

**Supreme Court of  
New South Wales  
2018 Annual Conference**

**Notable NSW Criminal Legislation  
August 2017 – August 2018**

**The Honourable Justice R A Hulme  
24 August 2018**

# Legislative Amendments

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The purpose of this paper is to provide a very broad overview of some of the more significant and/or interesting developments in criminal legislation over the past year. There is no pretence to being exhaustive of all of the detail. Again I express my gratitude for the input of my tipstaff, Mr William Bruffey BA LLB (Hons 1).

## *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*

The amendments effected by this Act commenced on 30 April 2018.

### **1. Criminal Procedure Act 1986**

The "Committal proceedings" provisions in Ch 2, Divs 2 to 5 (ss 47-108), are replaced with Divs 2 to 9 (ss 55-104). A new regime is introduced which has the goal of encouraging guilty pleas in appropriate cases to be entered while cases are still in the Local Court phase.

One of the features of this is the involvement of prosecutors from the Office of the Director of Public Prosecutions from an early time to ensure that appropriate charges are preferred. The accused is informed (orally and in writing) about the benefits that accrue from a guilty plea. Case conferences are to be held to explore the possibility of pleas of guilty being agreed.

A facility for witnesses to be called at committal is retained but they continue to be severely curtailed. There is no longer a requirement for a magistrate to be satisfied in order to commit for trial that the "evidence is capable of satisfying a reasonable jury, properly instructed, beyond reasonable doubt that the accused person has committed an indictable offence". The magistrate will commit for trial after a case conference certificate is filed or, if not required (e.g. accused unrepresented), after the charge certificate is filed.

### **2. Crimes (Sentencing Procedure) Act 1999**

Schedule 2 of the Act inserts provisions in this Act whereby there will be a mandatory regime of sentencing discounts for the utilitarian value of pleas of guilty to indictable offences (Commonwealth offences and juveniles excepted). There are some specified exceptions, but otherwise no discretion, whereby a court is permitted to apply the following discounts (per s 25D):

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|------------|---|
| <b>25%</b> | Plea accepted by magistrate in committal proceedings  |
| <b>10%</b> | Plea, or written offer to plead, or written acceptance of prosecutor's plea offer, at least 14 days before 1 <sup>st</sup> day of trial |
| <b>5%</b>  | In any other case.  |

This new regime applies to proceedings commenced on or after 30 April 2018 but regardless of whether the offence was committed before or after that date: Pt 30 Sch 2 of the principal Act.

## ***Justice Legislation Amendment Act (No 2) 2018***

### **1. Courts Suppression and Non-publication Orders Act 2010**

By an amendment to s 8, a suppression or non-publication order can only be made in respect of a defendant in criminal proceedings involving an offence of a sexual nature if there are "exceptional circumstances".<sup>1</sup>

### **2. Crimes Act 1900**

Provisions relating to child abuse material and similar offences rely upon a definition of "private parts" in s 91FB(4) which included "the breasts of a female person". This was amended to add the words "whether or not the breasts are sexually developed" to overcome the decision in *Turner v R* [2017] NSWCCA 304.

### **3. Crimes (Sentencing Procedure) Act 1999**

To the list of "vulnerable" persons in s 21A(2)(l) was added "a person working at a hospital (other than a health worker)".

Amendments were also made to the yet to be commenced amendments of the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*.

## ***Criminal Legislation Amendment (Child Sexual Abuse) Act 2018***

Substantial amendments are made to the criminal law relating to child sexual abuse.<sup>2</sup>

The provisions are all to commence on a day or days to be proclaimed.

### **1. Crimes Act 1900**

#### *Section 43B*

Section 43B was inserted into the *Crimes Act* to create an offence of failing to reduce or remove the risk of a child becoming a victim of child abuse.

#### *Sections 61L to 61O*

Sections 61L to 61O are omitted so as to remove offences of indecent assault and committing an act of indecency.

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<sup>1</sup> Nothing was said in the second reading speech about this being a response to the media furore about a District Court judge making an order in respect of a defendant in the proceedings which came to the Court of Criminal Appeal: *R v AB* [2018] NSWCCA 113.

<sup>2</sup> This was in response to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

### *Sections 61KC to 61KF: Sexual touching and sexual act*

New ss 61KC to 61KF provide for basic and aggravated offences of "sexual touching" and "sexual act". Sexual touching is defined in s 61HB to mean, in effect, touching another person (in almost any way imaginable) in circumstances where a reasonable person would consider the touching to be sexual.

A sexual act is defined in s 61HC to mean, in effect, an act carried out in circumstances where a reasonable person would consider the act to be sexual.

The matters to be taken into account in deciding whether the reasonable person would consider the touching/act to be sexual include certain nominated matters (e.g. whether the area of the body involved was the genital or anal area).

The sexual touching offence occurs when the offender sexually touches the victim; incites the victim to sexually touch the offender; incites a third person to sexually touch the victim; or incites the victim to sexually touch a third person: s 61KC (maximum penalty 5 years). The offence is committed in its aggravated form if the offender is in company; the victim is under the offender's authority; or the victim has a serious physical disability or a cognitive impairment: s 61KD (maximum 7 years).

The sexual act offence occurs when the offender carries out a sexual act with or towards the victim; incites the victim to carry out a sexual act with or towards the offender; incites a third person to carry out a sexual act with or towards the victim; or incites the victim to carry out a sexual act with or towards a third person: s 61KE (maximum 18 months). The circumstances of aggravation that apply to sexual touching also apply to the aggravated form of the sexual act offence: s 61KF (maximum 3 years).

### *Sections 66DA to 66DF: Sexual touching and sexual acts concerning children*

New provisions relating to offences of sexual touching and sexual acts concerning children are in ss 66DA to 66DF. Sexual touching in relation to a child under 10 has a maximum penalty of 16 years: s 66DA. Where the child is between 10 and 16 the maximum is 10 years: s 66DB. Sexual act in relation to a child under 10 has a maximum of 7 years and where the child is between 10 and 16 a maximum of 2 years: ss 66DC and 66DD. There is also an offence of sexual act in relation to a child between 10 and 16 in circumstances of aggravation (a longer list of such circumstances is specified) which has a maximum of 5 years: s 66DE. There is also an offence of sexual act in relation to a child under 16 for production of child abuse material which has a maximum of 10 years: s 66DF.

### *Section 73A: Sexual touching concerning young person between 16 and 18 under special care*

After the offence of sexual intercourse with a young person between 16 and 18 under special care (e.g. foster parent/child; school teacher/pupil; doctor/patient) there is added an offence of sexual touching in relation to such a young person: s 73A with a maximum of 2 or 4 years, depending on the victim's age.

### *Section 66EA: Persistent sexual abuse of a child*

The offence of persistent sexual abuse of a child (s 66EA) is recast. Where formerly there was a requirement to prove conduct constituting a sexual offence in relation to a child on at least three separate occasions on separate days during a nominated period, now it will be necessary to prove that a person had an "unlawful sexual relationship" with a child established by "2 or more unlawful sexual acts" (the particulars of which need not be alleged) within a nominated period. The maximum penalty is increased from 25 years to life.

Where formerly the jury were required to be unanimous as to the "same 3 occasions" if more than three were relied upon, the new provision does not require unanimity as to the "2 or more unlawful sexual acts"; the jury has to be satisfied simply that the evidence establishes that an unlawful sexual relationship existed. Further, the unlawful sexual relationship may have existed wholly, or partly, before the commencement of the new provision, or its predecessor (which was on 15 January 1999). As confirmation of the historical reach of this offence, an "unlawful sexual act" is defined to include offences listed in a new Sch 1A of the Act: these include offences long since repealed such as "Section 63 Rape" and "Section 72A Carnal knowledge of an idiot or imbecile".

### *Section 80AF*

New section 80AF provides that when a sexual offence occurs within a period of time in which there has been a change in the law, the accused may be prosecuted in respect of the conduct under whichever offence within the period has the lesser maximum penalty regardless of when during the period the conduct occurred. It is only necessary to establish that the offence was in force at some time during the period. If the age of the victim must be proved, it is only necessary to establish the victim was that age at some time during the period.

Provisions are made in relation to child abuse material offences which have the effect of protecting children from themselves in relation to "sexting" (e.g. a defence is inserted in s 91HA that applies to an offence of possessing child abuse material if the only person depicted is the accused person).

## **2. Crimes (Sentencing Procedure) Act 1999**

### *Section 25AA*

Section 25AA is inserted which provides that a court must sentence an offender for a child sexual offence in accordance with sentencing patterns and practices at the time of sentencing, not at the time of the offence. It also provides that a court must have regard to the trauma of sexual abuse on children as understood at the time of sentencing.

## **3. Criminal Procedure Act 1986**

Section 293A is inserted to allow a judge to give certain directions to a jury if there is evidence suggesting a difference in the complainant's account that may be relevant to his/her truthfulness or reliability.

The judge can inform the jury:

- i. that experience shows that people may not remember all of the details of a sexual offence or may not describe one in the same way each time;
- ii. that trauma may affect people differently, including how they recall events;
- iii. that it is common for there to be differences in accounts of a sexual offence; and
- iv. that both truthful and untruthful accounts may contain differences. The judge may direct the jury to decide whether or not any differences in the complainant's account are important in assessing his/her truthfulness and reliability.

## ***Parole Legislation Amendment Act 2017***

### **1. Statutory parole orders**

The most significant amendment in a practical sense affects sentences of imprisonment of 3 years or less where formerly a court was required to make a parole order ("direct" release on parole) and could impose conditions per ss 50-51B of the *Crimes (Sentencing Procedure) Act 1999*.

Those provisions were repealed and replaced by the concept of a "statutory parole order" in s 158 of the *Crimes (Administration of Sentences) Act 1999*. A statutory parole order is subject to the same standard conditions (including as to supervision) as a parole order made by the State Parole Authority.

These amendments took effect on 26 February 2018.

### **2. Re-integration home detention**

A scheme of re-integration home detention was created by the insertion of Pt 5A in the *Crimes (Administration of Sentences) Act*. It cannot apply to a "serious offender" (defined to include, e.g., an offender serving at least 12 years) or an offender serving a sentence for domestic violence, child sexual assault, or a serious sex, serious violence or terrorism offence. There is otherwise no limit on how long or short the sentence may be.

For eligible offenders, a community corrections officer may prepare an assessment report and if the offender is found to be suitable, the officer may request the Parole Authority to make a re-integration home detention order. One of the matters the Parole Authority must be satisfied of before directing an offender's release to home detention is that "it is in the interests of the safety of the community to make the order" (s 124D(1)(d)).

Standard conditions on re-integration home detention orders are prescribed by the regulations and the Parole Authority may impose additional conditions or vary or revoke conditions: s 124H. Clause 232B sets out the standard conditions; they include that the offender may be absent from the home when engaged in approved activities; submission of a schedule of proposed activities; and electronic

monitoring. Clause 232C imposes a standard condition of supervision for the period of the order which includes compliance with all reasonable directions as to a range of matters such as non-association; place restrictions; drug and alcohol abstinence; and testing in respect of same.

The provisions concerning this scheme took effect on 28 May 2018.

### *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*

This Act received assent on 24 October 2017 and has since been amended by the *Statute Law (Miscellaneous Provisions) Act 2018* and the *Justice Legislation Amendment Act (No 2) 2018*. It is not yet in force. The scheme of new sentencing options for which it provides depends upon regulations which are presently in draft.

Home detention (s 6), community service orders (s 8), good behaviour bonds (s 9), and suspended sentences (s 12) are abolished as sentencing options.

The new range of sentencing options (aside from full-time detention and fines) will be:

|                           |   |
|---------------------------|---|
| <b>Section 7 and Pt 5</b> | Intensive correction order (ICO)  |
| <b>Section 8 and Pt 7</b> | Community correction order (CCO)  |
| <b>Section 9 and Pt 8</b> | Conditional release order (CRO)   |
| <b>Section 10</b>         | Without conviction: dismissal, discharge under CRO, or enter intervention program |
| <b>Section 10A</b>        | Conviction with no penalty (unamended)  |
| <b>Section 11</b>         | Deferral of sentencing for rehabilitation (unamended)                             |

#### **1. Crimes (Sentencing Procedure) Act 1999**

##### *Section 4A*

Section 4A is inserted and provides that for domestic violence offences a sentence of full-time detention or a supervised order (ICO, CCO or a CRO with a supervision condition) must be imposed unless the court is satisfied otherwise.

##### *Details of sentencing options*

See attached pages for details of provisions concerning ICO, CCO and CRO sentencing options.

In relation to s 10, the options in s 10(1)(a) (without conviction, dismissal) and s 10(1)(c) (without conviction, discharge on person entering intervention program) are retained. The option in s 10(1)(b) (without conviction, discharge on person entering bond) is omitted and replaced by a provision that the person enter a CRO (in which case the court proceeds to make a CRO under s 9).

### *Machinery provisions*

A new Div 4B ("Assessment reports") is inserted in Pt 2 ("Penalties that may be imposed"). Sections 17B-17D make provision for the assessment reports by community corrections or juvenile justice officers that are required in relation to sentencing options.

A new Div 4C ("Provisions relating to certain orders") is inserted in Pt 2. Sections 17E-17J make miscellaneous provisions in relation to ICO, CCO and CRO sentencing options.

### *Miscellaneous*

Various consequential amendments are made throughout the Act to provide for consistency of terminology and the like.

### *Transitional provisions*

A new Part 29 is inserted in Sch 2 (Savings and transitional provisions). Notable provisions include:

| <b>Pt 29 Div 2 Existing bonds and orders</b>                        |  |
|---|--|
| <b>EXISTING</b>   | <b>TAKEN TO BE</b>   |
| <b>Home detention orders</b>  | ICO with home detention condition  |
| <b>Intensive correction orders</b>                                  | ICO  |
| <b>Community service orders</b>                                     | CCO with community service work condition  |
| <b>Good behaviour bonds (s 9)</b>                                   | CCO  |
| <b>Good behaviour bonds (s 10(1)(b))</b>                            | CCO without conviction   |
| <b>Suspended sentence</b>   | Continue in force – Act and regulations continue to apply as if amending Act not enacted – if revoked for breach, then must sentence to full-time detention or make an ICO under new provisions.     |
| <b>Pt 29 Div 4 Other provisions</b>                                 |  |
| <b>Appeals in respect of pre-amendment orders and bonds (cl 86)</b> | The appeal is not affected – but any re-sentencing must be in accordance with the amended Act. If court confirms the original order or bond, the provisions relating to existing orders/bonds apply. |

## **2. Crimes (Administration of Sentences) Act 1999**

Some significant amendments are made to this Act including the following.

### **Part 3 – Imprisonment by way of intensive correction in the community**

#### **Division 1 - Preliminary**



### *Section 81A: Conditions – Parole Authority*

The Parole Authority may, on application of a community corrections officer (“CC officer”) or offender:

- Impose conditions on an ICO;
- Vary/revoke conditions of an ICO, including conditions imposed by the sentencing court.

In effect, the Parole Authority has all the powers, but is subject to the same limitations, as the sentencing court in imposing conditions.

### *Section 82: Administration of intensive correction orders and obligations of offenders*

(1) Regulations may provide for or in respect to:

- (a) administration of ICOs, including any conditions.
- (b) ... (iii) the manner in which an offender’s failure to comply with obligations under an ICO may be dealt with.

(2) obligations of an offender under an ICO are to be prescribed by regulation.

### **New Part 4B: Administration of community correction orders**

#### *Section 107C: Breach of CCO*

Under the new s 107C, offender may be called up and dealt with by court that made order, court of like jurisdiction, or (with consent) court of superior jurisdiction.

Note:

- If breach established, may take no action; vary/revoke conditions (other than standard conditions) or impose further conditions; or revoke order
- If CCO revoked, court may resentence (new s 107D).

#### *Section 107E*

By new s 107E, a CC officer may suspend a supervision condition for period(s) or indefinitely. May suspend any other condition to which the section applies (curfew, non-association and place restriction conditions) for period(s). Suspension may be subject to conditions.

### **New Part 4C: Administration of community release orders**

#### *Section 108C: Breach of CCO*

In identical terms to s 107C: if CRO revoked, court may resentence (new s 108D).

### *Section 108E*

By new s 108E, a CC officer may suspend a supervision condition for a period(s) or indefinitely. May suspend any other condition to which the section applies (non-association and place restriction conditions) for period(s). Suspension may be subject to conditions.

### **Part 5 : Community service work and other work performed by offenders**

Part 5 is amended so as no longer to apply to community service orders but to community service work conditions.

### **Part 7: Revocation and reinstatement, and sanctions for breaches, of certain orders**

#### **Division 1 Intensive correction orders**

### *Section 163*

Section 163 provided that the Parole Authority could revoke an ICO in nominated circumstances. Section 164 made provision for when the revocation order took effect. Both sections are omitted.

The new s 163 applies where the Commissioner or a CC officer is satisfied of a failure to comply with an ICO. They may record the breach and take no action; give an informal warning; give a formal warning that further breaches will be referred to the Parole Authority; give a reasonable direction relating to the kind of behaviour that caused the breach; or impose a curfew. If the breach is serious, they may refer the matter to the Parole Authority and may make a recommendation as to the action the Parole Authority may take.

### *Section 164*

The new s 164 provides for the action the Parole Authority may take on breach of an ICO. It may record the breach and take no action; give a formal warning; impose conditions on the ICO (including home detention of up to 30 days or an electronic monitoring condition); vary or revoke any conditions of the ICO (including conditions imposed by the sentencing court, but not a standard condition); or revoke the ICO.

The new s 164A provides for when a revocation order takes effect.

Sections 165A-165C, which provided for the Parole Authority to make a home detention order when it revoked an ICO, are omitted.

# The New Range of Sentencing Options

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## INTENSIVE CORRECTION ORDERS

### **Section 7 – Intensive correction orders**

A court that has sentenced an offender to imprisonment for 1 or more offences may make an intensive correction order directing that the sentence(s) be served by way of intensive correction in the community.

- No NPP is to be set;
- Does not apply if offender under 18;
- Is subject to provisions of Part 5.

### **Section 17D – Requirement for assessment report**

A court cannot make an ICO without an assessment report – but need not obtain one if satisfied there is sufficient information to justify the making of an ICO without obtaining a report.

- But must obtain an assessment report relating to imposition of home detention or community service work conditions before imposing same;
- Cannot request assessment report relating to home detention unless sentence of imprisonment for a specified term has been imposed.

### **Part 5 – Sentencing procedures for intensive correction orders**

|   |   |
|---|---|
| <b>Division 1 Preliminary</b>   |   |
| <b>s 64 Application</b>   | When court considering or has made ICO  |
| <b>s 65 Definition</b>  | "Assessment report" – as per Div 4B of Pt 2   |
| <b>Division 2 Restrictions on power to make intensive correction orders</b> |   |
| <b>s 66 Community safety and other considerations</b>                       | Community safety the paramount consideration.<br><br>Court is to assess whether ICO or full-time detention more likely to address risk of reoffending.<br><br>When considering ICO, must also consider s 3A and any relevant common law principles and any other matters court things relevant. |
| <b>s 67 Intensive correction order not available for certain offences</b>   | Homicide – prescribed sexual offence – terrorism offence – contravention of serious crime prevention order or public safety order – offence involving discharge of firearm – an offence that includes the above, or intention to commit same.   |

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| <p><b>s 68 Intensive correction orders not available where imprisonment exceeds limits</b></p> | <p>ICO not available when sentence for offence &gt; 2 years.</p> <p>ICO available for aggregate sentence but not where aggregate sentence &gt; 3 years.</p> <p>Multiple ICOs may be made for multiple offences – but not if any individual term &gt; 2 years, and, the duration of the term for all offences exceeds 3 years.</p>  |
| <p><b>s 69 Assessment of suitability of offender for intensive correction order</b></p>        | <p>Court is to have regard to contents of any assessment report and to evidence from a community corrections officer and any other information court considers necessary.</p> <p>Subject to s 73A(3), court not bound by the assessment report.</p> <p>Cannot make ICO if offender resides or intends to in another State or Territory unless it is declared by regulations to be an approved jurisdiction.</p>  |
| <p><b>Division 3 Term and commencement</b></p>   |  |
| <p><b>s 70 Term of intensive correction order</b></p>  | <p>Same as term(s) of imprisonment in respect of which the order is made.</p>  |
| <p><b>s 71 Commencement of intensive correction order</b></p>                                  | <p>Commences on the day made</p> <p>Unless applies to an ICO made in relation to a sentence that is to be partly or wholly consecutively with another sentence the subject of an ICO.</p>  |
| <p><b>Division 4 Conditions</b></p>  |  |
| <p><b>s 72 Conditions generally</b></p>  | <p>ICO is subject to:</p> <ul style="list-style-type: none"> <li>(a) standard conditions imposed by the court under s 73</li> <li>(b) any additional conditions imposed by court under s 73A</li> <li>(c) any further conditions imposed by court under s 73B</li> <li>(d) any conditions imposed by Parole Authority under s 81A or s 163 of <i>Crimes (Administration of Sentences) Act 1999</i></li> </ul> <p>N.B. After ICO imposed, conditions are imposed, varied or revoked by Parole Authority, not the court.</p> |
| <p><b>s 73 Standard conditions</b></p>   | <p>Court must impose the standard conditions on an ICO:</p> <ul style="list-style-type: none"> <li>(a) "not commit any offence" and</li> <li>(b) "submit to supervision by a community corrections officer"</li> </ul> <p>N.B. Regulations may be made under <i>Crimes (Administration of Sentences) Act</i> to prescribe obligations under a standard condition of an ICO.</p>  |
| <p><b>s 73A Additional conditions</b></p>  | <p>Court must impose at least 1 of the additional conditions on an ICO referred to in s 73A(2) – unless satisfied of exceptional</p>   |

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|  | <p>circumstances (and must make a record of reasons for same).</p> <p>(2) additional conditions available are:</p> <ul style="list-style-type: none"> <li>(a) home detention</li> <li>(b) electronic monitoring</li> <li>(c) curfew</li> <li>(d) community service work (not exceeding 750 hours or hours prescribed by regulations)</li> <li>(e) participate in rehabilitation or receive treatment</li> <li>(f) abstinence condition re alcohol, drugs or both</li> <li>(g) non-association with particular persons</li> <li>(h) place restriction re place or area</li> </ul> <p>Home detention or community service work cannot be imposed without assessment report says offender suitable.</p> <p>Court may limit the time during which an additional condition is in force.</p> <p>N.B. Regulations may prescribe obligations under additional conditions.</p> |
| <p><b>s 73B Further conditions</b></p> | <p>Court may impose further conditions on an ICO – but not that are inconsistent with any standard or additional conditions – and may limit the time any further condition is in force.</p>   |

## COMMUNITY CORRECTION ORDERS

### **Section 8 – Community correction orders**

Instead of imposing a sentence of imprisonment, a court may make a community correction order in relation to the offender.

- A "community service work condition" must not be imposed on a CCO made in relation to an offender to whom the *Children (Community Service Orders) Act 1987* applies – i.e. a person who was a child when offence committed and who was under 21 when charged;
- Subject to provisions of Part 7.

### **Section 17D – Requirement for assessment report**

A court cannot impose a community service work condition on a CCO unless an assessment report relating to the imposition of such a condition has been obtained.

### **Part 7 – Sentencing procedures for community correction orders**

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|--|---|
| <b>Division 1 Preliminary</b>                          |   |
| <b>s 84 Application</b>                                | Applies when court considering or has made CCO  |
| <b>Division 2 Term and commencement</b>                |   |
| <b>s 85 Term of community correction order</b>         | The term is as specified and the maximum is 3 years.  |
| <b>s 86 Commencement of community correction order</b> | On the date it is made.   |
| <b>Division 3 Conditions</b>                           |   |
| <b>s 87 Conditions generally</b>                       | CCO is subject to:<br>(a) standard conditions imposed by the court under s 88<br>(b) any additional conditions imposed by court under s 89<br>(c) any further conditions imposed by court under s 90.   |
| <b>s 88 Standard conditions</b>                        | Court must impose the standard conditions on an CCO:<br><br>(a) "not commit any offence"; and<br>(b) appear before court if call on to do so during term of CCO.<br><br>N.B. Regulations may be made under <i>Crimes (Administration of Sentences) Act 1999</i> to prescribe obligations under a standard condition of a CCO. |
| <b>s 89 Additional conditions</b>                      | Court may at time of sentence – or subsequently on application of community corrections / juvenile justice officer or of offender – impose any additional conditions or vary/revoke any such additional   |

|  |   |
|--|---|
|  | <p>conditions.</p> <p>(2) additional conditions available are:</p> <ul style="list-style-type: none"> <li>(a) curfew</li> <li>(b) community service work (not exceeding 500 hours or hours prescribed by regulations)</li> <li>(c) participate in rehabilitation or receive treatment</li> <li>(d) abstention condition re alcohol, drugs or both</li> <li>(e) non-association with particular persons</li> <li>(f) place restriction re place or area</li> <li>(g) supervision by community corrections (or juvenile justice) officer</li> </ul> <p>Cannot impose conditions re home detention, electronic monitoring or curfew exceeding 12 hours in any 24 hour period.</p> <p>Community service work cannot be imposed without assessment report states offender is suitable.</p> <p>If offender resides or intends to reside in another State or Territory:</p> <ul style="list-style-type: none"> <li>- cannot make supervision condition on CCO unless other State/Territory declared by regulations to be an approved jurisdiction;</li> <li>- cannot make community service work condition on CCO unless "approved jurisdiction" or offender able and willing to travel to NSW to perform work.</li> </ul> <p>Court may limit the time during which an additional condition is in force.</p> |
| <p><b>s 90 Further conditions</b></p>                          | <p>Court may impose further conditions on a CCO at time of sentencing or subsequently on application, or may vary or revoke such further conditions – but not that are inconsistent with any standard or additional conditions – or that are not permitted conditions – and may limit the time any further condition is in force.</p>   |
| <p><b>s 91 Power of court in dealing with applications</b></p> | <p>Power to refuse to hear application by offender under s 89 or s 90 if without merit.</p> <p>Discretion to deal with application with/without parties present and in open court or in absence of public – if consent.</p> <p>Power for court to deal with if differently constituted.</p>   |

## CONDITIONAL RELEASE ORDERS

### **Section 9 – Conditional release orders**

Instead of imposing a sentence of imprisonment or a fine (or both) a court may make a conditional release order discharging the offender if (a) the court proceeds to conviction, or (b) the court does not proceed to conviction but makes an order under s 10(1)(b).

In deciding whether to make a CRO with a conviction, must have regard to:

- (a) character, antecedents, age, health and mental condition;
  - (b) whether offence of a trivial nature;
  - (c) extenuating circumstances in which offence committed;
  - (d) any other matter proper to consider.
- Cannot impose a fine and a CRO on the same offender for the same offence.
  - CRO with conviction may be made as an alternative to imposing a fine.
  - Subject to provisions of Part 8.

### **Part 8 – Sentencing procedures for conditional release orders**

|   |   |
|---|---|
| <b>Division 1 Preliminary</b>                         |   |
| <b>s 94 Application</b>                               | Applies when court considering or has made a CRO.   |
| <b>Division 2 Term and commencement</b>               |   |
| <b>s 95 Term of conditional release order</b>         | As specified with maximum of 2 years.   |
| <b>s 96 Commencement of conditional release order</b> | On date made.   |
| <b>Division 3 Conditions</b>                          |   |
| <b>s 97 Conditions generally</b>                      | <p>CRO is subject to:</p> <ul style="list-style-type: none"> <li>(a) standard conditions imposed by the court under s 98;</li> <li>(b) any additional conditions imposed by court under s 99;</li> <li>(c) any further conditions imposed by court under s 100A.</li> </ul> <p>N.B. Provisions relating to a breach of obligations under a CRO are in s 108C of the <i>Crimes (Administration of Sentences) Act 1999</i>.</p> |
| <b>s 98 Standard conditions</b>                       | <p>Court must impose the standard conditions on an CRO:</p> <ul style="list-style-type: none"> <li>(a) "not commit any offence"; and</li> <li>(b) appear before court if call on to do so during term of CRO.</li> </ul> <p>N.B. Regulations may be made under <i>Crimes (Administration of Sentences) Act 1999</i> to prescribe obligations under a standard</p>   |



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|  | condition of an CRO.   |
| <b>s 99 Additional conditions</b>                        | <p>Court may at time of sentence – or subsequently on application of community corrections / juvenile justice officer or of offender – impose any additional conditions or vary/revoke any such additional conditions.</p> <p>(2) additional conditions available are:</p> <ul style="list-style-type: none"> <li>(a) participate in rehabilitation or receive treatment;</li> <li>(b) abstention condition re alcohol, drugs or both;</li> <li>(c) non-association with particular persons;</li> <li>(d) place restriction re place or area;</li> <li>(e) supervision by community corrections (or juvenile justice) officer.</li> </ul> <p>Cannot impose conditions re home detention, electronic monitoring, curfew or community service work.</p> <p>Cannot impose supervision condition on CRO if offender resides or intends to in another State or Territory unless it is declared by regulations to be an approved jurisdiction.</p> <p>Court may limit the time during which an additional condition is in force.</p> |
| <b>s 99A Further conditions</b>                          | <p>Court may impose further conditions on an ICO at time of sentencing or subsequently on application, or may vary or revoke such further conditions – but not that are inconsistent with any standard or additional conditions – or that are not permitted conditions – and may limit the time any further condition is in force.</p>   |
| <b>s 100 Power of court in dealing with applications</b> | <p>Power to refuse to hear application by offender under s 99 or s 99A if without merit.</p> <p>Discretion to deal with application with/without parties present and in open court or in absence of public – if consent.</p> <p>Power to for court to deal with if differently constituted.</p>  |