



New South Wales

Crimes (Sentencing Procedure) Amendment (Community-based Orders and Other Matters) Regulation 2018

under the

Crimes (Sentencing Procedure) Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Crimes (Sentencing Procedure) Act 1999*.

MARK SPEAKMAN, MP
Attorney General

Explanatory note

The object of this Regulation is to amend the *Crimes (Sentencing Procedure) Regulation 2017* and Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999* in connection with community-based orders (intensive correction orders, community correction orders and conditional release orders) and other matters.

Schedule 1 amends the *Crimes (Sentencing Procedure) Regulation 2017* as follows:

- (a) to provide that a reference to a community corrections officer includes a reference to a juvenile justice officer where supervision is being undertaken by a juvenile justice officer,
- (b) to set out matters for inclusion in an assessment report in respect of an offender for consideration by the sentencing court (including an assessment report in relation to a home detention condition),
- (c) to provide for the procedure for imposing, varying or revoking additional or further conditions of a community correction order or conditional release order. The procedure includes requiring an application to be in writing, and requiring notice of the hearing and its outcome to be given to the parties,
- (d) to prescribe the maximum number of hours that may be specified in a community service work condition of an intensive correction order or community correction order (the number of hours vary according to the maximum allowable term of imprisonment),
- (e) to prescribe the minimum periods for which a community service work condition must be in force (the minimum periods vary according to the number of hours of community service work required to be performed during the relevant period).

Schedule 2 contains amendments of a savings or transitional nature. Clause 87 of Schedule 2 to the *Crimes (Sentencing Procedure) Act 1999* authorises regulations of this nature to be made amending Part 29 of that Schedule to consolidate the savings and transitional provisions. The amendments are as follows:

- (a) to substitute the definition of **commencement day**. The substituted definition contemplates a single day as well as the possibility of different days,
- (b) to insert definitions of **breach** (of an order or bond) and **sentencing legislation** (to refer to the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*),
- (c) to ensure that a converted home detention order retains any conditions imposed by the State Parole Authority,

- (d) to supply a missing word,
- (e) to provide that existing intensive correction orders remain subject to a community service work condition that is equivalent to the existing condition,
- (f) to provide that an offender is compliant with a community service work condition of an existing intensive correction order if the offender works the scheduled hours (including meal breaks and travel time) or provides a medical certificate or valid reason for any absence,
- (g) to provide that in relation to an existing community service order that is converted to a community correction order:
 - (i) the community correction order is taken to specify the same number of hours required for the performance of community service work as were specified in the community service order, and
 - (ii) the community correction order is taken to specify the term of the order as the maximum period for which the order could have previously been in force, and
 - (iii) the community correction order is subject to a rehabilitation or treatment condition if the community service order has a condition requiring the offender to participate in a development program,
- (h) to clarify references in transitional provisions to conditions of certain good behaviour bonds,
- (i) to provide that a reference in legislation (such as section 86 of the *Fines Act 1996*) to an assigned officer is taken to include a reference to a community corrections officer,
- (j) to make it clear that a court must, as far as practicable, not make an order in respect of a converted community service order or a converted section 9 bond or section 10 bond that would result in the conditions being more onerous than conditions that were previously available in comparable circumstances,
- (k) to make further transitional provisions and to some extent make explicit what is implicit or otherwise applicable. The provisions relate to applications to the Supreme Court regarding certain decisions made before the commencement of the new scheme, to home detention orders, intensive correction orders, community service orders and good behaviour bonds made or entered into before that commencement, and to certain warrants issued before that commencement.

This Regulation is made under the *Crimes (Sentencing Procedure) Act 1999*, including sections 17B (4), 73A, 89 and clauses 1 and 87 of Schedule 2.

Crimes (Sentencing Procedure) Amendment (Community-based Orders and Other Matters) Regulation 2018

under the

Crimes (Sentencing Procedure) Act 1999

1 Name of Regulation

This Regulation is the *Crimes (Sentencing Procedure) Amendment (Community-based Orders and Other Matters) Regulation 2018*.

2 Commencement

This Regulation commences on the commencement of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Regulation 2017

[1] Clause 3 Definitions

Insert after clause 3 (2):

- (3) A reference in this Regulation to a community corrections officer is, where the offender is subject to supervision by a juvenile justice officer, taken to be a reference to a juvenile justice officer within the meaning of the *Children (Detention Centres) Act 1987*.

Note. Juvenile justice officers are referred to in certain provisions of the *Crimes (Sentencing Procedure) Act 1999* (see sections 89–91 and 99–100) and the *Crimes (Administration of Sentences) Act 1999* (see sections 107E and 108E).

[2] Part 2, Division 3

Insert after Division 2:

Division 3 Assessment reports for courts

Note. A request for an assessment report about an offender may be made at any time during sentencing proceedings. An offender is defined as “a person whom a court has found guilty of an offence”. See sections 3 and 17C of the Act.

12A Assessment reports generally

- (1) An assessment report in respect of an offender is to address the following matters:
- (a) the offender’s risk of re-offending,
 - (b) any factors related to the offender’s offending behaviour,
 - (c) any factors that may impact on the offender’s ability to address his or her offending behaviour,
 - (d) how the matters referred to in paragraphs (b) and (c) would be addressed by supervision and the availability of resources to do so,
 - (e) any conditions that would facilitate the effective supervision of the offender in the community,
 - (f) the offender’s suitability for community service work,
 - (g) a summary of the offender’s response to any previous period of management in the community in respect of any relevant order,
 - (h) any additional matters that the court wishes to have specifically addressed.
- (2) Subclause (1) does not limit the matters that may be addressed in an assessment report.
- (3) An assessment report need not address a matter referred to in subclause (1) if the matter is not relevant to the circumstances relating to the offender or the court does not require the matter to be addressed.

12B Assessment reports for home detention condition

- (1) An assessment report in relation to a home detention condition must address the following matters:
- (a) the offender’s suitability for home detention,

- (b) any risks associated with imposing home detention, including any risks to the offender or any other persons, including children, and any strategies that could manage the risks,
 - (c) any other matters relevant to administering an intensive correction order with a home detention condition.
- (2) If it appears that the offender does not have accommodation suitable for the purposes of home detention, the assessment report is not to be finalised until reasonable efforts have been made by a community corrections officer, in consultation with the offender, to find suitable accommodation.
- (3) Subclause (1) does not limit the matters that may be addressed in an assessment report.

[3] Parts 3–5

Omit the Parts. Insert instead:

Part 3 Community-based orders

Note 1. If, in sentencing an offender, the sentencing court makes an intensive correction order in respect of the offender (with conditions imposed by the sentencing court under the Act), conditions of the intensive correction order are afterwards imposed, varied or revoked by the Parole Authority rather than the sentencing court.

Note 2. Section 20AB of the *Crimes Act 1914* of the Commonwealth provides for intensive correction orders under State legislation to be available for federal offences in certain circumstances. The Parole Authority's powers in relation to administering intensive correction orders (including imposing, varying or revoking conditions of an order or providing permissions in relation to conditions of an order) extend to intensive correction orders for federal offences. Section 20AC of that Act in effect requires breaches of intensive correction orders for federal offences to be dealt with by the sentencing court.

Note 3. Sections 69, 89 and 99 of the Act provide that certain orders and conditions must not be made or imposed in relation to offenders who reside or intend to reside in another State or Territory, unless that State or Territory is an approved jurisdiction. (Section 69 relates to making intensive correction orders, section 89 relates to imposing supervision conditions and community service work conditions on community correction orders, and section 99 relates to imposing supervision conditions on conditional release orders.)

No States or Territories are currently declared by the regulations to be approved jurisdictions for the purposes of section 69, 89 or 99 of the Act.

13 Procedure for imposition, variation or revocation of additional or further conditions of community correction orders or conditional release orders

- (1) An application to a court for the imposition, variation or revocation (under section 89, 90, 99 or 99A of the Act) of an additional or further condition of a community correction order or conditional release order must be in writing.
- (2) The court to which an application is made must fix a date for the hearing of the application, being a date not earlier than 14 days after, and not later than 3 months after, the date the application is filed.
- (3) The court may vary or waive a requirement imposed by subclause (2).
- (4) If the court fixes a date for the hearing, a copy of the application must be given not later than 5 days before the date fixed for the hearing of the application:
 - (a) to the offender (unless the offender's whereabouts are unknown or the court decides to deal with the matter under subclause (6) without the offender being present), if the applicant is a community corrections officer, or
 - (b) to a community corrections officer, if the applicant is an offender.
- (5) For the purposes of subclause (4), the application may be given to a person by the court or by the applicant:

- (a) by serving it or causing it to be served on the person personally, or
 - (b) by email to an email address, or by other electronic means, specified by the offender or a community corrections officer for the service of documents of that kind, or
 - (c) in the case of notice to the offender—by sending it or causing it to be sent by post to the person’s address as last known to Community Corrections, or
 - (d) in the case of notice to a community corrections officer—by sending it or causing it to be sent to the officer’s work address or to an office of Community Corrections.
- (6) The court may deal with the matter with or without parties being present and in open court or in the absence of the public.
- (7) The court:
- (a) must cause notice of the outcome of the application to be given to the offender, and
 - (b) must, as soon as practicable after the application is dealt with, cause notice of the outcome to be given to Community Corrections if the court:
 - (i) adds, varies or revokes a condition of a community correction order or conditional release order that is subject to a supervision condition or community service work condition, or
 - (ii) imposes a supervision condition on a community correction order or conditional release order or a community service work condition on a community correction order.
- (8) If the court imposes, adds or varies a condition, the court must take reasonable steps to explain to the offender (in language that the offender can readily understand):
- (a) the offender’s obligations under the condition, and
 - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (9) An order of the court is not invalidated by a failure to comply with subclause (8).
- (10) The court may vary or waive a requirement imposed by subclause (7) (a) or (8).
- (11) In this clause, *Community Corrections* means the Community Corrections Division, Department of Justice.

14 Community service work—maximum hours and minimum periods (ICO or CCO)

- (1) For the purposes of sections 73A and 89 of the Act, the maximum number of hours that may be specified for community service work in an additional condition of an intensive correction order or community correction order is:
- (a) 100 hours—for offences for which the maximum term of imprisonment provided by law does not exceed 6 months, or
 - (b) 200 hours—for offences for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed 1 year, or

- (c) 500 hours if the order is a community correction order—for offences for which the maximum term of imprisonment provided by law exceeds 1 year, or
 - (d) 750 hours if the order is an intensive correction order—for offences for which the maximum term of imprisonment provided by law exceeds 1 year.
- (2) For the purposes of sections 73A and 89 of the Act, the minimum period that a community service work condition of an intensive correction order or community correction order must be in force is:
- (a) the period of 6 months—if the number of hours of community service work required to be performed does not exceed 100 hours, or
 - (b) the period of 12 months—if the number of hours of community service work required to be performed exceeds 100 hours but does not exceed 300 hours, or
 - (c) the period of 18 months—if the number of hours of community service work required to be performed exceeds 300 hours but does not exceed 500 hours, or
 - (d) the period of 2 years—if the number of hours of community service work required to be performed exceeds 500 hours.

Schedule 2 Amendment of Part 29 of Schedule 2 to Crimes (Sentencing Procedure) Act 1999—savings and transitional provisions

[1] Schedule 2, clause 70 Definitions

Omit the definition of *commencement day*. Insert instead:

commencement day means the day on which the amending Act commences.

[2] Schedule 2, clause 70

Insert in alphabetical order:

breach of an order or bond includes a failure to comply with the obligations of the order or bond.

Parole Authority means the State Parole Authority constituted under the *Crimes (Administration of Sentences) Act 1999*.

sentencing legislation means the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* as respectively in force at any relevant time.

[3] Schedule 2, clause 71 Existing home detention orders under section 6

Insert “or section 103 (2) (a)” after “section 103 (1) (b) or (c)” in clause 71 (4) (c).

[4] Schedule 2, clause 72 Existing intensive correction orders under section 7

Omit “intensive order” in clause 72 (3) (b). Insert instead “intensive correction order”.

[5] Schedule 2, clause 72 (3) (c) and (d)

Omit clause 72 (3) (c). Insert instead:

(c) a condition that requires the offender to undertake a minimum of 32 hours of community service work a month, as directed by a community corrections officer, and

(d) any other conditions prescribed by or determined under the regulations.

[6] Schedule 2, clause 72 (3A)

Insert after clause 72 (3):

(3A) An offender who is subject to a condition imposed under subclause (3) (c) is subject to the same obligations that are prescribed for the purposes of section 82 of the *Crimes (Administration of Sentences) Act 1999* for an offender who is subject to a community service work condition of an intensive correction order.

[7] Schedule 2, clause 72 (6)

Insert after clause 72 (5) (before the note):

(6) The offender is compliant with the community service work condition referred to in subclause (3) (c) which provides for a minimum of 32 hours of community service work a month:

(a) to the extent the offender worked the scheduled hours at a work site, if the work was performed in accordance with directions of a community corrections officer or supervisor, including:

(i) tea and meal breaks to which the offender is entitled, and

- (ii) time spent travelling to and from the work site, that a community corrections officer considers appropriate, and
 - (b) to the extent (if any) the offender did not work the scheduled hours, if the offender (within 7 days of the failure to work):
 - (i) provided a medical certificate to a community corrections officer that states the nature of the illness or injury and indicates that its nature or extent justifies the offender's failure to perform the work, or
 - (ii) provided another reason to a community corrections officer for the failure to work and the officer is satisfied that the reason is valid, and
 - (c) to the extent (if any) the offender did not work the scheduled hours, if:
 - (i) work was cancelled or finished early for reasons such as, but not limited to, bad weather, lack of available supervision, an emergency situation or lack of equipment, and
 - (ii) a community corrections officer is satisfied that the reasons are valid.
- (7) A community corrections officer may vary or waive the obligation to provide a medical certificate under subclause (6) (b).

[8] Schedule 2, clause 73 Existing community service orders under section 8

Omit clause 73 (4). Insert instead:

- (4) Subject to this Act and the *Crimes (Administration of Sentences) Act 1999*:
- (a) the community correction order is taken to specify the same number of hours required for the performance of community service work as were specified in the community service order (so that the number of hours remaining to be completed under the community service order is the number of hours to be completed under the community correction order), and
 - (b) the community correction order expires:
 - (i) 12 months from the date on which the order was made, if the required number of hours under the order is less than 300, or if the order is extended for any further period before the commencement day, at the end of that further period, or
 - (ii) 18 months from the date on which the order was made, if the required number of hours under the order is 300 or more, or if the order is extended for any further period before the commencement day, at the end of that further period,
- (4A) If the community service order has a condition that requires the offender to participate in a development program under section 90 as in force before the commencement day, the community correction order is subject to a condition that the offender must comply with an additional condition referred to in section 89 (2) (c) (a rehabilitation or treatment condition) until the obligations relating to the development program have been fulfilled.

[9] Schedule 2, clause 74 Existing good behaviour bonds under section 9

Omit “conditions imposed on the section 9 bond under section 95 (c)” from clause 74 (3) (b).

Insert instead “conditions referred to in section 95 (c) that were imposed on the section 9 bond”.

[10] Schedule 2, clause 75 Existing good behaviour bonds under section 10 (1) (b)

Omit “condition imposed on the section 10 bond under section 95 (c)” from clause 75 (3) (b).

Insert instead “conditions referred to in section 95 (c) that were imposed on the section 10 bond”.

[11] Schedule 2, clause 77 References in other legislation

Insert at the end of clause 77:

- (2) A reference in any legislation to an *assigned officer* (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) is taken to include a reference to a community corrections officer.

[12] Schedule 2, clause 78 Variations of conditions of converted orders

Omit clause 78 (2). Insert instead:

- (2) However, in the case of an application made to a court (under section 89, 90, 99 or 99A) for the imposition, variation or revocation of a condition on:
- (a) the community correction order referred to in clause 73 (2) or 74 (2), or
 - (b) the conditional release order referred to in clause 75 (2),
- the court must, as far as practicable, not make an order that would result in the conditions of the community correction order or conditional release order being more onerous than conditions that were available, in comparable circumstances immediately before the commencement day, for the relevant community service order, section 9 bond or section 10 bond.

[13] Schedule 2, clause 80 (7)

Insert after clause 80 (6):

- (7) The following information, if available, about the offender is, at the request of the court, to be provided by the Commissioner:
- (a) a copy of the relevant assessment report, offender declaration and periodic detention order,
 - (b) details of the offender’s compliance with the requirements of the periodic detention order,
 - (c) the number of detention periods completed and outstanding,
 - (d) relevant circumstances of any breach of the periodic detention order,
 - (e) details of any relevant action taken by the Parole Authority,
 - (f) any other information available from its records that Corrective Services NSW considers relevant.

[14] Schedule 2, clause 80A

Insert after clause 80:

80A Offenders in custody following warrant

- (1) This clause applies to an offender subject to a periodic detention order to which this Division applies and who was in custody immediately before the commencement day.
- (2) The Commissioner must notify the court that the offender is in custody within 14 days of the commencement day.

- (3) On being notified under subclause (2), the court may direct the Commissioner to cause the offender to be brought before the court on a date fixed by the court to be re-sentenced.
- (4) Proceedings under this clause are taken to be proceedings for the administration of sentence for the purposes of clause 1 of Schedule 1 to the *Bail Act 2013*.
- (5) The court is to deal with the offender as if the offender were an offender arrested under clause 80.

[15] Schedule 2, clause 82 Provisions regarding warrants referred to in clauses 80 and 81

Omit clause 82 (3) and (4). Insert instead:

- (3) The Commissioner must notify the court that sentenced the offender, or a court of equivalent jurisdiction, within 14 days that the offender has been received into the custody of the governor of that correctional centre.
- (4) On receiving notice from the Commissioner under subclause (3), the court must direct the Commissioner to cause the offender to be brought before the court to be re-sentenced on a date to be fixed by the court.

[16] Schedule 2, clause 82 (4A) and (4B)

Insert after clause 82 (4):

- (4A) Proceedings under this clause are taken to be proceedings for the administration of sentence for the purposes of clause 1 of Schedule 1 to the *Bail Act 2013*.
- (4B) The following information, if available, about the offender is, at the request of the court, to be provided by the Commissioner:
 - (a) a copy of the relevant assessment report, offender declaration and periodic detention order,
 - (b) details of the offender's compliance with the requirements of the periodic detention order,
 - (c) the number of detention periods completed and outstanding,
 - (d) relevant circumstances of any breach of the periodic detention order,
 - (e) details of any relevant action taken by the Parole Authority,
 - (f) any other information available from its records that Corrective Services NSW considers relevant.

[17] Schedule 2, clause 82A

Insert before clause 83:

82A Existing assessment reports

- (1) If an assessment report was prepared on an offender for the purposes of section 78 of the Act, as in force before the repeal of that section by the amending Act, the report is taken to be an assessment report for the purposes of section 17D (2) and a further report is not required.
- (2) If an assessment report was prepared on an offender for the purposes of section 86 of the Act, as in force before the repeal of that section by the amending Act, the report is taken to be an assessment report for the purposes of section 17D (4) and a further report is not required.

[18] Schedule 2, clauses 86A–86F

Insert after clause 86:

86A Applications to Supreme Court as to certain existing orders

- (1) This clause applies in relation to a home detention order or intensive correction order referred to in section 176 of the *Crimes (Administration of Sentences) Act 1999* and made under section 6 or 7 of this Act or section 165A of that Act before the commencement day.
- (2) An application to the Supreme Court under that section in respect of an order to which this clause applies, and any proceedings in respect of the application, that were pending before the Court immediately before the commencement day are not affected by the amending Act.
- (3) An application may be made on or after the commencement day to the Supreme Court under that section in respect of an order to which this clause applies.
- (4) Any direction given by the Supreme Court under that section pursuant to an application referred to in this clause is given in respect of the intensive correction order or home detention order concerned as if the amending Act had not been enacted.

86B Other transitional matters in respect of home detention orders

(1) **Application to home detention orders**

This clause applies in respect of a home detention order made under section 6 before its repeal by the amending Act.

(2) **Previous breaches**

Subclause (3) applies if a breach of a home detention order occurred or is suspected to have occurred before the repeal of section 6 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.

- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the intensive correction order to which the home detention order was converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under an intensive correction order made by a court on or after that day.

(4) **Previous assessment for home detention**

If the Parole Authority referred an offender for assessment under section 165A (4) of the *Crimes (Administration of Sentences) Act 1999*, before the commencement day, in relation to the making of an order for home detention following the revocation of an intensive correction order and the Parole Authority had not completed its functions under that section before that day in relation to the matter:

- (a) the assessment may be carried out on or after that day if it has not already been carried out, and
- (b) the assessment (whether received by the Parole Authority before that day or on or after that day) is taken to be an assessment as to the suitability of the offender for an intensive correction order with a home detention condition on or after that day, and

- (c) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order.

Note. See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

(5) **Pending inquiries into home detention breaches**

If an inquiry by the Parole Authority under section 166 of the *Crimes (Administration of Sentences) Act 1999* (relating to a suspected breach of an offender's obligations under a home detention order) was pending immediately before the commencement day:

- (a) the inquiry may be conducted or continue to be conducted by the Parole Authority on or after that day, and
- (b) any findings of the Parole Authority may be considered in connection with the exercise of the Authority's functions (including its functions under section 164 of that Act).

(6) **Effect of existing revocation order**

A revocation order made by the Parole Authority under section 167 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day:

- (a) continues to have effect for the purposes of that Act, as amended by the amending Act, according to the terms of the order, and
- (b) is taken to be a revocation order to which section 164A of that Act applies.

(7) **Existing reinstatement applications**

If an application for the reinstatement of a home detention order under section 168A (1) of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day:

- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day, and
- (b) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order with a home detention condition and a supervision condition.

Note. See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

(8) If an application for the reinstatement of an intensive correction order under section 168A (1A) of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day:

- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day, and
- (b) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order with a supervision condition and at least 1 of the additional conditions referred to in section 73A of this Act.

Note. See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

(9) Despite subclause (8) (b), the Parole Authority may make an intensive correction order under that paragraph without imposing any of the additional conditions referred to in section 73A of this Act if it considers that it is not necessary to do so because of exceptional circumstances.

(10) If an offender was, under section 168A (2) of the *Crimes (Administration of Sentences) Act 1999*, referred for assessment in relation to the reinstatement of

a home detention order or intensive correction order and the assessment was received by the Parole Authority before the commencement day but the Parole Authority had not completed its consideration of the assessment or the assessment is received by the Parole Authority on or after that day:

- (a) the Parole Authority may consider or continue to consider the assessment on or after that day, and
- (b) the Parole Authority may use the assessment when considering whether to make an intensive correction order under subclause (7) or (8) (as the case requires).

(11) Existing warrants made after revocation of home detention orders

If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* before the commencement day in respect of a revoked home detention order, and that commits an offender to a correctional centre to serve the remainder of a sentence by way of full-time detention, was in force immediately before that day, the warrant:

- (a) continues in force on and after that day until it is executed, and
- (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of an intensive correction order revoked under that Act as amended by the amending Act, and
- (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.

(12) New intensive correction orders

For the purposes of an intensive correction order authorised to be made by the Parole Authority under subclause (4), (7) or (8):

- (a) Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, as in force on or after the relevant commencement day, applies to and in respect of the Parole Authority and the offender in relation to the making of the intensive correction order in the same way as it applies to and in respect of a court and an offender in relation to the making of an intensive correction order by a court, and
- (b) the intensive correction order is taken to have been made by a court.

86C Other transitional matters in respect of intensive correction orders

(1) Application to intensive correction orders

This clause applies in respect of an intensive correction order made under section 7 before its substitution by the amending Act.

(2) Previous breaches

Subclause (3) applies if a breach of an intensive correction order occurred or is suspected to have occurred before the substitution of section 7 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.

- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the intensive correction order to which the order was converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under an intensive correction order made on or after that day.

(4) Applications relating to conditions

If an application for the imposition of conditions on, or the variation of conditions of, an intensive correction order under section 81 (3) of the *Crimes (Administration of Sentences) Act 1999* was pending before the sentencing court immediately before the commencement day:

- (a) the application is transferred to the Parole Authority to be dealt with by it instead of the court, and
- (b) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day as if the application had been made under section 81A of that Act, and
- (c) in considering the application, the Parole Authority may have regard to matters raised before the court before that day and may concur with any decisions made by the court in that connection or may deal with all or any matters afresh.

(5) Pending inquiries into breaches of intensive correction orders

If an inquiry by the Parole Authority under section 162 of the *Crimes (Administration of Sentences) Act 1999* (relating to a suspected breach of an offender's obligations under an intensive correction order) was pending immediately before the commencement day:

- (a) the inquiry may be conducted or continue to be conducted by the Parole Authority on or after that day, and
- (b) any findings of the Parole Authority may be considered in connection with the exercise of the Authority's functions (including its functions under section 164 of that Act).

(6) Effect of existing revocation order for intensive correction order

A revocation order made by the Parole Authority under section 163 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day:

- (a) continues to have effect for the purposes of that Act, as amended by the amending Act, according to the terms of the order, and
- (b) is taken to be a revocation order to which section 164A of that Act applies.

(7) Existing reinstatement applications

If an application for the reinstatement of an intensive correction order under section 165 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day:

- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day under that section as amended by the amending Act, and
- (b) that section as so amended applies to and in respect of the application (including the provisions relating to the assessment as to suitability and the making of an intensive correction order).

(8) Existing warrants made after revocation of intensive correction orders

If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* before the commencement day in respect of a revoked intensive correction order, and that commits an offender to a correctional centre to serve the remainder of a sentence by way of full-time detention, was in force immediately before that day, the warrant:

- (a) continues in force on and after that day until it is executed, and
- (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of an intensive correction order revoked under that Act as amended by the amending Act, and
- (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.

86D Other transitional matters in respect of community service orders

(1) Application to community service orders

This clause applies in respect of a community service order made under section 8 before its substitution by the amending Act.

(2) Previous breaches

Subclause (3) applies if a breach of a community service order occurred or is suspected to have occurred before the substitution of section 8 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.

- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the community correction order to which the order is converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under a community correction order made on or after that day.

(4) Pending extension applications

If an application for the extension of the relevant maximum period for a community service order under section 114 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day:

- (a) the application may be dealt with or continue to be dealt with by the court on or after that day, and
- (b) the application is taken to be an application duly made under section 89 of this Act in respect of the relevant community service work condition of the community correction order (to which the community service order was converted by the operation of this Schedule), and
- (c) the court may make any order under section 89 that it may make in respect of an application made under that section.

(5) Existing revocation applications

If an application for the revocation of a community service order under section 115 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day:

- (a) the application may be dealt with or continue to be dealt with by the court on or after that day, and
- (b) in the case of an application made under section 115 (2) (a), the application is taken to be an application made, for the purposes of section 107C of that Act as amended by the amending Act, to revoke the community correction order to which the community service order is converted by the operation of this Schedule, and
- (c) in the case of an application made under section 115 (2) (b), the court may continue to deal with the application under section 115 as in force immediately before the commencement day.

(6) **Existing warrants issued in extension proceedings**

If a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day, in connection with an application for the extension of the period for which an offender's community service order is to remain in force, was in force immediately before that day, the warrant:

- (a) continues in force on and after that day until it is executed, and
- (b) authorises the offender to be brought before the relevant court.

(7) **Existing warrants issued in revocation proceedings**

If a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day, in connection with an application under section 115 of that Act for the revocation of an offender's community service order, was in force immediately before that day, the warrant:

- (a) continues in force on and after that day until it is executed, and
- (b) authorises the offender to be brought before the relevant court.

(8) **Action for breaches of expired community service orders**

Subclause (9) applies if:

- (a) a community service order was breached before the repeal of section 115 of the *Crimes (Administration of Sentences) Act 1999* by the amending Act, and
- (b) the order had expired not later than 1 month before that day, and
- (c) action in respect of the breach had not been commenced or completed before that day.

- (9) The breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D of the *Crimes (Administration of Sentences) Act 1999* and, for that purpose, those provisions apply despite the expiry of the order but only apply in respect of matters arising during the term of the order.

86E Other transitional matters in respect of good behaviour bonds

(1) **Application**

This clause applies in respect of a good behaviour bond entered into under section 9 (a *section 9 bond*) or section 10 (1) (b) (a *section 10 bond*) before their substitution by the amending Act.

(2) **Previous breaches**

Subclause (3) applies if a breach of a good behaviour bond occurred or is suspected to have occurred before the commencement day and action under the sentencing legislation as in force before that day had not been commenced or completed in respect of the breach.

- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under such an order made on or after that day.

(4) **Intervention program conditions**

Subclause (5) applies if before the commencement day a court referred, under section 95B, an offender for assessment as to the suitability of the offender to participate in an intervention program and the report was received before, or is received on or after, that day.

- (5) The court may, if it decides to make a community correction order or conditional release order in respect of the offender on or after that day, impose a further condition requiring the offender to participate in an intervention program and to comply with any intervention plan arising out of the program.

(6) **Existing breach proceedings**

If any proceedings were pending before a court immediately before the repeal of section 98 of the *Crimes (Sentencing Procedure) Act 1999* in respect of a breach of a section 9 bond or section 10 bond:

- (a) the proceedings are to continue to be dealt with by the court, and
- (b) the breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule, and
- (c) in considering the breach, the court may have regard to matters raised before the court before that day and may concur with any decisions made by the court in that connection or may deal with all or any matters afresh.

(7) **Refusal to participate in intervention program**

If an offender who was subject to a section 9 bond or section 10 bond decided under section 99A not to participate or to continue to participate in an intervention program or an intervention plan arising out of the program and action had not been taken or completed under that section before the commencement day:

- (a) the matter may be dealt with or continue to be dealt with on or after that day by taking action under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule, and
- (b) for that purpose, the decision is taken to be a breach of the order.

(8) **Action for breaches of expired bonds**

Subclause (9) applies if:

- (a) a section 9 bond or section 10 bond was breached before the commencement day for the repeal of section 100, and
- (b) the bond had expired before that day, and
- (c) action in respect of the breach had not been commenced or completed before that day.

- (9) The breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule and, for that purpose:

- (a) the breach is taken to be a breach of the order, and
- (b) those provisions apply despite the expiry of the bond but only apply in respect of matters arising during the term of the bond.

86F Transitional provisions in respect of certain warrants

- (1) If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* in respect of a revoked parole order, and that commits an offender to a correctional centre to serve the remainder of a sentence by way of full-time detention, was in force immediately before the commencement day, the warrant:
 - (a) continues in force on and after that day until it is executed, and
 - (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of a parole order revoked under that Act as so amended, and
 - (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.
- (2) If a warrant that was issued under section 181 (1A) of the *Crimes (Administration of Sentences) Act 1999*, and that commits an offender to a correctional centre pending the Parole Authority's decision as to whether or not to make a home detention order, was in force immediately before the commencement day, the warrant:
 - (a) continues in force on and after that day until it is executed, and
 - (b) commits the offender to a correctional centre pending the Parole Authority's decision as to whether or not to make an intensive correction order.