

TASMANIA

**SENTENCING AMENDMENT (PHASING OUT OF
SUSPENDED SENTENCES) ACT 2017**

No. 51 of 2017

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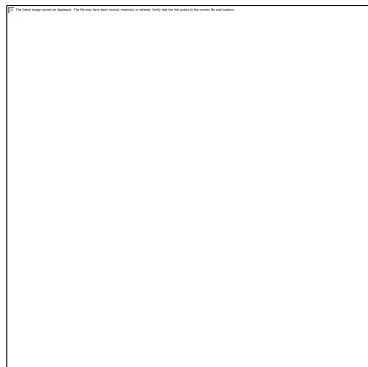
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SUSPENDED SENTENCES) ACT 2017**

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An Act to amend the *Sentencing Act 1997* to remove the power of courts to make community service orders and probation orders, to include a power for courts to make home detention orders and community correction orders, to restrict the power of courts to suspend certain sentences of imprisonment, to amend the *Interstate Transfer (Community-based Sentences) Act 2009*, and for related purposes

[Royal Assent 20 December 2017]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017*.

2. Commencement

- (1) The provisions of this Act commence on a day or days to be proclaimed.
- (2) Despite subsection (1), sections 8, 10 and 19 may not be commenced except if –
 - (a) a copy of a report in relation to a review under this section has been laid before both Houses of Parliament under subsection (8)(a); and
 - (b) at least 10 sitting-days of each of the Houses of Parliament have expired since a notice of intention to commence sections 8, 10 and 19 was laid before both Houses of Parliament under subsection (8)(b); and
 - (c) a motion to disallow the commencement of sections 8, 10 and 19 has not been passed by a House of Parliament under subsection (9).
- (3) The Minister may lay before each House of Parliament a draft of the terms of the review that

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has been prepared in consultation with the Sentencing Advisory Council.

- (4) A House of Parliament may pass a motion approving, or refusing to approve, a draft of the terms of the review that has been laid before the House of Parliament under subsection (3).
- (5) The Minister, by notice to the Sentencing Advisory Council, may request the Council to –
 - (a) conduct a review, in accordance with the terms of the review contained in a draft of the terms of review that is approved by each House of Parliament under subsection (4); and
 - (b) to provide a report in relation to the review by the day specified in the notice.
- (6) The Minister may only make a request under subsection (5) –
 - (a) not less than 18 months after; and
 - (b) not more than 2 years after –

the day by which both section 14 and 15 of this Act have commenced.
- (7) The Sentencing Advisory Council is to provide to the Minister a report in relation to the review within the period specified, in accordance with subsection (5)(b), in the notice under subsection (5).
- (8) The Minister –

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- (a) must, within 5 sitting-days after being provided with a report under subsection (7), lay a copy of the report before each House of Parliament; and
 - (b) may, after or at the same time as a copy of a report is laid before a House of Parliament under paragraph (a), lay before that House of Parliament a notice of intention to commence sections 8, 10 and 19.
- (9) A House of Parliament may, within 10 sitting-days after a notice of intention to commence sections 8, 10 and 19 has been laid before the House of Parliament under subsection (8)(b), pass a motion disallowing the commencement of sections 8, 10 and 19.

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PART 2 – SENTENCING ACT 1997 AMENDED

3. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *Chief Forensic Psychiatrist*:

community correction order means a community correction order made under section 42AN;

community service means work or other activity in the community under the direction of a probation officer or supervisor;

- (b) by inserting “, but does not include a community correction order” after “supervisor” in the definition of *community service order*;
- (c) by inserting the following definition after the definition of *fine*:

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home detention order means a home detention order made under section 42AC;

5. Section 7 amended (Sentencing orders)

Section 7 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c);
- (b) by inserting the following paragraph after paragraph (b):
 - (c) record a conviction and make a home detention order under section 42AC in respect of the offender, if the offender has attained the age of 18 years; or
- (c) by omitting paragraph (d);
- (d) by inserting the following paragraph after paragraph (c):
 - (d) with or without recording a conviction, make a community correction order under section 42AN in respect of the offender, if the offender has attained the age of 18 years; or

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6. Section 8 amended (Combined sentencing orders)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a) and (b) from subsection (1) and substituting the following paragraph:
 - (a) make a community correction order in respect of the offender, but only if the sentence of imprisonment is not for a term of more than 2 years;
- (b) by inserting in subsection (1)(ca) “in respect of the offender” after “order”;
- (c) by omitting subsection (2) and substituting the following subsection:
 - (2) A court that makes a home detention order in respect of an offender may also do any one or more of the following:
 - (a) make a community correction order in respect of the offender;
 - (b) order the offender to pay a fine;
 - (c) make a rehabilitation program order in respect of the offender;

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- (d) make a driving disqualification order in respect of the offender.
- (d) by omitting subsection (3) and substituting the following subsection:
 - (3) A court that makes a community correction order in respect of an offender may also do any one or more of the following:
 - (a) order the offender to pay a fine;
 - (b) make a rehabilitation program order in respect of the offender;
 - (c) if the court records a conviction, make a driving disqualification order in respect of the offender.
- (e) by inserting in subsection (4)(a) “in respect of the offender” after “order”.

7. Section 17 amended (Court may bar or limit eligibility for parole)

Section 17 of the Principal Act is amended by inserting after subsection (2) the following subsection:

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- (2A) A court that imposes a sentence of imprisonment on an offender may not make an order under subsection (2)(b) in respect of the offender if the court –
- (a) makes in respect of the offender a community correction order; and
 - (b) orders that the operational period, within the meaning of section 42AM, of the community correction order is to commence at the end of the sentence of imprisonment.

8. Section 23A inserted

Before section 24 of the Principal Act, the following section is inserted in Division 4:

23A. Limitations on ability to suspend sentences

A court must not, except in exceptional circumstances, make an order suspending the whole or part of a sentence of imprisonment if the sentence of imprisonment is imposed in relation to –

- (a) an offence, or an attempt to commit an offence, against a provision, specified in Column 2 of Part 1 of Schedule 3, of an Act, or of the Criminal Code, as specified in Column 3 of Part 1 of Schedule 3; or

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- (b) an offence, or an attempt to commit an offence, that is an offence –
 - (i) against a provision, of the *Misuse of Drugs Act 2001*, specified in Column 2 of Part 2 of Schedule 3; and
 - (ii) that relates to a trafficable quantity, within the meaning of, and as determined under, that Act, of a controlled substance, within the meaning of that Act.

9. Section 24 amended (Suspended sentence to be conditional)

Section 24 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(a) “for the number of hours, specified in the order, that are within a period specified in the order” after “service”;
- (b) by inserting in subsection (4) “, before the commencement of section 27Y,” after “sentence is”;

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- (c) by inserting in subsection (5) “, before the commencement of Part 5B,” after “sentence is”;
 - (d) by inserting the following subsections after subsection (5):
 - (5A) If a suspended sentence is, after the commencement of Part 5B, made conditional on the performance of community service, the following sections apply with such modifications as are necessary and, in particular, a reference to a community correction order in those sections is taken to be a reference to the condition imposing community service:
 - (a) section 42AO(b), (c), (d), (e) and (f);
 - (b) section 42AP(1)(d);
 - (c) section 42AQ(1), (2) and (3);
 - (d) sections 42AR, 42AS and 42AT;
 - (e) sections 42AX and 42AZ.
 - (5B) If a suspended sentence is, after the commencement of Part 5B, made conditional on supervision

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of the offender by a probation officer, the following sections apply with such modifications as are necessary and, in particular, a reference to a community correction order in those sections is taken to be a reference to the condition imposing probation:

- (a) section 42AO(b), (c), (d), (e) and (f);
- (b) section 42AP(1)(b), (c), (e), (f), (g), (i) and (j);
- (c) section 42AQ(1), (2) and (3);
- (d) section 42AR.

10. Section 27 amended (Breach of order suspending sentence)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4C)(c) “by order” and substituting “if there are exceptional circumstances, by order”;
- (b) by omitting from subsection (4C)(d) “make” and substituting “if there are exceptional circumstances, make”;

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- (c) by omitting from subsection (4E)(c) “by order” and substituting “if there are exceptional circumstances, by order”;
 - (d) by omitting from subsection (4E)(d) “make” and substituting “if there are exceptional circumstances, make”;
 - (e) by inserting the following subsection after subsection (5):
 - (5A) Unless there are exceptional circumstances, a substituted sentence imposed under this section may not include an order suspending all or part of a sentence of imprisonment.

11. Section 27Y inserted

Before section 28 of the Principal Act, the following section is inserted in Part 4:

27Y. No new community service orders to be made

Despite any other provision of this Act, a court may not impose a community service order on an offender after the day on which Part 5B commences.

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12. Section 34 amended (Duration of community service order)

Section 34(b) of the Principal Act is amended by inserting “or under another provision of this Act” after “36”.

13. Section 36B inserted

Before section 37 of the Principal Act, the following section is inserted in Part 5:

36B. No new probation orders to be made

Despite any other provision of this Act, a court may not impose a probation order on an offender after the day on which Part 5B commences.

14. Part 5A inserted

After section 42A of the Principal Act, the following Part is inserted:

PART 5A – HOME DETENTION ORDERS

42AB. Interpretation of Part

In this Part, unless the contrary intention appears –

boarding premises means a room, and any other facilities provided with the room, if –

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- (a) the room is occupied as a principal place of residence; and
- (b) any of the bathroom, toilet or kitchen facilities are shared with other persons –

but does not include premises that are located in a building that is occupied predominantly by –

- (c) secondary or tertiary students; or
- (d) TasTAFE students within the meaning of the *Training and Workforce Development Act 2013*;

core condition in relation to a home detention order, means a condition specified in section 42AD;

group premises means premises that –

- (a) are boarding premises; or
- (b) are provided for the purposes of enabling care, or mental health rehabilitation or treatment, to be provided to persons; or

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(c) are provided for the purposes of assisting in the rehabilitation of persons who are addicted to alcohol or drugs; or

(d) are situated in a caravan park; or

(e) are of a type of premises that is prescribed;

home detention premises, in relation to a home detention order, means the premises specified, in accordance with section 42AC(5), in the home detention order;

operational period, in relation to a home detention order, means the period specified, in accordance with section 42AF(1), in the order, as that period is varied, if at all, under this Part;

prescribed officer means a person prescribed, for the purposes of this definition, by the regulations;

relevant drug offence means an offence against section 6(1), 7(1), 10(1) or (2), 11, 12(1), 13(1) or 14 of the *Misuse of Drugs Act 2001*;

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special condition, in relation to a home detention order, means a condition that is imposed under section 42AE on the order;

violent offence means an offence (which may include a family violence offence) that involves violence, an element of violence or a threat of violence.

42AC. Home detention orders

- (1) A court may make a home detention order in relation to an offender if the court –
 - (a) convicts the offender of an offence or offences; and
 - (b) considers that, were it not to make a home detention order, it would have sentenced the offender to a term of imprisonment in relation to the offence or offences, whether or not it would have, or could have, but for the operation of section 23A, suspended all or part of the sentence.
- (2) A court may only make a home detention order in relation to an offender if –

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- (a) it is of the opinion that, in all the circumstances, it is appropriate to make the order; and
 - (b) it has considered a pre-sentence report as to whether the offender is suitable for a home detention order; and
 - (c) the offender consents to the order being made; and
 - (d) the offender is to reside, during the operational period of the order, at premises in relation to which the court is satisfied it is suitable for a home detention order to be made; and
 - (e) each person who has attained the age of 18 years and who resides at the premises (other than group premises) at which the offender is to reside during the operational period of the order has consented to a home detention order being made in relation to the offender; and
 - (f) the relevant circumstances do not exist in relation to the offender.
- (3) For the purposes of subsection (2)(f), the relevant circumstances exist in relation to an offender if –

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- (a) any one of the offences in relation to which the offender is being sentenced by the court is a family violence offence, a violent offence or a sexual offence and the premises at which the offender would reside during the intended operational period of the order are premises at which a victim of the offence is to, or is likely to, reside during all or part of that period; or
 - (b) the court is of the opinion that there is a significant risk that the offender may commit a violent offence, or a sexual offence, during the intended operational period of the order.
- (4) A court may make –
- (a) more than one home detention order in relation to an offender, except in relation to the same offence; and
 - (b) a home detention order in relation to an offender who is already subject to a home detention order; and
 - (c) a home detention order in relation to an offender who is, or is to be,

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subject to a community correction order; and

- (d) a home detention order in relation to an offender who is subject to a community service order or a probation order.
- (5) A home detention order in relation to an offender must specify the premises (the ***home detention premises***) that are to be the premises at which the offender must, in accordance with section 42AD(1)(b), reside during the operational period of the order.

42AD. Core conditions of home detention order

- (1) A home detention order is subject to the following conditions:
 - (a) the offender must not, during the operational period of the order, commit an offence that is punishable by imprisonment;
 - (b) the offender must, during the operational period of the order, reside at the home detention premises;
 - (c) the offender must, during the operational period of the order, be at the home detention premises during the times, specified in the

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order, of the days of the week specified in the order, except if the offender is, for a relevant reason, not on those premises;

- (d) the offender must, during the operational period of the order, permit a police officer, probation officer or prescribed officer to enter the home detention premises;
- (e) the offender must, during the operational period of the order, permit a police officer to –
 - (i) conduct a search of the home detention premises; and
 - (ii) conduct a frisk search, within the meaning of the *Search Warrants Act 1997*, of the offender, at the home detention premises or at any other place or premises; and
 - (iii) take a sample of a substance found on the home detention premises or on the person of the offender;
- (f) the offender must comply with any reasonable and lawful

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directions of a probation officer or prescribed officer, including any directions as to the kind of employment, or the place of employment, of the offender;

- (g) subject to subsection (2), the offender must, during all of the operational period of the order or such periods, within the operational period, as are determined from time to time by a court, submit to electronic monitoring, including by wearing or carrying an electronic device;
- (h) if the offender is, in accordance with paragraph (g), required to submit to electronic monitoring –
 - (i) the offender must not tamper with, damage or disable any device used for the purpose of the electronic monitoring; and
 - (ii) the offender must comply with all reasonable and lawful directions given to the offender in relation to the electronic monitoring;
- (i) the offender must, during the operational period of the order, if directed to do so by a police

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officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug;

- (j) if the order is subject to a special condition referred to in section 42AE(1)(c), the offender must, during the operational period of the order, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol;
 - (k) the offender must, during the operational period of the order, if directed by a probation officer or prescribed officer to engage in a personal development activity, counselling, or treatment, engage in the activity, counselling or treatment in accordance with any directions given by the probation officer or prescribed officer.
- (2) If a court makes a home detention order in relation to an offender –
- (a) the court may determine, and specify in the order, that there are suitable reasons for the offender

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not to be required to submit to electronic monitoring; and

- (b) where such a determination is made, the condition referred to in subsection (1)(g) is not a condition of the order unless a court varies the order by revoking the determination.
- (3) A home detention order may specify different times, for different days of the week, at which the offender to whom the order relates is to be at the home detention premises during the operational period of the order.
- (4) For the purposes of subsection (1)(c), an offender is, for a relevant reason, not on the home detention premises if the offender is not on the premises –
- (a) because the offender is travelling to or from, or is at, premises at which the offender is seeking urgent medical treatment or dental treatment; or
 - (b) because it is necessary to not be on the premises in order to avoid, or minimise a serious risk of, the death of, or injury to, the offender or another person; or

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- (c) with the approval, of a probation officer or prescribed officer, given –
- (i) so as to enable the offender to comply with a special condition; or
 - (ii) so as to enable the offender to seek or engage in employment; or
 - (iii) so as to enable the offender to attend an educational or training course or activity; or
 - (iv) so as to enable the offender to attend a rehabilitative or re-integrative activity or program; or
 - (v) so as to enable the offender to attend a court; or
 - (vi) for any other purpose approved by the probation officer or prescribed officer.
- (5) For the purposes of subsection (1)(h), a direction in relation to electronic monitoring means a direction, given by –

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- (a) a police officer; or
- (b) a probation officer or prescribed officer; or
- (c) another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring –

in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring.

42AE. Special conditions of home detention orders

- (1) A home detention order may also include any one or more of the following conditions:
 - (a) the offender must, during the operational period of the order, appear before the court at the places, days and times, that the court specifies in the order;
 - (b) the offender must, during the operational period of the order, take medication as required by a psychiatrist or a medical practitioner or by another person specified by the court;

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- (c) the offender must not, during the operational period of the order, consume alcohol;
 - (d) a condition, or conditions, with which the offender must comply, that the court considers appropriate for the purposes of reducing the likelihood of the offender re-offending during the operational period of the order.
 - (2) A special condition of a home detention order may specify that the condition applies during the whole or any part of the operational period of the order.
 - (3) Unless the court making the order directs otherwise, the special conditions of a home detention order made in respect of a person are, during the operational period of the order, concurrent with the conditions, of each other home detention order, community correction order, community service order, or probation order, in relation to that person, that are in force during the operational period of the home detention order.

42AF. Operational period of home detention order

- (1) A court that imposes a home detention order on an offender must specify the period during which the offender must

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comply with the order (the ***operational period***).

- (2) The operational period of a home detention order may not be specified to be more than 18 months.
- (3) A court must not specify, when making or varying a home detention order, an operational period, the effect of which would be that the total consecutive operational periods of all the home detention orders in relation to the offender would be more than 18 months.
- (4) A home detention order remains in force until the operational period expires or the order is cancelled under this Act, whichever occurs first.

42AG. Commencement of operational period of home detention order

The operational period of a home detention order in relation to an offender commences on the day on which the order is made or on a later day specified in the order.

42AH. Applications to vary or cancel home detention orders

- (1) An offender who is subject to a home detention order, or an authorised person,

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may apply, to the court that made the order, for the order to be varied or cancelled.

- (2) A copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –
- (a) the offender, if the applicant is an authorised person; or
 - (b) the DPP and the offender’s probation officer, if the application is made by the offender to the Supreme Court or the Court of Criminal Appeal; or
 - (c) the complainant or police prosecutor, and the offender’s probation officer, if the application is made by the offender to a court of petty sessions.
- (3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (4) Subject to subsection (6), at the hearing of the application, the court to which the application is made may –

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- (a) vary the home detention order by doing any one or more of the following:
 - (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) altering, subject to section 42AF, the operational period of the order;
 - (iv) altering which premises are to be the home detention premises in relation to the order;
 - (v) altering the times, specified in the order, of the days of the week specified in the order, or alter the days of the week specified in the order, or both, at which the offender must be at the home detention premises;
 - (vi) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to

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submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

- (b) cancel the home detention order and deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (c) cancel the home detention order and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made, and, whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

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- (d) refuse to vary or cancel the home detention order.
- (5) The court may, under subsection (4), vary or cancel a home detention order to which an application relates, whether or not the application was to vary or cancel the order.
- (6) The court must not vary or cancel the home detention order under subsection (4) unless the court is satisfied that –
 - (a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or
 - (b) the offender is no longer willing or able to comply with the order; or
 - (c) it is otherwise appropriate to do so.
- (7) In determining how to deal with an offender after the cancellation by the court of a home detention order or any other order under this section, the court must take into account the extent to which the offender had complied with the home detention order, or other order,

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respectively, before its cancellation or while it was still in force.

42AI. Breach of condition of home detention orders

- (1) If it appears to an authorised person that, during the operational period of a home detention order in relation to an offender, the offender has breached a condition of the order, the authorised person may, during or after that period, apply to the court that made the order for the court to deal with the application under this section.
- (2) If the offender to whom an application relates is not before the court at the time at which the application is made, a copy of the application and notification of the time and place of the hearing of the application is to be served on the offender at least 7 days before the hearing.
- (3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (4) The court to which an application is made under subsection (1) must, if the court finds that the offender has, during

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the operational period of the order, breached a condition of a home detention order in relation to the offender, other than a condition referred to in section 42AD(1)(a) –

- (a) confirm the home detention order, if it is still in force; or
- (b) vary the home detention order, if it is still in force, by doing any one or more of the following:
 - (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) extending, subject to section 42AF, the operational period of the order;
 - (iv) altering which premises are to be the home detention premises in relation to the order;
 - (v) altering the times, specified in the order, of the days of the week specified in the order, or alter the days of the week specified in the order, or

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- both, at which the offender must be at the home detention premises;
- (vi) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or
- (c) if the home detention order is still in force –
- (i) cancel the home detention order; and
- (ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

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- (d) if the home detention order is still in force –
 - (i) cancel the home detention order; and
 - (ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the home detention order was made; and
 - (iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (e) if the home detention order is not still in force –
 - (i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in

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relation to which the
home detention order was
made; and

- (ii) whether or not it cancels
any other order, deal with
the offender, in respect of
the offence or offences in
relation to which the
home detention order was
made, in any manner in
which the court could deal
with the offender had it
just found the offender
guilty of that offence or
those offences.
- (5) In determining how to deal with an
offender after the cancellation by the
court of a home detention order or any
other order under this section, the court
must take into account the extent to
which the offender had complied with
the home detention order, or other order,
respectively, before its cancellation or
while it was still in force.
- (6) If –
 - (a) an application is made under
subsection (1) in relation to an
offender in respect of whom a
home detention order is or was in
force; and

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- (b) a court has found the offender guilty of an offence; and
- (c) the offender has, by committing the offence, breached a condition of the home detention order referred to in section 42AD(1)(a); and
- (d) an application was not made under section 42AJ in relation to the offence –

the court to which the application is made under subsection (1) must deal with the application as if the application were an application made to the court under section 42AJ and the court were the court that found the offender guilty of the offence.

42AJ. Breach of condition of home detention order where offender found guilty of offence

- (1) If a court finds an offender guilty of an offence (in this section called the “**new offence**”) committed during the operational period of a home detention order in relation to the offender, an authorised person –
 - (a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for the court to deal

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with the application under this section; and

- (b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.
- (2) If the court that finds an offender guilty of a new offence committed during the operational period of a home detention order is unable to immediately deal with an application to the court under subsection (1), the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (3) If an application under subsection (1) is made to a court that is not the court that imposed the home detention order on the offender, the court may –
 - (a) deal with the application under this section; or
 - (b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.
- (4) The court to which an application is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must, if the new offence of which the offender to whom the order relates or

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related has been found guilty is not an offence that is punishable by imprisonment –

- (a) confirm the home detention order, if it is still in force; or
- (b) vary the home detention order, if it is still in force, by doing any one or more of the following:
 - (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) extending, subject to section 42AF, the operational period of the order;
 - (iv) altering which premises are to be the home detention premises in relation to the order;
 - (v) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under

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section 42AD(2) in a
home detention order that
an offender is not required
to submit to electronic
monitoring; or

- (c) if the home detention order is still
in force –
 - (i) cancel the home detention
order; and
 - (ii) deal with the offender, in
respect of the offence or
offences in relation to
which the home detention
order was made, in any
manner in which the court
could deal with the
offender had the court just
found the offender guilty
of that offence or those
offences; or
- (d) if the home detention order is still
in force –
 - (i) cancel the home detention
order; and
 - (ii) if it considers it
appropriate, cancel any
other order in respect of
the offence or offences in
relation to which the

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home detention order was made; and

(iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(e) if the home detention order is not still in force –

(i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in

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which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

- (5) A court to which an application in relation to an offender is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must, if the new offence of which the offender has been found guilty is an offence that is punishable by imprisonment –
- (a) cancel the home detention order, if it is still in force, and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and
 - (b) whether or not the home detention order is still in force, impose on the offender any sentence (other than a home detention order) that the court could have imposed on the offender had it just found the offender guilty of the offence, or offences, in respect of which the home detention order was made.

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- (6) Despite subsection (5), a court to which an application is made under subsection (1) or adjourned under subsection (3) must, if the new offence of which the offender has been found guilty is an offence that is punishable by imprisonment and the court is satisfied that there are exceptional circumstances –
- (a) confirm the home detention order, if it is still in force; or
 - (b) vary the home detention order, if it is still in force, by doing any one or more the following:
 - (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) extending, subject to section 42AF, the operational period of the order;
 - (iv) altering which premises are to be the home detention premises in relation to the order;
 - (v) specifying or altering the period or periods during

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which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

- (c) if the home detention order is not still in force –
 - (i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and
 - (ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

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- (7) In determining how to deal with an offender after the cancellation by it of a home detention order or any other order under this section, the court must take into account the extent to which the offender had complied with the home detention order, or other order, respectively, before its cancellation or while it was still in force.

42AK. Offence relating to home detention order

An offender who is subject to a home detention order must not assault, threaten, insult or use abusive language to a probation officer or prescribed officer.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

42AL. Power of arrest

- (1) A court to which an application in relation to an offender is made or adjourned under this Part may issue a warrant to arrest the offender if –
- (a) the offender fails to appear at the hearing of the application; or
 - (b) reasonable efforts have been made to serve the application on

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the offender but have been
unsuccessful –

and the application was not made by or
on behalf of the offender.

- (2) Without limiting the generality of subsection (1)(b), reasonable efforts are to be taken to have been made to serve the application on an offender to whom a home detention order relates if a copy of the application is, during the operational period of the order, left at the home detention premises in relation to the offender.
- (3) A court may issue a warrant to arrest an offender to whom a home detention order relates if the offender has failed to comply with a condition of the order referred to in section 42AE(1)(a).
- (4) A police officer may arrest an offender to whom a home detention order relates if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order.
- (5) If an offender to whom a home detention order relates is arrested under subsection (4) –
 - (a) the offender is, as soon as practicable, to be brought before the court that made the order,

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unless the offender is released without charge, or admitted to bail, by a police officer; and

- (b) a police officer may release the offender without charge or admit the offender to bail; and
- (c) despite section 42AH(2), an oral application may be made under section 42AH(1) in relation to the offender; and
- (d) a court before which the offender is brought may remand the offender in custody, or on bail, to appear before the court at a time specified by the court, so that the application under section 42AH(1) may be dealt with.

15. Part 5B inserted

Before the heading to Part 6 of the Principal Act, the following Part is inserted:

PART 5B – COMMUNITY CORRECTION ORDERS

42AM. Interpretation

In this Part, unless the contrary intention appears –

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core condition, in relation to a community correction order, means a condition specified in section 42AO;

operational period, in relation to a community correction order, means the period specified, in accordance with section 42AQ(1), in the order, as that period is varied, if at all, under this Part;

special condition, in relation to a community correction order, means a condition that is imposed on the order under section 42AP(1).

42AN. Community correction orders

- (1) A court may make a community correction order in relation to an offender if the court has found the offender guilty of, or convicted the offender of, an offence.
- (2) Without limiting the discretion of the court, it may be appropriate to impose a community correction order in relation to an offender in circumstances where a court –
 - (a) would otherwise have sentenced the offender to a wholly or partly

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suspended sentence of
imprisonment; or

- (b) but for the operation of section 23A, would otherwise have sentenced the offender to a wholly or partly suspended sentence of imprisonment.

42AO. Core conditions of community correction orders

A community correction order is subject to the following conditions:

- (a) the offender must not, during the operational period of the order, commit an offence punishable by imprisonment;
- (b) the offender must report, on or before a day specified in the order, to a probation officer at the place specified in the order;
- (c) the offender must, during the operational period of the order, report to a probation officer as required by the probation officer;
- (d) the offender must, during the operational period of the order, comply with the reasonable and lawful directions of a probation officer or a supervisor;

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- (e) the offender must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer;
- (f) the offender must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within 2 working days after, the change.

42AP. Special conditions

- (1) A community correction order may include any or all of the following conditions:
 - (a) the offender must, during the operational period of the order, appear before the court at the places, days and times, that the court specifies in the order;
 - (b) the offender must, during the operational period of the order, attend educational and other programs as directed by the court or a probation officer;
 - (c) the offender must, during the operational period of the order, submit to the supervision of a

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- probation officer as required by the probation officer;
- (d) the offender must, within a period specified in the condition as the period within which the offender must complete community service, satisfactorily perform community service, as directed by a probation officer or a supervisor, for the number of hours specified in the order;
 - (e) the offender must, during the operational period of the order, undergo assessment and treatment for drug dependency as directed by a probation officer;
 - (f) the offender must, during the operational period of the order, submit to testing for drug use as directed by a probation officer;
 - (g) the offender must, during the operational period of the order, undergo assessment and treatment for alcohol dependency as directed by a probation officer;
 - (h) the offender must not, during the operational period of the order, consume alcohol;
 - (i) if a condition referred to in paragraph (g) or (h) is imposed

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on the order, the offender must, during the operational period of the order, submit to testing for alcohol use as directed by a probation officer;

- (j) the offender must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;
- (k) the offender must not, during the operational period of the order, be present at a place, or places, specified in the condition;
- (l) the offender must not, during the operational period of the order, in any way, directly or indirectly, communicate with, or be in the presence of, a person, or a member of a class of persons, specified in the condition;
- (m) the offender must not, during the operational period of the order, be, during the periods, of the days, specified in the condition, at a place other than the premises at which the offender resides;

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- (n) any other condition, with which the offender must comply, that the court thinks appropriate.
- (2) A court must impose on a community correction order at least one of the special conditions referred to in subsection (1)(c) or (d).
- (3) A special condition of a community correction order may specify that the condition applies during the whole, or any part, of the operational period of the order, but, at any time during the operational period of such an order, at least one of the conditions referred to in subsection (1)(c) or (d) must apply in relation to the order.
- (4) Unless the court making the order directs otherwise, the special conditions of a community correction order made in respect of a person are, during the operational period of the order, concurrent with the conditions, of each other community correction order, home detention order, community service order or probation order in relation to that person, that are in force during the operational period of the community correction order.

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42AQ. Operational period of community correction order

- (1) A court that makes a community correction order in relation to an offender must specify the period during which the offender must comply with the order (the ***operational period***).
- (2) The operational period of a community correction order may not be specified to be more than 3 years.
- (3) A court must not specify, when making or varying a community correction order, an operational period, the effect of which would be that the total consecutive operational periods of all the community correction orders in relation to the offender would be more than 3 years.
- (4) A community correction order remains in force until –
 - (a) the operational period expires; or
 - (b) the order is cancelled under this Act –whichever occurs first.

42AR. Commencement of operational period of community correction order

- (1) Subject to subsection (4), a court that makes a community correction order

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must specify in the order when the operational period of the order commences.

- (2) For the purposes of subsection (1), a court may specify in a community correction order that the operational period of the order commences –
 - (a) on the day on which the order is made or a later day specified in the order; or
 - (b) when the operational period of a home detention order in relation to the offender ceases; or
 - (c) when the offender lawfully ceases to be imprisoned under a sentence of imprisonment that has not been wholly suspended.
- (3) If a sentence of imprisonment has been imposed on an offender by a court and the sentence has not been wholly suspended, the court may not specify in a community correction order that the operational period of the order commences on a day that is to occur during a period when the offender would be in prison or in detention.
- (4) A court may specify, in a community correction order in relation to an offender, an operational period of the order that is to commence before, during

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or after the operational period of a home detention order in relation to the offender.

42AS. Limitation on number of hours of community service

- (1) The maximum number of hours that a court may order community service to be performed, in accordance with a special condition, referred to in section 42AP(1)(d), that is imposed on a community correction order in relation to one or more offences, is 240.
- (2) A court that makes a community correction order in relation to an offender must not require the offender to perform, under the community correction order, community service for a number of hours that, aggregated with the number of hours of community service remaining to be completed under a community correction order, or a community service order, to which the offender is already subject, would exceed 240.
- (3) This section does not apply to an MPCSO.

42AT. Forms of community service

- (1) A probation officer may arrange for an offender, who is subject to a community

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correction order on which is imposed a special condition referred to in section 42AP(1)(d), to perform community service for the benefit of a victim of an offence in relation to which the order was imposed.

- (2) Community service that an offender performs under subsection (1) is taken to be performance of community service under the community correction order.
- (3) If an offender, who is subject to a community correction order on which is imposed a special condition referred to in section 42AP(1)(d), attends an educational or other program in accordance with the directions of a probation officer, the time that the offender spends attending that program is taken to be performance of community service under the order.

42AU. Application to vary or cancel community correction order

- (1) An offender who is subject to a community correction order, or an authorised person, may apply to the court that made the order to vary or cancel the order.
- (2) A copy of the application and notification of the time and place of the

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hearing of the application is to be served,
at least 7 days before the hearing, on –

- (a) the offender, if the applicant is an authorised person; or
 - (b) the DPP and the offender's probation officer, if the application is made by the offender to the Supreme Court or the Court of Criminal Appeal; or
 - (c) the complainant or police prosecutor, and the offender's probation officer, if the application is made by the offender to a court of petty sessions.
- (3) If the offender to whom an application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (4) Subject to subsection (6), at the hearing of the application, the court to which the application is made may –
- (a) vary the community correction order by doing any one or more of the following:
 - (i) adding a special condition to the order;

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- (ii) removing or altering a special condition of the order;
 - (iii) altering, subject to section 42AQ, the operational period of the order; or
- (b) cancel the community correction order and deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (c) cancel the community correction order, and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the community correction order was made, and, whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

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- (d) cancel the community correction order if –
- (i) a special condition, requiring the offender to perform community service, was imposed on the order under section 42AP(1)(d); and
 - (ii) the court is satisfied that the offender has completed the performance of community service under the order; and
 - (iii) the court considers that it is appropriate for the order to cease to be in force; or
- (e) refuse to vary or cancel the community correction order.
- (5) The court may vary or cancel a community correction order to which an application relates whether or not the application was to vary or cancel the order.
- (6) The court must not vary or cancel the community correction order, except under subsection (4)(d), unless the court is satisfied that –

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- (a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or
 - (b) the offender is no longer willing or able to comply with the order; or
 - (c) it is otherwise appropriate to do so.
- (7) In determining how to deal with an offender under this section after the cancellation by the court of a community correction order or any other order under this section, other than in accordance with subsection (4)(d), the court must take into account the extent to which the offender had complied with the community correction order, or other order, respectively, before its cancellation or while it was still in force.

42AV. Breach of condition of community correction order

- (1) If it appears to an authorised person that, during the operational period of a community correction order in relation to an offender, the offender has breached a condition of the order, the authorised person may, during or after that period,

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apply to the court that made the order for the court to deal with the application under this section.

- (2) If the offender to whom an application relates is not before the court at the time at which the application is made, a copy of the application and notification of the time and place of the hearing of the application is to be served on the offender at least 7 days before the hearing.
- (3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (4) A court to which an application is made under subsection (1) must, if the court finds that the offender has, during the operational period of the order, breached a condition of a community correction order in relation to the offender, other than a condition referred to in section 42AO(a) –
 - (a) confirm the community correction order, if it is still in force; or
 - (b) vary the community correction order, if it is still in force, by

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doing any one or more of the following:

- (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) extending, subject to section 42AQ, the operational period of the order; or
- (c) if the community correction order is still in force –
- (i) cancel the order; and
 - (ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (d) if the community correction order is still in force –

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- (i) cancel the community correction order; and
 - (ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and
 - (iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (e) if the community correction order is not still in force –
- (i) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and

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- (ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences.
- (5) In determining how to deal with an offender under this section after the cancellation by the court of a community correction order or any other order under this section, the court must take into account the extent to which the offender had complied with the community correction order, or other order, respectively, before its cancellation or while it was still in force.
- (6) If –
 - (a) an application is made under subsection (1) in relation to an offender in respect of whom a community correction order is or was in force; and
 - (b) a court has found the offender guilty of an offence; and

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- (c) the offender has, in committing the offence, breached a condition, of a community correction order that is or was in force, that is specified in section 42AO(a); and
- (d) an application was not made under section 42AW(1) in relation to the offence –

the court to which the application is made under subsection (1) must deal with the application as if the application were an application made to the court under section 42AW(1) and the court were the court that found the offender guilty of the offence.

42AW. Breach of condition of community correction order where offender found guilty of offence

- (1) If a court finds an offender guilty of an offence (in this section called the “**new offence**”) committed during the operational period of a community correction order in relation to the offender, an authorised person –
 - (a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for the court to deal with the application under this section; and

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- (b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.
- (2) If the court that finds an offender guilty of an offence committed during the operational period of a community correction order is unable to immediately deal with an application to the court under subsection (1), the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.
- (3) If an application under subsection (1) is made to a court that is not the court that imposed the community correction order on the offender, the court may –
 - (a) deal with the application under this section; or
 - (b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.
- (4) A court to which an application is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must –
 - (a) confirm the community correction order, if it is still in force; or

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- (b) vary the community correction order, if it is still in force, by doing any one or more of the following:
 - (i) adding a special condition to the order;
 - (ii) removing or altering a special condition of the order;
 - (iii) extending, subject to section 42AQ, the operational period of the order; or
 - (c) if the community correction order is still in force –
 - (i) cancel the order; and
 - (ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or
 - (d) if the community correction order is still in force –

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- (i) cancel the order; and
 - (ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and
 - (iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or
- (e) if the community correction order is not still in force –
- (i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the community correction order was made; and

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- (ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences.
- (5) In determining how to deal with an offender after the cancellation by the court of a community correction order or any other order under this section, the court must take into account the extent to which the offender had complied with the community correction order, or other order, respectively, before its cancellation or while it was still in force.

42AX. Offences relating to community correction orders

- (1) An offender who is subject to a community correction order must not assault, threaten, insult or use abusive language to a probation officer or a supervisor.

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Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) A person must not –

- (a) disturb or interfere with a person performing an activity under a community correction order; or
- (b) prevent a person from performing an activity under a community correction order.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

42AY. Arrest for failure to appear at certain applications, or for breach, or suspected breach, of order

- (1) A court to which an application in relation to an offender is made or adjourned under this Part may issue a warrant to arrest the offender if –
 - (a) the offender fails to appear at the hearing of the application; or
 - (b) reasonable efforts have been made to serve the application on the offender but have been unsuccessful –

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and the application was not made by or on behalf of the offender.

- (2) Without limiting the generality of subsection (1)(b), reasonable efforts are to be taken to have been made to serve the application on an offender to whom a community correction order relates if a copy of the application is, during the operational period of the order, left at the premises which the person who makes the application believes to be the premises at which the offender resides or was last known to reside.
- (3) A police officer may arrest an offender to whom a community correction order relates if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order by leaving, or attempting to leave, the State.

42AZ. Offender discharging order is taken to be Crown employee for certain purposes

- (1) An offender performing community work in compliance with a community correction order is, for the purposes of the *Workers Rehabilitation and Compensation Act 1988* and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, taken to be a worker employed

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by the Crown and being paid at the greater of the following rates:

- (a) a rate equal to the basic salary within the meaning of the *Workers Rehabilitation and Compensation Act 1988*;
 - (b) the rate of the offender's normal weekly earnings, if any, within the meaning of section 69 of the *Workers Rehabilitation and Compensation Act 1988*.
- (2) Despite subsection (1), an offender performing community work in compliance with a community correction order is not to be taken to be a worker for the purposes of section 84(3) of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* if he or she is a worker for the purposes of section 84(3) of that Act by reason only of the application of subsection (1) of this section.
- (3) An offender is taken to be performing community work for the purposes of this section if he or she is –
 - (a) performing a required activity; or
 - (b) making a required journey.

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- (4) For subsection (3)(a), an offender is taken to be performing a required activity if he or she is –
- (a) reporting to the offender's probation officer for the purposes of performing community service in accordance with a community correction order; or
 - (b) performing community service in accordance with a community correction order; or
 - (c) in accordance with a condition imposed under section 42AP(1)(d), attending an educational, rehabilitation or other program in accordance with a community correction order; or
 - (d) doing something else –
 - (i) at the request or direction of, or with the express or implied authority of, the offender's probation officer or supervisor; and
 - (ii) that is related to performing community service in accordance with a community correction order.
- (5) For subsection (3)(b) –

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- (a) a required journey is a journey made for the purposes of, or in connection with, a required activity; but
- (b) a journey is not taken to be a required journey by reason only of the fact that it is for the purpose of enabling an offender to travel –
 - (i) from his or her place of residence to the place at which he or she is required to perform a required activity; or
 - (ii) from the place at which he or she is required to perform a required activity to his or her place of residence.

16. Section 83 amended (Contents of pre-sentence report)

Section 83(1) of the Principal Act is amended by inserting after paragraph (g) the following paragraph:

- (ga) whether the offender is a suitable person for a home detention order to be made in relation to the person and the opinion, in respect of whether the offender ought to

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reside at the premises while the order is
in force, of each person who –

- (i) will reside at the premises that, if
such an order were made, would
be the home detention premises,
within the meaning of
section 42AB, in relation to the
offender; and
- (ii) is a person who is considered by
the person making the report to
be a person whose opinion ought
to be considered;

17. Section 102 amended (Regulations)

Section 102(2)(b) of the Principal Act is
amended by inserting “home detention orders,
community correction orders,” after “of”.

18. Section 104AB inserted

After section 104AA of the Principal Act, the
following section is inserted in Part 12:

**104AB. Savings and transitional provisions in
relation to *Sentencing Amendment (Phasing
Out Of Suspended Sentences) Act 2017***

- (1) In this section –

amending Act means the *Sentencing
Amendment (Phasing Out Of
Suspended Sentences) Act 2017*.

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(2) A provision of this Act, as inserted or amended by the amending Act, applies in relation to –

- (a) a court imposing a sentence on an offender in relation to an offence; or
- (b) a court making an order in relation to an offence or offender or a breach of an order or sentence; or
- (c) a person or court taking an action under this Act in relation to an offence or a breach of an order or a sentence –

whether the offence or breach was committed before or after the day on which the provision is inserted or amended.

(3) A sentence or order imposed or made before the day on which a provision of this Act is amended, repealed or substituted by the amending Act is not to be taken to be invalid by reason only that, after that day, a court could not, under this Act, have imposed the sentence or made the order.

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19. Schedule 3 inserted

After Schedule 2 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 3 – NON-SUSPENSION OF SENTENCE
OFFENCES**

Section 23A

PART 1 – OFFENCES GENERALLY

Column 1 - Description of offence	Column 2 – Section	Column 3 – Act
Sexual intercourse with a young person under the age of 17 years	Section 124(1)	<i>Criminal Code Act 1924</i>
Maintaining a sexual relationship with a young person under the age of 17 years	Section 125A(2)	<i>Criminal Code Act 1924</i>
Procuring unlawful sexual intercourse with young person	Section 125C(2)	<i>Criminal Code Act 1924</i>
Sexual intercourse with a person with a mental impairment	Section 126(1)	<i>Criminal Code Act 1924</i>
Aggravated sexual assault	Section 127A(1)	<i>Criminal Code Act 1924</i>

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Column 1 - Description of offence	Column 2 – Section	Column 3 – Act
Involving a person under the age of 18 years in the production of child exploitation material	Section 130	<i>Criminal Code Act 1924</i>
Producing child exploitation material	Section 130A	<i>Criminal Code Act 1924</i>
Distributing child exploitation material	Section 130B(1)	<i>Criminal Code Act 1924</i>
Incest	Section 133(1)	<i>Criminal Code Act 1924</i>
Murder	Section 158	<i>Criminal Code Act 1924</i>
Manslaughter	Section 159(2)	<i>Criminal Code Act 1924</i>
Being accessory after the fact to murder	Section 161	<i>Criminal Code Act 1924</i>
Committing an unlawful act intended to cause grievous bodily harm	Section 170(1)	<i>Criminal Code Act 1924</i>
Wounding [or causing grievous bodily harm]	Section 172	<i>Criminal Code Act 1924</i>
Performing female genital mutilation	Section 178A(1)	<i>Criminal Code Act 1924</i>

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Column 1 - Description of offence	Column 2 – Section	Column 3 – Act
Setting a spring-gun [or man-trap] [or allowing a spring-gun (or man-trap) to remain set]	Section 179(1)	<i>Criminal Code Act 1924</i>
Rape	Section 185(1)	<i>Criminal Code Act 1924</i>
Forcible abduction	Section 186(1)	<i>Criminal Code Act 1924</i>
Abduction	Section 186(2)	<i>Criminal Code Act 1924</i>
Abduction of a child	Section 191(1)	<i>Criminal Code Act 1924</i>
Kidnapping	Section 191A	<i>Criminal Code Act 1924</i>
Armed robbery	Section 240(3)	<i>Criminal Code Act 1924</i>
Aggravated armed robbery	Section 240(4)	<i>Criminal Code Act 1924</i>
Arson	Section 268	<i>Criminal Code Act 1924</i>

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Column 1 - Description of offence	Column 2 – Section	Column 3 – Act
Procuring or otherwise causing or permitting a child to provide sexual services in a sexual services business	Section 9(1)	<i>Sex Industry Offences Act 2005</i>
Receiving a fee or reward that a person knows &c. is derived, directly or indirectly, from sexual services provided by a child in a sexual services business	Section 9(2)	<i>Sex Industry Offences Act 2005</i>
PART 2 – DRUG OFFENCES WHERE TRAFFICABLE QUANTITY		
Column 1 – Description of Offence	Column 2 – Section	Column 3 – Act
Manufacturing controlled drug for sale	Section 6(1)	<i>Misuse of Drugs Act 2001</i>
Cultivating controlled plant for sale	Section 7(1)	<i>Misuse of Drugs Act 2001</i>
Possessing thing intended for use in manufacture of controlled substance for sale	Section 8	<i>Misuse of Drugs Act 2001</i>

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Column 1 – Description of Offence	Column 2 – Section	Column 3 – Act
Possessing thing intended for use in cultivation of controlled plant for sale	Section 9	<i>Misuse of Drugs Act 2001</i>
Manufacturing controlled precursor intended for use in manufacture of controlled drug for sale	Section 10(1) or (2)	<i>Misuse of Drugs Act 2001</i>
Selling controlled precursor for use in manufacturing controlled drug	Section 11	<i>Misuse of Drugs Act 2001</i>
Trafficking in controlled substance	Section 12(1)	<i>Misuse of Drugs Act 2001</i>
Procuring child to traffic in controlled substance	Section 13(1)	<i>Misuse of Drugs Act 2001</i>
Supplying controlled drug to child	Section 14	<i>Misuse of Drugs Act 2001</i>
Concealing, &c., property derived from drug offence	Section 16	<i>Misuse of Drugs Act 2001</i>
Receiving property directly received from drug offence	Section 17(1)	<i>Misuse of Drugs Act 2001</i>

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Part 3 – Interstate Transfer (Community-based Sentences) Act 2009
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23. Section 18 amended (Effect of registration under this Part)

Section 18(1)(h) of the Principal Act is amended by inserting “a community correction order,” after “service order,”.

24. Section 22 amended (Application to court to alter sentence to enable registration in another State or a Territory)

Section 22 of the Principal Act is amended by inserting after subsection (7) the following subsection:

- (7A) If an application under subsection (1) is made in relation to a sentence that is a community correction order within the meaning of the *Sentencing Act 1997*, any variation or cancellation of the sentence under this section is to be taken to have been made under section 42AU of the *Sentencing Act 1997*.

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Part 4 – Concluding Provision

PART 4 – CONCLUDING PROVISION

25. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.

*[Second reading presentation speech made in:–
House of Assembly on 19 October 2017
Legislative Council on 16 November 2017]*