

Brief Overview of Reforms

BRIEF OVERVIEW OF REFORMS

Amendment Acts

Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 ('CSP Amendment Act')

- Passed NSW Parliament 18 October 2017
- Makes substantial changes to *Crimes (Sentencing Procedure) Act 1999 ('CSPA')* and *Crimes (Administration of Sentences) Act 1999 ('CASA')*
- Planned to commence on **Monday 24 September 2018**

Object:

- “to improve the availability and nature of community-based sentencing options”

Also note amendments to Regulations:

- **CSPR** = *Crimes (Sentencing Procedure) Regulation 2017*
- **CASR** = *Crimes (Administration of Sentences) Regulation 2014*

Key Aims of Amendments

- To protect community safety by reducing reoffending
- To reduce the number of offenders receiving short prison sentences (less than 2 years)
- To get a greater number of appropriate offenders on community-based supervised sentences with conditions tailored to address their offending behaviour and criminogenic needs

Key Legislative Changes

- Based on recommendations made by NSW Law Reform Commission ('LRC') in Report 139 – Sentencing (2013)
- Part of NSW Government's 'Strategy to Reduce Reoffending' (which includes EAGP, parole and high risk offender reforms)
- Existing suite of community-based sentences are being replaced with new range of sentencing options

Main points:

- Suspended sentences are being abolished
- Intensive correction orders are being overhauled
- Some existing sentences are being converted into new sentence orders
- New provisions are being introduced for domestic violence offenders
- Sentencing assessment reports are being streamlined

Abbreviations

Acts:

- **CSPA** = *Crimes (Sentencing Procedure) Act 1999*
- **CASA** = *Crimes (Administration of Sentences) Act 1999*
- **CSP Amendment Act** = *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*

Regulations:

- **CSPR** = *Crimes (Sentencing Procedure) Regulation 2017*
- **CASR** = *Crimes (Administration of Sentences) Regulation 2014*
- **CSP Amendment Regulation** = *Crimes (Sentencing Procedure) Amendment (Community-based Orders and Other Matters) Regulation 2018*
- **CAS Amendment Regulation** = *Crimes (Administration of Sentences) Amendment (Community-based Orders and Other Matters) Regulation 2018*

Old & New Sentencing Orders

ABOLITION OF SOME SENTENCING OPTIONS

Sentencing options to be abolished

- Home detention order
- Suspended sentence (section 12 bond)
- Community service order
- Section 9 good behaviour bond
- Section 10(1)(b) non-conviction discharge to good behaviour bond
- Section 10(1)(c) non-conviction discharge to participate in intervention program

Current sentencing options to remain available

- Intensive correction order (although structure will change substantially)
- Section 10(1)(a) non-conviction dismissal
- Section 10A conviction with no further penalty
- Fine
- Section 11 deferral of sentence for rehabilitation

INTRODUCTION OF NEW SENTENCE ORDERS

New Sentencing Orders

- Conditional release order ('CRO')
- Community correction order ('CCO')

Conditions of New Sentence Orders

'Standard' conditions (mandatory)

+

'Additional' conditions (discretionary)

+

'Further' conditions (discretionary)

Conditional Release Order ('CRO')

- Non-custodial order
- Intended for lowest level of offending
- Adopts features of section 10(1)(b) bond and section 10(1)(c) order
- Available for fine-only offences and offences punishable by imprisonment
- Can be imposed for up to 2 years
- Can be imposed with or without conviction
- Cannot be imposed in addition to a fine (ie. they are alternatives)
- Consists of two 'standard' conditions (mandatory), as well as any 'additional' and 'further' conditions imposed by court
- Court can vary, add or revoke conditions at any time after sentence, without breach

Community Correction Order ('CCO')

- Non-custodial order
- Intended to sit above CRO and below ICO in sentencing hierarchy
- Adopts features of section 9 bond and community service order
- Available for offences punishable by imprisonment (not for fine-only offences)
- Can be imposed for up to 3 years
- Carries a conviction
- Can be imposed in addition to a fine
- As per CRO, consists of two 'standard' conditions (mandatory), as well as any 'additional' and 'further' conditions imposed by court

Standard Conditions

- Found in CSPA section 88 for CCOs and 98 for CROs
- Mandatory
- Remain in force for duration of order
- Two standard conditions:
 1. The offender must not commit any offence
 2. The offender must appear before the court if called upon to do so at any time during the term of the order

Additional Conditions

- Found in CSPA section 89 for CCOs and 99 for CROs
- Discretionary
- Court can impose any conditions on list which are appropriate in circumstances, subject to exclusions
- Court can limit period during which additional condition is in force

List of Additional Conditions

Court can impose any of the following additional conditions, subject to exclusions:

- Curfew (NB. curfew only available for CCO, not CRO)
- Community service work (N.B. community service work only available for CCO, not CRO)
- Rehabilitation or treatment
- Abstention (drugs and/or alcohol)
- Non-association (with a particular person/s)
- Place restriction
- Supervision

Excluded Conditions – CRO

Court cannot impose any of the following additional conditions on a CRO:

- Home detention
- Electronic monitoring
- Curfew
- Community service work

Excluded Conditions – CCO

Court cannot impose any of the following conditions on a CCO:

- Home detention
- Electronic monitoring
- Curfew of more than 12 hours in any 24 hour period

Further Conditions

- Found in CSPA section 90 for CCOs and 99A for CROs
- Discretionary
- Court can impose any conditions at all which it considers appropriate in circumstances (i.e. further conditions are at large)
- But further conditions:
 - ⇒ Must not be inconsistent with standard or additional conditions
 - ⇒ Must not impose an excluded condition
- Court can limit period during which additional condition is in force

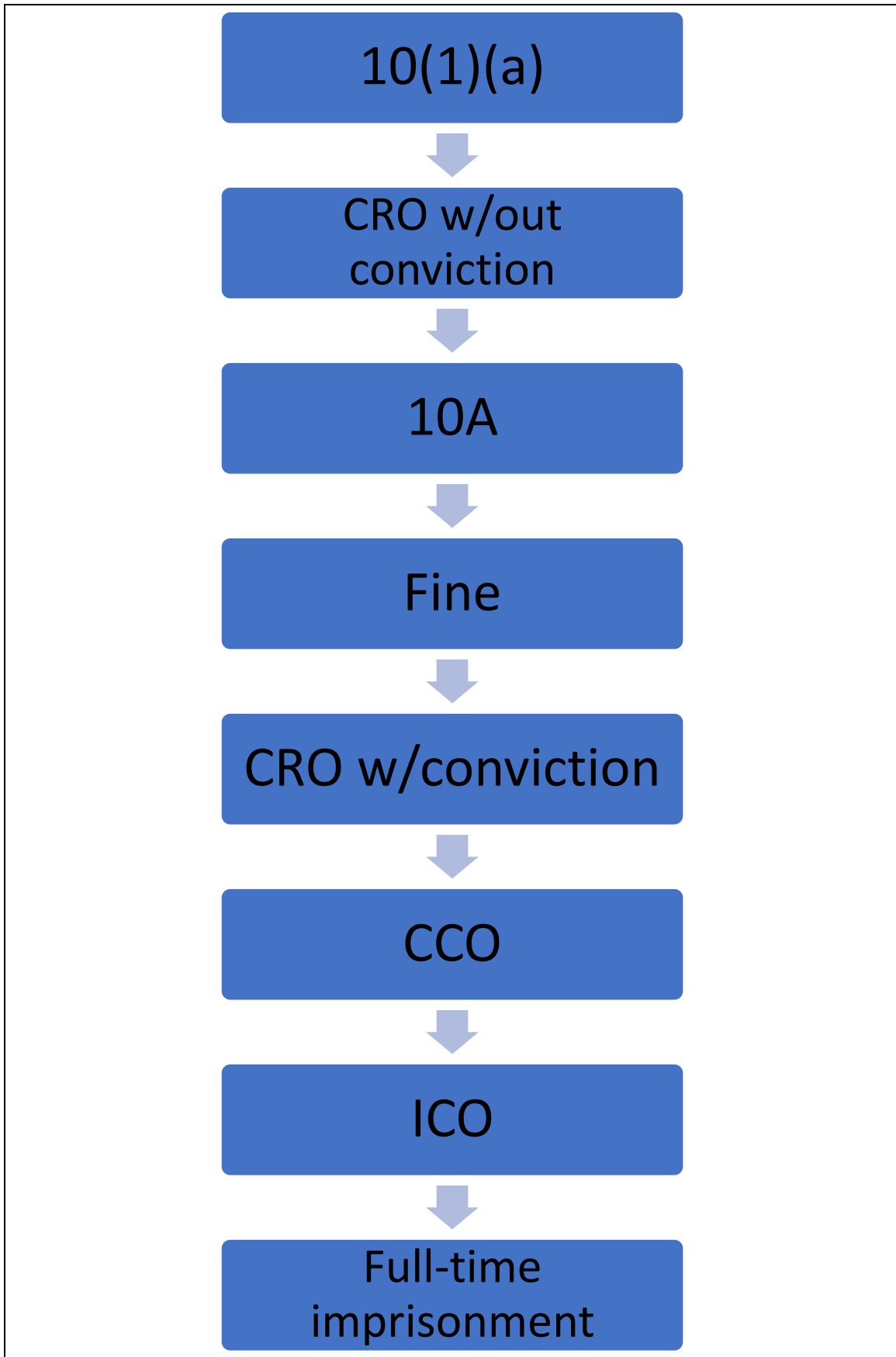
Breaches

- CASA ss 107C and 107D for CCO; ss 108C and 108D for CRO
- CASR cl 329
- Substantially same procedure as former procedure for call-up of section 9 and 10(1)(b) good behaviour bonds
- Written breach report filed by community corrections officer
- Court may call upon offender to appear in relation to alleged breach
- If court is satisfied of breach, it may:
 - ⇒ Take no action,
 - ⇒ Vary or revoke any conditions (other than standard conditions), or impose further conditions, or
 - ⇒ Revoke order

Breaches Continued

- If court revokes order, it may re-sentence offender
- Upon resentencing, court can increase severity of order by adding or varying conditions rather than by escalating to heavier form of sentence
- Court can also issue same order multiple times with different conditions depending on offence and offender's personal circumstances

New Sentencing Hierarchy



Changes to ICOs

CHANGES TO INTENSIVE CORRECTION ORDERS

Key Changes to ICOs

- “Community safety” is now the paramount consideration for court
- ICO is now available for aggregate sentence of up to 3 years (still only available for individual sentence of up to 2 years)
- Supervision is now a mandatory ICO condition
- Community service work is no longer a mandatory condition (can be imposed as discretionary condition for up to 750 hours)
- Home detention is able to be imposed as a discretionary condition
- Offence-based exclusions have been expanded
- Domestic violence offences are subject to specific sentencing considerations

Community Safety

- CSPA section 66
- Community safety must be paramount consideration for court in deciding whether to impose ICO
- Requires court to assess whether an ICO or full-time imprisonment “is more likely to address the offender’s risk of reoffending”

Conditions of new ICOs

‘Standard’ conditions (mandatory)

+

‘Additional’ conditions (discretionary)

+

‘Further’ conditions (discretionary)

Second Reading Speech:

“Community safety is not just about incarceration. Imprisonment under two years is commonly not effective at bringing about medium to long-term behaviour change that reduces reoffending. Evidence shows that community supervision and programs are far more effective at this.”

Standard Conditions

- Found in CSPA section 73
- Mandatory
- Remain in force for duration of order
- Slightly different to standard conditions for CROs and CCOs
- Two standard conditions:
 1. The offender must not commit any offence
 2. The offender must submit to supervision by a community corrections officer

Additional Conditions

- CSPA section 73A
- Discretionary
- Court can impose any conditions on list which are appropriate in circumstances
- Must impose at least 1 additional condition unless exceptional circumstances exist
- Court can limit period during which additional condition is in force

List of Additional Conditions

Court can impose any of the following additional conditions:

- Home detention
- Electronic monitoring
- Curfew
- Community service work for up to 750 hours
- Rehabilitation or treatment
- Abstention (drugs and/or alcohol)
- Non-association (with a particular person/s)
- Place restriction

Further Conditions

- CSPA section 73B
- Discretionary
- Court can impose any conditions at all which it considers appropriate in circumstances (ie. further conditions are at large)
- But further conditions must not be inconsistent with standard or additional conditions
- Court can limit period during which further condition is in force

Excluded Offences

CSPA section 67(1) – expands range of offences for which ICO cannot be imposed:

- Murder or manslaughter
- Prescribed sexual offence (defined in ss(2))
- Terrorism offence
- Offence involving contravention of serious crime prevention order
- Offence involving contravention of public safety order
- Offence involving discharge of firearm
- Offence which includes commission of, or intention to commit, one of above offences
- Offence of attempting, or of conspiracy to or incitement, to commit one of above offences

ICO – Geographical Exclusion

- CSPA section 69(3)
- Court cannot impose ICO in respect of an offender “who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the Regulations to be an approved jurisdiction”
- *Crimes (Sentencing Procedure) Regulation* does not presently declare any other State or Territory to be an approved jurisdiction

Restrictions for Domestic Violence Offences

- CSPA section 4B
- Court cannot impose an ICO for a domestic violence offence unless satisfied that the victim and any person with whom the offender is likely to reside “will be adequately protected” (ss (1))
- Court cannot impose home detention condition if court believes that offender will reside with victim (ss (2))

Changes to Reports

CHANGES TO SENTENCING ASSESSMENT REPORTS

Streamlining of Reports

- New CSPA Division 4B – Assessment Reports to be inserted
- No longer have separate reports for each different type of sentencing orders
- Community Corrections now provide information about offender at time of sentencing via single assessment report

Purpose:

- “to assist a sentencing court to determine the appropriate sentence options and conditions to impose on the offender”

Content of Assessment Report

CSPR 2017 cl 12A(1) – contains non-exhaustive list of matters to be addressed in report, including:

- The offender's risk of reoffending
- Any factors relating to the offender's offending behaviour
- Any factors that may impact on the offender's ability to address his/her offending behaviour
- How the above matters would be addressed by supervision and the availability of resources to do so
- Any conditions that would facilitate the effective supervision of the offender in the community
- The offender's suitability for community service work
- A summary of the offender's response to any previous period of supervision
- Any additional matters that the court wishes to have specifically addressed (eg. suitability for home detention)

Requirement to Obtain Assessment Report

CSPA ss 17C and 17D – Court generally not required to obtain report before sentencing offender. However, exceptions in s 17D:

- Cannot impose ICO without report unless court is satisfied there is sufficient existing information to justify making of ICO without report (see ss (1) and (1A))
- Cannot impose home detention condition on ICO without report
- Cannot request report addressing suitability for home detention condition unless sentence of imprisonment has been imposed for specified term
- Cannot impose community service work condition without report

Assessment Report for Home Detention

Condition

CSPR cl 12B(1) – Assessment report in relation to home detention condition must address following matters:

- Offender's suitability for home detention
- Any risks associated with imposing home detention, including any risks to offender or any other persons, and any strategies that could manage risks
- Any other relevant matters

Supervision

SUPERVISION

Obligations under Supervision Condition

- CASR clauses 187 and 188
- Sets out offender's obligations if subject to supervision condition
- Obligations differ slightly between CRO/CCO and ICO supervision

Obligations under CRO and CCO Supervision

CASR cl 188(1) – obligations are identical to ICO supervision, except:

- Offender must comply with additional reasonable direction, being direction as to “not undertaking specified employment, education, training, volunteer, leisure or other activities” (ss (1)(c)(iv))
- No provision requiring offender to seek permission to leave NSW (which is a requirement for ICO supervision)

ICO Supervision

CASR cl 187 – key obligations:

- To report to an office of Community Corrections as soon as practicable after ICO is made (but not later than 7 days after)
- To report as directed
- To permit an officer to visit the offender at their place of residence at any time and to enter the premises for that purpose
- Not to leave NSW/Australia without approval
- To comply with all reasonable directions of an officer relating to any of the following:
 - ⇒ The place in which the offender is to reside
 - ⇒ Participating in programs, treatment, interventions or other related activities
 - ⇒ Participating in employment, education, training or other related activities
 - ⇒ Not associating with a specified person
 - ⇒ Not frequenting or visiting a specified place or area
 - ⇒ Ceasing drug or alcohol use
 - ⇒ Drug and alcohol testing
 - ⇒ Requirements for the purposes of monitoring compliance with the order

Obligations under Home Detention Condition

CASR cl 189 – obligations under home detention condition:

- To remain at approved residence at all times other than:
 - ⇒ When engaged in approved activities, or
 - ⇒ When faced with immediate danger
- To submit schedule of proposed activities for approval
- To comply with all reasonable directions of an officer about giving consent to third parties providing information to that or another officer for the purposes of checking compliance with the approved activities
- To submit to electronic monitoring
- To comply with all reasonable directions of an officer in relation to electronic monitoring
- Not to remove or tamper with, damage or disable electronic monitoring equipment
- Not to possess or have in the offender's control any firearm or prohibited weapon without approval.

Obligations under Community Service Work Condition

CASR cl 189C(1) – key obligations:

- To report to an office of Community Corrections as soon as practicable after condition is imposed (but not later than 7 days after)
- To participate in any activities connected with administration of community service work condition
- To permit an officer to visit offender at offender's residence at any time and to enter the premises for that purpose
- To give consent to third parties providing information to officer about offender's compliance with condition
- To perform number of hours of community service work specified in condition

Community Service Work Condition

Continued

- To perform community service work in accordance with reasonable directions of an officer
- Not to report for, or perform, community service work while under influence of alcohol or drugs
- To submit to testing for alcohol or drugs
- To give officer notice of the reasons for any failure to report to work site or perform work within 7 days after failure
- If illness or injury is reason for failure, to give officer medical certificate within 7 days
- To provide (if so directed by an officer) a medical certificate
- To submit to medical examination by a medical practitioner nominated by officer

Suspension of Certain Conditions by Community Correction Officer

CASA ss 82A (ICOs), 107E (CCOs) and 108E (CRO)

Community correction officer can make order suspending application of:

- Supervision condition (for period(s) or indefinitely)
- Curfew, non-association or place restriction condition (for period(s) but not indefinitely)

Suspension can be unconditional or subject to conditions.

Community correction officer cannot suspend any other types of condition – can only be done upon application to sentencing court (for CRO/CCO) or Parole Authority (for ICO)

Suspension of Supervision Condition

CSPR cl 189I(1) – Community correction officer must take following matters into account in deciding whether to suspend supervision:

- Risk of offender reoffending
- Seriousness of offender's criminal history
- Likely benefits of supervision condition continuing to apply and effect of any other measures that are being, or could be, taken to address risk of reoffending
- Resources available to supervise offender and other offenders who may be at higher risk of reoffending

Order suspending supervision can be revoked (ie. supervision can be reinstated)

Variation Applications

APPLICATIONS TO VARY SENTENCE ORDERS

CRO/CCO Variation Application

CSPA ss 89(1) and 90(1) for CCOs; ss 99(1) and 99A(1) for CROs

Sentencing court may “at the time of sentence, or subsequently, on the application of a community corrections officer or juvenile justice officer or the offender”:

- Impose additional or further conditions
- Vary or revoke existing additional or further conditions
- No requirement for breach to have occurred for variation application to be made
- Application is made to sentencing court

Power of Court in Dealing with CRO/CCO

Variation Application

- Court may deal with variation application even though constituted differently from sentencing court
- Court may refuse to consider variation application by offender if satisfied that application is “without merit”
- No such restriction on variation application by community corrections or juvenile justice officer
- No legislative guidance on what constitutes “without merit”

Limitations on Power to Vary Conditions of CRO/CCO

Court is subject to same restrictions as at first instance.

This means some types of additional and further conditions are excluded:

- **For CRO:** Home detention, electronic monitoring, curfew and community service work
- **For CCO:** Home detention, electronic monitoring and curfew of more than 12 hours in any 24 hour period
- Court can limit period during which additional or further condition is in force

ICO Variation Application

- CASA ss 81 and 81A
- No requirement for breach to have occurred for variation application to be made
- Can be made by offender or community corrections officer
- Application is made to Parole Authority, not sentencing court (s 81(b))

Sentence Conversions

SAVINGS AND TRANSITIONAL PROVISIONS

Amending Legislation

- Schedule 2 of CSP Amendment Act
- Inserts new CSPA Part 29 – Provisions consequent on enactment of CSP Amendment Act
- Outlines the way in which the existing legislation interacts with the new legislation, and the transition from one to the other
- Determines how existing and continuing sentences are to be treated after the law is amended

Sentence Conversions

- Some existing sentence orders are “taken to be” some other sentence order on commencement day
- X sentence is converted to Y sentence
- Conversion is automatic – no court order required

Sentence Conversions

Old sentence	New sentence
Home detention order	New ICO with home detention condition
Intensive correction order (ICO)	New ICO with same and standard conditions
Section 12 suspended sentence	Remains in force unless breached and revoked, then either: <ul style="list-style-type: none">● Re-sentence to full time imprisonment, or● Re-sentence to new ICO
Community service order	Community correction order (CCO) with community service condition
Section 9 good behaviour bond	Community correction order (CCO) with same and standard conditions
Section 10(1)(b) good behaviour bond	Conditional release order (CRO) without conviction with same and standard conditions

Conversion of Home Detention Orders

- CSPA section 71
- Existing home detention order will be converted to ICO under new legislation
- Converted ICO will be subject only to those conditions outlined in ss(4):
 1. Standard conditions of an ICO,
 2. Home detention condition,
 3. Any conditions imposed under CASA s 103(1)(b) or (c) and in force as at commencement day, and
 4. Any other conditions prescribed by regulations

Conversion of Existing Intensive Correction Orders

- CSPA section 72
- Existing ICO will be converted to new ICO
- Converted ICO will be subject only to those conditions outlined in ss(4):
 1. Standard conditions of an ICO,
 2. Any conditions imposed previously under CASA section 81(3) and in force as at commencement day, and
 3. Any other conditions prescribed by regulations

Suspended Sentence (Section 12 Bond)

- CSPA section 76
- Suspended sentence continues in force until completed or revoked
- No conversion of existing suspended sentence
- Existing provisions apply in event of alleged breach of section 12 bond and in respect of action that court may take following breach (see ss (3)):
 - ⇒ Section 98: Proceedings for breach of good behaviour bond, and
 - ⇒ Section 99: Consequences of revocation of good behaviour bond
- If court revokes section 12 bond, its only options are to (ss (4)(b)):
 - ⇒ Re-sentence offender to full-time imprisonment, or
 - ⇒ Make an ICO

Conversion of Existing Community Service Order

- CSPA section 73
- Existing community service order will be converted to a community correction order ('CCO')
- Converted CCO will be subject only to those conditions outlined in ss (3):
 1. Condition under section 88(2)(b) that offender must appear before court if called on to do so at any time during term of order,
 2. Community service work condition, and
 3. Any other conditions prescribed by regulations

Conversion of Existing Section 9 Good Behaviour Bond

- CSPA section 74
- Existing section 9 good behaviour bond will be converted to a community correction order ('CCO')
- Converted CCO will be subject only to those conditions outlined in ss (3):
 1. Standard conditions of a CCO,
 2. Any conditions imposed previously under section 95(c) and in force as at commencement day, and
 3. Any other conditions prescribed by regulations

Conversion of Existing Section 10(1)(b) Good Behaviour Bond

- CSPA section 75
- Existing section 10(1)(b) good behaviour bond will be converted to a conditional release order ('CRO') without conviction
- New CRO is subject only to those conditions outlined in ss (3):
 1. Standard conditions of a CRO,
 2. Any conditions imposed previously under section 95(c) and in force as at commencement day, and
 3. Any other conditions prescribed by regulations

Appeals against Existing Sentence Orders and Bonds

- CSPA section 86
- If court re-sentences offender following an appeal, it must do so in accordance with amended Act:
 - ⇒ Home detention order and suspended sentence are not available as custodial alternatives to full-time imprisonment, and
 - ⇒ Community service work condition is no longer a mandatory condition of an ICO
- If court confirms original order or bond on appeal, savings and transitional provisions apply – ie. some sentences be converted

Domestic Violence Orders

PROVISIONS FOR DOMESTIC VIOLENCE OFFENDERS

Presumption of Full-Time Imprisonment or Supervision

- CSPA section 4A
- If court finds person guilty of a domestic violence offence (as defined in *Crimes (Domestic and Personal Violence) Act 2007*), it must impose either (ss (1)):
 - ⇒ Full-time imprisonment, or
 - ⇒ Supervised order (ie. ICO, CCO or CRO with supervision condition)
- However, court not required to do so “if satisfied . . . that a different sentencing option is more appropriate in the circumstances, and gives reasons for reaching that view” (ss (2))

Effect of Presumption

- Section 4A contains wide discretion for sentencing court to impose most appropriate sentence in the circumstances
- Not all domestic violence offenders will be sent to gaol or be supervised – court can still impose fines or unsupervised sentences where appropriate
- More DV offenders will be referred to Community Corrections for risk assessment
- More medium and high risk DV offenders will be supervised and required to participate in programs aimed at reducing risk of reoffending

Limits on ICOs for Domestic Violence Offences

- CSPA section 4B
- Court cannot make ICO for DV offence unless “satisfied that the victim of the DV offence, and any person with whom the offender is likely to reside, will be adequately protected (whether by conditions of the ICO or for some other reason)” (ss (1))
- Includes aggregate sentence for 2 or more offences one of which is a DV offence
- Court cannot impose home detention condition if it “reasonably believes that the offender will reside with the victim of the DV offence” (ss (2))
- Court must consider safety of victim before making CCO or CRO for DV offence (ss (3))