

# COURT ASSESSMENT, PRE- SENTENCE REPORT AND PRE- RELEASE REPORT POLICY 2023

ACT CORRECTIVE SERVICES



**ACT**  
Government

Justice and Community Safety

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## 1 PURPOSE

ACT Corrective Services (ACTCS) is committed to ensuring the provision of accurate, reasonable and verified reports to the Court and Sentence Administration Board in a timely manner to assist as required by law.

This policy provides instructions on the conduct and management of assessments and other reports undertaken as part of ACT Community Operations functions.

## 2 SCOPE

This policy applies to all Community Operations staff.

Where required, the Assistant Commissioner, Service Improvement and Community Operations will establish operational procedures under this policy.

Court Duty Reports do not fall under the requirements of this Policy.

## 3 DEFINITIONS

**Assessment** An Intensive Correction Order Assessment or a Drug and Alcohol Treatment Assessment.

**Assessor** As defined in sections 39A (Pre-Sentence Report), 46A (Intensive Correction Order Assessment) and 46H (Drug and Alcohol Treatment Assessment) of the *Crimes (Sentencing) Act 2005 (ACT)* (the Act):

- a. a public servant whose functions include preparing PSRs, Intensive Correction Order Assessments and Drug and Alcohol Treatment Order assessments
- b. a person with similar functions under the law of a State.

**Collateral checks** Information used to verify information from the offender, including police statement of facts, criminal history, interviews with co-residents, family members, and/or significant others, service records, information from external agencies etc.

**Community Corrections Officer (CCO)** An Officer who has delegation as stated in legislation to supervise offenders.

**Community Service Work Assessment Matters** Information that must be considered when assessing the offender's suitability to serve a sentence by way of Community Service Work, as set out in table 90, Column 2 of the *Act* and noted in a PSR.

**Drug and Alcohol Treatment Assessment Matters** Information that must be considered when assessing the offender's suitability to serve a sentence by way of a Drug and Alcohol Treatment Order, as set out in table 46K, Column 2 of the *Act*.

**Intensive Correction Order Assessment Matters** Information that must be considered when assessing the offender's suitability to serve a sentence by way of Intensive Correction Order, as set out in table 46D, Column 2 of the *Act*.

**Offender** A person convicted or found guilty of an offence by a Court, including young offenders, as defined in s 8 of the *Act* or a person who has indicated an intention to plead guilty.

**Parole Progress Report** A written report about an offender's progress while on parole.

**Pre-Sentence Report (PSR)** A report as defined by s 42 of the *Act* prepared by an officer delegated by the Director-General to support the Court to determine an appropriate sentence.

**Pre-Sentence Report Matters** Information that must be considered, in relation to an offender, as set out in section 40A of the *Act*.

**Pre-Sentence Report Order** An Order made by the Court under section 41 of the *Act*. The Order for a Pre-Sentence Report may include one or more pre-sentence report matters, or any other matter, that must be addressed in the report.

**Pre-Release Report (PRR)** A written report about an offender requested by the Sentence Administration Board to assist in determining release on parole.

**Sentence Administration Board (the Board)** A board established under section 171 of the *Crimes (Sentence Administration) Act 2005*, which executes functions as per section 172 of the *Act*.

## 4 AUTHORITY

- 4.1 The Magistrates/Supreme Court of the Australian Capital Territory can make an Order under the *Crimes (Sentencing) Act 2005* (ACT) (the *Act*) for a Pre-Sentence Report (PSR) or Assessment.
- 4.2 The *Act* provides an Assessor with the relevant legislative powers to conduct any investigation the assessor considers appropriate, including the ability to ask an entity to provide information that may be relevant for the preparation of the report.
- 4.3 The *Act* also provides the Assessor with the legislative framework to request information under the *Children and Young People Act 2008* or the *Domestic Violence Agencies Act 1986*, for the preparation of a report for a young offender or an offender being sentenced for a family violence offence respectively.
- 4.4 In accordance with the *Act*, a PSR or Assessment may be given to the Court either orally or in writing.
- 4.5 All reports provided to the courts may be subject to cross-examination.
- 4.6 For an Inquiry, the Sentence Administration Board (the Board) may request a Pre-Release Report (PRR) under section 198 of the *Crimes (Sentence Administration) Act 2005*.
- 4.7 In accordance with the *Crimes (Sentence Administration) Act 2005*, a PRR must be provided in writing.

## 5 PRINCIPLES

- 5.1 ACTCS is committed to ensuring the provision of reasonable, accurate and verified reports to the Court and the Board in a timely manner to support the Court or the Board to determine a suitable sentence or decision on parole.
- 5.2 Reports and assessments play an important role in assisting the Court to impose sentences that are constructively adapted to individuals in a way that is just and appropriate and which promote rehabilitation and reintegration of the offender into the community.
- 5.3 Where the Court requests a PSR, the report must address all PSR matters and, during a COVID-19 Emergency, include matters for assessing an offender's suitability for an Intensive Correction Order (ICO) as mentioned in section 46D of the *Act*.

- 5.4 Where the Court requests a Drug and Alcohol Treatment Assessment, the report must address all matters mentioned in table 46K, Column 2 of the *Act*.
- 5.5 Where the Board requests a PRR, the report must address all matters the Board must take into consideration, as listed in s.120(2) of the *Crimes (Sentence Administration) Act 2005* (ACT).
- 5.6 Reports or assessments that do not address all the matters required by the legislation may be grounds for appeal of the sentence. The Court may require an unsatisfactory report or assessment to be redone.
- 5.7 ACTCS will, as far as practicable, observe the principles of natural justice in the preparation of reports and assessments. This includes considering the views of, or material considered relevant by, the offender, remaining unbiased in consideration of the material or information and making sure that there is reasonable evidence and basis for any conclusions made as part of the report or assessment.
- 5.8 As per section 17B (2) of the *Victims of Crime Act 1994*, ACTCS must seek and consider the victim's concerns about the need for protection from violence or harassment by the offender when writing a sentencing report for the Court. In the case of Pre-Release Reports for offenders applying for parole, this function is carried out by the Board.
- 5.9 The rules of evidence may apply to the consideration of a report or assessment by the Court, if the Court considers it appropriate in the interests of justice after an application is made by a party that the rules of evidence should apply, and the Court considers that the proceeding will involve proof of a fact which will be significant in deciding a sentence. Assessors should be prepared to be cross-examined on the report or assessment.
- 5.10 The Board is not subject to the rules of evidence but is required to observe natural justice.
- 5.11 The report or assessment should not contain information, material or views that are not relevant, and should remain neutral and factual.
- 5.12 As far as practicable, the conduct and management of reports or assessments must respect the offender's rights to privacy and reputation and information be handled in accordance with relevant information privacy laws applying to ACTCS.

## **6 ABORIGINAL AND/OR TORRES STRAIT ISLANDER PEOPLE**

- 6.1 A Community Corrections Officer must consider the cultural identity of an Aboriginal or Torres Strait islander offender when preparing a PSR, PRR or Assessment.
- 6.2 Components that make up cultural identity include cultural heritage and distinctive spiritual practices, observances, beliefs and teachings, language and knowledge, kinship ties and relationships with country of both the offender and their community.
- 6.3 The cultural identity of an offender is an important consideration which should inform assessments about suitable interventions.
- 6.4 Cultural information may be included to demonstrate the way in which cultural identity may have related to the commissioning of an offence.

Example: Intergenerational trauma.

## **7 COLLATERAL CHECKS**

- 7.1 For the purpose of an Assessment or PSR, a Community Corrections Officer must advise the offender of their legislative powers as an Assessor to conduct any investigation they consider appropriate, for the preparation of the report.
- 7.2 For the purpose of a PRR, a Community Corrections Officer will seek consent from the offender:
  - a. to provide contact information for collateral checks
  - b. for the sharing and exchange of relevant information relating to the offender's impending release from custody.
- 7.3 A Community Corrections Officer must explain to the offender that withholding consent, and the officer's consequent inability to obtain certain information or collateral checks, may impact on possible sentencing or release outcomes.
- 7.4 A Community Corrections Officer will liaise with third parties to:
  - a. verify information
  - b. confirm an offender's participation in interventions
  - c. confirm an offender's stability with co-residents or significant others
  - d. gain a better understanding of the needs and goals of the offender
  - e. assist in the achievement of positive outcomes.
- 7.5 All sources of information must be identified in the PSR, PRR or Assessment.

- 7.6 Information that is not verified should be identified as such in the PSR, PRR or Assessment.

## **8 COMMUNITY CORRECTIONS OFFICER - QUALITY ASSURANCE MEASURES**

- 8.1 The Community Corrections Officer preparing the PSR, PRR or Assessment will:
- a. ensure all information contained in the report is accurate and where possible, verified
  - b. ensure the verified Level of Services Inventory - Revised (LSI-R) assessment is used in identifying criminogenic risks/needs and risk of reoffending informs the PSR, PRR or Assessment
  - c. ensure charge descriptions and charge numbers reflect the indictment or PSR Order.
- 8.2 Where there is an identifiable victim, for all report types, with the exception of PRR, the Community Corrections Officer must liaise with ACTCS Victim Liaison Officer, who will contact the victim(s) of the offence(s) to seek their input, and consent for this to be included in the report.
- 8.3 The PSR, PRR or Assessment must be provided to the Team Leader for vetting at least five (5) full business days prior to the due date at Court or as required by the Secretariat.

## **9 TEAM LEADER – QUALITY ASSURANCE MEASURES**

- 9.1 The Team Leader will ensure that:
- a. the PSR, PRR or Assessment is written in a manner that is consistent with relevant Community Instructions, including an appropriate depth of analysis of information
  - b. all matters, specific to the PSR, PRR or Assessment, have been addressed
  - c. the LSI-R is approved and informs the content of the PSR, PRR or Assessment
  - d. adequate opportunity has been given to the offender to discuss information required for the PSR, PRR or Assessment
  - e. a home visit has been undertaken where indicated
  - f. sources of information are verified by appropriate collateral checks or identified as not verified



- g. charge descriptions and charge numbers reflect the indictment or Court Order
- h. the risk of reoffending and identification of criminogenic risk factors has been included in the PSR, PRR or Assessment
- i. ensure the conclusions drawn are reasonable, correctly based upon information contained in the body of the PSR, PRR or Assessment and that this information is accurate and specific to the offender.

## **10 PROVISION OF REPORTS TO THE COURT OR SECRETARIAT**

- 10.1 The timeframe required for submitting a PSR or Assessment to the courts is two (2) days prior to the next court date (as per the requirements of the Memorandum of Understanding) or as stipulated on the Order.
- 10.2 The timeframe required for submitting a PRR to the Secretariat will be specified in the written request from the Secretariat.
- 10.3 In accordance with natural justice principles, the offender should be made aware of the information included in the completed PSR or Assessment prior to the Court date.
- 10.4 In accordance with natural justice principles, a completed PRR must be read and provided to the offender at least two (2) days prior to the SAB inquiry date so that:
  - a. the offender can express any views on the accuracy of the report
  - b. the offender is aware of any recommendations made by the Assessor.
- 10.5 If the timeframes for submission of an PSR, PRR or Assessment are not able to be met, the relevant Team Leader must consult with the Director or Senior Director, Community Operations prior to the due date, to decide on an appropriate course of action.
- 10.6 The decision to contact the Court or the Secretariat in relation to the provision of an Assessment, PSR or PRR, is made by the Director or Senior Director, Community Operations.

## **11 RELATED DOCUMENTS**

- Memorandum of Understanding (MOU) between ACTCS and the ACT Courts and Tribunal
- Crimes (Sentence Administration) Act 2005
- Crimes (Sentencing) Act 2005

- Children and Young People Act 2008
- Domestic Violence Agencies Act 1986
- Corrections Management Act 2007
- Human Rights Act 2004

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