  - (b) a warrant to arrest—

in order to compel the attendance of the offender at the sentencing court.

- (2) An application under subsection (1) may be made by the applicant in person or by post and at any venue of the Magistrates' Court.

**83AK Issue of contravention summons or warrant to arrest**

- (1) On an application under section 83AJ, the registrar must, if satisfied that there are reasonable grounds to believe that the offender has committed an offence under section 83AB, 83AC or 83AD issue—
  - (a) a summons to answer to the commission of the offence; or
  - (b) a warrant to arrest.
- (2) A registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that—
  - (a) it is probable that the offender will not answer a contravention summons; or

- (b) the offender has absconded, is likely to abscond or is avoiding service of a contravention summons that has been issued; or
- (c) a warrant is required or authorised for other good cause.

**83AL Power to amend a contravention summons or warrant to arrest**

Section 50 of the **Magistrates' Court Act 1989** applies to a contravention summons or warrant to arrest issued under section 83AK as if the reference in that section—

- (a) to a warrant were a reference to a contravention summons or warrant issued under section 83AK; and
- (b) to the court were a reference to the court which imposed the order which is the subject of the offence.

**83AM Form of contravention summons**

A contravention summons—

- (a) must direct the offender to attend at the proper venue of the Magistrates' Court or, if the order was imposed by the Supreme Court or the County Court, at that court, on a specified date and at a specified time to answer to the commission of the offence; and
- (b) may be served in any manner in which a summons to answer to a charge may be served under section 16 of the **Criminal Procedure Act 2009**.

**83AN Extension of return date for summons**

On the application of the person who applied for the issue of the contravention summons at any time before it is served, the date specified in the contravention summons for the offender to attend court (the *return date*) may be extended without cause—

- (a) before the return date; or
- (b) within one month after the return date—

by a registrar at the venue of the Magistrates' Court at which the summons was issued on one occasion and thereafter may be extended—

- (c) before the current return date; or
- (d) within one month after the current return date—

by such a registrar if he or she is satisfied by evidence on oath or by affidavit that reasonable efforts have been made to serve the summons.

**83AO Service of contravention summons**

Service of a contravention summons may be proved in any manner in which service of a summons to answer to a charge may be proved under section 399 of the **Criminal Procedure Act 2009**.

**83AP Issue of warrant to arrest on failure to comply with bail or summons**

- (1) If an offender does not attend before a court—
  - (a) in accordance with his or her undertaking of bail granted under section 83AI(2); or

- (b) in answer to a contravention summons which has been served in accordance with this section—

the court may issue a warrant to arrest the offender.

- (2) A warrant to arrest authorised to be issued under this section is to be issued in accordance with Part 4 of the **Magistrates' Court Act 1989** and that Part applies to such a warrant with any necessary modifications.

### **83AQ Unrepresented accused**

- (1) If the offender is unrepresented on his or her first attendance before the court in answer to bail granted or a contravention summons or warrant issued, under this Part, the court must—
- (a) ask the offender whether he or she has sought legal advice; and
  - (b) if satisfied that the offender has not had a reasonable opportunity to obtain legal advice, grant an adjournment if so requested by the offender.
- (2) If the court before which an offender attends in answer to bail granted, or a contravention summons or warrant issued, under this Part is satisfied that the offender does not have a knowledge of the English language that is sufficient to enable the offender to understand, or participate in, the proceeding, it must not hear and determine the proceeding without a competent interpreter interpreting it.

**83AR Powers of court on finding of guilt for  
contravention of order as to suspended  
sentence**

- (1) If the court finds a person guilty of an offence under section 83AB in respect of a suspended sentence order the court must (in addition to sentencing the offender for the offence)—
  - (a) restore the sentence or part sentence held in suspense and order the offender to serve it; or
  - (b) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or
  - (c) in the case of a wholly suspended sentence, extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order under this subsection; or
  - (d) make no order with respect to the suspended sentence.
- (2) Despite anything to the contrary in subsection (1), if the court finds the offender guilty as mentioned in that subsection it must exercise the power referred to in subsection (1)(a) unless it is of the opinion that it would be unjust to do so because exceptional circumstances have arisen since the order suspending the sentence was made.
- (3) If a court orders an offender to serve a term of imprisonment that had been held in suspense, the term must be served—
  - (a) immediately; and

- 
- (b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.
- (4) Despite anything to the contrary in this section, if, in the case of an offender who is under 21 years of age at the time the finding is made under subsection (1), the court restores the whole or part of the sentence or part sentence held in suspense, it may order the offender to serve it as detention in a youth justice centre or youth residential centre.
- (5) Section 32 applies to an order under subsection (4) as if it were a youth justice centre order or a youth residential centre order and as if the reference in section 32(1) to a pre-sentence report were a reference to a pre-sentence report that deals with the matter of the contravention of the suspended sentence.
- (6) If a court makes no order with respect to a suspended sentence, the proper officer of the court must record that fact in the records of the court.
- (7) If it is not possible for the court to deal with the offender immediately, then the **Bail Act 1977** applies for the purposes of granting bail with any necessary adaptations and in particular with the modification that a reference to a person accused of an offence or an accused person is to be construed as a reference to the offender.



**83AS Powers of the court on finding of guilt for contravention of community correction order**

- (1) If a court finds a person guilty of an offence under section 83AD (in addition to sentencing the offender for the offence) the court must—
  - (a) vary the order in any manner set out in section 48M(2)(c), (d), (e), (f), (g) or (h); or
  - (b) confirm the order originally made; or
  - (c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to subsection (2), deal with the offender for the offence with respect to which the order was made in any manner in which the court could deal with the offender as if it had just found him or her guilty of that offence; or
  - (d) cancel the order and make no further order with respect to the offence with respect to which the order was originally made.
- (2) A court, in determining how to deal with an offender under subsection (1), must take into account the extent to which the offender has complied with the order.
- (3) The Secretary must disclose any direction he or she has given under Division 3 of Part 3C to a court making an assessment under subsection (2).

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**83AT Powers of the court on finding of guilt for contravention of order for release on adjournment**

- (1) If in a proceeding for an offence under section 83AC, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—
  - (a) deal with the order under section 78, as if an application had been made under that section; or
  - (b) confirm the order originally made; or
  - (c) cancel the order (if it is still in force), and, whether or not it is still in force, deal with the offender for the offence with respect to which the order was made in any manner in which the court could deal with the offender if it had just found him or her guilty of that offence; or
  - (d) make no further order with respect to the offence in respect of which the original order was made.
- (2) A court, in determining how to deal with an offender under subsection (1), must take into account the extent to which the offender has complied with the order.

\_\_\_\_\_".

**44 Heading amended**

In the heading to Part 3A of the **Sentencing Act 1991** for "**3A**" substitute "**3D**".

**45 Division 1A of Part 6 repealed**

Division 1A of Part 6 of the **Sentencing Act 1991** is **repealed**.

**46 Division 2 of Part 6 repealed**

Division 2 of Part 6 of the **Sentencing Act 1991** is **repealed**.

**47 Division 2A of Part 6 repealed**

Division 2A of Part 6 of the **Sentencing Act 1991** is **repealed**.

**48 Penalty scale**

(1) For section 109(3) of the **Sentencing Act 1991** **substitute—**

"(3) Subject to subsection (3A), an offence that is punishable by a term of imprisonment (other than life) is, unless the contrary intention appears, punishable (in addition to or instead of imprisonment) by a maximum fine of the number of penalty units that is 10 times more than the maximum number of months of imprisonment that may be imposed."

(2) Section 109(4) of the **Sentencing Act 1991** is **repealed**.

**49 New sections inserted**

After section 115 of the **Sentencing Act 1991** **insert—**

**"115A Effect where punishment suffered for indictable offence**

(1) If a person who has been convicted of an indictable offence has suffered the punishment imposed in respect of it, the punishment has the like effect and consequence as a pardon under the great seal.

(2) Subsection (1) does not limit the operation of any enactment that expressly disqualifies a person who has been convicted of an indictable offence from holding any office."

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**50 Heading to Part 11 substituted**

For the heading to Part 11 of the **Sentencing Act 1991 substitute—**

**"PART 11—REGULATIONS AND GENERAL MATTERS".**

**51 Regulations**

In section 116(1) of the **Sentencing Act 1991—**

- (a) paragraph (b) is **repealed**;
- (b) in paragraph (c), for "community-based orders" **substitute** "community correction orders";
- (c) in paragraph (d), for "community-based order" **substitute** "fine conversion order or fine default unpaid community work order";
- (d) paragraph (e) is **repealed**;
- (e) for paragraph (f) **substitute—**
  - "(f) contraventions of sentence and applications for variation of sentence; and
  - (fa) proceedings for contravention of sentence; and
  - (fb) any matter relating to reviews by the court of decisions of the Secretary under Division 3 of Part 3C; and".

**52 New section 116A inserted**

After section 116 of the **Sentencing Act 1991 insert—**

**"116A Transitional provisions**

Schedule 3 has effect."

**53 Transitional provision—Sentencing Amendment Act 2010**

- (1) In section 143(1) of the **Sentencing Act 1991**—
  - (a) the definition of *old combined custody and treatment order* is repealed;
  - (b) the definition of *old intensive correction order* is repealed.
- (2) The heading preceding section 143(2) of the **Sentencing Act 1991** is repealed.
- (3) Section 143(2) of the **Sentencing Act 1991** is repealed.
- (4) The heading preceding section 143(3) of the **Sentencing Act 1991** is repealed.
- (5) Section 143(3) of the **Sentencing Act 1991** is repealed.
- (6) The heading preceding section 143(4) of the **Sentencing Act 1991** is repealed.
- (7) Section 143(4) of the **Sentencing Act 1991** is repealed.

**54 New Schedule 3 inserted**

After Schedule 2 to the **Sentencing Act 1991** insert—

**"SCHEDULE 3**

Section 116A

**TRANSITIONAL PROVISIONS**

**PART 1—DEFINITIONS**

**1 Definitions**

In this Schedule—

*old combined custody and treatment order*  
means a combined custody and

treatment order within the meaning of section 3(1) as in force before the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement;

*old community-based order* means a community-based order within the meaning of section 3(1) as in force before the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement;

*old intensive correction order* means an intensive correction order within the meaning of section 3(1) as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement.

**PART 2—SENTENCING AMENDMENT  
(COMMUNITY CORRECTION REFORM) ACT  
2011**

**2 Combined custody and treatment orders**

Subject to clause 7 and despite the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old combined custody and treatment order is taken to continue in force on and from that commencement as if this Act, as in force

before that commencement, continued to apply to it.

**3 Intensive correction orders**

Subject to clause 9 and despite the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old intensive correction order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

**4 Community-based orders**

Subject to clause 10 and despite the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old community-based order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

**5 Community correction orders**

Section 37 as inserted by section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011** applies to a sentence imposed on or after the commencement of that Act, irrespective of when the offence was committed or the finding of guilt was made.

**6 Contravention—Suspended sentences**

- (1) Part 3C applies to a suspended sentence order that is made on or after the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**.

(2) Part 3C applies to a contravention of a pre-existing suspended sentence order that occurs on or after the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**.

(3) In this clause—

*pre-existing suspended sentence order*

means a suspended sentence order made before the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**;

*suspended sentence order* means an order made under section 27.

**7 Contravention—Old combined custody and treatment orders**

(1) An offender who is subject to an old combined custody and treatment order must not, unless that person has a reasonable excuse, contravene that order.

Penalty: 3 months imprisonment.

(2) Subclause (1) does not apply to a contravention of an old combined custody and treatment order that occurs before the commencement of section 12 of **Sentencing Amendment (Community Correction Reform) Act 2011**.

(3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).



- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old combined custody and treatment order, the court finds the person guilty of the offence the court, in addition to sentencing the offender for that offence, must—
- (a) confirm the order that was contravened; or
  - (b) whether or not the offender has served any part of the sentence in the community, order the offender to serve in custody the whole or part of the sentence that was to be served in the community.
- (5) The court must make an order under subclause (4)(b), unless the court is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.
- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court makes an order under subclause (4)(b), the term of imprisonment which the offender must serve in custody must be served—
- (a) immediately or, if the offender is still serving the original custodial part of the sentence, immediately on completion of service of that part of the sentence; and
  - (b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.

**8 Contravention—pre-existing home detention orders**

- (1) An offender who is subject to a pre-existing home detention order must not, unless that person has a reasonable excuse, commit a serious contravention of that order.  
Penalty: 3 months imprisonment.
- (2) This clause does not apply to a contravention of a pre-existing home detention order—
  - (a) that occurs before the commencement of section 43 of the **Sentencing Amendment (Community Correction Reform) Act 2011**; or
  - (b) a contravention of a home detention order that is not a serious contravention.
- (3) Subject to this clause, Part 3C applies to an offence under this clause as if any reference in that Part to an offence under section 83AD were a reference to an offence under this clause.
- (4) If in a proceeding for an offence under this clause, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—
  - (a) confirm the order that was contravened; or
  - (b) cancel the order (if it is still in force) and, whether or not it is still in force, commit the offender to prison for the portion of the term of imprisonment to which he or she was sentenced that was unexpired at the date on which the contravention occurred.

- (5) The court must make an order under subclause (4)(b), unless the court is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.
- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court, under subclause (4)(b), orders the offender to serve in prison the unexpired portion of the term of imprisonment, the offender must serve the term of imprisonment—
- (a) immediately; and
  - (b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.
- (8) In this clause—
- pre-existing home detention order* means a home detention order made before the commencement of section 43 of the **Sentencing Amendment (Community Correction Reform) Act 2011**;
- serious contravention* means—
- (a) a contravention that compromises the safety and security of the community, any person residing with the offender or the offender's family; or
  - (b) a contravention that involves the commission of an offence; or

- (c) a contravention that involves non-compliance with an order made under section 84 or 86(1); or
- (d) a contravention that occurs after repeated failure to comply with the conditions of the order; or
- (e) a contravention of a core condition of the home detention order set out in section 26U(d) or (e) (as in force before their repeal by the **Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011**).

**9 Contravention—Old intensive correction orders**

- (1) An offender who is subject to an old intensive correction order must not, unless that person has a reasonable excuse, contravene that order.  
Penalty: 3 months imprisonment.
- (2) Subclause (1) does not apply to a contravention of an old intensive correction order that occurs before the commencement of section 15 of **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).
- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old intensive correction order, the court finds the person guilty of the offence the court must

(in addition to sentencing the offender for the offence)—

- (a) confirm the order that was contravened;  
or
  - (b) cancel the order (if it is still in force) and, whether or not it is still in force, commit the offender to prison for the portion of the term of imprisonment to which he or she was sentenced that was unexpired at the date of the offence.
- (5) If the person has been found guilty of a contravention of the old intensive correction order that was constituted, in whole or in part, by another offence punishable by imprisonment, the court must make an order under subclause (4)(b), unless the court is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.
- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court, under subclause (4)(b), orders the offender to serve in prison the unexpired portion of the term of imprisonment, the offender must serve the term of imprisonment—
- (a) immediately; and
  - (b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.

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**10 Contravention—Old community-based orders**

- (1) An offender who is subject to an old community-based order must not, unless that person has a reasonable excuse, contravene that order.

Penalty: 3 months imprisonment.

- (2) Subclause (1) does not apply to a contravention of an old community-based order that occurs before the commencement of section 21 of **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).
- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old community-based order, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—
- (a) confirm the order that was contravened; or
  - (b) cancel the order (if it is still in force) and, whether or not it is still in force, deal with the offender for the offence or offences with respect to which the order was made as if the court has just found him or her guilty of that offence or those offences.
- (5) In determining how to deal with an offender following the cancellation by it of an old community-based order, the court—

- (a) must take into account the extent to which the offender complied with the order before its cancellation; and
- (b) in imposing any new sentencing order on the offender, must have regard to the conditions of the old community-based order.

**11 Presumption of concurrency, old orders and community correction orders**

- (1) The conditions of a community correction order made in respect of an offender are concurrent with the conditions of any old sentencing order made in respect of the offender, unless the court orders otherwise.
- (2) In this clause *old sentencing order* means—
  - (a) an old combined custody and treatment order;
  - (b) an old community-based order;
  - (c) an old intensive correction order.

**12 Offences occurring on more than one date**

- (1) An offence under clause 7(1), 8(1) or (2), 9(1) or 10 is taken not to have been committed if the conduct that would be the subject of any alleged offence has occurred between two dates, one of which is before the commencement of the clause and the other of which is after the commencement of the clause.
- (2) The provisions of this Act as in force before the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old combined custody and treatment order, are taken to continue to apply in respect of a

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breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for that purpose the breach is taken to have been committed before that commencement.

- (3) The provisions of this Act as in force before the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old community-based order, are taken to continue to apply in respect of a breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for that purpose the breach is taken to have been committed before that commencement.
- (4) The provisions of this Act as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old intensive correction order, are taken to continue to apply in respect of a breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for that purpose the breach is taken to have been committed before that commencement.



### **13 Time for bringing proceeding**

- (1) A proceeding for an offence under clause 7(1), 8(1) or (2), 9(1) or 10(1) must be commenced—
  - (a) if the contravention is constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 6 months after the person is convicted or found guilty of the later offence, subject to subclause (2); or
  - (b) if the contravention is not constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 1 year after the order ceases to be in force.
- (2) A proceeding to which subclause (1)(a) applies must not be commenced more than 2 years after the order ceases to be in force.

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**PART 3—FURTHER AMENDMENT OF THE SENTENCING  
ACT 1991**

**55 Definitions**

In section 3(1) of the **Sentencing Act 1991** insert the following definition—

**"bond condition** means a condition that may be attached to a community correction order under section 48JA(1);".

**56 Unpaid community work condition**

After section 48C(3) of the **Sentencing Act 1991** insert—

"(3A) If the Secretary gives a direction under section 83AU the offender must perform the number of hours of unpaid community work specified by the Secretary."

**57 Curfew condition**

After section 48I(3) of the **Sentencing Act 1991** insert—

"(3A) If the Secretary gives a direction under section 83AV the offender must remain at the place specified by the court for the increased hours or period that is specified by the Secretary."

**58 Bond condition**

After section 48J of the **Sentencing Act 1991** insert—

**"48JA Bond condition**

- (1) A court which is making a community correction order may attach a condition requiring an offender to pay an amount of money as a bond, the whole or part of which is subject to forfeiture if the offender fails to comply with the order.

- (2) The court may attach a bond condition for the purpose of ensuring the compliance of the offender with the order.
- (3) When attaching a bond condition the court must—
  - (a) have regard to adequacy of the financial circumstances of the offender as contained in the pre-sentence report to support the payment of the bond; and
  - (b) fix a time period for the payment of the bond by the offender.
- (4) Any money paid by an offender under subsection (1) is to be held by the court making the order until the money is required to be repaid or forfeited under this Act.
- (5) On the expiry or cancellation of the order the court must repay to the offender any of the money paid under subsection (1) that has not been forfeited under section 83AS(3)."

**59 Powers of the court on finding of guilt for contravention of community correction order**

After section 83AS(3) of the **Sentencing Act 1991** insert—

- "(4) If the court finds a person guilty of an offence under section 83AD in respect of a community correction order and the person has paid a bond under a bond condition of the community correction order—
- (a) if the court makes an order under subsection (1)(a) or (b), the court may order that all or a part of the bond is forfeited to the Crown; or

- (b) if the court makes an order under subsection (1)(c), the court must order that all or part of the bond is forfeited to the Crown."

**60 New Division 3 of Part 3C inserted**

After Division 2 of Part 3C of the **Sentencing Act 1991** insert—

**"Division 3—Direction of certain conditions on failure to comply**

**83AU Direction of unpaid community work condition on failure to comply**

- (1) If an offender fails to comply, without reasonable excuse, with a community correction order that has an unpaid community work condition attached, the Secretary may direct the offender to perform up to a maximum of 16 hours of unpaid community work in a 12 month period in addition to that imposed by the court that made the order.
- (2) The Secretary must not give a direction under subsection (1) unless the Secretary is satisfied that—
- (a) the failure to comply with the order is sufficiently serious to give the direction; and
  - (b) the failure to comply with the order is not sufficiently serious to file a charge for the offence under section 83AD; and
  - (c) the unpaid community work condition has not been completed; and

- (d) the number of hours of unpaid community work that the offender is directed to perform by the Secretary together with the number of hours of unpaid community work that the offender has been ordered to perform by the court attaching the condition will not exceed the maximum number of hours permitted under section 48C(4).

**83AV Direction of curfew condition on failure to comply**

- (1) If an offender fails to comply, without reasonable excuse, with a community correction order that has a curfew condition attached, the Secretary may direct that the specified hours of each day that the offender must remain at the place under the condition be increased by up to 2 hours or that the period that the condition applies to the order be increased by up to 14 days in addition to that imposed by the court that made the order.
- (2) The Secretary must not give a direction under subsection (1) unless the Secretary is satisfied that—
  - (a) the failure to comply with the order is sufficiently serious to give the direction; and
  - (b) the failure to comply with the order is not sufficiently serious to file a charge for the offence under section 83AD; and
  - (c) the curfew condition has not expired; and

- (d) the number of hours of each day that the offender must remain at the place as directed by the Secretary together with the number of hours that the offender has been ordered to remain at the place by the court attaching the condition will not exceed the maximum number of hours permitted under section 48I(3); and
- (e) the period that the offender must remain at the place under the curfew condition as directed by the Secretary under subsection (1) will not exceed the maximum period under 48I(3).

**83AW Reasonable excuse for a failure to comply**

For the purposes of section 83AU or 83AV it is a reasonable excuse for an offender to fail to comply with a community correction order if—

- (a) there exists an application to vary the order under section 48N relating to or resulting from the failure to comply; or
- (b) the court varied the order under section 48M in relation to or as a result of the failure to comply.

**83AX Notice of direction to be given in writing**

- (1) The Secretary must serve on an offender notice in writing of a decision under section 83AU or 83AV.
- (2) In a notice under subsection (1) the Secretary must include his or her reasons for making the decision and the right of an offender to make an application for review on the merits of the Secretary's decision under section 83AY.

- (3) A decision of the Secretary under section 83AU or 83AV does not take effect until the notice is served under subsection (1) or any later date specified in the notice.

**83AY Review by the sentencing court**

- (1) The court may review the decision of the Secretary on application by the offender.
- (2) If the Secretary has given a direction in terms of an unpaid community work condition or a curfew condition under section 83AU or 83AV, the offender may apply to the court that imposed the condition for a review on the merits of the Secretary's decision.
- (3) An application under subsection (2) must be made within 28 days after the day on which the decision was made.
- (4) The court may, on application of an offender, extend the period within which an application must be made under subsection (3).
- (5) A review under this section is a hearing de novo.

**83AZ Powers of a sentencing court on review**

- (1) In a review under section 83AY the court has the same powers and duties that the Secretary has to make the decision under this Division.
- (2) The Secretary must produce to the court the notice served on the offender in accordance with section 83AX.
- (3) In a review under section 83AY the court may, by order—
- (a) confirm the decision under review; or

- (b) vary the decision under review; or
  - (c) revoke the decision under review.
- (4) A decision of a court on a review is taken to have effect from the time at which the court makes the decision, unless the court orders otherwise."

### **61 Heading to Division 3 of Part 4 substituted**

In the heading to Division 3 of Part 4 of the **Sentencing Act 1991** for "**Forfeiture and disqualification**" substitute "**Orders as to driver licences and learner permits**".

### **62 Interpretation**

- (1) In section 87P(1) of the **Sentencing Act 1991** for the definition of *alcohol interlock condition* substitute—

*"alcohol interlock condition* means a condition imposed on a driver licence or learner permit in accordance with a direction under section 89A or 89B;"

- (2) In section 87P(2) of the **Sentencing Act 1991**, omit "or 89B".

### **63 Section 88 substituted**

For section 88 of the **Sentencing Act 1991** substitute—

#### **"88 Application of Evidence Act 2008**

To avoid doubt, a proceeding under this Division is a proceeding that relates to sentencing for the purposes of section 4(2) of the **Evidence Act 2008**."



**64 Driver licence or learner permit—suspension, cancellation, disqualification**

- (1) **Insert** the following heading to section 89 of the **Sentencing Act 1991**—

**"Suspension, cancellation or disqualification of driver licence or learner permit—certain motor vehicle offences".**

- (2) For section 89(1) and (1A) of the **Sentencing Act 1991** **substitute**—

- "(1) If a person is found guilty or convicted of a serious motor vehicle offence the court must—
- (a) if the person is the holder of a driver licence or learner permit, cancel the driver licence or learner permit held by the person and disqualify the person from obtaining a further driver licence or learner permit for the period of time that the court specifies; or
  - (b) if the person is the holder of the equivalent of a driver licence or learner permit issued in another State or a Territory of the Commonwealth or another country, disqualify the person from driving a motor vehicle on a road in Victoria for the period for which the person would have been disqualified from obtaining a driver licence or learner permit, had the person held such a licence or permit; or
  - (c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify the person from obtaining a driver licence or learner permit for the period of time that the court specifies.

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- (1A) The court must not specify a period of time for disqualification under subsection (1) that is—
- (a) for an offence to which paragraph (d) of the definition of *serious motor vehicle offence* applies, less than 18 months; or
  - (b) for any other serious motor vehicle offence, less than 24 months.
- (1B) If, on a person being convicted or found guilty of a serious motor vehicle offence, the court makes an order under subsection (1), the court may make a finding that the offence was committed while the offender was under the influence of alcohol or a drug which contributed to the offence.
- (1C) A court that makes a finding under subsection (1B) must cause the particulars of the finding to be sent immediately to the Roads Corporation.
- (1D) A period of disqualification under subsection (1) commences on the day that the order imposing it is made or on any later day that the court specifies in the order."
- (3) In section 89(2) of the **Sentencing Act 1991**, after "driver licence" **insert** "or learner permit".
- (4) In section 89(3A) of the **Sentencing Act 1991**—
- (a) in paragraph (a), after "driver licence" **insert** "or learner permit";
  - (b) in paragraph (b), for "subsection (1)" **substitute** "subsection (1B)".
- (5) In the note at the foot of section 89(3E) of the **Sentencing Act 1991**, after "driver licence" **insert** "or learner permit".

(6) Section 89(3F) of the **Sentencing Act 1991** is **repealed**.

(7) For section 89(4) of the **Sentencing Act 1991** **substitute—**

"(4) If a person is found guilty or convicted of stealing or attempting to steal a motor vehicle, the court may (in the case of a finding of guilt) and must (in the case of a conviction)—

(a) if the person is the holder of a driver licence or learner permit—

(i) suspend the driver licence or learner permit held by the person for the period of time that the court specifies; or

(ii) cancel the driver licence or learner permit held by the person and disqualify the person from obtaining a further driver licence or learner permit for the period of time that the court specifies; or

(b) if the person is the holder of the equivalent of a driver licence or learner permit issued in another State or a Territory of the Commonwealth or another country, disqualify the person from driving a motor vehicle on a road in Victoria for the period for which the person would have been disqualified from obtaining a driver licence or learner permit, had the person held such a licence or permit; or

(c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify the person from obtaining a driver licence or

learner permit for the period of time that the court specifies."

(8) After section 89(4) of the **Sentencing Act 1991** insert—

"(5) In this Division, *serious motor vehicle offence* means—

- (a) manslaughter arising out of the driving of a motor vehicle; or
- (b) an offence under section 24 of the **Crimes Act 1958** in respect of serious injury arising out of the driving of a motor vehicle; or
- (c) an offence under section 318 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel); or
- (d) an offence under section 319 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel)."

**65 New sections inserted after section 89**

After section 89 of the **Sentencing Act 1991** insert—

**"89AB Suspension, cancellation or disqualification of driver licence or learner permit—any offence**

- (1) If a person is found guilty or convicted of any offence the court may—
  - (a) if the person is the holder of a driver licence or learner permit—
    - (i) suspend the driver licence or learner permit held by the person for the period of time that the court specifies; or

- (ii) cancel the driver licence or learner permit held by the person and disqualify the person from obtaining a further driver licence or learner permit for the period of time that the court specifies; or
  - (b) if the person is the holder of the equivalent of a driver licence or learner permit issued in another State or a Territory of the Commonwealth or another country, disqualify the person from driving a motor vehicle on a road in Victoria for the period for which the person would have been disqualified from obtaining a driver licence or learner permit, had the person held such a licence or permit; or
  - (c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify the person from obtaining a driver licence or learner permit for the period of time that the court specifies.
- (2) Subsection (1) does not apply to an offender found guilty or convicted of—
- (a) a serious motor vehicle offence or an offence to which section 89(4) applies; or
  - (b) an offence under the **Road Safety Act 1986** or regulations or rules (within the meaning of section 95D of that Act) made under that Act.

**89AC Finding on cancellation or disqualification of driver licence or learner permit**

- (1) A court in addition to making an order under section 89AB(1) may make a finding that the offence was committed while the offender was under the influence of alcohol or a drug which contributed to the offence.
- (2) A court that makes a finding under subsection (1) must cause particulars of the finding to be sent immediately to the Roads Corporation.

**89AD Period of disqualification**

- (1) If the period of disqualification is not specified by the court on making an order under section 89AB(1) the period of disqualification is 3 months.
- (2) A period of disqualification under section 89AB(1) commences on the day that the order imposing it is made or on any later day that the court specifies in the order.

**89AE Application for driver licence or learner permit after disqualification**

- (1) A driver licence or learner permit must not be issued to a person who has been disqualified from obtaining one under section 89AB except on the order of the Magistrates' Court made on the application of the offender at the end of the period of disqualification.
- (2) A person must give at least 28 days written notice of an application under subsection (1) to the Chief Commissioner of Police and the registrar at the proper venue of the Magistrates' Court.

- (3) If—
- (a) a person applies under subsection (1) for an order as to the issue of a driver licence or learner permit; and
  - (b) the court referred to in section 89AB has made a finding under section 89AC that the offence was committed while the person was under the influence of alcohol or a drug which contributed to the offence—
- the Magistrates' Court must have regard to the reports referred to in subsection (4).
- (4) A person to whom subsection (3) applies must obtain from an accredited agency—
- (a) an assessment report about the person's use of alcohol or drugs (as the case requires) at least 3 months before applying for the order under subsection (1); and
  - (b) a licence restoration report within 28 days before applying for the order.
- (5) If a person applies under subsection (1) for an order and a finding referred to in subsection (3)(b) was not made in respect of the person, the Magistrates' Court may request a licence restoration report from an accredited agency.
- (6) On an application under subsection (1) the Magistrates' Court may, in exceptional circumstances, reduce the period of 3 months referred to in subsection (4)(a).

**89AF Licence restoration**

On an application under section 89AE(1), the Magistrates' Court may make or refuse to make the order sought, and for the purpose

of determining whether or not the order should be made—

- (a) the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court; and
- (b) without limiting the generality of its discretion, the court must have regard to—
  - (i) if a finding has been made under section 89AC, the conduct of the applicant with respect to intoxicating liquor or drugs (as the case may be) during the period of disqualification; and
  - (ii) the applicant's physical and mental condition at the time of the hearing of the application; and
  - (iii) the effect which the making of the order may have on the safety of the applicant or of the public; and
  - (iv) any licence restoration report obtained under section 89AE(4)(b) or section 89AE(5); and
  - (v) any report obtained under section 89AE(4)(a).

**Note**

The Magistrates' Court may, in making the order sought, be permitted or required to direct the Roads Corporation to impose an alcohol interlock condition on a driver licence or learner permit granted to the applicant: see section 89B.



**89AG Presumption in favour of concurrency**

- (1) If the driver licence or learner permit of an offender is suspended under section 89(4) or section 89AB (*later suspension*) and the driver licence or learner permit of the offender has previously been suspended or the offender has been disqualified from obtaining a driver licence or learner permit or from driving under—
- (a) either of those sections; or
  - (b) the **Road Safety Act 1986**; or
  - (c) regulations made under the **Road Safety Act 1986** or rules (within the meaning of section 95D of the **Road Safety Act 1986**) made under that Act—

the later suspension is presumed to operate concurrently with the earlier suspension or disqualification, unless the court orders otherwise.

- (2) If a person is disqualified under section 89 or 89AB from obtaining a driver licence or learner permit or from driving (*later disqualification*) and the driver licence or learner permit of the offender has previously been suspended or the offender has been disqualified from obtaining a driver licence or learner permit or from driving under—
- (a) either of those sections; or
  - (b) the **Road Safety Act 1986**; or

- (c) regulations made under the **Road Safety Act 1986** or rules (within the meaning of section 95D of the **Road Safety Act 1986**) made under that Act—

the later disqualification is presumed to operate concurrently with the earlier suspension or disqualification, unless the court orders otherwise.

- (3) The presumption—
- (a) under subsection (1) does not apply if the **Road Safety Act 1986** or regulations or rules (within the meaning of section 95D of that Act) made under that Act require the suspension to be consecutive;
- (b) under subsection (2) does not apply if the **Road Safety Act 1986** or regulations or rules (within the meaning of section 95D of that Act) made under that Act require the disqualification to be consecutive.

#### **89AH Cancellation on disqualification**

If under this Division a court disqualifies a person from obtaining a driver licence or learner permit for any time without expressly cancelling any driver licence or learner permit held by that person, any driver licence or learner permit held by that person is, unless the order specifies otherwise, to be taken to have been cancelled by that order.

#### **89AI Requirement to send particulars to Roads Corporation**

A court must cause particulars of an order made under section 89 or 89AB to be sent immediately to the Roads Corporation."

**66 Amendment of section 89A**

- (1) For the heading to section 89A of the **Sentencing Act 1991 substitute**—

**"Imposition of alcohol interlock condition, disqualification under section 89"**.

- (2) In section 89A(1)(a) of the **Sentencing Act 1991** after "driver licence" **insert** "or learner permit or from driving on a road in Victoria".

**67 Substitution of sections 89B to 89D**

For sections 89B to 89D of the **Sentencing Act 1991 substitute**—

**"89B Imposition of alcohol interlock condition, disqualification under section 89AB— any offence**

- (1) In an order under section 89AE(1) the Magistrates' Court may direct the Roads Corporation that it can only grant the person a driver licence or learner permit that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock if—
- (a) the person has been disqualified from obtaining a driver licence or learner permit or disqualified from driving on a road in Victoria under section 89AB(1); and
  - (b) a finding has been made under section 89AC that the person was under the influence of alcohol when the offence was committed which contributed to the commission of the offence.

**Note**

Section 52(1BA) of the **Road Safety Act 1986** applies to a direction given under subsection (1).

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- (2) The Magistrates' Court must specify the period that a direction given under subsection (1) applies to the person.
  - (3) A person to whom a direction under subsection (1) applies must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by an approved alcohol interlock supplier.

**89C Specified period where alcohol interlock condition must not be removed**

- (1) If the Magistrates' Court gives a direction under section 89A(2), 89A(3)(b) or 89A(4), it must specify in the direction a period during which the person concerned cannot apply to the Court for the removal of an alcohol interlock condition imposed on his or her driver licence or learner permit.
- (2) The period specified under subsection (1) must be—
  - (a) in the case of a direction under section 89A(2), at least 6 months after the condition is imposed; or
  - (b) in any other case, at least 4 years after the condition is imposed.
- (3) If the Magistrates' Court gives a direction under section 89B(1) it must specify that the person concerned cannot apply to the Court for the removal of an alcohol interlock condition imposed on his or her driver licence or learner permit for the period of the direction.

**89D Procedure for removal of alcohol interlock condition**

- (1) The Roads Corporation must not remove an alcohol interlock condition imposed on a person's driver licence or learner permit unless the Magistrates' Court orders that the condition be removed.
- (2) At the end of the period specified by the Court under section 89C a person may apply for the removal of the alcohol interlock condition.
- (3) A person making an application under subsection (2) must give 28 days notice in writing to the Chief Commissioner of Police of his or her intention to make the application.
- (4) A notice under subsection (3) must state the venue of the Court at which it is to be made.
- (5) Within 28 days before applying for the removal of an alcohol interlock condition imposed on a person's driver licence or learner permit, the person must obtain from an accredited agency a report that—
  - (a) covers the whole period since an approved alcohol interlock was installed under the direction of the Court; and
  - (b) includes—
    - (i) an assessment by each approved alcohol interlock supplier who maintained, or authorised a person or body to maintain, the approved alcohol interlock during that period on the extent to which the person complied with the manufacturer's instructions for

- 
- using the approved alcohol interlock; and
- (ii) an assessment of the person's use of alcohol during that period; and
  - (iii) the last licence restoration report obtained by the person.
- (6) In determining whether to make an order to remove an alcohol interlock condition imposed on a person's driver licence or learner permit—
- (a) the Court must hear any relevant evidence tendered by either the person or the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the Court; and
  - (b) the Court, without limiting the generality of its discretion, must have regard to—
    - (i) the person's use of alcohol in the period since the condition was imposed; and
    - (ii) the person's physical and mental condition at the time of the hearing of the application; and
    - (iii) the effect that the making of the order may have on the safety of the person or the public; and
    - (iv) any report obtained under subsection (5).

**89DA Appeals against direction or period specified in direction**

- (1) A person in respect of whom a direction is given by the Magistrates' Court under section 89A or 89B may appeal to the County Court under section 254 of the **Criminal Procedure Act 2009** against—
- (a) in the case of a direction under section 89A(2)—
    - (i) the giving of the direction; or
    - (ii) the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition, if that period is more than 6 months; or
  - (b) in the case of a direction under section 89A(3)(b) or 89A(4), the period specified in the direction during which the person cannot apply for the removal of the alcohol interlock condition, if that period is more than 4 years; or
  - (c) in the case of a direction under section 89B(1)—
    - (i) the giving of the direction; or
    - (ii) the period specified in the direction during which the person cannot apply for the removal of the alcohol interlock condition—
- as if the direction were a sentence of a kind referred to in section 254 of the **Criminal Procedure Act 2009**.
- (2) That Act applies with respect to the appeal with any necessary modifications.

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- (3) The making of an appeal to the County Court under subsection (1) does not stay the operation of a direction under section 89A or section 89B, but the court making the direction may, in its discretion, stay the operation of the direction pending the decision of the appeal.

**89DB Offences and immobilisation orders**

- (1) A person whose driver licence or learner permit is subject to an alcohol interlock condition under this Division is guilty of an offence if—
- (a) the person contravenes that condition; or
  - (b) the person drives a motor vehicle with an approved alcohol interlock in accordance with that condition but the motor vehicle has been started—
    - (i) with the approved alcohol interlock disengaged; or
    - (ii) in a way that does not comply with the manufacturer's instructions for the use of the approved alcohol interlock; or
    - (iii) in a way other than by the person blowing directly into the appropriate part of the approved alcohol interlock.

**Note**

Section 50AAH and 50AAI of the **Road Safety Act 1986** may affect whether a person has contravened the condition.



- (2) A person who is guilty of an offence against subsection (1) is liable to a fine of not more than 30 penalty units or to imprisonment for a term of not more than 4 months.
- (3) If—
- (a) a person contravenes an alcohol interlock condition by driving a motor vehicle with a type of alcohol interlock—
    - (i) the approval of which is cancelled under section 50AAH of the **Road Safety Act 1986**; or
    - (ii) that is installed or maintained by a person or body whose approval as an alcohol interlock supplier is cancelled under section 50AAI of the **Road Safety Act 1986**; or
    - (iii) that is installed or maintained by a person or body who would be authorised by an approved alcohol interlock supplier except that the supplier's approval is cancelled under section 50AAI of the **Road Safety Act 1986**; and
  - (b) the person is charged with an offence against subsection (1)(a) in respect of that contravention—

it is a defence if the person proves that he or she reasonably believed at the time of the contravention that the type of alcohol interlock was an approved alcohol interlock, or the person or body was an approved alcohol interlock supplier or authorised by such a supplier, as the case may be.

- (4) A court finding a person guilty, or convicting a person, of an offence against subsection (1)(b) may, if the court considers it appropriate to do so, order that the motor vehicle concerned be immobilised (whether by wheel clamps or any other means) for a period specified in the order of up to 12 months.
- (5) An order under subsection (4) may be made subject to specified conditions.
- (6) The court may make an order under subsection (4) whether the motor vehicle is owned by the offender or another person.
- (7) If the court considers that another person, who is not present at the hearing concerning the making of an order under subsection (4), may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.
- (8) On the return of the summons, the court may, after hearing the evidence brought before it, make or refuse to make the order."

**68 New section inserted**

After section 115A of the **Sentencing Act 1991**  
**insert—**

**"115B Delegation**

- (1) The Secretary may, by instrument, delegate any power or duty of the Secretary under—
  - (a) Part 3A of this Act or the regulations except this power of delegation to—
    - (i) any officer within the meaning of Part 5 or Part 9 of the **Corrections Act 1986**; or

- (ii) the Commissioner, within the meaning of the **Corrections Act 1986**; or
  - (iii) a prescribed person or prescribed class of person; or
  - (b) Division 3 of Part 3C of this Act or the regulations except this power of delegation to a person employed in the Department of Justice under Part 3 of the **Public Administration Act 2004** at a level of Grade 6 or higher.
- (2) A delegation under subsection (1) may be to a person or class of persons."

**69 New sections inserted after heading to Part 11**

After the heading to Part 11 of the **Sentencing Act 1991** insert—

**"115C Infringement penalties**

The infringement penalty for an offence against section 83AE or 83AF is 1 penalty unit.

**115D Power to serve an infringement notice**

- (1) If the authorised person has reason to believe that an offender has committed an offence referred to in subsection (3), the authorised person may serve an infringement notice on that person.
- (2) An offence referred to in subsection (3) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

- (3) An infringement notice may be served in respect of an offence against—
  - (a) section 83AE (offence to fail to obey a particular direction of Secretary);
  - (b) section 83AF (offence to fail to obey written direction of Secretary).

**115E Appointment of authorised person**

- (1) The Secretary may by instrument, appoint a person as an authorised person.
- (2) The Secretary in appointing a person under subsection (1) must specify the nature and extent of the appointment."

**70 New Part 3 to Schedule 3 inserted**

After Part 2 of Schedule 3 to the **Sentencing Act 1991** insert—

**"PART 3—SENTENCING AMENDMENT  
(COMMUNITY CORRECTION REFORM) ACT  
2011—FURTHER AMENDMENTS**

**14 Community correction orders—bond condition**

Section 48JA as inserted by section 58 of the **Sentencing Amendment (Community Correction Reform) Act 2011** applies to a sentence imposed on or after the commencement of section 58 that Act, irrespective of when the offence was committed or the finding of guilt was made.

**15 Direction of certain conditions on failure to comply with a community correction order**

- (1) The amendment of this Act by section 60 of the **Sentencing Amendment (Community Correction Reform) Act 2011** apply to a failure by an offender to comply with a

community correction order that is alleged to have been committed on or after that commencement.

- (2) For the purposes of subclause (1), if a failure to comply with a community correction order is alleged to have been committed between two dates, one before and one after the commencement of section 60 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, the failure to comply with the community correction order is alleged to have been committed before that commencement.

**16 Suspension, cancellation or disqualification of driver licence or learner permit—certain motor vehicle offences**

- (1) The amendment of this Act by section 64 of the **Sentencing Amendment (Community Correction Reform) Act 2011** applies in respect of an offence alleged to have been committed on or after the commencement of section 64 of that Act.
- (2) For the purposes of subclause (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 64 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, the offence is alleged to have been committed before that commencement.

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**17 Suspension, cancellation or  
disqualification of driver licence or  
learner permit—any offence**

- (1) The amendment of this Act by section 65 of the **Sentencing Amendment (Community Correction Reform) Act 2011** applies in respect of an offence alleged to have been committed on or after the commencement of section 65 of that Act.
  - (2) For the purposes of subclause (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 65 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, the offence is alleged to have been committed before that commencement."
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**PART 4—AMENDMENT OF THE SENTENCING  
AMENDMENT ACT 2010**

**71 Definitions**

See:  
Act No.  
77/2010 and  
amending  
Act No.  
9/2011.  
Statute Book:  
www.  
legislation.  
vic.gov.au

In section 3 of the **Sentencing Amendment Act 2010**—

- (a) paragraph (b) is **repealed**;
- (b) paragraph (c) is **repealed**;
- (c) paragraph (d) is **repealed**;
- (d) paragraph (e) is **repealed**.

**72 Sentencing guidelines**

Section 4 of the **Sentencing Amendment Act 2010** is **repealed**.

**73 Sentences**

Section 5 of the **Sentencing Amendment Act 2010** is **repealed**.

**74 Repeal of reference to intensive correction order**

Section 6 of the **Sentencing Amendment Act 2010** is **repealed**.

**75 Repeal of Subdivision 1B of Division 2 of Part 3**

Section 7 of the **Sentencing Amendment Act 2010** is **repealed**.

**76 Repeal of references to certain orders**

Section 8 of the **Sentencing Amendment Act 2010** is **repealed**.

**77 Drug Court to hear and determine certain offences**

Section 9 of the **Sentencing Amendment Act 2010** is **repealed**.

**78 Repeal of Subdivision 2 of Division 2 of Part 3**

Section 10 of the **Sentencing Amendment Act 2010** is **repealed**.

**79 Time for bringing proceeding for contravention of home detention order**

Section 11 of the **Sentencing Amendment Act 2010** is repealed.

**80 Insertion of new Division 2A of Part 3**

Section 13 of the **Sentencing Amendment Act 2010** is repealed.

**81 Community-based order in addition to term of imprisonment**

Section 14 of the **Sentencing Amendment Act 2010** is repealed.

**82 Insertion of heading to section 39**

Section 15 of the **Sentencing Amendment Act 2010** is repealed.

**83 Unpaid community work condition**

Section 16 of the **Sentencing Amendment Act 2010** is repealed.

**84 Section 46 substituted**

Section 17 of the **Sentencing Amendment Act 2010** is repealed.

**85 Powers of court on determination of contravention proceeding**

Section 18 of the **Sentencing Amendment Act 2010** is repealed.

**86 Time for bringing proceeding for contravention of community-based order**

Section 19 of the **Sentencing Amendment Act 2010** is repealed.

**87 New heading to section 48**

Section 20 of the **Sentencing Amendment Act 2010** is repealed.



**88 Pre-sentence reports**

Section 22 of the **Sentencing Amendment Act 2010** is repealed.

**89 Drug and alcohol reports**

Section 23 of the **Sentencing Amendment Act 2010** is repealed.

**90 Drug and alcohol pre-release reports**

Section 24 of the **Sentencing Amendment Act 2010** is repealed.

**91 Penalty scale**

Section 25 of the **Sentencing Amendment Act 2010** is repealed.

**92 Regulations**

Section 26 of the **Sentencing Amendment Act 2010** is repealed.

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**PART 5—AMENDMENT OF OTHER ACTS**

**93 Procedural requirements for apprehended etc. person—Family Violence Protection Act 2008**

After section 17(7) of the **Family Violence Protection Act 2008** insert—

"(7A) If the person is subject to a residence restriction or exclusion condition or curfew condition attached to a community correction order under the **Sentencing Act 1991** a police officer must notify the Secretary as soon as practicable that the person has been directed or apprehended and detained under this Act.

(7B) In subsection (7A)—

*residence restriction or exclusion condition* has the same meaning as in the **Sentencing Act 1991**;

*curfew condition* has the same meaning as in the **Sentencing Act 1991**."

**94 Application for family violence safety notice**

After section 24(d) of the **Family Violence Protection Act 2008** insert—

"(da) the police officer has no reasonable grounds for suspecting there is a community correction order under the **Sentencing Act 1991** in force that may be inconsistent with the proposed terms of the family violence safety notice; and"

**95 New section inserted after section 175 in Family Violence Protection Act 2008**

After section 175 of the **Family Violence Protection Act 2008** insert—

See:  
Act No.  
52/2008.  
Reprint No. 1  
as at  
1 January  
2011 and  
amending  
Act Nos  
53/2010,  
16/2011 and  
29/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

**"175A Relationship with certain orders under the Sentencing Act 1991**

- (1) If a court makes a family violence intervention order in respect of a respondent that is inconsistent with a residence restriction or exclusion condition or a curfew condition attached to a community correction order to which the respondent is subject at the time the family violence intervention order is made, the family violence intervention order prevails to the extent of any inconsistency.
- (2) In this section *community correction order*, *curfew condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**."

**96 Concurrency of periods of suspension—  
Infringements Act 2006**

See:  
Act No.  
12/2006.  
Reprint No. 3  
as at  
22 June 2011  
and  
amending  
Act Nos  
65/2010 and  
74/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

For section 118(2) of the **Infringements Act 2006** substitute—

- "(2) A period of suspension or a direction not to renew a driver licence or registration of a motor vehicle or trailer may be concurrent with—
- (a) any other period of suspension or non-renewal under the **Road Safety Act 1986**; or
  - (b) any other period of suspension under Division 3 of Part 4 of the **Sentencing Act 1991**."

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**97 Cumulative periods of work—Infringements Act 2006**

- (1) In the heading to section 151 of the **Infringements Act 2006** for "**fine default CBOs**" substitute "**orders under the Sentencing Act 1991**".
- (2) In section 151(2) of the **Infringements Act 2006** for "fine default CBO" (wherever occurring) substitute "fine conversion order or fine default unpaid community work order".
- (3) For the note at the foot of section 151(2) of the **Infringements Act 2006** substitute—

**"Note**

Work under a fine conversion order or a fine default unpaid community work order is to be performed cumulatively with work under other fine conversion orders or other fine default unpaid community work orders, but concurrently with work performed under any community correction order under the **Sentencing Act 1991**. See section 42 of the **Sentencing Act 1991**."

- (4) For section 151(3) of the **Infringements Act 2006** substitute—

"(3) In this section—

*fine conversion order* has the same meaning as in the **Sentencing Act 1991**;

*fine default unpaid community work order* has the same meaning as in the **Sentencing Act 1991**."

**98 Powers of the Court—Infringements Act 2006**

In section 160(3)(e) of the **Infringements Act 2006** for "community based order under Division 4 of Part 3" substitute "fine default unpaid community work order under Division 1 of Part 3B".

**99 Repeal of unproclaimed amendments—Justice  
Legislation Amendment Act 2010**

See:  
Act No.  
30/2010 and  
amending  
Act No.  
29/2011.  
Statute Book:  
www.  
legislation.  
vic.gov.au

Sections 9, 13, 18, 20, 21 and 22 of the **Justice  
Legislation Amendment Act 2010** are repealed.

**100 New section inserted after section 130 of the  
Personal Safety Intervention Orders Act 2010**

See:  
Act No.  
53/2010 and  
amending  
Act Nos  
16/2011 and  
20/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

After section 130 of the **Personal Safety  
Intervention Orders Act 2010** insert—

**"130A Relationship with certain orders under  
the Sentencing Act 1991**

- (1) If a court makes a personal safety intervention order in respect of a respondent that is inconsistent with a residence restriction or exclusion condition or a curfew condition attached to a community correction order to which the respondent is subject at the time the personal safety intervention order is made, the personal safety intervention order prevails to the extent of any inconsistency.
- (2) In this section *community correction order*, *curfew condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**."

**101 Driver licences and learner permits—Road Safety Act 1986**

(1) In section 19(7) of the **Road Safety Act 1986** for "section 87P(1)" **substitute** "as imposed under section 89A".

(2) After section 19(7) of the **Road Safety Act 1986** **insert**—

"(7A) A person who holds a full driver licence issued only because of the order of the Magistrates' Court made on an application under section 89AE of the **Sentencing Act 1991** must have the licence in his or her possession while driving or in charge of a motor vehicle at any time during the period that an alcohol interlock condition imposed under section 89B of that Act applies to the licence under that court order.

Penalty: 5 penalty units."

**102 Disqualified person must not apply for licence or permit—Road Safety Act 1986**

In section 28B(1) of the **Road Safety Act 1986** after "this Act" **insert** ", the **Sentencing Act 1991**".

**103 Cancellation of approval of types of alcohol interlocks—Road Safety Act 1986**

In section 50AAH(5) of the **Road Safety Act 1986** for "section 89A" **substitute** "section 89A or 89B".

**104 Cancellation of approval of alcohol interlock supplier—Road Safety Act 1986**

In section 50AAI(4) of the **Road Safety Act 1986** for "section 89A" **substitute** "section 89A or 89B".

See:  
Act No.  
127/1986.  
Reprint No. 13  
as at  
1 July 2011  
and  
amending  
Act Nos  
19/1991,  
93/2009,  
63/2010,  
74/2010,  
32/2011,  
34/2011 and  
38/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

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**105 Zero blood or breath alcohol—Road Safety Act 1986**

- (1) In section 52(1B) of the **Road Safety Act 1986** for "section 87P(1)" **substitute** "as imposed under section 89A".
- (2) After section 52(1B) of the **Road Safety Act 1986** **insert**—

"(1BA) This section also applies to a person, who is driving or in charge of a motor vehicle, while holding a full driver licence which authorises the holder to drive such a motor vehicle, if—

- (a) the licence has been issued only because of an order of the Magistrates' Court made on an application under section 89AE of the **Sentencing Act 1991**; and
- (b) an alcohol interlock condition, imposed on the licence under section 89B of the **Sentencing Act 1991**, applies to the licence."

**106 Duty to produce licence—Road Safety Act 1986**

In section 59(3) of the **Road Safety Act 1986** after "section 50(4)" **insert** "or who has been issued with a driver licence under an order of the Magistrates' Court made on application under section 89(2) or section 89AE of the **Sentencing Act 1991**".

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**PART 6—CONSEQUENTIAL AND OTHER AMENDMENTS**

**107 Consequential and other amendments**

On the coming into operation of an item in the Schedule, the Act specified in the heading to that item is amended as set out in that item.

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**PART 7—REPEAL OF AMENDING ACT**

**108 Repeal of amending Act**

This Act is **repealed** on 30 June 2014.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## SCHEDULE

Section 107

### CONSEQUENTIAL AND OTHER AMENDMENTS

#### 1 Conservation, Forests and Lands Act 1987

- 1.1 In section 97(1)(b) for "community-based"  
**substitute** "community correction".

#### 2 Corrections Act 1986

- 2.1 In section 3(1) **insert** the following definition—

*"combined custody treatment order* has the same meaning as *old combined custody and treatment order* in clause 1 of Schedule 3 to the **Sentencing Act 1991**;"

- 2.2 In section 3(1) for the definition of *community-based order* **substitute**—

*"community-based order* has the same meaning as *old community-based order* within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;"

- 2.3 In section 3(1) in the definition of *correctional order*—

- (a) after paragraph (a) **insert**—

"(aa) a community correction order, within the meaning of the **Sentencing Act 1991**;"

- (b) for paragraph (c) **substitute**—

"(c) an old intensive correction order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;"

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2.4 For section 94(4) **substitute**—

"(4) If after completing an investigation and considering any submissions made by an offender the Regional Manager determines that the offender has committed an act of misconduct but that the act is so trivial that action should not be taken against the offender for—

- (a) breach of an old community-based order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
- (b) contravention of a community correction order, within the meaning of the **Sentencing Act 1991**—

the Regional Manager may caution or reprimand the offender and need take no further action."

**3 County Court Act 1958**

3.1 For section 78(1)(fc) **substitute**—

"(fc) delegating to the judicial registrars all or any of the powers of the court specified by the Rules in relation to proceedings prescribed under paragraph (fb), including, but not limited to, the exercise by the judicial registrars of the jurisdiction of the court other than the power—

- (i) to impose a sentence of imprisonment; or
- (ii) to impose a sentence of detention in a youth justice centre or youth residential centre within the meaning of the **Sentencing Act 1991**; or

- (iii) to make a drug treatment order within the meaning of the **Sentencing Act 1991**; or
- (iv) to make a community correction order within the meaning of the **Sentencing Act 1991**; or
- (v) to make a hospital security order within the meaning of the **Sentencing Act 1991**;

#### **4 Criminal Procedure Act 2009**

- 4.1 In paragraph (e) in the definition of *original jurisdiction* in section 3 for "breach" **substitute** "contravention".
- 4.2 In paragraph (b) in the definition of *sentence* in section 3 after "3A" **insert** ", 3B, 3C, 3D".
- 4.3 In section 87(2)(a) for "Division 4 of Part 3" **substitute** "Division 1 of Part 3B".
- 4.4 In the note at the foot of section 87(2) for "community-based" **substitute** "community correction".
- 4.5 In the note at the foot of section 268(1) for "community-based" **substitute** "community correction".
- 4.6 In the note at the foot of section 322 for "community-based" **substitute** "community correction".

#### **5 Evidence (Miscellaneous Provisions) Act 1958**

- 5.1 In section 32G(1)(b) for "Division 1A of Part 6" **substitute** "Division 1C of Part 3".

## 6 Firearms Act 1996

- 6.1 For paragraph (c)(ii) of the definition of *prohibited person* in section 3(1) **substitute—**
- "(ii) an old community-based order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or".
- 6.2 In section 3(1) for the definition of *prohibited person* after paragraph (c)(ii) **insert—**
- "(iia) a community correction order, within the meaning of the **Sentencing Act 1991**, that has a supervision condition attached under section 48E of the **Sentencing Act 1991**; or"
- 6.3 In section 3(1) in the definition of *term of imprisonment* in paragraph (b) after "community" **insert** "within the meaning of the **Sentencing Act 1991** as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**".

## 7 Juries Act 2000

- 7.1 In clause 3(c) of Schedule 1 after "in the community" **insert** "within the meaning of the **Sentencing Act 1991** as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**".
- 7.2 In clause 4 of Schedule 1 for "a community-based order" **substitute** "an old community-based order (within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**)".
- 7.3 After clause 4 of Schedule 1 **insert—**
- "4A. A person in respect of whom a court in Victoria (including the Magistrates' Court), has, within the last 5 years, made a community correction order under Part 3A of the **Sentencing Act 1991**, or an equivalent of

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a community-based sentence in another jurisdiction, but any conviction, or finding of guilt, of an offence in respect of which a free pardon has been granted must be disregarded."

## **8 Magistrates' Court Act 1989**

8.1 Section 16I(b)(ii) is **repealed**.

8.2 In section 16I(b)(v) for "the Court." **substitute** "the Court; or".

8.3 After section 16I(b)(v) **insert**—

"(vi) to make a community correction order within the meaning of the **Sentencing Act 1991**."

## **9 Marine Act 1988**

9.1 In the heading to section 85AW for "**breach**" **substitute** "**contravention**".

9.2 In section 85AW for "Sections 78 and 79" **substitute** "Section 78 and Part 3C".

9.3 In section 85AW for "those sections" **substitute** "that section or Part".

9.4 After section 85AW(a) **insert**—

"(ab) a reference to section 72 or 75 were a reference to section 85AV; and"

9.5 In section 85AW(c) for "section 79(4)" **substitute** "section 83AC".

## **10 Occupational Health and Safety Act 2004**

10.1 In the heading to section 138 for "**breach**" **substitute** "**contravention**".

10.2 In section 138 for "Sections 78 and 79" **substitute** "Section 78 and Part 3C".

10.3 In section 138 for "those sections" **substitute** "that section or Part".

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10.4 After section 138(a) **insert**—

"(ab) a reference to section 72 or 75 were a reference to section 137; and"

10.5 In section 138(c) for "section 79(4)" **substitute** "section 83AC".

## **11 Serious Sex Offenders (Detention and Supervision) Act 2009**

11.1 In section 3, in the definition of *community-based disposition*—

(a) for paragraph (a) **substitute**

"(a) an old community-based order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**";

(b) after paragraph (a) **insert**—

"(ab) a community correction order, within the meaning of the **Sentencing Act 1991**";

(c) for paragraph (b) **substitute**—

"(b) an old intensive correction order, within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**";

(d) in paragraph (c) for "a combined custody and treatment order" **substitute** "an old combined custody and treatment order, (within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**)".

11.2 In section 3 for the definition of *custodial sentence*—

(a) in paragraph (b) for "a combined custody and treatment order within the meaning of the **Sentencing Act 1991**" **substitute** "an old combined custody and treatment order,

- 
- (within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**");
- (b) in paragraph (e) after "**Sentencing Act 1991**" insert "(as in force before the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**)";
- (c) after paragraph (e) insert—
- "(ea) an order made under section 83AR(1)(a) or (b) of the **Sentencing Act 1991**; or".

## 12 Sex Offenders Registration Act 2004

- 12.1 In paragraph (a) in the definition of *community service order* in section 3, after "is attached" insert "(as in force before the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011**)".
- 12.2 After paragraph (a) in the definition of *community service order* in section 3 insert—
- "(ab) an order under Part 3A of the **Sentencing Act 1991** to which one or more conditions referred to in section 48D, 48E, 48F, 48G, 48H, 48I or 48K of the **Sentencing Act 1991** is attached; or".
- 12.3 In paragraph (a) in the definition of *good behaviour bond* in section 3 for "Division 5 of Part 3" substitute "Division 2 of Part 3B".
- 12.4 In the definition of *employment* in section 67(1)—
- (a) for paragraph (c) substitute—
- "(c) performance of work as a volunteer including the performance of unpaid community work under—



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- (i) a drug treatment order within the meaning of the **Sentencing Act 1991**; or
  - (ii) an old community-based order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
  - (iii) an old intensive correction order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**; or
  - (iv) a fine conversion order within the meaning of the **Sentencing Act 1991**; or
  - (v) a fine default unpaid community work order within the meaning of the **Sentencing Act 1991**; or";
- (b) after paragraph (c) **insert**—
- "(d) performance of work as a volunteer including the performance of unpaid community work under a community correction order within the meaning of the **Sentencing Act 1991**;".

### 13 Sheriff Act 2009

#### 13.1 In section 34—

- (a) for the definition of *community-based order substitute*—
- "*community-based order* has the same meaning as *old community-based order* has in clause 1 of Schedule 3 to the **Sentencing Act 1991**;"

(b) **insert** the following definitions—

***fine conversion order*** means an order made under section 55(1)(d) of the **Sentencing Act 1991**;

***fine default unpaid community work order*** means an order made under section 62(10) or section 62A of the **Sentencing Act 1991**;

13.2 In section 39(3) in the definition of ***liability discharge event***, in paragraph (c) for "order." **substitute** "order; or".

13.3 After paragraph (c) of the definition of ***liability discharge event***, in section 39(3) **insert**—

"(d) a fine conversion order or fine default unpaid community work order has been made in respect of the person."

13.4 In section 40(3) in the definition of ***liability discharge event***, in paragraph (c) for "order." **substitute** "order; or".

13.5 After paragraph (c) of the definition of ***liability discharge event***, in section 40(3) **insert**—

"(d) a fine conversion order or fine default unpaid community work order has been made in respect of the person."

#### **14 Transport (Compliance and Miscellaneous) Act 1983**

14.1 In the heading to section 230F for "**breach**" **substitute** "**contravention**".

14.2 In section 230F for "Sections 78 and 79" **substitute** "Section 78 and Part 3C".

14.3 In section 230F for "those sections" **substitute** "that section or Part".

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14.4 After section 230F(a) **insert**—

"(ab) a reference to section 72 or 75 were a reference to section 230E; and".

14.5 In section 230F(c) for "section 79(4)" **substitute** "section 83AC".

## **15 Victims' Charter Act 2006**

15.1 In the note at the foot of section 13(1) for "Division 1A of Part 6" **substitute** "Division 1C of Part 3".

## **16 Working with Children Act 2005**

16.1 For section 9(1)(c) **substitute**—

"(c) work engaged in as a volunteer including engaging in unpaid community work—

- (i) under an old community-based order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;
- (ii) under an old intensive correction order within the meaning of clause 1 of Schedule 3 to the **Sentencing Act 1991**;
- (iii) under a drug treatment order within the meaning of the **Sentencing Act 1991**;
- (iv) under a community correction order within the meaning of the **Sentencing Act 1991**;
- (v) a fine conversion order within the meaning of the **Sentencing Act 1991**;

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(vi) a fine default unpaid community work order within the meaning of the **Sentencing Act 1991**—  
other than unpaid work engaged in for a private or domestic purpose—".

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## ENDNOTES

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 15 September 2011*

*Legislative Council: 27 October 2011*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Sentencing Act 1991** to make further provision as to sentencing orders and other matters, to amend the **Sentencing Amendment Act 2010**, to amend and make consequential and related amendments to other Acts and for other purposes."