# Community Correction Orders from 20 March 2017

The *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (‘the Act’) amends the *Sentencing Act 1991* (‘SA’). It makes significant changes to the community correction orders (CCO) by:

* reducing the maximum length of imprisonment that can be combined with a CCO from two years to one year
* reducing the maximum length of a CCO that higher court can impose to five years
* prohibiting a non-parole period being fixed as part of a combined CCO custody order
* restricting the availability of CCO and other non-custodial orders for serious offences.

The Act commenced on 20 March 2017. Some changes apply to all sentences imposed on or after that date (see the transitional provisions in s. 17 of the Act.)

## Changes to length of CCOs, combined orders and non-parole periods

The following changes apply to sentences imposed **on or after 20 March 2017**, regardless of when the offence was committed.

**Combined sentence of imprisonment and CCO**

The maximum period of imprisonment that can be combined with a CCO is reduced from two years to one year (amended s. 44(1)) SA). The sum of all terms of imprisonment (after deducting of any pre-sentence detention declared under section 18 of the Sentencing Act), must be one year or less. An exception remains for arson offences specified in clause 5 of Schedule 1 of the Sentencing Act.

**Maximum term of imprisonment for multiple offences**

Section 118 of the Sentencing Act provides that the maximum cumulative term of imprisonment that the Magistrates’ Court can impose for several offences is five years. The requirement that the offences be ‘committed at the same time' is removed.

**Maximum length of CCOs in higher courts**

The maximum length of a CCO that can be imposed in the County Court or Supreme Court for one or more offences is reduced to five years (amended s. 38(1) (b) SA). Prior to this change, a CCO could be imposed for the maximum term of imprisonment applicable to the offence.

The maximum cumulative period of separate CCOs that can be imposed by the County Court or Supreme Court for two or more offences, is reduced to five years, the same period as currently applies in the Magistrates' Court (amended s. 41A SA).

**Non-parole periods and CCOs**

Under s.11(2) of the Sentencing Act a court has discretion to fix a non-parole period where it imposes a prison sentence of at least one year but less than two years. New ss. 11(2A) prohibits the fixing of a non-parole period where the prison sentence is combined with a CCO.

## Custodial sentences required for certain serious offences

New provisions require custodial sentences to be imposed for certain serious offences **committed after 20 March 2017**. The Sentencing Act has been amended to create two new classes of serious offences: category 1 offence and category 2 offence, which are defined in s. 3(1) of the Sentencing Act.

A court must impose a custodial sentence for category 1 offences. No other sentencing options are available. A custodial sentence must be imposed for a category 2 offence, unless **specified circumstances** exist (new s. 5(2G) and (2H) SA). A custodial sentence is a sentence imposed under Division 2 of Part 3 of the Sentencing Act and does not include a CCO combined with imprisonment.

**Category 1 offences are defined as:**

* murder
* intentionally or recklessly causing serious injury in circumstances of gross violence
* rape
* rape by compelling sexual penetration
* incest with the person's child, other lineal descendant or step-child, who is under 18
* incest with a child, other lineal descendant or step-child under 18 years, of the person’s de-facto spouse
* sexual penetration of a child under the age of 16 committed where the child is under 12 years
* persistent sexual abuse of a child under the age of 16
* trafficking in or cultivating a large commercial quantity of a drug of dependence
* trafficking a large commercial quantity of a drug of dependence or cultivating a large commercial quantity of a narcotic plant.

**Category 2 offences are defined as:**

* manslaughter
* child homicide
* intentionally causing serious injury
* kidnapping (at common law and under s. 63A of the *Crimes Act 1958*.
* arson causing death
* trafficking a commercial quantity of a drug of dependence or cultivating a commercial quantity of a narcotic plant
* providing documents or information facilitating terrorist attacks.

The **specified circumstances** that must exist for a non-custodial sentence to be imposed for a category 2 offence are set out in new ss. 5(2H) (a) - (e). The circumstances are that:

* the offender has provided or undertaken to provide assistance to law enforcement in the investigation or prosecution of an offence
* at the time of offending, the offender was aged over 18 but under 21 years and can show psychosocial immaturity, which substantially diminished their ability to regulate their behaviour
* the offender demonstrates impaired mental functioning that was a cause of the offending and which substantially reduces their culpability
* the court will make a Court Secure Treatment Order or Residential Treatment Order, or
* there are substantial and compelling circumstances that justify a custodial sentence not being imposed. In determining if the relevant circumstances exit the court must have regard to Parliament’s intention, that a term of imprisonment should ordinarily be imposed for a class 2 offence, and whether the total circumstances justify a different sentence being imposed. (s.5(2I).

These circumstances mirror the 'special reasons’ under s. 10A of the Sentencing Act that currently apply to the imposition of a mandatory minimum term of imprisonment for gross violence offences.

## Other changes

The Act also:

* clarifies that the provisions relating to expungement of historical homosexual convictions apply to convictions in the Children's Court ((new s. 105AA)
* clarifies that the court must also specify the sentence discount for a guilty plea, where it imposes a term of imprisonment, or a CCO of 2 years or more (new ss. 6AAA(1)(b) (ia) and (ib)
* repeals sections 29 and 30 of the *Bail Act 1977* relating to the issuing of a notice of trial
* makes other consequential amendments.

## More information

This is a summary of the changes only. Lawyers should read the [Sentencing (Community Correction Order) and Other Acts Amendment Act 2016](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/4508138bb27b1a1dca25806c0010be22%21OpenDocument) before providing legal advice to clients.

Further information, can also be obtained by reading the [Explanatory memorandum and second reading speech](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/ca257cca00177a46ca25804a00197f6f%21OpenDocument) to the Bill.