

Community based sentencing orders, imprisonment and parole

Cross-Jurisdictional Analysis

April 2019

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Summary and Key

This cross-jurisdictional analysis is a companion document to the Queensland Sentencing Advisory Council *Community based sentencing orders, imprisonment and parole: options paper*. The tables presented consider Community Correction Orders (CCO), Intensive Correction Orders (ICO), Suspended Sentences (SS), Home Detention (HD) and Court Ordered Parole for adult offenders as these orders (or their equivalents) exist in Australia, England and Wales, Canada and New Zealand.

The tables do not include an analysis of the law for juveniles. In almost all cases, this will be different. The tables do not focus on fines or bonds unless they interact with intermediate orders. They do not include specialist forms of sentencing orders that exist for drug courts, guideline judgments, compensation, reparation, restitution, disqualifications or community service as an alternative to payment of fines. They do not include information about special provisions that apply under mandatory sentencing regimes such as for serious repeat sexual offenders, serious organised crime offending, serious weapon offences, serious violent offences and indefinite detention. They also exclude treatment orders for offenders with mental health issues (ie forensic order equivalents) if they form a condition of an ICO or equivalent order.

Legislation

Australian Capital Territory (ACT)

CSA – *Crimes (Sentencing) Act 2005* (ACT)

CSAA - *Crimes (Sentence Administration) Act 2005* (ACT)

Canada

CC – *Criminal Code R.S.C., 1985, c. C-46*

CCRA – *Corrections and Conditional Release Act S.C 1992, c. 20*

CCRR – *Corrections and Conditional Release Regulations SPR/92-620*

Commonwealth of Australia (Cth)

CA – *Crimes Act 1914* (Cth)

New South Wales (NSW)

CASA – *Crimes (Administration of Sentences) Act 1999* (NSW)

CSPA – *Crimes (Sentencing Procedure) Act 1999* (NSW)

New Zealand (NZ)

PA – *Parole Act 2002* (NZ)

SA – *Sentencing Act 2002* (NZ)

Northern Territory (NT)

SA – *Sentencing Act 1995* (NT)

Queensland (Qld)

CSA – *Corrective Services Act 2006* (Qld)

PSA – *Penalties and Sentences Act 1992* (Qld)

South Australia (SA)

CSA – *Correctional Services Act 1982* (SA)

SA – *Sentencing Act 2017* (SA)

Tasmania (Tas)

SA – *Sentencing Act 1997* (Tas)

CA – *Corrections Act 1997* (Tas)

United Kingdom (UK)

CJA – *Criminal Justice Act 2003* (UK)

CJCA – *Criminal Justice and Courts Act 2015* (UK)

LASPOA – *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (UK)

OMA – *Offender Management Act 2007* (UK)

ORA – *Offender Rehabilitation Act 2014* (UK)

Victoria (Vic)

SA – *Sentencing Act 1991* (Vic)

Western Australia (WA)

SAA – *Sentence Administration Act 2003* (WA)

Terms

A-G – Attorney-General

CCO – Community Correction Order

CE – Chief Executive of Department of Corrections

CRO – Conditional Release Order

CS – Corrective Services

CSC – Correctional Service of Canada

CSI – Conditional Suspended Imprisonment

D-G – Director-General of Corrective Services

DPP – Director of Public Prosecutions

DV – Domestic Violence

GBO – Good behaviour order

HD – Home Detention

HDC – Home Detention Curfew

HDO – Home Detention Order

JP – Justice of the Peace

N/A – Not applicable

NPP – Non-parole Period

PA – Parole Authority

PBQ – Parole Board Queensland

PSR – pre-sentence report

PSS – Post-sentence supervision

RRO – Recognizance release order

SAB – Sentence Advisory Board

SNPP – Standard Non-parole Period

SS – Suspended Sentence

Sol Gen – Solicitor-General

Officer – Departmental or Corrections Officer

Community Correction Orders (CCO)

Jurisdictions with: Victoria (Vic), Tasmania (Tas), New South Wales (NSW) and the Commonwealth (Cth) and the United Kingdom (UK).¹

Jurisdictions without: Queensland (Qld), Northern Territory (NT), South Australia (SA), Australian Capital Territory (ACT),² Western Australia (WA) and New Zealand (NZ).³

Issue	VIC	TAS	NSW	UK
Legislation	<i>Sentencing Act 1991</i> (Vic) (SA) Parts 3A (ss 36-48Q), 3BA (s 80) and 3C (ss 83AD-83AZ)	<i>Sentencing Act 1997</i> (Tas) (SA) Part 5B (ss 42AM-42AZ)	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) (CSPA) Part 7 (ss 84-91) (The CSPA is referred to below unless otherwise stated) <i>Crimes (Administration of Sentences) Act 1999</i> (NSW) (CASA) Part 4B (ss 107A-E)	<i>Criminal Justice Act 2003</i> (UK) Part 12, Chapter 2, ss 177-180; Chapter 4, ss 196-223 and Chapters 2 - 3
Year CCOs commenced	A number of sentencing orders replaced in early 2012, including intensive correction, home detention and community-based orders, and coincided with the progressive phasing out of suspended sentences	Amended by <i>Sentencing Amendment (Phasing out of Suspended Sentences) Act 2017</i> (Tas) (assent 20 December 2017, commenced 14 December 2018 Introduced home detention (HDO) and community correction orders. From 14 December 2018, community service and probation orders could no longer be made)	Introduced by amendments in force 24 September 2018 - <i>Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017</i> (NSW), passed 24 October 2017, amended the CSPA to strengthen Intensive Correction Orders (ICO), abolish suspended sentences and standalone community service orders, allow home detention as an ICO condition (and abolish it otherwise)	4 April 2005
Name of order	Community correction order (CCO)	Community correction order (CCO)	Community correction order (CCO)	Community order (CO)

¹ The UK has three criminal justice jurisdictions: England and Wales, Scotland and Northern Ireland. The *Criminal Justice Act 2003* (UK) is in respect of England and Wales. For Scotland and Northern Ireland see *Criminal Justice (Scotland) Act 2003* and *Criminal Justice Act (Northern Ireland) 2013*.

² Although, the ACT does have a longer form of Intensive Correction Order.

³ Two other jurisdictions have insufficiently analogous orders which have not been included in the Council's analysis of either ICOs or CCOs. New Zealand has intensive supervision (*Sentencing Act 2002* (NZ) Part 2 ss 54B - 54L; 6 months-2 years, not imprisonment) but also supervision (ss 45-54A), community work (ss 55-69A) and community detention (ss 69B-M). Western Australia has intensive supervision (*Sentencing Act 1995* Part 10 ss 68-75; 6 months - 2 years, not imprisonment) but also a community based order (ss 61-67).

Issue	VIC	TAS	NSW	UK
Criteria	<p>Offender consent required (ss 37(c), 48M(1)(c))</p> <p>List of offences which cannot attract a CCO (Category 1 – s 3). They include murder, rape and some child sex offences. Other offences remain eligible, but only if there are exceptional circumstances (Category 2 – ss 3, 5(2H)). They include manslaughter and commercial drug trafficking and cultivation</p> <p>Pre-sentence report required (see below)</p> <p>Offence must be punishable by more than 5 penalty units (s 37)</p> <p>CCO must commence within 3 months (unless imposed with imprisonment) (s 38(2))</p> <p>A court must not impose a custodial sentence if the purpose or purposes of the sentence can be achieved by a CCO combined with one or more of the following conditions (s 5(4C)): non-association; residence restrictions or exclusions; place or area exclusions; curfews; or alcohol exclusions</p>	<p>Offender consent not required; although one ground for cancelling or varying a CCO is that ‘the offender is no longer willing or able to comply with the order’ (s 42AU(6)(b))⁴</p> <p>Offender found guilty of an offence (s 42AN(1))</p>	<p>Offender consent not required; but supervision, if ordered, requires the offender’s submission to it (s 89(2)(g))</p>	<p>Consent to order not required but willingness to comply is required for some conditions (‘requirements’). Failing to express willingness to comply with such conditions when proposed by court disengages statutory bar on custodial penalty as that of last resort (s 152)</p> <p>Restrictions (s 148):</p> <p>Court must hold opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough</p> <p>Particular requirement/s must be the most suitable for the offender</p> <p>Restrictions on liberty must be commensurate with seriousness of offence/combination of offence and one or more associated offences</p> <p>Only available for offences punishable by imprisonment; or, for ‘persistent offenders’ previously fined on 3 or more previous occasions and in the interests of justice to make order instead of fine (ss 150A, 151)</p>

⁴ This is consistent with the previous community service and probation provisions (probation orders could have a condition that an offender ‘must submit’ to testing, assessment or treatment – s 37(2) – ‘There is no requirement that an offender consent to the making of the order but consent is implicit because the order may be cancelled if the offender is no longer willing to comply with the conditions of the order. However, the general nature of the condition in the sentencing order may mean that an offender can refuse to take part in psychological counselling but offer to take part in other programs and so may technically not be in breach of the order’: Sentencing Advisory Council (Tasmania), *Mandatory Treatment for Sex Offenders: Research Paper No. 1* (2016) 27.

Issue	VIC	TAS	NSW	UK
Other guidance	<p>Purposes of CCOs expressly legislated (s 36): provide a community based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender; without limiting discretion, a CCO may be appropriate where a wholly suspended sentence would have been imposed</p> <p>In the 2014 Victorian Court of Appeal guideline judgment of <i>Boulton v The Queen</i>,⁵ a key point was that CCOs may be appropriate for relatively serious offences that would previously have attracted a medium term of imprisonment (subsequent legislative amendments have arguably mitigated this)</p>	<p>Without limiting the court’s discretion, it may be appropriate to impose a CCO where a court once would otherwise have imposed a wholly or partially suspended sentence (s 42AN(2))</p> <p>This recognises pending Schedule 3 (and see pending s 23A and new s 42AN(2)(b)) which lists offences which cannot attract a wholly or partially suspended sentence, unless there are exceptional circumstances. It will include various sexual offences, murder, manslaughter, unlawful act intended to cause GBH, wounding [or causing GBH], abduction, armed robbery, arson and various drugs charges</p>	<p>Can be imposed ‘instead of imposing a sentence of imprisonment on an offender’ (s 8(1))</p>	<p>Court can order pre-sentence drug testing – failure to comply = fine (s 161)</p> <p>Two duties of offender enforceable as if a requirement imposed by the order: to ‘keep in touch’ (undefined) with responsible officer in accordance with instructions given (s 220); and to obtain permission before changing residence (doesn’t apply if residence requirement in place) (s 220A)</p> <p>The Act cedes powers to the Secretary of State (executive government), who may by order (s 178):⁶</p> <ul style="list-style-type: none"> • enable/require court making community order to provide for the order to be reviewed periodically by that or another court • enable court to amend order to include/remove a provision for court review • make provision as to timing and conduct of reviews and as to court review powers • make provision corresponding to those regarding suspended sentences (s 191 – power to provide for review; s 192 – periodic reviews) <p>An order under s 178 may repeal or amend any provision under Act Part 12 - sentencing</p> <p>Further: Secretary of State can by order amend: setting maximum hours for unpaid work and curfew requirements (s 223(1)); substituting applicable durations of curfew, exclusion and alcohol abstinence/monitoring requirements (s 223(2)); and the maximum</p>

⁵ [2014] VSCA 342; (2014) 248 A Crim R 153.

⁶ “Secretary of State” means one of Her Majesty’s Principal Secretaries of State: Schedule 1, *Interpretation Act 1978* (UK). See also <https://www.parliament.uk/site-information/glossary/secretary-of-state/> and <https://www.parliament.uk/mps-lords-and-offices/government-and-opposition1/her-majestys-government/>

Issue	VIC	TAS	NSW	UK
				fine applicable on a breach if it appears there has been a change in value of money (Schedule 8 ss 11A(1), (2))
Minimum duration	Not stated	Not stated	Not stated	Not stated
Maximum duration	<p>Section 38: Higher courts (for one or more offences sentenced on/after 20 March 2017): 5 years</p> <p>Magistrates Court – 1 offence: 2 years; 2 offences: 4 years; 3+ offences: 5 years</p> <p>County or Supreme Court: 1 (or more than 1) offence: 5 years (see also s 41A)</p> <p>For sentences from 20 March 2017, the maximum term of imprisonment that can generally be combined with a CCO is one year (after deducting any pre-sentence custody) (s 44(1))⁷</p> <p>When the Magistrates Court imposes imprisonment and a CCO in respect of 2+ offences, maximum total combined order is 5 years (s 44(1B))</p>	The operational period of a CCO, or cumulative or varied CCOs, cannot exceed 3 years (s 42AQ)	3 years (s 85(2))	<p>3 years (s 177(5))</p> <p>However, this is subject to s 200(3): unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it (see also s 177(5B))</p>
PSR mandatory?	<p>Yes</p> <p>Purpose is to establish suitability, that any necessary facilities exist and provide advice on the most appropriate condition/s (ss 8A(2), 37(b))</p>	<p>No (s 82)</p> <p>Courts can receive oral statements from probation officers. Magistrates Court committing offender for sentence to Supreme Court can order a PSR for Supreme Court (for guidance of PSR contents see s 83)</p>	<p>Depends on the conditions to be imposed</p> <p>Only where a community service condition applies as ‘assessment reports’ are preconditions for ICOs, home detention conditions as part of ICOs and community service work</p>	<p>Yes</p> <p>PSR is required to form requisite opinions regarding the offence seriousness and offender suitability (s 156(3)) but does not apply if court thinks it is unnecessary to obtain (s 156(4))</p>

⁷ This restriction does not apply to serious arson offenders, in which case the court may impose a CCO in addition to any sentence of imprisonment (including a term exceeding one year). Section 44(1A).

Issue	VIC	TAS	NSW	UK
	<p>Contents: see s 8B – 19 matters (e.g. circumstances of offences on history, compliance with sentences in force, other services which may benefit re risk of recidivism, assessment of relevant program, offender capacity re community service)</p> <p>Not required if considering CCO with sole condition of unpaid work up to 300 hours (s 8(3))</p>		<p>conditions on ICOs and CCOs (ss 17D(4); 69, 73A(3), 89(4))</p>	<p>A failure to obtain a PSR does not invalidate a sentence (s 156(6))</p> <p>PSR can be given orally in court (s 158)</p>
<p>Mandatory conditions</p>	<p>‘Core terms’ (s 45):</p> <ul style="list-style-type: none"> • not reoffend • comply with regulations • report/receive visits with Department • not leave state without permission • reporting to community corrections centre within 2 days of order • comply with Departmental directions; • notify of change of address or employment <p>For compliance with written Departmental directions regarding day-to-day operation see s 46. Contravention of a written direction is an offence (s 83AF)</p>	<p>‘Core conditions’ (s 42A0):</p> <ul style="list-style-type: none"> • not reoffend • report to probation officer • comply with directions • not leave state without permission <p>notify of change of address or employment Special conditions (s 42AP(2)): court must impose at least one of two (‘mandatory’) special conditions:</p> <ol style="list-style-type: none"> 1. Submit to supervision of a probation officer; 2. Complete community service (capped at 240 hours – s 42AS) <p>While special conditions can be tailored in duration as regards the operational period of the CCO, at least one of the two mandatory special condition must apply at any time during the operational period (s 42AP(3))</p>	<p>Three condition categories (s 87) – standard, conditional, further (ss 88-90)</p> <p>Standard are mandatory: not commit any offence and appear before the court if called on to do so at any time during the term of the order (s 88)</p>	<p>Imposing any one or more of these requirements (s 177):</p> <ul style="list-style-type: none"> • unpaid work (s 199) • rehabilitation activity (s 200A) • programme (s 202) • prohibited activity (s 203) • curfew (s 204) • exclusion (s 205) • residence (s 206) • foreign travel prohibition (s 206A) • mental health treatment (s 207) • drug rehabilitation (s 209) • alcohol treatment (s 212) • alcohol abstinence and monitoring (s 212A) • where offender under 25, attendance centre (s 214) • electronic monitoring (s 215) <p>Court must include at least one requirement imposed for purpose of punishment – or – impose a fine for the same offence (or do both) (s 177(2A)). Applies unless exceptional circumstances and it is unjust in all the circumstances to impose a fine (s 177(2B))</p> <p>An order imposing 2 or more different requirements may also specify a date by</p>

Issue	VIC	TAS	NSW	UK
				<p>which each requirement must have been complied with. The last of those dates must be the same as the end date (s 177(5A))</p> <p>Before making an order imposing 2 or more different requirements, court must consider whether, in the circumstances of the case, the requirements are compatible with each other (s 177(6))</p> <p>Court must impose electronic monitoring requirement if it imposes a curfew or exclusion requirement – unless legislation otherwise prevents or inappropriate to do so (s 177(3))</p>
<p>Guidance for additional or discretionary conditions</p>	<p>Guiding principles (s 48A): Court must attach conditions in accordance with the proportionality principle, sentencing purposes (ss 5⁸ and 36)</p> <p>Note PSR purposes, above and sections regarding CCO conditions which require assessment of PSR (ss 37(b), 48D(2)(b), 48E(3), 48LA(3),(4))</p> <p>Purpose of conditions:</p> <ul style="list-style-type: none"> unpaid work: adequate punishment in the community (s 48C(2)) supervision: addressing ensuring compliance with order (s 48E(2)) electronic monitoring: monitor compliance with curfew or place/area 	<p>A probation officer can arrange for community service to be performed for a victim's benefit (s 42AT(1))</p> <p>The legislation deems attendance by an offender subject to a community service condition, at educational or other programs as directed by a probation officer, to be community service (s 42AT(3))</p>	<p>Not stated</p>	<p>The Sentencing Council's Guideline states:</p> <p>"The seriousness of the offence should be the <u>initial</u> factor in determining which requirements to include in a community order. Offence-specific guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high).</p> <p>The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band (low, medium and high) is appropriate."⁹</p> <p>See also – Additional/discretionary conditions (below).</p>

⁸ Equivalent to *Penalties and Sentences Act 1992* (Qld) s 9.

⁹ Sentencing Council, *Imposition of Community and Custodial Sentences Definitive Guideline* (1 February 2017) 4. A sentencing court must follow a guideline unless the court is satisfied that it would be contrary to the interests of justice to do so: *Coroners and Justice Act 2009* (UK) s 125(1).

Issue	VIC	TAS	NSW	UK
	<p>exclusion conditions (s 3)</p> <p>Treatment and rehabilitation condition requires regard to underlying causes of offending (s 48D(2)(a))</p>			
<p>Additional or discretionary conditions</p>	<p>Each CCO must also attach one additional condition (ss 47-48LB; 80-83), to all or part of the order:</p> <ul style="list-style-type: none"> • unpaid community work (up to 600 hours; 20 hours in 7 days; can be 40 hours on offender request), or 300 hours if sole condition of CCO is community service (s 48C) • treatment and rehabilitation (s 48D) • supervision (supervised, monitored, managed: s 48E) • no contact/ association with particular people (s 48F) • live/not live at a specified address (s 48G) • avoid nominated places/ areas (s 48H) • curfew – not less than 2 hours/ no more than 12 hours per day up to 6 months (s 48I) • not enter, remain in, consume alcohol in licensed premises (s 48J) • bond – regarding compliance with any condition (s 48JA) 	<p>CCO can include any or all of a list of special conditions (s 42AP):</p> <ul style="list-style-type: none"> • appear before a court during order (judicial monitoring) • education/other programs as directed by court or probation officer • submit to supervision of a probation officer (potential mandatory condition 1) • community service (potential mandatory condition 2) • assessment and treatment for drug/alcohol dependency as directed (and submit to drug/alcohol testing) • not consume alcohol (and submit to alcohol testing) • medical/ psychological/ psychiatric assessment or treatment as directed • not be present at place/s specified • no contact condition • curfew • any other condition court thinks appropriate <p>Special conditions may be tailored to run over any part of the order, or the whole order (s 42AP(3))</p>	<p>Supervision is an option for the court, but not a requirement (s 89)</p> <p>Court can limit the period a condition is in force (ss 89(5), 90(3))</p> <p>Additional (s 89): Court may, at time of sentence or subsequently on application of officer or offender; impose, vary or revoke:</p> <ul style="list-style-type: none"> • curfew (not exceeding 12 hours in 24) • CS work condition (not exceeding 500 hrs or hours prescribed in regulations re offence class; whichever is lesser) • Rehab/treatment • Abstention re alcohol/drugs • Non association re particular persons • Place restriction • Supervision condition • But not: home detention or electronic monitoring <p>Further (s 90): Cannot be inconsistent with standard or additional conditions (whether actually imposed or not; and no home detention or electronic monitoring)</p> <p>The court may refuse an offender's post-sentence application if satisfied it is without merit, and may deal with it in</p>	<p>Unpaid work (s 199): If satisfied offender is suitable. If 2 orders made for 2 or more offences, court may order work hours to be concurrent or in addition, but must not exceed maximum (300 hours / minimum 40 hours)</p> <p>Time frame to perform: 12 months (s 200(2)) but can extend order if not completed (s 200(3))</p> <p>Rehabilitation activity (s 200A): Must specify maximum number of days for which offender can be instructed to attend appointments/ participate in activities (including accredited programmes and those for reparative purposes such as restorative justice activities)</p> <p>Programme (s 202): Number of days of participation in programmes accredited by Secretary of State – e.g. anger management, sex offender programs, DFV, drug and alcohol</p> <p>Prohibited activity (s 203): Refrain from activities on a day/s specified or for period specified.</p> <p>Curfew (204): Before making, court must obtain/ consider information about proposed place and persons likely to be affected by the offender's presence. Order may specify different places or different periods for different day. It may not be for less than two hours or more than 16 hours a day for 12 months. Must also include electronic monitoring requirement unless inappropriate</p>

Issue	VIC	TAS	NSW	UK
	<ul style="list-style-type: none"> judicial monitoring to ensure CCO compliance (ss 48K-L) Court can attach any other condition it thinks fit, other than restitution/ compensation/ costs/ damages (s 48) <p>Court can decide attendance a treatment and rehabilitation program can be taken, in whole or part, to be community service if CCO has both community work and treatment and rehabilitation conditions (s 48CA(2))</p> <p>Higher court can attach electronic monitoring requirement to a monitored condition (curfew or exclusion order) (s 48LA)</p> <p>Intensive compliance period (s 39): For part of a CCO of 6 months or more; offender must complete 1 or more conditions. For example, completing a treatment program in first 6 of a 12 month order</p> <p>Justice plan (s 80): may be attached as a condition for intellectually disabled offenders. Department of Health and Human Services prepares, specifies treatment services aimed at reducing reoffending risk</p> <p>New mandatory treatment and monitoring order (s 44A, added 16 October 2018) applies in</p>		<p>the absence of the parties or the public if the parties consent (s 91)</p>	<p>Exclusion (s 205): Up to 2 years. Prohibiting offender from entering a specified place/area for specified period during specified days and times, and must include electronic monitoring requirement unless inappropriate</p> <p>Residence (s 206): Court must consider offender's home surroundings. Cannot specify hostel/other institution except on local probation board/ probation service provider officer's recommendation</p> <p>Foreign travel prohibition (s 206A): Day/s specified may not fall outside 12 month period. Period specified may not exceed 12 months beginning with day of order</p> <p>Mental health treatment (if satisfied of mental health condition (ss 207 and 208)</p> <p>Drug rehabilitation (ss 209, 210, 211): Must be satisfied of dependence on/ propensity to misuse drugs which requires/may be susceptible to treatment and that arrangements have been/can be made for the treatment intended to be specified in the order. Requirement must be recommended as suitable by a local probation board/probation service provider officer and offender expresses willingness to comply. This condition is subject to periodic review</p> <p>Alcohol treatment (s 212): Court must be satisfied offender is dependent, requires and may be susceptible to treatment, arrangements have been/can be made for treatment (including residential), offender must express willingness</p> <p>Alcohol abstinence and monitoring (s 212A): if alcohol consumption is an element of or associated with the offence, or if the offender's consumption was a factor in the offence, and the offender is not dependent</p>

Issue	VIC	TAS	NSW	UK
	<p>particular circumstances for specific offences. It requires a judicial monitoring condition to be combined with either a treatment and rehabilitation condition or a justice plan condition</p>			<p>on alcohol and Secretary of State must notify court that arrangements for monitoring of the kind to be specified are available in the relevant local justice area and must not exceed 120 days, re total abstention or capped at specified level</p> <p>Attendance centre (s 214): if the offender is under 25, must be satisfied an attendance centre is available having regard to the means of access available and any other circumstances. Cannot be required to attend more than once per day or more than 3 hours on any occasion - aggregate hours: minimum 12 hours, maximum 36 hours. Secretary of State must notify that attendance centre is available (s 218(3))</p> <p>Electronic monitoring (s 215): Cannot be included only to secure electronic monitoring of compliance with alcohol abstinence and monitoring requirement. Secretary of State must notify arrangements are available in relevant area; court must be satisfied provision can be made under current available arrangements (s 218(4))</p>
<p>One order for multiple offences?</p>	<p>Single CCO may be imposed for multiple offences founded on the same facts, or forming or part of a series of offences of the same or similar character (s 40)</p> <p>Multiple CCOs can be ordered to be served cumulatively or concurrently. Maximum cumulative CCO duration is 5 years (s 41A)</p>	<p>Where there are multiple offences the court may impose (s 11):</p> <ul style="list-style-type: none"> • one sentence for all offences • separate sentences for each offence, or • one sentence for a group of different offences. <p>Express allowance for more than one HDO for one offender with multiple offences (s 42AC(4)). But does not have an analogous provision regarding CCOs however, s 42AQ(3) refers to</p>	<p>Only one ICO, CCO or CRO (conditional release order) ('relevant order') can be in force for one offence</p> <p>However, 2 or more such orders can be in force at the same time in respect of 2 or more offences</p> <p>An ICO (and its conditions) prevail over a CCO; a CCO (and its conditions) over a Conditional Release Order (CRO), although a standard condition prevails over a non-standard one (s 17F)</p>	<p>Part 12 does not make it explicitly clear. However note s 148 – must not make CO unless 'the offence, or the combination of the offence and one or more offences associated with it...'</p>

Issue	VIC	TAS	NSW	UK
		total consecutive periods of CCOs, in regards to making and varying CCOs		
Combined orders – allowed	<p>In addition to imprisonment (s 44) or a fine (s 43, except as regards a mandatory treatment and monitoring order; s 44A)</p> <p>A CCO and imprisonment can be combined for one, or more than one, offence – subject to duration limitations on the term of imprisonment (s 44)</p> <p>Where a court imposes a CCO in addition to imprisonment, the CCO commences on release (s 44(3))</p> <p>A court must not fix a non-parole period for the period of custody (s 11(2A))</p> <p>‘Imprisonment’ in this context does not include a suspended sentence (s 44(4))</p>	<p>CCOs can be combined with:</p> <ul style="list-style-type: none"> • HDO (ss 8(2)(a), 42AC(4)(c), 42AR(2)(b), 42AR(4)) • imprisonment not exceeding 2 years (maximum combined sentence of 5 years (s 8(1) with no parole eligibility ss 17(2A), 42AR(2)(c), (3)) <p>See also ss 42AU(4)(c), 42AV(4)(ii) – if cancelling on application, court can also cancel any other order made for the same offence/s</p> <p>Commencement can be when:</p> <ul style="list-style-type: none"> • CCO is made • a later specified day • when a home detention order ceases • during or after the operational period of a home detention order, or • once a period of actual custody is served (ss 42AR(2) and 42AR(4)) <p>CCO can be combined with a fine, rehabilitation program, and/or driving disqualification (s 8(3))</p> <p>Special conditions run concurrently with any other community based order, CCO or HDO unless the court otherwise orders (s 42AP(4))</p> <p>CCOs can run concurrently with existing probation and community service orders (see ss 42AP(4) and 104AB(3))</p>	Does not appear to be capable of combination with imprisonment or HDO	Fine – a mandatory consideration: s 177(2A)

Issue	VIC	TAS	NSW	UK
Combined orders – not allowed	Not stated, given that CCOs replaced other community based orders in Victoria	See above	See above	Suspended sentence – whether for the same or a different offence (s 189(5))
Decision making authority for variation, breaches etc	<p>Secretary of Department of Justice has <i>administrative</i> breach powers:</p> <ul style="list-style-type: none"> suspend if offender ill or other exceptional circumstances – period does not count for order duration (s 480) deal administratively with a breach in relation to unpaid community work or a curfew condition, if the breach is not sufficiently serious to file a charge for the offence (ie ss 83AU, 83AV; court can review (s 83AY)) <p>Court variations etc (non-breach) are very wide in terms of applicant, grounds and scope (s 48M)</p> <p>Applications can be made to the court while the order is in force¹⁰ on five grounds (s 48M):</p> <ul style="list-style-type: none"> circumstances altered since order; offender cannot comply 	<p>Court can only deal with variation/cancellation application (s 42AU) which can be brought by offender or authorised person (s 4 – DPP, police officer, probation officer)</p> <p>Court powers are:</p> <ul style="list-style-type: none"> vary – add/remove/alter special condition; alter CCO operational period cancel order and deal with offender afresh cancel order and any other order for same offence/s and deal with offender afresh <p>[The above 3 powers only apply if there is a change in offender's circumstances after order made which means an offender is unable to comply with condition/s or no longer willing/able to comply with order or it is otherwise appropriate]</p> <p>In addition, court powers are:</p> <ul style="list-style-type: none"> cancel order if CCO had community service as a special condition and it is completed and appropriate for order to cease or refuse to vary or cancel 	<p>Additional/further conditions may be imposed by the court at sentence, or imposed, varied or revoked afterwards on the application of the offender or community corrections officer (ss 89-90)</p> <p>A court (or a superior court with the offender's consent) may call on an offender who it suspects may have failed to comply with any CCO condition, to appear before it. If satisfied of the failure, it can take no action, vary or revoke non-standard conditions or impose further conditions, or revoke the order (CASA s 107C). Revocation permits re-sentence (CASA s 107D)</p> <p>Some <i>administrative</i> breach powers:¹¹ A community corrections officer can (subject to the regulations) suspend a supervision condition for a period/s or indefinitely, and can suspend a curfew, non-association or place restriction condition for a period or periods (CASA s 107E)</p>	<p>Schedule 8 (s 179):</p> <p><i>Breach of requirement:</i></p> <p>Responsible officer alleging breach must give warning unless warning already issued in preceding 12 months or officer refers to enforcement officer. Must so refer if warning already given within last 12 months (s 5)</p> <p>Enforcement officer – must consider case and institute court action where appropriate (s 6A)</p> <p>Magistrates Court powers (s 9):</p> <p>If breach proved – must either:</p> <ul style="list-style-type: none"> Amend order to make more onerous including extending requirements within constraints in Part 12 and that section Fine (up to £2,500) Resentence (revoke order if still in force) <p>If original offence not punishable by imprisonment, and offender 'wilfully and persistently' failed to comply – imprison for up to 51 weeks (revoke order if still in force)</p> <p>Crown Court: Same powers as s 9 (s 10)</p> <p>A reasonable refusal of surgical/ electrical/ other treatment regarding requirement to submit to mental health, drug rehab or</p>

¹⁰ Application can be made by the Chief Commissioner of Police, a member of the police force, a regional manager, community corrections officer or DPP lawyer (s 25 *Sentencing Regulations 2011* (VIC) or the informant/ police prosecutor/DPP, offender or Secretary (s 48N of the Act)

¹¹ The *Crimes (Administration of Sentences) Act 1999* (NSW) deals with this. It was also amended by the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*. A new Part 4B (ss 107A-E) was inserted. Regulations guide administration (s 107B).

Issue	VIC	TAS	NSW	UK
	<ul style="list-style-type: none"> • circumstances wrongly stated/ not accurately presented to court or PSR author prior to sentence • offender no longer consents • offender rehabilitation/ reintegration would be advanced by dealing with the order • continuation of the sentence is no longer necessary in community or offender interest <p>Court's powers:</p> <ul style="list-style-type: none"> • confirming the order or part of it • cancelling and sentencing afresh • cancelling with no further order • varying • cancel/suspend/vary/ reduce a condition (or program) • attach new condition (or program) <p>Court powers on breach (s 83AS): As well as sentencing for the breach, court must vary (s 48M), confirm, or cancel CCO (if still in force) and deal with offender afresh or cancel and make no further order</p> <p>Breaching a mandatory treatment and monitoring order means a varied order at least as onerous, or imprisonment.</p>	<p>Breach of condition other than by a new offence punishable by imprisonment:</p> <p>Application made by authorised person during or after order (s 42AV) or breach of condition by new offence (s 42AW) – If court finds order breached through s 42AV or AW, during operational period and order still in force, must:</p> <ul style="list-style-type: none"> • confirm • vary by adding/ removing/ altering special condition • extend operational period • cancel order and any other order for same offence/s and deal with offender afresh <p>If the order is not still in force, the court can cancel any other order re the offence/s and/or deal with the offender afresh (ss 42AV(4)(e), 42AW(4)(3e))</p> <p>A breach by reoffending can be actioned by an oral application at the proceedings for the new offence (s 42AW)</p> <p>If an authorised person brings an application under s 42AV and the offender had breached the order by reoffending but was not the subject of a s 42AW proceeding, the court must deal with the offender under s 42AW as if it were the court dealing with that breaching offence (s 42AV(6))</p>		<p>alcohol treatment is not a breach. Court may not amend without offender willingness to comply (s 11)</p> <p>Crown Court order can include direction that any failure to comply with requirements is to be dealt with by Magistrates Court (s 14(1)(a))</p> <p><i>Revocation</i> (schedule 8):</p> <p>Magistrates Court: Offender or officer can apply where order is in force and having regard to circumstances arising post order, it is in the interests of justice to revoke the order or revoke and resentence. Circumstances can include offender's good progress/ responding satisfactorily to supervision/ treatment (s 13)</p> <p>Crown Court: Same effect as s 13 (s 14)</p> <p><i>Amendment</i> (schedule 8):</p> <p>Certain technical mandatory court amendments such as change of residence (s 16)</p> <p>Offender/ officer can apply to court to cancel any or replace requirement, but cannot amend mental health treatment, drug rehab or alcohol treatment requirement unless offender expresses willingness to comply with amended requirement. If offenders fails to do so a court may revoke and resentence (s 17)</p> <p>For treatment under requirement for mental condition/drug or alcohol dependency or misuse propensity – if doctor or other person responsible thinks treatment should not be continued beyond period specified/ needs different treatment/ not susceptible to treatment/ doesn't require further treatment/ unwilling to continue treating the offender – responsible person must make</p>

Issue	VIC	TAS	NSW	UK
				<p>written report to responsible officer, who must make s 17 application for variation or cancellation of the requirement (s 18)</p> <p><i>Extension</i> (schedule 8):</p> <p>Offender or officer can apply – court can amend by substituting later date – cannot fall outside period of 6 months beginning with date previously specified under Act s 177(5) but can otherwise exceed 3 years (s 19A)</p> <p><i>Court powers following Subsequent conviction</i> (schedule 8, ss 21-23):</p> <p>Court can revoke or revoke and resentence if:</p> <ul style="list-style-type: none"> • Order is still in force; • Court thinks in interests of justice to exercise such powers having regard to circumstances arising since order made; • Offender convicted of ‘an offence’ by that court <p>See also the Sentencing Council’s <i>Breach Offences Definitive Guideline</i>¹²</p>
<p>Is breach a separate offence?</p>	<p>Yes</p> <p>A breach carries a maximum penalty of 3 months’ imprisonment (s 83AD).</p> <p>Fines apply to various contraventions of departmental directions (ss 83E, 83AF)</p>	<p>No</p>	<p>No</p>	<p>No</p> <p>However, in such a situation, the court should consider guidance from the Sentencing Council¹³</p>

¹² Sentencing Council, *Imposition of Community and Custodial Sentences Definitive Guideline* (1 February 2017) 3–5.

¹³ *Ibid*, 5 citing Sentencing Council, *Offences Taken into Consideration and Totality Definitive Guidelines* (2012) 14.

Intensive Correction Orders

Jurisdictions with: Queensland (Qld), Australian Capital Territory (ACT), New South Wales (NSW), Northern Territory (NT), South Australia (SA). Commonwealth (Cth).¹⁴ Western Australia (WA) and Canada have relatively analogous conditional suspended sentence orders.

Jurisdictions without: Tasmania (Tas) (has never had; CCOs pending), Victoria (Vic) (introduced April 1992 but replaced by CCOs in January 2012).

Note: See Community Correction Orders (above) as WA and New Zealand (NZ) have other orders which could be considered as sharing some of the features of ICOs, but are not terms of imprisonment served in the community.

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
Legislation	<i>Penalties and Sentences Act 1992</i> (Qld) (PSA) Part 6 (ss 111-119) and Part 7 (ss 120-142)	<i>Crimes (Sentencing) Act 2005</i> (ACT) (CSA) ss 11, 29, Part 5.4 ss 76-80L (The CSA is referred to below unless stated) <i>Crimes (Sentence Administration) Act 2005</i> (ACT) (CSAA) Chapter 5 (ss 39-81)	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) (C(SP)A) s 7; Part 5 (ss 64-73A) (The C(SP)A is referred to below unless stated) <i>Crimes (Administration of Sentences) Act 1999</i> (NSW) (C(AS)A) Part 3 (ss 80-91)	<i>Sentencing Act 1995</i> (NT) (SA) Part 3, Division 5, Subdivision 2A (ss 48A-48Q)	<i>Sentencing Act 2017</i> (SA) ss 79-91	<i>Sentencing Act 1995</i> (WA) (SA) Part 12 (ss 81-84R) (The SA is referred to below unless stated) <i>Sentence Administration Act 2003</i> (WA) (SAA)	<i>Criminal Code R.S.C., 1985, c. C-46</i> Part XXIII (ss 742–742.7)
Year ICOs commenced	In original 1992 PSA but commenced 1 September 1994	2 March 2016	1 October 2010, substantial amendments 24 September 2018	27 February 2012	30 April 2018	31 May 2006	1996
Name of order	Intensive correction order (ICO)	Intensive correction order (ICO)	Intensive correction order (ICO)	Community custody order (in Division 5 (Custodial order) not a 'community based	Intensive correction order (ICO)	Conditional suspended imprisonment (CSI)	Conditional sentence of imprisonment (CSI)

¹⁴ By virtue of section 20AB of the *Crimes Act 1914* (Cth) read with regulation 6 of the *Crimes Regulations 1990* (Cth). Effectively, a State court, exercising Commonwealth jurisdiction on a federal offender, can impose a State's ICO order on a federal offender as a sentence. Therefore, the Commonwealth legislation itself does not have its own ICO to be included in the table.

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
				order' s 39B in Division 4A)			
Criteria	<p>Sentence of imprisonment imposed (s 112)</p> <p>Offender must consent to order (s 117)</p>	<p>Imprisonment imposed (s 11(1), (7))</p> <p>2-4 years: If appropriate (level of harm caused to victim/community, whether offender poses risk to 1 or more people in community, culpability): s 11(3)</p> <p>Court must be satisfied ICO suitable for offender, appropriate to serve as ICO</p> <p>Offender gives informed consent (s 77(1))</p>	<p>Imprisonment of up to two years or three year aggregate (ss 7, 64-69)</p> <p>Community safety paramount, must assess whether serving sentence in full time detention more likely to address risk (s 66)</p> <p>Cannot impose for range of offences including prescribed sexual offences, terrorism, firearm discharge (s 67)</p> <p>Cannot be imposed for Domestic Violence (DV) offence unless court satisfied victim/person offender likely will reside with will be protected. No home detention condition if DV victim at residence (s 4B)</p> <p>Regard to any assessment report obtained; evidence from officer/other necessary information (s 69)</p>	<p>Convicted of offence other than a sexual/violent offence, common assault with circumstance of aggravation (s 188(2) of <i>Criminal Code</i>) or other prescribed offence</p> <p>Actual imprisonment not exceeding 12 months (s 48A)</p>	<p>Purpose (s 79(1) and see ss 3 and 4 re primary and secondary sentencing purposes generally; being the PSA s 9 equivalents):</p> <p>alternative option if considering 12 m imprisonment or less + genuine risk of re-offending if not provided with intervention program for rehabilitation</p> <p>Can order when imposed 2 years imprisonment or less; should not be suspended; and 'good reason' for serving in the community under intensive correction (s 81(1))</p> <p>May be 'good reason'; even though custody warranted and moderate to high risk of reoffending, if any rehab achieved in prison ltd compared to likely rehab effect of</p>	<p>Not to be imposed unless imprisonment for term/s equal to that suspended would, if it were not possible to suspend, be appropriate (s 81(2))</p> <p>Cannot be imposed if offence was committed when offender subject to an early release order (s 81(3)(a))</p> <p>Must be wholly suspended (s 82(1))</p> <p>Can only be imposed by a prescribed court (s 81), being the Supreme, District, Children's, Magistrates and speciality courts (<i>Sentencing Regulations 1996</i> (WA) s 6B)</p>	<p>Imprisonment of less than two years imposed</p> <p>Purpose: supervising offender's behaviour in the community; subject to conditions - if doing so would not endanger community safety and is consistent with fundamental purpose and principles of sentencing in the Act (s 742.1 cf s 718; the PSA s 9 equivalent)</p> <p>Exclusions: listed disqualifying offences (all prosecuted on indictment). Includes all with a maximum term of 14 years or life; offences with a maximum of 10 years or more of terrorism, criminal organisation, or those resulting in bodily harm or involving drug import/export/trafficking/ produce or weapons use offences; and specific offences including sexual</p>

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
					<p>spending the time on ICO (s 81(2))</p> <p>Permissible despite minimum penalty, but not if mitigation or substitution of penalties prohibited (s 80)</p>		<p>assault, motor vehicle theft, theft over \$5000 and being unlawfully in a dwelling house.</p> <p>All offences with a minimum imprisonment term excluded (s 742.1)</p>
Other guidance	Not stated	Not stated	<p><i>R v Pogson</i> (2012) 82 NSWLR 60:</p> <ul style="list-style-type: none"> ICO not restricted to offenders needing rehabilitation/at risk of re-offending; Identifying need for 'correction' is not a pre-requisite; fact that an ICO may not be a productive or effective use of resources is relevant but does not disqualify an offender <p>However this pre-dates a new 2018 provision s 66 – community safety and other considerations</p> <p><i>R v Pullen</i> [2018] NSWCCA 264 (23</p>	Not stated	<p>Should not impose unless, given the short custodial sentence court would otherwise have imposed, rehab more likely achieved by serving sentence in community subject to strict conditions (s 79(2))</p> <p>Paramount consideration: community safety (s 79(3))</p> <p>ICO should not be made if court not satisfied of adequate resources for proper monitoring (s 81(3)(b))</p> <p>Must consider impact ICO likely to have on a victim, spouse or domestic partner of offender, or person residing where</p>	Not stated	<p>Guideline judgment in <i>R v Proulx</i> [2000] 1 SCR 61, 126 [127]:</p> <ul style="list-style-type: none"> Conditional sentence to reduce reliance on incarceration, increase restorative justice use Probation is primarily rehabilitative. Conditional sentences are punitive and rehabilitative and should generally include punitive conditions restricting liberty Conditions like house arrest should be the norm A conditional sentence need not be the same length as

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
			<p>November 2018) At [89]: 'In some cases, [community safety] will be best achieved through incarceration. That will no doubt be the case where a person presents a serious risk to the community. In other cases, however, community protection may be best served by ensuring that an offender avoids gaol. As the second reading speech makes plain, evidence shows that supervision within the community is more effective at facilitating medium and long term behavioural change, particularly when it is combined with stable employment and treatment programs'</p>		<p>defendant does or may reside (s 81(4))</p>		<p>incarceration would have otherwise been imposed</p> <ul style="list-style-type: none"> • The sole requirement is that duration and conditions equal a just, appropriate sentence; • Generally, a conditional sentence will be better than incarceration due to the restorative objective of rehabilitation, reparations to the victim / community, promotion of the offender's sense of responsibility and acknowledging harm. • Where both punitive and restorative objectives may be achieved a conditional sentence will likely be more appropriate • Where denunciation and deterrence are particularly pressing,

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
							incarceration is generally preferable. <ul style="list-style-type: none"> • Yet a conditional sentence may provide for these, depending on condition, duration and offender and community circumstances
Minimum duration	Not stated	Not stated	Not stated	Not stated	Not stated	Part 13, mandates that a term of 6 months or less cannot be imposed (s 86). See also Parts 11 and 12 (suspended and CSI ss 76(2) and 82(2))	Not stated
Maximum duration	12 months (s 112)	Not exceeding 2 years (s 11)(2)) 2-4 years (s 11(3))	2 years for one offence, 3 years for aggregate sentence (s 68) ¹⁵	12 months	2 years (s 81) [although purpose refers to 12 months (s 79)]	60 months' imprisonment - a term or aggregate terms (s 81(1)) Suspension not more than 24 months (s 81(1))	2 years
PSR mandatory?	No	PSR appears optional (s 77) but mandatory assessment by director-general regarding whether ICO is suitable (ss	Yes - assessment reports preconditions (ss 17B, 17D; 69, 73A(3), 89(4)). ICO can be made without one, unless imposing	Yes (s 48B)	No – but PSR (if any) ordered by court must be taken into account (s 81(4)(b)) and see s 17)	No – optional for court to order (s 20)	No – optional for court to order (s 721(1))

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See *R v Pullen* [2018] NSWCCA 264 (23 November 2018) [82]-[83]: where the Crown unsuccessfully argued that an ICO is not available if the term of imprisonment for any one offence exceeds two years even where an aggregate sentence is imposed for all offences: 'the only relevant limitation on the imposition of an ICO is that the aggregate sentence must not exceed three years imprisonment'.

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
		78(1)(b)), 79, 80D and 80J)	a home detention order (HDO) or community service work condition				
Mandatory conditions	<p>General (s 114):</p> <ul style="list-style-type: none"> • reoffending • reporting and receiving visits (at least twice per week) • counselling and programs directed by the court or department • community service (up to 12 hours per week) • community residential facilities • notify of change of residence and employment • remaining in Queensland • compliance with reasonable directions 	<p>Core - s 11(4) directs to CSAA s 42:</p> <ul style="list-style-type: none"> • reoffending • disclosing new charge • contact details • compliance with directions (residence, program, reporting, visits) • use or obtain drugs, test samples • on probation • not leave ACT • comply with conditions <p>CSAA 41(3) – Regulations can make provisions for electronic monitoring in respect of an ICO</p> <p>General coalface provisions in CSAA (ss 39-58)</p>	<p>Standard (s 73):</p> <ul style="list-style-type: none"> • Not offend • Submit to supervision¹⁶ <p>Must also impose at least one 'additional' condition, unless there are exceptional circumstances (s 73A):</p> <ul style="list-style-type: none"> • home detention • electronic monitoring • curfew • community service work condition (up to 750 hours or hours prescribed by a regulation for class of offence – whichever is lesser), • rehab/treatment • drug/alcohol abstention • non-association • place restriction 	<p>Statutory (s 48E):</p> <ul style="list-style-type: none"> • not commit offence punishable by imprisonment • community work and program condition • report within 2 days after order made • report to/receive visits at least twice a week or shorter period specified • notify address/employment change within 2 work days • not leave Territory • give voice sample for monitoring device, • comply with reasonable directions re device use • comply with regulations; lawful directions (including 	<p>Conditions (s 82):</p> <ul style="list-style-type: none"> • good behaviour • be under supervision • obey lawful directions [reasonable directions see s 88] • report within 2 working days • not possess firearm/ammunition • submit to gunshot residue tests • undergo assessment or treatment (or both) relating to the mental/physical condition • report change of address/employment • not leave State without permission 	<p>Standard obligations (s 83):¹⁷</p> <ul style="list-style-type: none"> • report within 72 hours of release/ as otherwise ordered • notify change of address/employment • remain in WA <p>Also, comply with SAA (ss 76 and s 77(ba)) which requires: compliance with lawful orders/ directions, not possess/ use/ be under influence of alcohol/ drug (other than prescribed)/ substance; submit for substance testing if directed; not disturb/ interfere with another offender complying with their order, commit no insubordination/ misconduct</p>	<p>Compulsory (s 742.3(1)):</p> <ul style="list-style-type: none"> • keep the peace/be of good behaviour • appear before the court when required • report to supervisor within 2 working days or longer period as court directs and then when supervisor requires • remain within court's jurisdiction • notify court or supervisor re • change of name, address, employment or occupation • No communication with any victim/ witness • Not to go any place specified

¹⁶ Includes further obligations such as reporting, complying with reasonable directions (including re treatment, programs, non-association, substance testing and abstention, not leave state. *Crimes (Administration of Sentences) Regulation 2014* (NSW) s 187.

¹⁷ Community service is not a standard condition.

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
			Additional condition period can be limited (s 73A(4))	residential condition, wearing monitoring device up to 14 days) <ul style="list-style-type: none"> for 12 hours per week (Commissioner can increase to 20) attend place for performing community work not less than 8 of the hours (but no more than 8 hours a day) and spend balance undertaking prescribed program or counselling or treatment as directed 	<ul style="list-style-type: none"> if unemployed— condition requiring specified number of community service hours (s 86) (15-300 hrs – completed within period not > 18 months and not < 4 hrs each week or days or, unless approved, for > 7.5 hrs) comply with regulations and lawful directions of the Chief Executive Any other condition the court thinks appropriate 	subversive of good order/ management of a centre or the conduct of anything required by the order; not assault/ threaten/ insult/ use abusive language to departmental staff; comply with prescribed obligations and written instructions issued by CEO with minister's approval	(except where consent of the victim/ witness given) or court decides exceptional circumstances exist (s 742.3(1.1))
Guidance for additional or discretionary conditions	Not stated	Can be reasonably complied with within term of the order (s 11(5)) For non-association /place restriction – ss 23, 24	Not stated	Prescribed program specified in order must be designed to address personal factors contributing to offender's criminal behaviour; may be residential or community-based (s 48F)	Not stated	See below regarding the purposes for primary requirements	Not stated
Additional or discretionary conditions	'Additional' (s 115): <ul style="list-style-type: none"> submission to medical, psychiatric or 	'Additional' (s 11(5)): <ul style="list-style-type: none"> Community Service (ss 80A-F). 20-500 hrs (s 80E) 	'Further' – not defined, cannot be inconsistent with standard or additional conditions,	'Imposed by court' (s 48F): <ul style="list-style-type: none"> One or more prescribed 	Other conditions (s 82(2)) include but not limited to: <ul style="list-style-type: none"> Live at specified premises 	Must also contain at least one of 3 primary requirements (s 84):	'Optional' (s 743(2)): <ul style="list-style-type: none"> abstain from drugs (except with prescription)/alco

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
	<p>psychological treatment</p> <ul style="list-style-type: none"> compliance, for the whole or part of the order, with conditions necessary to cause behaviour acceptable to the community and stop reoffending (in the same or different ways) 	<ul style="list-style-type: none"> Within: 6m/<125; 12m/125-250; 24m/250 or + Rehab program (ss 80G-L). Prescribed by regulation. Place must be available in reasonable time (s 80I). Max period 2 years (s 80K) Reparation (s 24) Non-association Place restriction (see s 21-26) Conditions prescribed by regulations Any other appropriate condition (eg medical, supervision, supply samples, educational, treatment, not to drive, not to consume substances/ drugs, attend programs) curfew if adults present consent (s 11(6)) 	<p>duration can be limited – s 73B</p> <p>Parole authority can, on officer application, impose conditions that sentencing court could have imposed (C(AS)A s 81A and see also s 164(2))</p>	<p>programs if PSR recommends</p> <ul style="list-style-type: none"> Not consume/ purchase alcohol/drug (unless prescription) Specified residence Wear approved monitoring device for period in force or otherwise ordered, allow placing and retrieval of device 	<ul style="list-style-type: none"> Be monitored by electronic device Abstain from drugs of specified class (including alcohol); Intervention program Tests relating to drug use as officer may reasonably require Contribute financially to course/treatment program undertaken Any other condition court thinks fit <p>Lawful directions of Chief Executive include but not limited to (s 82(3)):</p> <ul style="list-style-type: none"> residential electronic monitoring up to 28 days abstain from drugs / alcohol intervention program drug tests Community service if unemployed (at least 12 hrs but 	<p>Programme (s 84A): Purpose – assessment of personal factors contributing to criminal behaviour; opportunity for offender to recognise/ take steps to control/ receive appropriate treatment. Requires offender to: obey all orders re assessment/ treatment and substance abuse (must be recommended and requires informed consent); attend education / vocational, personal development courses; reside at specific place for any of these purposes. Speciality court or officer can give notice programme requirement ceases to be in force prior to suspension period ends if satisfied requirement complied with</p> <p>Supervision (s 84B): Purpose – allow for regular monitoring of offender in</p>	<p>hol/intoxicating substance</p> <ul style="list-style-type: none"> provide bodily substance for analysis on demand based on reasonable suspicion of relevant breach, or at regular specified intervals not own/possess/ carry weapon provide support/care of dependants up to 240 hours community service within maximum eighteen months attend approved treatment program comply with other reasonable conditions, subject to any regulations, for securing good conduct and preventing a repetition of the same offence or commission of other offences

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
					not > 20 hrs/week	community, regular counselling to rehabilitate and/or ensure compliance with any direction of court. Requires offender to contact and receive visits from officer. Generally requires contact at least once every 28 days. Requirement ceases when suspension ends Curfew (s 84C) Purpose – restrict movement when high risk of reoffending; impose short periods of detention at residence or other specified place. Requires remaining at specified place (over 2 hours but less than 12 hours per day) plus submission to surveillance/monitoring. Cannot exceed 6 continuous months	
One order for multiple offences?	No, but multiple orders in single form of order (s 118)	Not stated	Yes, aggregate sentence can be imposed for multiple offences – s 53A; s 68(2), and see s 53 Only one ICO, community correction	Yes (s 48B(3))	Yes – s 26	Not stated	Not stated

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
			<p>order (CCO) or conditional release order (CRO) can be in force for same offence. Subject to that, two or more such orders can be in force at the same time for two or more offences (s 17F)</p> <p>Two or more ICOs can be in force at same time re two or more offences (ss 17F, 68(3))</p>				
Combined orders – allowed	<p>Fine (s 45)</p> <p>With CSO – see s 141</p> <p>See discussion of combinations re case law in issues paper</p>	<p>Fine, driver licence disqualification, reparation, non-association, place restriction orders (s 29)</p>	<p>ICO, CCO and CRO can be in force at same time if imposed for different offences (ss 17E – F)</p>	<p>Fine (s 48B(4))</p>	<p>None – see s 25(3); may allow fine and imprisonment</p>	<p>Programme requirements for CSI are additional to those for a community order or presentence order (s 84A(5))</p> <p>Curfew requirements generally concurrent with same under an intensive supervision or presentence order (s 84C(5))</p>	<p>Can be combined with probation (ss 731(1)(b), 732.2(1)(b), (2)(b) and Form 46). Probation starts on expiration of conditional sentence, for 3 year maximum</p>
Combined orders – not allowed	<p>Probation</p>	<p>Not with other form of imprisonment or Good Behaviour Order (GBO) or even default imprisonment (ss 29(1)(b) and 80). Sometimes ICO can go with GBO or</p>	<p>See above</p>	<p>Community based order (s 39B(2))</p> <p>Suspended sentence (s 48B(2))</p>	<p>ICO cannot be made if sentence to be served concurrently with a term of imprisonment (s 81(3))</p>	<p>Cannot be imposed if offender is serving or is yet to serve imprisonment that is not suspended (s 81(3)(b))</p>	<p>Not stated – Actual imprisonment [by inference]</p>

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
		suspended sentence: 80(2)-(5)					
Decision making authority for variation, breaches etc	<p>Court</p> <p>Court can amend, revoke, resentence, admonish, discharge, order payment (ss 122 – 123, 125 – 127)</p>	<p>Court and Sentence Administration Board (SAB)</p> <p>See CSAA ss 62-75)</p> <p>SAB can inquire, warn, suspend (imprisonment 3 days [if breach admitted] or 7 days), cancel or refer for amendment or discharge. If satisfied offender has withdrawn consent, must cancel ICO (CSAA s 66). Cancellation means ICO ends, offender must serve remainder in full time detention (CSAA s 69). Offender can apply for reinstatement after 30 days' detention (CSAA s 73)</p> <p>Court can amend/ discharge (CSAA s 74)</p> <p>If offender convicted of offence punishable by imprisonment, sentencing court must cancel ICO as soon as practicable and order remainder</p>	<p>The Parole Authority (PA) imposes, varies or revokes ICO conditions post sentence</p> <p>Variation/order administration: PA can impose, vary or revoke conditions – including those imposed by a court, on application of officer (CASA ss 81, 81A)</p> <p>Department can suspend a supervision condition for a period/s or indefinitely, and suspend a curfew, non-association or place restriction condition (CASA s 82A)</p> <p>Breaches: PA judicial member can suspend ICO if satisfied of failure to comply or serious, immediate risk offender will leave NSW, harm another, commit an offence and urgency = no time for PA to meet. Suspension order can be</p>	<p>Court and Commissioner</p> <p>Commissioner can:</p> <ul style="list-style-type: none"> increase work/ programs of 12 hours per week to a max of 20 hours (s 48E(3); must consider offender's circumstances (s 48E(4)) suspend order or any condition if satisfied offender is ill or other exceptional circumstances exist (s 48H) <p>Court can: revoke/ order sentence of imprisonment/ quash/ sentence afresh/ vary conditions on application of offender or Commissioner on grounds of inability to comply due to material change in circumstances or information not presented for PSR (s 48J)</p>	<p>Court and Minister</p> <p>Court can vary or revoke the statutory and other conditions in s 82 (s 82(5). Can only do so for firearms and residue testing if evidence on oath and possession does not represent undue risk to public safety) (s 82(6))</p> <p>Court can revoke community service condition or discharge ICO if given mandatory Chief Executive advice that suitable community service work is not available for the offender (s 87)</p> <p>Minister can increase community service hours (by not more than 24 hours in aggregate but can exceed normal total limit) instead of initiating court breach proceedings, when satisfied person with community service condition failed to obey a direction.</p>	<p>Court</p> <p>Reoffending: Court must deal with offender if it convicts offender who commits offence punishable by imprisonment during suspension (s 84D). Court may deal with, even if suspension finished (s 84D(2))</p> <p>Application (s 84E) can be brought to court, up to 2 years after suspension ended including offence punishable by imprisonment committed during suspension. Lodged by CEO corrections, police officer, DPP, AG, Sol Gen. Court must (s 84F):</p> <p>Order to serve all/part suspended term/s unless unjust to do so, substitute another suspension up to 24 months if original suspension still active, fine up to</p>	<p>Supervisor and Court</p> <p>Supervisor: may give written notice of proposed change to optional conditions, with reasons, to offender, prosecutor and court – if of opinion that change desirable due to change in circumstances (s 724.4(1)). Creates option for offender, prosecutor or court to initiate hearing to consider proposed change (s 724.4(2)) where court shall approve or refuse it and may make any other change to optional conditions deemed appropriate (s 724.4(3)). If no hearing requested/ordered, proposed change takes effect 14 days after notice provided to court (s 724.4(4))</p> <p>Offender/ prosecutor:</p> <p>May also propose change to optional conditions under</p>

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
		<p>to be served in full or in part by full-time detention, unless it is not in the interests of justice to do so (CSAA s 65(2))</p> <p>Can only discharge if offender complied and served at least 12 months – replace with suspended sentence or GBO with core conditions but not amend length. Or, discharge and replace on director-general application or board referral re health/ exceptional circumstances (CSAA s 75)</p>	<p>revoked, lasts up to 28 days and means ICO has no effect and offender imprisoned (CASA s 91)</p> <p>PA can inquire into a breach whether or not order expired; offender can make submissions (CASA s 162)</p> <p>Department may record, not further action a breach; give an informal warning, a formal warning, or reasonable direction regarding the relevant behaviour; or impose a curfew. It can refer a serious breach to the PA (CASA s 163)</p> <p>PA can record breach without further action, give a formal warning, impose, vary or revoke conditions (including those imposed by the sentencing court but not standard conditions and cannot do what court could not), or revoke the ICO. It can impose home detention of up to 30 days and electronic</p>	<p>For breach by reoffending (s 48L): Court must revoke (if still in force) and sentence (whether order in force or not) to imprisonment for portion of the order unexpired at the breach – unless unjust due to exceptional circumstances arising after order made (may then confirm/ vary if order still in force, otherwise confirm discharged and take no further action)</p> <p>Unexpired term served immediately; cumulatively on any other term previously imposed</p> <p>(Separate licence disqualification provisions also apply)</p> <p>Breach of other conditions (s 48M):</p> <p>If order still in force, court may confirm, vary, revoke and sentence to imprisonment for the unexpired term at date of breach</p>	<p>Minister can also suspend order's operation until breach proceedings determined (s 89)</p> <p>Court can discharge the ICO if community service is a condition but suitable placement not available (the matter may be returned to court for further order) (s 87)</p> <p>Breach (s 83): If court satisfied of breach must revoke and order balance served in custody. It may reduce the term if there are special circumstances.</p> <p>However, if a breach was trivial or there are proper grounds to excuse it, court can instead vary the order (including extension but not beyond a two-year aggregate, nor imposing home detention) and impose a further condition or revoke or vary one</p>	<p>\$6,000 with no further order re CSI.</p> <p>Amending/cancelling requirements (s 84l): Court can if just to do so and offender's circumstances wrongly presented to sentencing court or so altered since that offender cannot comply. Otherwise must confirm.</p>	<p>same framework (s 724.4(5))</p> <p>Breach: Hearing of allegation to be heard within 30 days or as soon thereafter as practicable (s 742.6(3))</p> <p>Court powers on breach: Take no action, change optional conditions, suspend order and direct offender serve portion of unexpired sentence in custody and that order resume on release, or terminate order and commit offender to custody for remainder of sentence (s 742.6(9))</p> <p>Such imprisonment is to be served consecutively to any other period offender is serving when order made, unless not in the interests of justice (s 742.7(2))</p> <p>'Running of' the order is suspended until determination of breach (s 742.6(10)) but conditions continue to apply if</p>

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
			<p>monitoring (CASA s 164)</p> <p>PA has power of revocation and can be backdated = imprisonment (CASA s 164A(3))</p> <p>PA can reinstate ICO for the balance after offender has served one month in full-time detention (CASA s 165)</p>	<p>If order no longer in force, can sentence to imprisonment for unexpired term or confirm order, discharge and take no further action</p> <p>Separate licence disqualification provisions. Same immediate/ cumulative requirements re imprisonment</p> <p>Order discharged when Commissioner issues certificate (s 48Q)</p>			<p>offender not in custody ((s 742.6(11)) unless there is an unreasonable delay (ss 742.6(14)-(15)). If breach proven, court may order some/ all of suspension period is time served in exceptional case and in interests of justice (s 742.6(16))</p> <p>If imprisonment imposed for another offence (whenever committed), running of the order is suspended (s 742.7(1))</p>
Is breach a separate offence?	Yes - contravene requirement - 10 penalty units (s 123(1))	No	No	No - arrest without warrant powers and powers as if breach an offence (see s 48K)	Yes - contravene or fail to comply with a condition maximum penalty \$2,500 or 6 months' imprisonment (s 91)	<p>Yes - breach CSI requirement - prosecution by CEO corrections can be commenced before suspension ends (ss 84J, P, Q, R). Maximum fine up to \$1,000 (s 84K)</p> <p>Additional powers -</p> <p>Court must also exercise powers as per s 84F re re-offending or make no further order (s 84L)</p> <p>Also offence to hinder officer/ fail to</p>	No

Issue	QLD	ACT	NSW	NT	SA	WA	CANADA
						answer/ mislead when ascertaining compliance with curfew - \$2,000 and 12 months' imprisonment (s 84B(14))	

Suspended Sentences

Jurisdictions with: Queensland (Qld), Australian Capital Territory (ACT), Northern Territory (NT), South Australia (SA), Tasmania (Tas) (commitment by Tas Government to phase out – see *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017* (Tas)), Western Australia (WA), United Kingdom (England and Wales)

Jurisdictions without: Victoria (Vic) (suspended sentences replaced by CCO): Abolished in 1958, reintroduced in 1986 and abolished on 1 September 2014.

New South Wales (NSW): Suspended sentences available in NSW until 1974 (via *Crimes Act 1900* ss 558-562);

Abolished in 1974 following recommendation by NSW Criminal Law Committee;

Remained unavailable for next 26 years;

Reintroduced in 2000 as part of enactment of CSPA following NSW Law Reform Commission recommendation;

Abolished in 2018 (changes came into effect 24 September 2018 together with a number of other reforms, including enhancing ICOs and introducing CCOs).

New Zealand (NZ): Introduced in 1993 and then abolished with commencement of *Sentencing Act 2002* (NZ) on 30 June 2002.

Scotland: Did not introduce new form of suspended sentence order adopted elsewhere in the UK because it took evidence from England and Wales that a Suspended Sentence Order had replaced community sentences, not custody.¹⁸

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
Legislation	<i>Penalties and Sentencing Act 1992</i> (Qld) (PSA) Part 8 (ss 143-151) <i>Corrective Services Act 2006</i> (Qld) (CSA)	<i>Crimes (Sentencing) Act 2005</i> (ACT) (CSA) ss 12, 13 <i>Crimes (Sentence Administration) Act 2005</i> (ACT) (CSAA)	<i>Sentencing Act 1995</i> (NT) (SA) Part 3, Division 5, Subdivision 1	<i>Sentencing Act 1997</i> (Tas) (SA) s 7 and Part 3 Division 4	<i>Sentencing Act 2017</i> (SA) (SA) Part 4, Division 2	<i>Sentencing Act 1995</i> (WA) (SA) Parts 11 (ss 76–80) and 12 (ss 81–84R)	<i>Crimes Act 1914</i> (Cth) (CA) s 20(1)(b)	<i>Criminal Justice Act 2003</i> (UK) (CJA) Part 12, Chapter 3, ss 189–194; Schedule 12
Year commenced	Current form – 1992	Current form – 2 June 2006		1 August 1998	2017	31 May 2006 – Conditional Suspended Sentence Current form of suspended sentences – 1995	On introduction in 1914	Current form of order – 4 April 2005 Previous form had ‘virtually fallen into disuse’ due to legislation restricting to

¹⁸

Catherine Heard, *Community Sentences since 2000: How they work – and why they have not cut prisoner numbers* (Centre for Crime and Justice Studies, 2015) 21.

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								'exceptional circumstances' ¹⁹
Name	Suspended sentence of imprisonment (SS)	Suspended sentence order (SSO)	Suspended sentence of imprisonment (SS)	Suspended sentence (SS)	Suspended sentence (SS)	Suspended Imprisonment (SI) Conditional suspended imprisonment (CSI)	Recognizance release order (RRO)	Suspended sentence order (SSO)
Minimum imprisonment term	Not stated	Not stated	Not stated	Not stated	Wholly suspended sentence – not stated Partially suspended sentence – 3 months (s 96(4))	6 months (s 86)	Not stated (but note, s 19AC provides court has discretion not to make where sentence or sentences do not exceed 6 months, and creates a presumption to make where sentences are 3 years or less)	14 days
Maximum imprisonment term	5 years (s 144(1))	Not stated	5 years – aggregate terms for all offences (s 40(4))	Not stated	Wholly suspended sentence – not more than 2 years if prescribed designated offence Otherwise, term not specified Partially suspended sentence – not if 12 months or > (s 96(4))	5 years (60 months' imprisonment – term or aggregate terms) (ss 76(1) and 81(1))	3 years	2 years (6 months in the Magistrates' Court for single offence, 12 months for 2 or >) – term or aggregate terms (ss 189(1) and 189(2))

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George Mair and Helen Mills, *The Views and Experiences of Probation Officers and Offenders* (Centre for Crime and Justice Studies, 2009) 5.

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
Maximum operational period	5 years (operational period not to be less than term of imprisonment) (s 144(6))	Not stated	5 years	Not stated In practice, based on the Tasmanian Sentencing Council's 2016 analysis, operational periods in the Supreme Court for wholly suspended sentences range from 12 to 60 months (with a median of 24 months), while for partially suspended sentence, these ranged from 12 to 36 months (with a median of 24 months)	Term of the bond (max period not specified) – can be less than term of imprisonment imposed, but must be proportionate to length of imprisonment imposed (<i>Flett v SA Police</i> (Unreported, SASC, 5 August 1997, King AJ), and not disproportionate (<i>Griffin v Police</i> [2005] SASC 337; <i>Wilson v Police</i> [2013] SASC 48, [26]–[27] (2 year bond on 21 day sentence reduced to 8 month bond)	2 years (suspension not more than 24 months – ss 76(1) and 81(1))	5 years (max period of recognizance) Can extend beyond period of the sentence (see <i>R v Smith</i> [2004] QCA 417, McMurdo P; <i>Johnsson v The Queen</i> [2007] NSWCCA 192, [30] (Grove J, Beazley JA and Simpson J agreeing); <i>Fowler v Matias</i> [2006] ACTSC 106, [12]–[16] (Gray J); <i>R v MB</i> [2014] ACTSC 399, [32] (Murrell CJ)	2 years (6 month minimum) Any conditions must be complied with for a period called the 'supervision period' which also must be a minimum of 6 months and must not exceed 2 years, and must not extend past the operational period (ss 189(3)–(4))
Can the sentence be partially suspended?	Yes	Yes	Yes	Yes	Yes (s 96(4)) but only if sentence 3–12 months	No	Yes – can specify period to be served (s 20(1)(b))	No
Can a conditional suspended sentence be imposed for a single offence?	No	Yes – Court <i>must</i> also make a Good Behaviour Order (GBO) for the period during which the order is suspended or any longer period court considers appropriate (s 12(3))	Yes – 'order may be subject to such conditions as the court sees fit' (s 40(2))	Yes – but not mandatory (s 24)	Yes – suspension is conditional on the defendant entering into a bond	Yes – separate forms of orders SI and CSI	Yes – only form of order in the form of a RRO	Yes – but not mandatory – order <i>may</i> also provide the offender is to comply with one or more requirements (s 189(1A))

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
Criteria	<p>Conviction recorded</p> <p>Terms of imprisonment of 5 years or less</p> <p>Court satisfied it is appropriate in the circumstances to order the term of imprisonment to be suspended</p> <p>Must not suspend if satisfied it would be appropriate in the circumstances that the offender be imprisoned for the term imposed (s 144(4))</p>	<p>Offender convicted of an offence</p> <p>Offender sentenced to imprisonment</p>	<p>Conviction recorded</p> <p>Term of imprisonment of 5 years or less</p> <p>Court satisfied it is desirable in the circumstances to order sentence to be suspended</p> <p>Sentence of imprisonment, if unsuspended, must be appropriate in circumstances having regard to the Act</p>	<p>Conviction recorded</p> <p>Sentence of imprisonment imposed</p>	<p>Conviction recorded</p> <p>Sentence of imprisonment imposed</p> <p>Court may suspend sentence 'if it thinks good reason exists for doing so'</p>	<p>Conviction recorded (no spent conviction order option)</p> <p>Term of imprisonment or aggregate of terms of imprisonment 5 years or less (ss 76(1) and 81(1))</p> <p>Must be suspended in whole (no option to suspend in part) (ss 82(1))</p> <p>Imprisonment must otherwise be 'appropriate in all the circumstances' (ss 76(2) and 81(2)).</p> <p>CSI can only be imposed by a 'prescribed court' (ss 81(1), being the Supreme, District, Children's, Magistrates' and speciality courts²⁰)</p>	<p>Imprisonment of 3 years or less</p>	<p>Court convicts offender and imposes term of imprisonment of not less than 14 days, or more than 2 years</p>
Other guidance	Wholly suspended sentence not to be ordered in case of	Not stated	Not stated	Not stated	Court may not suspend if person being sentenced:	Not stated	See further	Generally, as to custodial

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Section 6B of the *Sentencing Regulations 1996* (WA) amended this section in 2017 prior to which, the Magistrates' Court had no power to order a suspended sentence – see *Sentencing Amendment Regulations (No 2) 2017* gazetted 29 Sep 2017, p. 4984.

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
	<p>offence of sexual nature in relation to child under 16 years unless there are 'exceptional circumstances' (s 9(4) PSA – see definition of 'actual term of imprisonment' s 9(12) PSA)</p> <p>The starting point required by s 147(2) is that the full period of imprisonment should be ordered to be served unless the relevant circumstances made such a sentence unjust: <i>R v Bowen</i> [1997] 2 Qd R 379; <i>R v Holcroft</i> [1997] 2 Qd R 392; <i>R v Holley</i> [1997] 2 Qd R 407</p>				<ul style="list-style-type: none"> To imprisonment to be served with another term of imprisonment To 2 years imprisonment of > for a prescribed designated offence (but can partially suspend: s 96(5)) For serious and organised crime offence or specified offence against police (unless exceptional circumstances): s 96(6) For a designated offence²¹ if during the previous 5 years a court has suspended a sentence of imprisonment for a designated offence: s 96(3) 		<p><i>Hili v The Queen</i> [2010] HCA 45, at [40]:</p> <p>“The Court of Appeal in <i>Ruha</i> examined what considerations bear upon fixing the length of a pre-release period under a [RRO]. As the Court of Appeal rightly said, ss 16A(1) and (2) “make it plain that all of the circumstances, including the matters in the non-inclusive list in s 16A(2), must be taken into account in making [a RRO] just as they must be taken into account in imposing a sentence of imprisonment”. In determining what recognizance release order is to be made, s 16A(1) requires the sentencing court to “make an order that is of a</p>	<p>sentences, see s 152:</p> <ul style="list-style-type: none"> The court must be satisfied that the offence (or combination of offences) was so serious that neither a fine or community order can be justified Unless, the offender fails to express a willingness to comply with a community order or fails to comply with pre-sentence drug testing under s161(2)

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Designated offences include: conspiracy to murder, manslaughter; aiding suicide; unlawful threats/ stalking; dangerous driving to escape police pursuit; causing harm/ serious harm; kidnapping; serious sex offences (e.g. rape, unlawful sexual intercourse, persistent sexual exploitation etc), robbery, serious criminal trespass, assaults with intent.

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					If suspended on the basis of person's ill health, disability or frailty, court may also impose a home detention condition (s 96(7))		severity appropriate in all the circumstances of the offence"" ²² The court must also have regard under s 16A(3) to the nature and severity of the conditions that may be imposed on, or may apply to the offender under the order	
Exclusions	A sentence over 5 years	Not stated	Not stated	Not stated	See above In addition, a sentence of imprisonment imposed on person who is a 'serious firearm offender' for a 'serious firearm offence' cannot be suspended (s 51(1)), unless person satisfies court it is appropriate, in all the circumstances, to	If offence committed when offender subject to an early release order ²³ ; or offender is serving or is yet to serve a term of imprisonment that is not suspended (ss 76(3) and 81(3))	Does not apply in relation to a minimum non-parole offence mentioned in section 19AG, or offences that include one or more such minimum non-parole offences	Offences with mandatory/ minimum sentence

²² Per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ (citations omitted).

²³ 'Early release order' means – (a) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995* (WA); or (b) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003* (WA).

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
		<p>direction must not be positive</p> <ul style="list-style-type: none"> • Not leave ACT for more than the defined period without approval • Comply with any agreement to attend court • Comply with any condition prescribed by regulation 				<p>court or a Community Corrections Officer;</p> <ul style="list-style-type: none"> • Notify a Community Corrections Officer of any change of address or place of employment within 2 days or as otherwise ordered by the speciality court; • Not leave the State without permission of the speciality court or the CEO; and • Comply with section 76 of the <i>Sentence Administration Act 2003</i> (offenders obligations) [and see s 77(ba)] <p>Plus at least one of the following primary requirements (s 84):</p> <ul style="list-style-type: none"> • a programme requirement (s 84A); 	<ul style="list-style-type: none"> • Pay such pecuniary penalty as the court specifies [see s 20(5) as to max penalty] • Comply with such other conditions (such as supervision, counselling, education or treatment) as the court thinks fit to specify – for a period not exceeding 2 years 	

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
						<ul style="list-style-type: none"> a supervision requirement (s 84B); a curfew requirement (s 84C) (term not exceeding 6 months in total) 		
Guidance regarding special conditions	N/A	Not stated	Not stated	Not stated	<p>A bond may include such conditions as the court thinks appropriate (s 98) but must not include a condition:</p> <ul style="list-style-type: none"> Require a person to live with a specified person or in a specified place unless satisfied accommodation is available and suitable Require person to undergo medical or treatment unless satisfied treatment is recommended by a legally qualified medical practitioner and is available 	<p>The purpose of a programme requirement is to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors</p> <p>The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by</p>	<p>If the court specifies a condition that the person will, during the specified period be subject to the supervision of a probation officer and obey all reasonable directions of the probation officer, the court must also specify the condition that the person will not travel interstate or overseas without the written permission of the probation officer (s 20(1A))</p>	<p>If imposing two or more different requirements, the court must consider whether, the requirements are compatible with each other (s 190(5))</p> <p>Unpaid work: Court must be satisfied that the offender is a suitable person to perform work (s 199(3)) and if two or more orders made, work hrs must not exceed max hrs (300 hrs) (s 199(5))</p> <p>Prohibited activity: Court must consult with an officer of a local probation board or probation service provider</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					<ul style="list-style-type: none"> Require person to undertake intervention program unless the person is eligible for services including on the program and services are available at a suitable time and place 	<p>a Community Corrections Officer, for the purpose of either or both rehabilitating the offender and/ or ensuring the offender complies with any direction given by the court when imposing the requirement</p> <p>The purposes of the curfew requirement are to allow for the movements of the offender to be restricted during periods when there is a high risk of the offender offending; and (b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place</p>	<p>Curfew: Court must obtain and consider information about the place proposed (including as to the attitude of persons likely to be affected) (s 204(3))</p> <p>Residence requirement: Before making, court must consider home surroundings of the offender (s 206(4))</p> <p>Mental health treatment: Court may not make unless the court is satisfied the mental condition of the offender is such as requires and may be susceptible to treatment, but is not such as to warrant the making of a hospital order or guardianship order within the meaning of <i>Mental Health Act 1983</i>; the court is</p>	

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>also satisfied that arrangements have been or can be made for the treatment; and the offender has expressed his willingness to comply with such a requirement (s 207(3))</p> <p>Drug rehabilitation: Court must be satisfied the offender is dependent on, or has a propensity to misuse, drugs and the dependency or propensity is such as requires and may be susceptible to treatment, and arrangements have been or can be made for the treatment intended to be specified in the order.</p> <p>Requirement must have been recommended to the court as being suitable for the offender by a</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>probation board officer or provider of probation services, and offender must have expressed his willingness to comply with the requirement (s 209(2))</p> <p>Alcohol treatment: Court must be satisfied that the person is dependent on alcohol, and requires treatment, and arrangements have been or can be made for the treatment intended. Offender must express willingness to comply (ss 212(2)-(3)).</p> <p>Alcohol abstinence and monitoring: the consumption of alcohol by the offender must be an element of the offence or the court is satisfied that the consumption of alcohol by the</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								offender was a factor of the offence. The court must be satisfied that the offender is not dependent on alcohol and must not have included an alcohol treatment requirement in the order and arrangements for monitoring are available in the local justice area (ss 212A(8)-(12))
Additional conditions	N/A	<p>May include extra conditions (13(3)):</p> <ul style="list-style-type: none"> • Give security for a stated amount • Perform community service (s13(6) 20-500 hrs (91) • Rehab program order (s13(7)) which must also include probation (s 95(1)) maximum period 3 years (s 99) 	<p>May include 'such conditions as the court thinks fit' (s 40(2))</p>	<p>Court may make the order subject to one or more of the following conditions:</p> <ul style="list-style-type: none"> • Perform community service, • Be subject to supervision • Undertake a rehabilitation program; • Any other condition as the court considers necessary or expedient (s 24(2)) • Any condition the court 	<ul style="list-style-type: none"> • Be under supervision of a CCO (power to issue reasonable directions (s 108(1)) • Live with a specified person or in a specified place or area • Not live with a specified person or in a specified place or area • Perform community service (not < 15 or > 300 hrs) (s 105(1)(a)) 	<p>Additional conditions (ss 84A – 84C):</p> <p>Programme requirement (s84A): Requires offender to obey all orders regarding assessment and treatment, and regarding substance abuse (must be recommended and requires informed consent); attend education/ vocational, personal development</p>	<p>Not stated</p>	<p>Called 'requirements' and can include:</p> <p>Unpaid work (not <40 hrs or >300hrs completed within 12 months, unless period extended),</p> <p>Rehabilitation activity requirement (comply with instructions to attend appointments and/ or participate in activities – includes</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
		<ul style="list-style-type: none"> Reparation order <p>Any other condition not inconsistent with the Act such as medical treatment, submit to testing for alcohol or drugs, attend educational, vocational, psychological or psychiatric programs or counselling, not to drive a motor vehicle or consume alcohol or drugs or non-prescription medication and regularly attend alcohol or drug management programs.</p>		<p>considers 'necessary or expedient' (s 24(3))</p>	<p>within period not exceeding 18 months (s 105(1)(c)), and CCO may also give reasonable directions re reporting/ participation etc (s 108(2))</p> <ul style="list-style-type: none"> Undertake an intervention program Undergo medical or psych treatment Abstain from drugs of specified class or alcohol Submit to tests relating to drug use as Community Corrections Officer may reasonably require Restore misappropriated property to person or pay compensation to any person for injury, loss or damage Attend and complete a 	<p>courses; reside at specific place for any of these purposes.</p> <p>Can be terminated early (by Community Corrections Officer or court giving notice to this effect)</p> <p>Supervision requirement (s 84B): Requires offender to contact and receive visits from officer. Generally requires contact at least once every 28 days. Requirement ceases when suspension ends</p> <p>Curfew requirement (s 84C): Requires remaining at specified place (over 2 hours but less than 12 hrs per day) plus submission to surveillance/ monitoring (term</p>	<p>restorative justice activities)²⁴</p> <p>Programme requirement (participate in a program accredited by the Secretary of State – e.g. anger management, sex offender programs, DFV, drug and alcohol)</p> <p>Prohibited activity requirement (can apply on a specific day, days or period, advice of probation board or probation services provider must be sought and can include requirement not to possess or carry a firearm)</p> <p>Curfew requirement (remain, for periods specified, at a specific place – not > 2 hrs or > 16hrs per day for up to 12 months, and must also include electronic monitoring</p>	

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					<p>specified education program approved by Attorney-General</p> <ul style="list-style-type: none"> • Comply with regulations (if any) or lawful direction of CE • Any other condition the court thinks appropriate (s 98(1)) <p>Pay sum on non-compliance, with or without sureties/ guarantors (s 100)</p>	not exceeding 6 months in total)		<p>requirement unless inappropriate to do so or court is prevented from doing so)</p> <p>Exclusion requirement (prohibiting offender from entering a specified place/area for specified period, and must include electronic monitoring requirement unless inappropriate to do so or court is prevented from doing so)</p> <p>Residence requirement (to live at a specified place (can include a hostel or other institution) – can also allow for prior approval to live elsewhere)</p> <p>A foreign travel prohibition requirement (prohibits person from travelling on a day or days specified or a</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>specific period of time to any country outside the British Islands specified, or other than a country/territory specified, or to any country/territory outside British Islands but not outside of, or for > 12 months from date of order)</p>
								<p>A mental health treatment requirement (requiring offender to submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender's mental condition and can also specify type - e.g. residential, out-patient, under</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>medical practitioner of psych's direction) but there's provision for different arrangements to be made if treatment can be better or more conveniently given elsewhere (see s 208))</p> <p>A drug rehabilitation requirement (requirement during 'the treatment and testing period' offender (a) submit to treatment under direction of specified person having necessary qualifications or experience with view to reduce or eliminate offender's dependency or propensity to misuse drugs (can be residential or out-patient), and (b) provide samples as may be determined by responsible officer</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>of person under whose direction treatment is to be provided. Order may (and <i>must</i> if treatment and testing period is > 12 months) provide for court review periodically at intervals not < 1 month which offender required to attend, provide for probation to provide report in writing and for test results and views of treatment provider to be reported)</p> <p>An alcohol treatment requirement (submit to treatment (residential, or non-residential) by, or under the direction of a specified person with necessary qualifications or experience with a view to reduce or eliminate dependency on alcohol)</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>An alcohol abstinence and monitoring requirement (subject to any exceptions specified, abstain from consuming alcohol for specified period, or not consume alcohol so that at any time during specified period there's more than a specified level in offender's body (amount prescribed), and submit to monitoring – for a period no > 120 days</p> <p>Attendance centre requirement (if under 25 years of age</p> <p>Electronic monitoring requirement (together with a curfew or exclusion required unless certain criteria met (s 190(3))</p> <p>Court can also provide for a suspended</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
								<p>sentence with one or more requirements to be periodically reviewed (at specified intervals) by the court, in which case there is a requirement the offender attend each review hearing and that probation services provide a report on the offender's progress in complying with the order prior to each review (s 191), with the court having the power to amend the requirements at these review hearings (s 192), and can also decide that no review hearing be held if offender's progress is satisfactory (s 192(4)) [reviews without a hearing can be undertaken in the Magistrates' Court by a JP]</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
One order for multiple offences?	Not stated	Not stated	Not stated	Not stated	Not stated – but see s 26 (one penalty for multiple offences can be imposed, provided doesn't exceed max penalty for any one and not a prescribed designated offence)	Not stated	Yes – see ss 19AC(1) and (2) (court must make a single RRO in specified circumstances) and 20(1)(b)	Not stated
Combined orders – allowed	<p>Fine (for a single offence)</p> <p>If more than one offence:</p> <ul style="list-style-type: none"> • Recognisance • Fine • Probation • Community Service • Imprisonment 	<p>Combination sentences permitted for single offence (Chapter 3, part 3.6)</p> <p>For offence punishable by imprisonment, court may impose combination sentence consisting of 2 or more of following:</p> <ul style="list-style-type: none"> • Order sentencing offender to imprisonment as full-time detention; • SSO • A fine • Disqualified from driving, reparation, non-association or 	<p>Not stated – but see s 7 (court may make one or more of listed sentencing orders for an offence)</p>	<ul style="list-style-type: none"> • CCO • Fine • Rehabilitation order <p>(s 8)</p>	<p>(if > one offence)</p> <p>Fine</p>	<ul style="list-style-type: none"> • Intensive supervision order • Community based order • Suspended fine • Fine <p>Conditional release order (CRO):</p> <p>Programme requirements for CSI are additional to those for a community order or presentence order (s 84A(5))</p> <p>Curfew requirements generally concurrent with same under an intensive supervision or</p>	<p>Combinations of orders under the Qld PSA (and equivalent Acts) but do not apply to Cth offenders</p>	<p>Fine or Imprisonment</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
		place restriction orders					presentence order (s 84C(5))	
Combined orders – not allowed	Intensive Correction Order (ICO) (if imposed at time of sentence)	Intensive Correction Order (ICO) – but ICO can be made if under existing SSO and offence pre-dates offence for which SSO imposed, in which case court must cancel the SSO and re-sentence person to ICO (ss 80(1) and (4)–(5))	Not stated	Not stated	<ul style="list-style-type: none"> • Imprisonment (s 96(3)(a)) • Home Detention (s 71(1)(b)) • Intensive Correction Order (s 81(1)(b)) 	<ul style="list-style-type: none"> • Imprisonment and SS • Imprisonment and CSI • Early release order (parole, home detention or work release) + SS or CSI • Indefinite sentence + SS or CSI <p>Cannot be imposed if offender is serving or is yet to serve imprisonment that is not suspended (ss 76(3)(b) and 81(3)(b))</p>	Orders combining imprisonment and community service (or other relevant orders under s 20AB) are impermissible as this applies to the sentencing of federal offenders for a federal offence – see <i>R v Shambayati</i> [1999] QCA 102. The only way such an order can be made is pursuant to s 20AB	Community sentence (either for the same or different offence) (s 189(5))
Decision making authority for variation, breaches etc	<p>Court for breaches</p> <p>Cannot vary condition</p> <p>No ability for lower court to deal with a breach of order made by a court of higher jurisdiction, but a court of higher jurisdiction can deal with</p>	<p>Court for both variations and breaches (CSAA Chapter 6, parts 6.5–6.6)</p> <p>Lower court must commit up (Magistrates Court to Supreme Court) if offender has committed new offence and</p>	<p>Court for both variations and breaches</p> <p>A court may deal with breach of an order made by that court on its own motion (s 43(4A)). If the order is made by Supreme Court, Local Court may</p>	<p>Court for both variations and breaches</p> <p>For breach, if an application is made in relation to the new offence breaching the original order to a court that is not the court that imposed the</p>	<p>If found guilty of an offence by a court of inferior jurisdiction to that which imposed the sentence, it must either sentence the person for the offence and remand him or her to the probative court, or remand the person to the</p>	Non-CSI order	<p>Court</p> <p>Application under s 20AA(1) may be made by an authorised person (defined s 20AA(12), the offender, the surety or a probation officer.</p>	<p>Court</p> <p>Prior to court an offender must be given a warning before initiating breach action unless the offender within the previous 12 months has been given a warning, or the responsible</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
	order imposed by a lower court 'unless the court considers it that it would be in the interests of justice for the offender to be dealt with ... by the court that made the order' (ss 146(2)-(3))	original GBO made by the Supreme Court (s 107) Court may amend or discharge GBO on own initiative or application (s 112), but cannot increase number of hours of community service (s 113) See below for powers on breach	commit the offender to the Supreme Court to be dealt with by that Court (s 43(4C)) Court can vary or cancel order if satisfied the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or the offender has failed or is no longer willing to comply with a condition of the order (s 42(1)) If cancelled, the court must take into account the extent to which the offender had complied with the order before its cancellation (s 42(2)) See below for powers on breach	suspended sentence, the court may either: • Deal with the application or • Adjourn the application to the court that imposed the order and either grant bail or remand the offender in custody (s 27(4A)) Court can: • Vary the order, or • cancel the order and re-sentence the offender if satisfied the circumstance of the offender has materially altered since the order was made, and the offender will not be able to comply with one or more of the conditions, or the offender is no longer willing to comply If cancelled, the court must take into account the	probative court to be sentenced for the offence and be dealt with for the breach of the bond (s 57) Court can vary or revoke a condition (including core conditions not to possess a firearm or to submit to test for gunshot residue if there are cogent reasons to do so and the possession of firearm, ammunition etc does not represent an undue risk to public safety) (ss 103(4)) Other guidance: If court extends beyond term of bond period during which community service is to be performed, the term of bond is extended, despite exceeding 3 years Cannot extend period community	the person to the superior court that made the order or, if the District Court and the Court would not have jurisdiction to deal with the matter, commit the person to the Supreme Court (s 78(1)) Court must deal with offender if it convicts offender who commits offence punishable by imprisonment during suspension period (s 78). Court may deal with, even if operational period has expired (s 78(2)), re conviction, including outside WA, for offence punishable by imprisonment committed during suspension. Lodged by CEO corrections, police officer, DPP, A-G, Solicitor General (s 79) any time until 2 years after	Order can be discharged if the court is satisfied the conduct of the offender such as to make it unnecessary offender remain bound by it (s 20AA(2)) Court may vary the order by: • Extending or reducing the duration of the recognizance (but not beyond 5 years (s 20AA(4)) • Altering the conditions • Reducing liability to make reparation or restitution, or to pay compensation, costs or a pecuniary penalty, or • Altering the manner in which any reparation, restitution, compensation, costs or penalty is to be made (s 20AA(3))	officer refers the matter to an enforcement officer (schedule 12, para 5) Must either be dealt with by the Crown Court, or where the offender is convicted by a magistrates' court of any offence committed during the operational period of a suspended sentence passed by the Crown Court, must be committed to the Crown Court (schedule 12, para 11) Amendments/ variations to community requirements/ conditions can only be made by a court on application by the offender or probation services officer Court can cancel the community requirements on the basis that,

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
				<p>extent to which the offender had complied with the order prior to its cancellation (s 26(3))</p> <p>See below for powers on breach</p>	<p>service is to be performed by > 6 months</p> <p>Minister for Correctional Services, if satisfied on application of probationer that it is no longer necessary for the probationer to remain under supervision, and it would not be in their best interests to remain under supervision, may, in writing, waive the obligation to comply with condition requiring supervision (s 103(5)) and in making this decision, Minister must take into account likely impact on victim (s 103(6))</p> <p>Court may also discharge the bond if satisfied, on application of probationer, it's no longer necessary for probationer to</p>	<p>last day of suspension period</p> <p>Court must: Order to serve all/ part suspended term/s unless unjust to do so, substitute another suspension up to 24 months if original suspension still active, fine up to \$6,000 with no further order (s 80)</p> <p>CSI order</p> <p>New offence – Court, as above for suspended sentence (ss 84D, 84E and 84F)</p> <p>Amending/ cancelling requirements (Part 12, Division 3): Court can if just to do so and offender's circumstances wrongly presented to sentencing court or so altered since that offender cannot comply. Otherwise must confirm</p>	<p>having regard to circs arising since the order was made, it would be in interests of justice to do so – including the offender making good progress or responding satisfactorily to supervision (schedule 12, para 13(1)-(2))</p> <p>Court can amend any community requirement by cancelling it, or replacing it with a requirement of the same kind court could include if then making the order (i.e. any type of requirement that can be attached to SSO) (schedule 12, para 15)</p> <p>If offender fails to consent to mental health treatment, drug rehab requirement, or alcohol treatment, court can revoke the SSO and re-sentence (taking into account</p>	

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					<p>remain subject to it</p> <p>Court may revoke community service condition if Chief Executive (CE) notified no suitable community service work can be found (s 104(1))</p> <p>Minister may extend period to perform community service work on application by person if satisfied they will not complete in time and sufficient reason exists for the person not being able to complete it within the required time, but not by > 6 months (in aggregate) (s 110(1) and (3)) and Minister must notify court of this (s 110(5))</p> <p>Minister for Corrective Services may also waive compliance with requirement to complete hours</p>	<p>If all requirements cancelled, treated as a SI for remaining period (s 84(2))</p> <p>Programme requirement ceases to be in force when specialty court or Community Corrections Officer given notice (so effectively, can terminate) (s 85A(6))</p> <p>Supervision requirement is required to contact a Community Corrections Officer or receive visits as ordered by Community Corrections Officer – minimum contact of at least once every 28 days unless the CCO orders otherwise (flexibility in reporting)</p> <p>Curfew is a term set by the court (not exceeding 6 months) with court able to give</p>		<p>extent to which offender has complied with requirements of the order) (schedule 12, para 15(4)–(5))</p> <p>There are other specific provisions that relate to amending specific types of conditions. E.g. to extend period of 12 months to complete unpaid work hours</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					<p>(up to 10 hours) on application if person has substantially complied with order, person not seeking to deliberately evade their obligations and sufficient reason exists for not insisting on performance of some or all hrs and Minister must notify court of this (s 111)</p> <p>Minister for Corrective Services, for failure to comply with direction by Community Corrections Officer, if community service is a condition, can instead of commencing breach proceedings, increase no of hrs of community service by no more than 24 (but can extend it beyond normal limit) (s 112)</p>	<p>directions as to periods when offender should be subject to curfew. Otherwise, a Community Corrections Officer can order person to remain in place between 2 and 12 hours a day and issue reasonable directions. Offender may leave the specified place during the specified period for reasons including a purpose approved by a Community Corrections Officer or on the order of a CCO</p>		

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
Is a breach a separate offence?	No	No	No Powers to arrest without warrant and powers as if the breach of conditions were an offence (see ss 43(4AA)-(4AB))	No	No	No if the breach is by commission of new offence Yes if breach of CSI requirement (maximum penalty: \$1,000 fine – s 84K) Prosecution by CEO corrections can be commenced before suspension period ends (s 84J) Also offence to hinder officer/ fail to answer/ mislead ascertaining compliance with curfew - \$2,000 and 12 months' imp (s 84B(14))	No	No, but a fine can be imposed in lieu of taking other action and, where a fine is imposed, is treated as law ('for the purposes of any enactment') as being a sum adjudged to be paid by a conviction (schedule 12, para 8(4ZA))
Breach consequences	Breach (s 147) Court may: • Order the offender to serve whole of suspended imprisonment ('unless of the opinion it would be unjust to do so'); or	Breach etc (CSAA Chapter 6, Part 6.5) Court must cancel GBO and either: • Impose the SS, or • Re-sentence the offender for the offence (s 110) Also, if offender has given security	Breach etc (s 43) Court may: • Activate the sentence or part sentence held in suspense (court must take this action unless of opinion it would be unjust to do so (s 43(7)), or	Breach by commission of new offence: Court must activate the sentence of imprisonment unless of the opinion such an order would be unjust, in which case the court may –	Breach of bond (s 114) Court may: • If bond requires payment in event of non-compliance, order person to pay whole or part • Order guarantor/	Breach by commission of new offence: • Order the person to serve the term/s of imprisonment suspended (must make this order unless court determines it would be unjust	Failure to comply with condition of release (s 20A(5)(c)) Court may: • Impose monetary penalty of not > \$1000, or • Extend period to be of good behaviour (but	Court must take one of the following actions— Order that the SSO is to take effect with its original term unaltered (court must make such an order unless it is of the opinion that it would be unjust to do so in all the

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
	<ul style="list-style-type: none"> Extend the operational period for no more than 1 year If operational period expired, that the offender's term of imprisonment be further suspended and the offender subject to further operational period of not more than 1 year; or Order offender to serve part of the suspended imprisonment 	<p>under GBO, court may:</p> <ul style="list-style-type: none"> Order payment of security to be enforced, and Order GBO to be cancelled on payment of the security 	<ul style="list-style-type: none"> Restore part of the sentence or part sentence held in suspense and order the offender to serve it; or For a wholly suspended sentence, extend the operational period to a date after the date of the order suspending the sentence, or For a partially suspended sentence – extend the operational period to a date after the date specified in the order suspending the sentence, or Make no order with respect to the suspended sentence (s 43(5)) 	<ul style="list-style-type: none"> Activate part of the sentence held in suspense, or Order that a substituted sentence take effect in place of the suspended sentence (may be any sentence that the court could have imposed on the offender had it just found the offender guilty of the offence in respect of which the SS was imposed, but no greater than the original term of imprisonment imposed), or Vary the conditions on which the execution of the sentence was suspended, including extending the operational period to a day no later than 12 months after the day the offender was found guilty of the new offence, or 	<p>surety to pay whole or part of amount due under guarantee, and</p> <ul style="list-style-type: none"> Revoke the suspension and activate the sentence unless satisfied failure to comply was trivial or there are proper grounds on which the failure should be excused (ss 114(1)(d) and 114(3)) <p>If SS is activated, court may:</p> <ul style="list-style-type: none"> If special circumstances justify it, reduce the term of the sentence, Direct some time spent in custody pending determination of breach proceedings be counted towards SS, If sentence partially suspended, fix or extend the NPP taking into 	<ul style="list-style-type: none"> Order the person to serve part of the term/s of imprisonment suspended (even if this is 6 months or less); Unless the suspension period has ended, substitute another suspension period of not more than 24 months Impose a fine (maximum \$6,000) and make no order (ss 80 and 84F) <p>Breach by failure to comply with other conditions:</p> <ul style="list-style-type: none"> Order the person to serve the term or terms of imp suspended, Order the person to serve part of the term or terms of imp suspended (even if the period ordered to be served is 6 months or <), Unless the suspension 	<p>not > 5 years l total), or</p> <ul style="list-style-type: none"> Revoke the order and make an order under s 20AB (State sentencing orders), or Revoke the order and deal with the person for the original offence/s or offences by ordering person be imprisoned for sentence of imp suspended, or Take no action <p>[In addition, security given may be enforced – s 20A(7)]</p> <p>Court must take into account the fact the order was made, anything done under the order and any other order made re the offence/s (s 20A(6))</p>	<p>circumstances, including the extent to which the offender has complied with any community requirements of the order and, for breach by commission of a new offence, the facts of the subsequent offence (schedule 12, paras 8(3)–(4))</p> <p>Order that the sentence is to take effect with the substitution for the original term of a lesser term</p> <p>Order the offender to pay a fine of an amount not exceeding £2,500,</p> <p>In the case of a SSO that imposes one or more community requirements, amend the order by doing any one or more of the following</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
				<ul style="list-style-type: none"> • Make no order <p>Breach other than by commission of new offence:</p> <ul style="list-style-type: none"> • Activate all or part of the sentence held in suspense, or • Order that a substituted sentence take effect in place of the suspended sentence, or • Vary the conditions on which the execution of the sentence was suspended, including extending the operational period to a day no later than 12 months after the day the offender was found guilty of the new offence, or • Make no order 	<p>account time served in custody prior to release,</p> <ul style="list-style-type: none"> • If made with a home detention condition, direct period of compliance be counted as part of term of SS, • Order directing the sentence be cumulative on another sentence or sentences of imprisonment being or yet to be served (s 114(5)) <p>If SS not activated, court may, if performance of community service was a condition of a bond:</p> <ul style="list-style-type: none"> • Extend the term of bond not exceeding 12 months, or extend period during which uncompleted hrs must be performed by no > 6 months, or 	<p>period has ended, substitute another suspension</p> <ul style="list-style-type: none"> • Make no order in respect of the CSI 		<ul style="list-style-type: none"> • Imposing more onerous community requirements • Extend the supervision period (but not beyond 2 year max term), or • Extend the operational period (but not more than 2 year maximum term) <p>In the case of a SSO that does not impose any community requirements, amend the order by extending the operational period</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					<ul style="list-style-type: none"> • If period has expired, impose a period of not > 6 months in which community service must be performed • Cancel the whole or some of unperformed hours, or • Revoke or vary another condition <p>If SS not activated, court may, for any other bond:</p> <ul style="list-style-type: none"> • Extend term for not > 12 months, or • Impose condition requiring probationer to perform specified hours of community service, or • Revoke or vary any other condition • If bond has expired, require the person to enter into a further bond, term of which 			

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
					must not > 12 months (s 114(3))			
Data – how often used?	<p>Higher courts – selected principal offences – Wholly suspended sentence n=641/4,406 = 14.5% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – Wholly suspended sentence: n=4,584/139,211 = 3.3% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in Qld:</p> <p>Custodial (including suspended sentence): 11.8% (n=16,970)</p> <p>Non-custodial: 88.1% (n=126,647)</p>	<p>Source: ABS, <i>Criminal Courts Australia, 2016–17</i></p> <p>Higher courts – selected principal offences – Wholly suspended sentence n=29/164 = 17.7% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – Wholly suspended sentence n=224/3,223=7.0% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in ACT:</p> <p>Custodial (including SS): 23.0% (n=779)</p>	<p>Source: ABS, <i>Criminal Courts Australia, 2016–17</i></p> <p>Higher courts – selected principal offences – n=35/440 = 8.0% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – WSS n = 709/8,794= 8.1% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in NT:</p> <p>Custodial (including SS): 48.8% (n=4,508)</p> <p>Non-custodial: 51.2% (n=4,721)</p> <p>Total: 9,229</p>	<p>Source: ABS, <i>Criminal Courts Australia, 2016–17</i></p> <p>Higher courts – selected principal offences – Wholly suspended sentence n=81/272 = 29.8% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – Wholly suspended sentence n = 1,123/9,911 = 11.3% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in ACT:</p> <p>Custodial (including SS): 21.1% (n=2,147)</p>	<p>Source: ABS, <i>Criminal Courts Australia, 2016–17</i></p> <p>Higher courts – selected principal offences – Wholly suspended sentence n=163/1,197 = 13.6% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – Wholly suspended sentence n = 2,035/26,183 = 7.8% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in SA:</p> <p>Custodial (including SS): 20.2% (n=5,526)</p> <p>Non-custodial: 79.8% (n=21,848)</p>	<p>Source: ABS, <i>Criminal Courts Australia, 2016–17</i></p> <p>Higher courts – selected principal offences – Wholly suspended sentence n=444/2,115= 21.0% of penalties imposed by principal proven offence</p> <p>Magistrates' Court – Wholly suspended sentence n=2,132/79,605 = 2.7% penalties imposed by principal proven offence</p> <p>Overall split of custodial vs non-custodial by principal sentence in WA:</p> <p>Custodial (including SS): 8.56% (n=7,301)</p>	<p>Included in State and Territory data – unclear from ABS data how often orders made for Cwth offences</p> <p>NSW data (prior to repeal of SS):</p> <p>Higher courts – selected principal offences – Wholly suspended sentence n=527/3,999 = 13.2% of penalties imposed by principal sentence count</p> <p>Magistrates' Courts – Wholly suspended sentence n=5,589/127,358 = 4.4% of penalties imposed by principal sentence count</p> <p>Overall split of custodial vs non-custodial by principal sentence in NSW:</p>	<p>In 2017, 53,148 offenders had a suspended sentence order imposed, representing 4 per cent of offenders sentenced.</p> <p>The proportion of offenders receiving a SSO for an indictable offence was 16% (an increase of 7 percentage points from 2008) (further 32% received immediate custodial sentence), an increase from 24% in 2010).</p> <p>Source: Ministry of Justice's criminal justice statistics publications</p> <p>2009 Report found that around 60% of SS had 2 or 3 requirements (with a further 37% (approximate) having only one).</p>

Issue	QLD	ACT	NT	TAS	SA	WA	Cth	UK
	Total: 143,617 Source: ABS, <i>Criminal Courts Australia, 2016- 17</i>	Non-custodial: 77.0% (n=2,608) Total: 3,387		Non-custodial: 78.9% (n=8,036) Total: 10,183 The Tasmanian Sentencing Council in a 2016 report: 'only 2% of offenders [sentenced in the Supreme Court] received FSSs [fully suspended sentences] for a period exceeding 18 months and no such sentences exceeded three years.' In the case of PSSs, there were only three sentences exceeding three years (1.5%). ²⁵ In the Magistrates Court, 'there were no PSSs imposed longer than two years, and only 0.4% of offenders received FSSs exceeding 18 months' ²⁶	Total: 27,374	Non-custodial: 91.43% (n=77,905) Total: 85, 209	Custodial (including SS): 15.4% (n=20,217) Non-custodial: 84.6% (n=111,140) Total: 131,357	The most commonly used conditions at that time were: supervision (now part of a rehabilitation activity requirement), unpaid work and participation in an accredited program: George Mair and Helen Mills, <i>The Views and Experiences of Probation Officers and Offenders</i> (Centre for Crime and Justice Studies, 2009) 10-11, Tables 4-5

²⁵ Sentencing Advisory Council (Tasmania), *Phasing Out of Suspended Sentences* (Report No 6, 2016) 22 [3.3.4].

²⁶ Ibid.

Home Detention

Jurisdictions with: Northern Territory (NT), South Australia (SA), Tasmania (Tas), New Zealand (NZ)

Jurisdictions without: Commonwealth (Cwth), Queensland Qld, New South Wales (NSW), Australian Capital Territory (ACT), Western Australia (WA), United Kingdom (UK) (England and Wales, Northern Ireland)

Issue	SA	TAS	NT	NZ
Legislation	<i>Sentencing Act 2017</i> (SA) (SA) Division 7, Subdivision 1	<i>Sentencing Act 1997</i> (Tas) (SA) Part 5A	<i>Sentencing Act 1995</i> (NT) (SA) Part 3, Division 5, Subdivision 2, ss 44-48	<i>Sentencing Act 2002</i> (NZ) (SA) s 15A, 26A, Subpart 2A ss 80A – 80ZI
Name of order	Home detention order (HDO)	Home detention order (HDO)	Home detention order (HDO)	Home detention (HD)
Criteria	<p>Period of imprisonment is imposed that is not suspended and the court considers the offender is suitable for a HDO (s 71(1)).</p> <p>The court must consider (s 71(3)):</p> <ul style="list-style-type: none"> the impact on any victim, any partner of the offender and any other person residing at the residence the pre-sentence report (if any) any other matter <p>When a HDO must not be made (s 71(2)):</p> <ul style="list-style-type: none"> If the order may or would affect public confidence in the administration of justice If the imprisonment with a non-parole period of two years or more for a 'prescribed offence' If the offence is a serious sexual offence unless special reasons exist under s 71(4) If the offence is a serious and organised crime offence 	<p>Court may make a HDO if it would have sentenced the offender to imprisonment, whether or not suspended (s 42AC)</p> <p>The court may consider:</p> <ul style="list-style-type: none"> it is appropriate a PSR has been considered the offender consents the residence is suitable each other person at the residence over 18 has consented (s 42AC(2)) <p>The court is satisfied that the following 'relevant circumstances' in s 42AC(3) do not exist:</p> <ul style="list-style-type: none"> if a family violence offence, violent offence or sexual offence – the victim does not reside at the residence the court is of the opinion that there is a significant risk the offender will commit a violent or sexual offence during the order <p>See also – “order for multiple offence”</p>	<p>Court may suspend a term of imprisonment and order served as HD if appropriate in circumstances (s 44(1)).</p> <p>Can only order HD if the Commissioner report states:</p> <p>(i) suitable residential arrangement</p> <p>(ii) premises/place is suitable for home detention</p> <p>(iii) making a HD order is not like to “inconvenience or put at risk other persons living at premises/place or the community generally” (s 45(1))</p> <p>And Offender must consent (s 45(b))</p>	<p>Court can only order HD (s 80A) if:</p> <ol style="list-style-type: none"> Convicted of offence punishable by imprisonment OR HD is a prescribed sentence by legislation. Proposed residence is suitable and in an area where home detention scheme is operated by Corrections and requirements for relevant occupants are satisfied (s26A(4)) and offender agrees to conditions <p>And:</p> <p>if satisfied that purpose/s if sentence imposed cannot be achieved by any less restrictive sentence or combination of sentences and the court would otherwise sentence the offender to a short-term sentence of imprisonment (s 15A(1))</p> <p>If offender was under 17 years old, cannot impose HD on category 4 or a category 3 offence where maximum penalty is life or at least 14 years (s 15B)</p>

Issue	SA	TAS	NT	NZ
	<ul style="list-style-type: none"> If the offence is a designated offence and in the previous 5 years, the offender has been sentenced to imprisonment (that is not suspended) or a HDO If the residence is not suitable and available If adequate resources do not exist for the proper monitoring of the offender <p>Not available for certain offences (s 70):</p> <ul style="list-style-type: none"> An offender serving a sentence of indeterminate duration with a non-parole period Offences such as murder, treason; a terrorist act or any offence which prohibits the reduction, mitigation or substitution of penalties 			
Other guidance	Not stated	Not stated	<p>Court must order Commissioner provide a report on suitability of HD</p> <p>When preparing report, Commissioner may take into account views of community members who may be affected by the making of a HD.</p> <p>(ss 45(1A) and 45(2))</p> <p>Court can only wholly suspend imprisonment for an aggravated property offence by ordering a HD (s 78B)</p>	<p>If considering HD a court must order a pre-sentence report (s 26A). The pre-sentence report must include information on HD residence – such as safety and welfare of occupants, and confirmation the offender consents to standard and special conditions.</p> <p>When completing report the probation officer must (s 26A(3)):</p> <ul style="list-style-type: none"> Ensure all residence occupants are aware of offender's past & current offending Tell relevant occupants that sharing information is for an informed decision Information will not be used for any other purpose

Issue	SA	TAS	NT	NZ
				<ul style="list-style-type: none"> Obtain consent from relevant occupant to offender serving HD at residence and (e) can withdraw consent at anytime.
Minimum duration	Not stated	Not stated	Not stated	14 days (s 80A(3))
Maximum duration	Not stated Only guidance is s 72(2): If the offender is subject to a non-parole period – until the person is released on parole	18 months (s 42AF) Applies to additional HDO orders. Starts on the day the order is made or a later date specified (s 42AH)	12 months (s 46(1))	12 months (s 80A(3)) Applies to cumulative HD orders (s 80B(2))
Core conditions	<p>Core conditions (s 72):</p> <ul style="list-style-type: none"> Remain at the residence and not leave except: to attend employment, for an urgent medical appointment; to attend a mental health appointment, intervention program or education/ training activity Be of good behaviour Be supervised by a home detention officer and obey lawful directions. Prohibited from possessing a firearm or any part of a firearm or Condition relating to the use of drugs other than for therapeutic purposes Requirement to submit to tests for gunshot residue and drug use Be monitored by electronic device Such other conditions as appropriate 	<p>Core conditions (s 42AD), the offender must:</p> <ul style="list-style-type: none"> Not commit an offence punishable by imprisonment; Reside at the home detention residence; Reside during the times and days specified in the order; Permit a police officer to conduct a search of the premises/ frisk search/ take a sample of any substance Comply with any reasonable and lawful directions – including as to employment; Submit to electronic monitoring (unless otherwise ordered) and must not tamper damage or disable it and comply with directions in respect of it; Submit to a breath, urine or other test for drugs; Engage in a personal development activity, counselling or treatment if directed 	<p>Must specify the premises or place (which may include a restricted area) that offender must reside or remain in (s 44(2))</p> <p>A copy of order must be given to offender and Commissioner.</p> <p>HD order requires a conviction and suspension of a term of imprisonment (s 7)</p>	<p>Relevant occupants must agree (s 26A), offender agrees, residence is suitable and specified</p> <p>Section 80C sets out standard conditions (e.g. under supervision of probation officer, not to leave residence except in approved circumstances e.g. attend training or rehabilitative programs, not associate with specified persons, electronic monitoring – if ordered.</p>

Issue	SA	TAS	NT	NZ
Guidance regarding special conditions	<p>Other conditions can include:</p> <ul style="list-style-type: none"> Alcohol not be consumed Not entering a licensed premises Gambling not permitted If an offender subject to a HDO does not have employment or structured activities (such as education) they may be required to do community service²⁷ 	<p>A court can make any one or more of the following special conditions (s 42AE):</p> <ul style="list-style-type: none"> Offender must appear before the court as specified in the order Offender must take medication as required by psychiatrist, medical practitioner or another person specified by the court Offender must not consume alcohol (a core condition if this is imposed is to submit to alcohol testing when directed) Any condition the court considers appropriate <p>The special conditions can apply for all or part of the order and unless specified are concurrent with any other HDO, Community Correction Order (CCO), community service or probation order (ss 42AE(2) – (3))</p>	Not stated	<p>Section 80D sets out special conditions which can be imposed where the court is satisfied that a) offender at significant risk of reoffending; b) standard conditions inadequately reduce risk; and c) special conditions would reduce reoffending risk through rehabilitation and reintegration</p> <p>Examples of special conditions include – conditions on offender's finance, requiring them to take medication, prohibiting alcohol and drug consumption. Cannot impose fines, reparations or any sum to be paid or service that would be community service (s 80D(7))</p>
Additional conditions	Not stated	Not stated	<p>May be subject to conditions (s 44(3)) including, but not limited to – Not leaving the premises/place except as prescribed or permitted by Commissioner or probation/parole; wear/have attached approved monitoring device and obey reasonable directions of the Commissioner</p>	Section 80E sets out purpose of electronic monitoring
One order for multiple offences?	Not stated	Yes – a court may make more than one HDO in relation to an offender except for the same offence (s 42AC(4)(a))	Yes, can make HD order for 2 or more offences. Then aggregate period order in force cannot exceed 12 months (s 46)	Unclear

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Department of Correctional Services (SA), Home Detention conditions and supervision. Accessed 12 April 2010, available from <https://www.corrections.sa.gov.au/community-corrections/home-detention/conditions>.

Issue	SA	TAS	NT	NZ
			Can also have more than one HD order in force (again aggregate period not exceed 12 months)	
Combined orders – allowed	Not stated	A court may also make a HDO for an offender already on a HDO, CCO, community service or probation (ss 42AC(4)(b) – (c))	Not stated	Can combine with a sentence of reparation, a fine or community work (s 19(8))
Combined orders – not allowed	Not allowed if the HDO is concurrent with a term of imprisonment	Not stated	Not stated	Cannot combine with supervision community detention, intensive supervision (ss 19(4), (6) and (7))
Combined with other orders?	Not stated	A court may also make a HDO for an offender already on a HDO, CCO, community service or probation (ss 42AC(4)(b) – (c))	Not stated	An offender already on a community based sentence or HD (aka 1 st sentence) and is sentenced to another community based sentence or HD (aka 2 nd sentence), the court must (s 20) look at permitted combinations in s 19, or defer commencement of 2 nd sentence until after 1 st sentence served, or cancel 1 st sentence (but not if imposed by higher court), or cancel 1 st sentence and substitute any other sentence that could have been imposed (and permitted by s 19)
Decision making authority for variation, breaches etc	Court	Court	<p>Court</p> <p>However: A Justice of the Peace has authority to issue a court summons for an offender where on reasonable grounds of evidence they believe a breach has occurred (s 48(2)); and</p> <p>Police who suspects a breach (on reasonable grounds) may, without warrant, arrest the offender and enter premises/ place</p>	Court

Issue	SA	TAS	NT	NZ
When can apply for variation or cancellation?	Not stated	Not stated An offender or authorised person may apply for a variation or cancellation and must serve the other parties 7 days before the hearing (s 42AH)	Commissioner or offender may apply to court (s 47) to discharge HD, or revoke HD (an either confirm the sentence of imprisonment imposed or quash the term of imprisonment and deal with offender) or vary terms and conditions Where Commissioner makes application the court must summon offender to appear and if fail to appear issue an arrest warrant Where offender applies, court must notify Commissioner	Offender and probation officer can apply for variation or cancellation of HD (s 80F)
Powers to vary or cancel	Court may vary or revoke core conditions (ss 72(3) and (4)) If the breach of a condition was trivial or there were proper grounds the court may refrain from revoking the HDO and impose, revoke or vary condition/s (s 73(2))	Court may (s 42AH(4)): <ul style="list-style-type: none"> • Add a special condition • Remove or alter a special condition • Alter the period of the HDO • Alter the home detention premises • Alter the time and day the offender must reside • Alter the period the offender is required to submit to electronic monitoring or revoke electronic monitoring condition • Cancel the HDO (and any other order made for the offence) and resentence the offender • Refuse to vary or cancel the HDO 	Court When making an order the court may take into account length of time offender has complied with HD and any report of the Commissioner. An order must not exceed 12 months (s 47)	Court and Chief Executive of Department of Corrections (CE) Under s 80F the Court has the power to: <ul style="list-style-type: none"> • Remit, suspend or vary special conditions or impose additional ones • Vary HD residence • Cancel the sentence • Cancel the sentence and substitute it with any other sentence which can be imposed. Under s 80FA the CE may vary home detention residence
Is breach a separate offence?	Yes It is an offence for an offender to hinder a home detention officer or fails to answer truthfully any question – maximum penalty \$2,500 (s 76(2))	No	Yes For the application of ss 137 and 138 of the <i>Police Administration Act</i> , a breach of a HD order is taken to be an offence (s 48(5))	Yes A breach of detention conditions – maximum penalty 1 year imprisonment or up to \$2,000 fine (s 80S)

Issue	SA	TAS	NT	NZ
	It is an offence to contravene or fail to comply with a condition – maximum penalty \$10,000 or 2 years imprisonment (s 78)	However, an offender subject to a HDO must not assault, threaten, insult, use abusive language to a probation or prescribed officer – maximum penalty 10 penalty units and/or 3 months imprisonment (s 42AK)		Offence relating to drug or alcohol conditions – maximum penalty 1 year imprisonment or up to \$2,000 fine (s 80SA) Offence to refuse entry to HD residence – maximum penalty 3 months imprisonment or up to \$5,000 fine (s 80T)
Breach consequences	If an offender has breached a condition of the HDO or the residence is no longer suitable – the court must revoke the HDO and order that the balance of the sentence be served in custody (s 73(1)). In special circumstances the court may reduce the sentence of imprisonment or make imprisonment cumulative (s 73(4))	If the offender has breached a condition or committed an offence the court may (ss 41AI – 41AJ): <ul style="list-style-type: none"> • Confirm the HDO • Remove or alter a special condition • Extend the period of the HDO (such that the total is no longer than 18 months) • Alter the premises for the HDO • Alter the time and day the offender must reside (this is not an option if the offender committed another offence) • Alter the period the offender is required to submit to electronic monitoring or revoke electronic monitoring condition • If the HDO is in force – the court may cancel the HDO (and any other order made in respect of the offence) and resentence the offender • If the HDO is not in force – the court may cancel any other order made in respect of the offence and resentence the offender 	If order still in force court must revoke and (even if no longer in force) must be imprisoned for the term suspended for the HD, as if it had never been made and despite any period served under HD (s 48(6)) If HD expired but offender committed offence during that period of time, the offender must be imprisoned for the suspended period as if it had never been made and despite any period served under HD (s 48(7)) <u>However</u> , subject to breach circumstances or new offence is regulatory or not punishable by imprisonment, a court may keep HD order and vary conditions or if no longer in force, order a new HD order (s 48(9)) If offender breached by s 48(1)(h): damaging or destroying the monitoring device/machine, the offender is liable to pay costs of restoring or replacing it (s 48(12))	Offender or probation officer may apply to the court to vary or cancel the HD (s 80F) on the grounds: <ul style="list-style-type: none"> • Offender is unable/ has failed to comply • A program is no longer available or suitable • The residence is no longer suitable • A change in circumstances • Offender has been convicted of an offence • Special condition are incompatible Court may: <ul style="list-style-type: none"> • Remit, suspend or vary any special condition • Vary the HD residence • Cancel the sentence • Cancel the sentence and any other sentence If a court cancels a sentence of HD the court may substitute the sentence and take into account the portion of the original sentence which remains unserved (s 80G(2))

Issue	SA	TAS	NT	NZ
		<ul style="list-style-type: none"> If the offender has committed another offence the court must cancel the HDO (and any other order) and impose a sentence other than a HDO. Unless satisfied of exceptional circumstances to confirm or vary the HDO 	<p>If breach due to s 48(1)(h) or guilty of an offence in s 48(7) and sentenced to imprisonment, term commences at the expiration of the imprisonment term suspended for the HD (s 48(13))</p>	

Court Ordered Parole

Jurisdictions without a similar model: Western Australia, Victoria, Tasmania, the ACT and the Northern Territory do not have court ordered parole or something similar. These jurisdictions have systems entirely of discretionary parole.²⁸

Jurisdictions with a similar model: New South Wales²⁹, South Australia, the United Kingdom, Canada and New Zealand have systems that involve an offender's early release from custody without consideration by the Parole Board.

Queensland is the only state in Australia to have a system where parole must apply to all sentences of a term of imprisonment.³⁰ In Victoria, South Australia, Western Australia, the Northern Territory and the Australian Capital Territory (ACT), parole is not available for sentences of less than 12 months. In New South Wales (NSW), parole is not available for sentences of less than six months (called fixed-terms),³¹ and in Tasmania courts have the discretion to order that an offender is not eligible for parole in respect of a sentence for a term of imprisonment.³²

Queensland courts *must* fix a parole release date for offenders sentenced to a term of imprisonment of three years or less for offences that do not include a serious violent offence or a sexual offence, and where the person has not had a parole order cancelled under sections 205 or 209 of the *Corrective Services Act 2006*. In all other Australian states, the sentencing court may choose not to fix a non-parole period, meaning the offender will not be eligible for parole and will be required to serve the full term.

Issue	QLD	NSW	SA	NZ	UK	Canada
Legislation	<i>Penalties and Sentences Act 1992</i> (Qld) (PSA)	<i>Crimes (Administration of Sentences) Act 1999</i> (NSW) (CASA)	<i>Sentencing Act 2017</i> (SA) (SA)	<i>Sentencing Act 2002</i> (NZ) (SA)	<i>Criminal Justice Act 2003</i> (UK) (CJA)	<i>Corrections and Conditional Release Act</i> (CCRA)
	Part 9 (ss 160 – 160H)	Division 3 (s 159)	Part 3, Division 2 (s 47)	(ss 16, 19, 81, 91-96A)	Chapter 6	Part II (ss 127 – 135)
	<i>Corrective Services Act 2006</i> (Qld) (CSA)	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) (CSPA)	<i>Correctional Services Act 1982</i> (SA) (CSA)	<i>Parole Act 2002</i> (NZ) (PA)	<i>Offender Rehabilitation Act 2014</i> (UK) (ORA)	<i>Corrections and Conditional Release Regulations</i> (CCRR)
	ss 199 – 200		Part 6, Division 3 (ss 66 – 77AA)	(ss 17, 86)	(ss 1 – 3)	Part II (ss 160 – 163)
				<i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i> (UK) (LASPOA)	<i>Criminal Code</i> (CC)	
				Chapters 4 and 5	Part XXIII (ss 716 – 743)	

²⁸ NSW Law Reform Commission, *Parole Question Paper 1: The design and objectives of the parole system* (2013) 15.

²⁹ Previously had court based parole, however the Government accepted and implemented the NSW Law Reform Commission recommendation to abolish that approach (CSPA ss 50, 51, 51A and 51B) and replace with statutory based parole. Under this approach for sentences of three years or less the court is required to set a non-parole period and offenders must be released at the end of the non-parole period, unless the State Parole Authority (SPA) revokes parole in advance. The court is no longer required to make parole orders or have a role in setting parole conditions.

³⁰ Queensland Parole System Review, *Queensland Parole System Review Final Report* (2016), 72.

³¹ Where a court declines to set a non-parole period or the term of imprisonment is 6 months or less – *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 45 and 46.

³² *Sentencing Act 1997* (Tas), ss 17(2), (3A), (4), (5).

Issue	QLD	NSW	SA	NZ	UK	Canada
					Offender Management Act 2007 (UK) (OMA) Part 1 (ss 2 – 8)	
Year COP or similar commenced	August 2006	February 2018 – statutory parole order 1999 – court based parole	Existed in now repealed <i>Criminal Law (Sentencing) Act 1988</i>	1 June 2010	Unconditional release – 2003 Post Sentence Supervision (PSS) – 1 February 2015 Licence/extended release – 2012	1992
Name of order	Court ordered parole or parole release date	Statutory parole order	Automatic release on parole (for certain prisoners)	Statutory release date for short-term sentence	1) Unconditional release 2) PSS 3) Release on licence	Statutory release
Criteria	Sentence of imprisonment imposed for 3 years or less (PSA s 160B) Cannot be a serious violent or sexual offence (PSA s 160B) Court may fix any day of sentence as parole release date (PSA s160G)	Sentence of imprisonment of 3 years or less (CASA s 158) where a non-parole period (NPP) has been set of 6 months or more (CSPA s 46) but the balance of the sentence must not exceed one-third of the NPP unless in special circumstances (CSPA s 44). This means the NPP must be three-quarters of the term unless the court decides there are special circumstances Certain specified violent and sexual offences are subject to standard NPPs (SNPP) and the lowest SNPP is 3 years	Automatic parole for sentences of imprisonment or home detention greater than 12 months and less than 5 years (CSA s 66(1)) However, only prisoners who accept the conditions of parole fixed by the Parole Board will be released on parole (CSA s 68(4)) For sentences under automatic parole, the Parole Board must order the offender's release at the end of the non-parole period (NPP) (CSA s 66(1)) Does not apply where any part of the	An offender on a short-term sentence of under two years is to be released after serving half of the sentence. (PA s 86(1)) A short-term sentence is a sentence of imprisonment 2 years or less (PA s 4(1)) The offender is not released on parole; they are released on conditions set by the court with the probation office to monitor their compliance For sentences of less than 12 months, the court determines whether or not the offender will undergo post-release supervision	Unconditional release: The only offenders released unconditionally at the halfway point of the sentence are: offenders serving a custodial sentence of 1 day; offenders serving a custodial sentence of more than 1 day but less than 12 months who aged 18 years at the halfway point of their sentence and offenders serving a sentence of less than 12 months imposed for an offence committed before this section came into force on 1/2/15 (CJA s 243A, LASPOA s111 and ORA s 1(1A)) Other offenders serving more than 1 day but less than 12	Federal offenders on a fixed-length sentence are to be released from prison under supervision upon serving two-thirds of their sentence (CCRA s 127(3)) Offenders on statutory release are prisoners who either did not apply for release on parole, or who were denied release on full parole. Statutory release is a mandatory release by law. It is not parole and it is not a decision of the Parole Board ³⁴ Available to most offenders except those serving life or

Issue	QLD	NSW	SA	NZ	UK	Canada
		<p>(CSPA ss 54A, 54B, 54C and Table). Some offences listed in the Table for Standard Non-Parole Periods are:</p> <ul style="list-style-type: none"> • Murder; • Reckless wounding; • Sexual assault; • Aggravated sexual touching; • Sexual intercourse with a child 10-14 years; • Induce a child under 14 years to participate in child prostitution; • Meet a child under 14 years following grooming; • Robbery with arms etc and wounding; • Breaking etc into any house etc and committing serious indictable offence in circumstance of aggravation; • Bushfires; • Taking motor vehicle or vessel with assault or with occupant on board; • Supply, manufacture or production of 	<p>imprisonment is in respect to offences committed while on parole, a sexual offence, personal violence offence, arson offence, or the person is a serious firearm offender, a terror suspect or has been returned from prison for under s 74 for a breach of a parole condition. (CSA ss 66(2)(aa) – (b))</p> <p>Cannot fix NPP of a person sentenced to imprisonment for a serious offence against a person and the mandatory minimum NPP prescribed is four-fifths the length of the sentence (SA s 47(5)(d))</p> <p>Court can also decline to order NPP because it is of the opinion that it would be inappropriate because of the gravity of the offence, the criminal record of the person, person's behaviour during previous parole or conditional release or any other circumstance (SA s47(5)(e))</p>		<p>months will be released on licence when reaching halfway and are subject to post-sentence supervision (see below)</p> <p>PSS: An offender serving a fixed term of more than 1 day but less than 2 years is to be released under supervision once serving the 'requisite custodial period' - one-half of their sentence. They must be 18 years+ on the last day of the requisite custodial period and only applies to offences committed on or after the Act came into force (CJA s 256AA and ORA s 2)</p> <p>The supervision period begins on the end of the sentence and ends on the expiry of 12 months from the date of release. This means an offender serves half the sentence in custody, half under licence in the community, with PSS applying until the offender has spent 12 months under supervision in the community since their automatic release</p>	<p>indeterminate sentences³⁵</p> <p>The offender serves remainder of sentence in the community and must report regularly to a Correctional Service of Canada (CSC) Parole Officer and follow conditions</p> <p>The CSC can refer a statutory release case to the Parole Board for review. The Board's role is limited</p>

Issue	QLD	NSW	SA	NZ	UK	Canada
		<p>commercial quantity of prohibited drug;</p> <ul style="list-style-type: none"> Unauthorised possession or use of firearms. <p>The court has to make a separate order for release at the end of any NPP</p> <p>Release is conditional on eligibility for release on parole (CASA s 126)</p> <p>Must have at least one sentence with a NPP, has served the NPP is not subject to another sentence and cannot be a Cth post sentence terrorism inmate or a NSW post sentence inmate</p>	For all other forms of parole see CSA s 67		<p>Release on Licence: An offender serving a fixed term of imprisonment of 2 years or more will serve half their sentence in prison and serve the rest of the sentence in the community on licence (CJA s244).³³</p> <p>Licence (extended sentence): Offenders convicted of certain violent or sexual offences under an extended sentence, who received a custodial sentence less than 10 years and it is not for a schedule 15B offence will be automatically released after two-thirds of the appropriate custodial sentence (CJA s 246A, CJACA s 4). In any other case the Secretary of the State is to refer the offender to the Parole Board</p>	
Other guidance	<i>Foster v Shaddock</i> [2016] QCA 36 held that the power of Queensland Corrective Services to amend, suspend or cancel parole under CSA s 205 can be exercised whether the offender has actually been released pursuant to	Whenever a court imposes a sentence of imprisonment for a term greater than 3 years, release on parole and the terms of the parole order are matters solely for the Parole Authority: <i>Muldrock v The Queen</i> (2011) 244 CLR 120 at [4]; <i>Wilson v</i>	Section 47 (CSA) (duty of court to fix or extend NPP) does not apply to youth offenders, unless the youth is sentenced as an adult, or is sentenced to detention to be served in a prison or is otherwise transferred to or ordered to serve a period of	Pre-sentence detention must not be taken into account by the court when determining a term of imprisonment (SA s 82)	Licence: Offenders serving sentences of between 3 months and 4 years, with certain exceptions for violence and sexual offenders, may also be eligible for a home detention curfew (HDC). This allows an offender to be released up to 135 days before their automatic release date. The offender will be electronically	Not stated

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Offenders falling under sections 243A, 244A, 246A or 247 of the *Criminal Justice Act 2003* (UK) may be excluded from the duty to release prisoners after serving the requisite custodial period. Similarly, prisoners who have been released on licence and recalled may be excluded.

Issue	QLD	NSW	SA	NZ	UK	Canada
	an existing parole order or not	R [2008] NSWCCA 243 at [29]. If the court makes a parole order with conditions in circumstances where it does not have the power to do so "it has no effect": <i>Moss v R</i> [2011] NSWCCA 86 per Simpson J at [28]	detention in a prison (SA s 46)		tagged and a curfew imposed (CJA s 246, LASPOA s 112)	
Minimum duration of parole and supervision and head sentence	Not stated But cannot be earlier than a current parole eligibility date or current parole release date offender already has (s 160B(4))	Cannot set NPP for a term of imprisonment 6 months or less (CSPA s 46(1)) but this does not apply if imposing an aggregate sentence of imprisonment for 2 or more offences exceeding 6 months (CSPA s 46(2))	Cannot set NPP for a term of imprisonment 12 months or less (SA s 47(5)(a)(i))	Not stated	PSS: Over 1 day and less than 2 years. After completing licence, on PSS until 12 months in community is completed Licence: Sentence of 2 years or more released on licence halfway through sentence Licence (extended period): Sentence of 4 years (or a previous conviction for a Schedule 15B offence)	Remaining one-third of the sentence is to be served in the community under statutory release
Maximum duration of parole and head sentence	To the end of the sentence (maximum 3 years)	The balance of the term of imprisonment must not exceed one-third of the NPP for the sentence, unless there are special circumstances for it to be more Case law indicates the court can also depart from statutory ratio of parole for special circumstances to make	A total period of imprisonment of less than five years To the end of the term of imprisonment (CSA s 69(1))	2 years, released after serving half of their sentence	Licence/parole: Duration until end of sentence (CJA s 249) Licence (extended period): Less than 10 years	No limitation indicated barring that life sentences and intermittent sentences are excluded from statutory release

Issue	QLD	NSW	SA	NZ	UK	Canada
		it less e.g. first time in custody and need for rehabilitation (<i>R v Saville</i> [2018] NSWDC 448)				
PSR mandatory?	N/A	No but has power to request an assessment report at prescribed times (CSPA ss 17B, 17C, 17D)	No, but court has power to request that the Parole Board of the Training Centre Review Board make a report on any person that the court proposes to fix or extend the NPP (SA s47(12))	No, but court has power to direct a probation officer to prepare a PSR where the offender is facing a term of imprisonment (SA s 26(1))	Preferred that for terms of imprisonment a PSR is obtained (CJA s 156(3)). However, if a court determines it is unnecessary it must justify its decision not to obtain a PSR (CJA s 156(4))	No, but a court can request a probation officer prepare and file a report to assist the court in imposing a sentence or in determining whether the accused should be discharged under CC s 730 (CC s 721(1))
Mandatory conditions	Standard conditions e.g. under supervision, report and receive visits and not commit an offence (CSA s 200)	Standard conditions (CASA s 128) and supervision (CASA s 128C)	Standard conditions to be supervised, not commit another offence, and not possess a weapon (unless authorised) (CSA ss 68(1aa), 68(a)(i-iii))	For sentences over 12 months, but under two years the standard conditions apply to the offender until the sentence expiry date (unless different date specified by the court). (SA s 93(2)(a)) For sentences under 12 months the court may impose standard conditions (SA s 93(1)). Standard release conditions are set out in PA s 14	PSS: Supervision requirements include not committing another offence, staying in touch and being visited by the supervisor and drug testing. (CJA s 256AB(1) and ORA Schedule 1, Part 1) <u>Licence:</u> There are standard conditions set by the CJA which apply to offenders on licence (CJA s 250) Licence (extended sentence): A prisoner on extended sentence under s 226A or 226B must follow conditions set out in s 246A(2) (CJA)	Mandatory conditions of release apply to offenders released on parole and statutory release. These are prescribed by regulations. (CCRA s 133(2); CCRR s 161)
Guidance for additional or discretionary conditions	Not stated	Courts not authorised to make conditions The State Parole Authority (SPA) can	May also be subject to any other condition (including GPS monitoring) (CSA ss 68(1aa) and 68(b)).	For sentences 12 months or less the court may impose standard conditions and any special	Licence: The court has the power to recommend conditions to the Secretary of State when sentencing (CJA s 238)	The releasing authority may impose any conditions on statutory release that it considers 'reasonable and necessary in order to

Issue	QLD	NSW	SA	NZ	UK	Canada	
		impose additional conditions (CASA s 128)	Prisoners sentenced for child sexual offenders may be subject to additional conditions which the Board must consider (CSA ss 68(1a) and 68(1b))	<p>conditions on the offender (SA s 93(1)).</p> <p>The court may impose special conditions for sentences over 12 months, but under 2 years (SA s 93(2)(b))</p> <p>In both cases the court must specify an expiry date for the conditions- it can be the sentence expiry date, a date before the sentence expiry date or up to 6 months after the sentence expiry date (SA s 93(2A))</p> <p>Special conditions cannot be imposed unless designed to reduce risk of reoffending, facilitate or promote rehabilitation and reintegration or provide for the reasonable concerns of the victim/s of the offender (SA s 93(3))</p>	<p>conditions on the offender (SA s 93(1)).</p> <p>The court may impose special conditions for sentences over 12 months, but under 2 years (SA s 93(2)(b))</p> <p>In both cases the court must specify an expiry date for the conditions- it can be the sentence expiry date, a date before the sentence expiry date or up to 6 months after the sentence expiry date (SA s 93(2A))</p> <p>Special conditions cannot be imposed unless designed to reduce risk of reoffending, facilitate or promote rehabilitation and reintegration or provide for the reasonable concerns of the victim/s of the offender (SA s 93(3))</p>	<p>Licence (Extended sentence): Adults convicted of sexual or violence offences (CJA Schedule 15) the court may impose an extended period for which the offender is subject to a licence. This is up to 5 years for a violent offence and up to 8 years for a sexual offence. An offender is deemed suitable if meeting: Condition A – the current offence was committed by an offender with a previous conviction for an offence in Schedule 15B or meeting; or Condition B – the current offence is serious enough to receive at least a 4 year custodial sentence. (CJA s 226A, LASPOA s 124)</p> <p>The appropriate custodial term and the extension must not together exceed the maximum term of imprisonment that may be imposed for the offence (CJA s 226A(9), LASPOA s124)</p>	<p>protect society and to facilitate the offender's successful reintegration into society' (CCRA s 133(3))</p> <p>The releasing authority may also impose conditions on statutory release necessary to protect the victim (if the victim of a person referred to in s 26(3) or 142(3) has written to the releasing authority with concerns). Conditions can include no contact, or not going to a specified place (CCRA s 133(3.1))</p>
Additional discretionary conditions	Not stated	Not stated	Not stated	<p>The court must not impose a Global Processing System (GPS) unless it has considered a pre-sentence report (SA s 93(3A))</p> <p>No offender can be given a special condition requiring the offender to take prescription medication date, unless</p>	<p>Make arrangements for supervision and rehabilitation of female offenders. The Secretary of State is required to comply with the public sector equality duty of s 149 of the <i>Equality Act 2010</i> (UK) as it relates to female offenders; and to identify anything in the arrangements that it is intended to meet</p>	Not stated	

Issue	QLD	NSW	SA	NZ	UK	Canada
				the offender has been fully advised by a qualified person on the nature and intended effect of the medication and consents to taking the medication (SA s 93(4))	particular needs of female offenders (ORA s 10; OMA s 3(6A)) The Secretary of State must publish national standards for the management of offenders (OMA s 7(1))	
One order for multiple offences?	There must be one parole release date or one parole eligibility date in existence for an offender (PSA s 160F(1))	Unless ordering an aggregate sentence of imprisonment (CSPA s 53A) the court must order a sentence in relation to each offence	Court may sentence a person to 1 penalty for all or some multiple offences, but the sentence cannot exceed the total of the maximum penalties that could be imposed for each of the offences to which the sentences relate (SA s 26(1))	If the court sentences the offender to more than 1 term of imprisonment on the same occasion, only 1 order for conditions may be made and that order applies to all sentences of imprisonment imposed (SA s 93(8))	Not stated	The remainder of the youth sentence or disposition and the subsequent term of imprisonment and the term of imprisonment and the subsequent youth sentence or disposition constitute one sentence under CCRA s 139 (CC s 743.5(3))
Combined orders – allowed	Does not apply if the offender is sentenced to imprisonment and makes any orders for (PSA s 160A(6)): <ul style="list-style-type: none"> • ICO • Probation (PSA s 92(1)(b)) • Suspended sentence 	Intensive Corrections Order cannot be ordered if the term of imprisonment exceeds 2 years (CSPA s 68)	Cannot fix NPP of a person liable to serve an Intensive Corrections Order (SA s 47(5)(a)(ii))	A sentence of imprisonment may be combined with a sentence of reparation or a fine (SA s 19(9))	Not stated	In addition to fining or sentencing an offender to imprisonment for a term up to 2 years, a court can order a probation order (CC s 731(1)(b)) A court can order a fine in addition to a minimum term of imprisonment (CC s 734(1)(b))
Decision making authority for variation, breaches, etc.	A release date is automatically cancelled when (PSA s 160E):	The State Parole Authority (SPA) can revoke a statutory parole order before release (CASA s 130)	The Parole Board ('Board') has authority to vary or revoke a condition of parole (CSA s 71(1))	The court has authority to suspend any condition, vary the duration of any condition or impose additional conditions, or discharge a condition and	PSS: The Secretary of state may add requirements, remove or amend requirements or set	A Parole Board member, or a person designated by name or position by the Parole Board Chairperson or by the Commissioner has

Issue	QLD	NSW	SA	NZ	UK	Canada
	<ul style="list-style-type: none"> • Court fixes another parole release or eligibility date • Given imprisonment for a serious violent or sexual offence • Given a term of imprisonment over 3 years <p>The Chief Executive may amend a parole order (CSA s 201) and the Parole Board may cancel this amendment (CSA s 202).</p> <p>A parole order can also be amended, suspended or cancelled by the Parole Board under ss 205 and 209, CSA.</p> <p>Suspension under CSA s 205 can be ordered pre or post release</p> <p>The Parole Board can amend a parole order and insert conditions from CSA s 200(2) (CSA s 205(1)). The Parole Board can also suspend or cancel a parole order where it reasonably believes the prisoner has failed to comply with the order, poses a serious risk of harm to someone else or of committing an</p>	<p>The Commissioner or a community corrections order has the power to give warnings where non-compliance (CASA s 170(2)(c)) and can refer to SPA for further action</p> <p>SPA has authority to vary, revoke or impose new conditions where an offender has failed to comply with their parole order (CASA ss 170A, 170B, 171)</p> <p>The AG or DPP may request SPA revoke parole in relation to a serious offender on the basis of false, misleading or irrelevant information (CASA s 172)</p>	<p>Board has authority to cancel parole where a person has breached a condition (CSA s 74(1) (1b))</p> <p>Board may impose community service for breach of parole, instead of exercising powers under s74 (cancellation) (CSA s 74AA(1)). It cannot be less than 40 hours, or more than 200. (CSA s 74AA(4(a)) but cannot be ordered if the parole order already has a condition requiring community service (CSA s 74AA(2))</p>	<p>substitute with any other condition that could have been imposed at time of sentence (SA s 94(3))</p> <p>The offender or a probation order may apply for an order under this section</p> <p>However, the court must not vary any existing condition or impose a new condition involving prescription medication (SA s 93(4)), unless the offender has been fully advised by a qualified person on the nature and intended effect of the medication and consents to taking the medication (SA s 94(4))</p> <p>A probation officer can also apply to have conditions reviewed if a condition is incompatible with any other condition and it is unreasonable to expect the offender to comply with 1 or more of the conditions (SA s 95)</p>	<p>instructions for requirements (CJA s 256AB(4))</p> <p>A magistrate has power to revoke and amend a PSS, as well as revoke the order and issue penalties for breach. The court may deal with the supervision failure by way of committal to prison, imposing a fine or by making a new supervision default order (CJA ss 256C(4)(a) to (c) and ss 56AC (5) and (7) to (9) and ORA Schedule 19A, Part 2, s 9)</p> <p>Licence: The Secretary of State may revoke or cancel any prisoner released on licence on basis of noncompliance with conditions</p> <p>Can also revoke licence for offenders on early release under s 246 (curfew and electronic monitoring) (CJA s 255, ORA s 9)</p>	<p>authority to suspend statutory release (CCRA s 135(1))</p> <p>Statutory release is automatically suspended if an offender receives an additional sentence, other than a conditional sentence (CC s 742.1) to be served in the community or an intermittent sentence (CC s 732) (CCRA s 135(1.1))</p> <p>The Parole Board has authority if it believes an offender on statutory release would constitute an undue risk to society, it may at any time terminate or revoke the statutory release (CCRA s 135(7))</p>

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	<p>offence, or is planning to leave Qld without approval (CSA s 205(2))</p> <p>Receiving another sentence for a term of imprisonment automatically cancels a parole order (CSA s 209)</p> <p>A parole order can be immediately suspended by the Chief Executive if certain conditions are met (CSA s 208A)</p>					
Is breach a separate offence?	<p>No. If an offender breaches parole they will be returned to imprisonment and will then need to apply to the Parole Board for release</p>	<p>No. If an offender breaches the SPA has authority to act (see above)</p> <p>Breach of interstate leave permit is subject to a maximum penalty of 10 penalty units</p>	<p>If offence committed on parole will result in automatic cancellation of parole (CSA s 75)</p> <p>A person is automatically liable to serve the balance of their sentence if an offence is committed while they are on parole and it results in a further sentence of imprisonment being imposed (CSA s 75)</p>	<p>Yes. Breaching any conditions imposed under SA s 93 or s 94, without reasonable excuse, is liable for a term of imprisonment up to 1 year or a fine up to \$2000</p> <p>However, unlike paroled offenders, they cannot be recalled to prison if they breach conditions of the release order</p> <p>However, in the case of SA s 93(4) it is not a breach if the offender withdraws their consent to taking prescription medication</p> <p>In addition, an offender subject to a post-imprisonment condition that is a drug or alcohol condition commits an</p>	<p>PSS: No, however a magistrate can order the arrest of the person if they do not answer a summons and may order imprisonment up to 14 days, a fine not exceeding level 3 or order the person do unpaid work or a curfew requirement (CJA s256AC (4)(a) to (c) and ORA Schedule 19A, Part 2, s9 (2))</p> <p>Licence: No, a breach (called a recall) will return the offender back to prison for either a fixed-term period (14 days if original sentence less than 12 months, 28 days if original sentence 12 months or more) or a standard recall where offender stays in jail until end of sentence. However, the Parole Board or Secretary of State have</p>	<p>Does not appear to be</p>

Issue	QLD	NSW	SA	NZ	UK	Canada
				offence and is liable for a term of imprisonment up to 1 year or a fine up to \$2000, if they refuse testing (without reasonable excuse), dilutes or contaminates a bodily sample, or tampers with a drug or alcohol monitoring device	power to release early if deemed appropriate ³⁶	

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United Kingdom Government, *Probation: Being taken back to Prison* (Web page) <<https://www.gov.uk/guide-to-probation/being-taken-back-to-prison>>.