

CRIMINAL LAW (SENTENCING) ACT 1988

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[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

SOUTH AUSTRALIA

CRIMINAL LAW (SENTENCING) ACT 1988

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 6 April 1999.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 18 December 1995.

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CRIMINAL LAW (SENTENCING) ACT 1988

being

Criminal Law (Sentencing) Act 1988 No. 50 of 1988
[Assented to 5 May 1988]¹

as amended by

Criminal Law (Sentencing) Act Amendment Act 1988 No. 76 of 1988 [Assented to 1 December 1988]
Criminal Law (Sentencing) Act Amendment Act 1989 No. 47 of 1989 [Assented to 31 August 1989]
Statutes Amendment (Victims of Crime) Act 1990 No. 27 of 1990 [Assented to 26 April 1990]²
Statutes Amendment (Criminal Law Sentencing) Act 1991 No. 22 of 1991 [Assented to 18 April 1991]³
Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]⁴
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]⁵
Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]⁶
Statutes Amendment (Sentencing) Act 1992 No. 34 of 1992 [Assented to 21 May 1992]⁷
Criminal Law (Sentencing) (Suspension of Vehicle Registration) Amendment Act 1992 No. 73 of 1992
[Assented to 19 November 1992]⁸
Criminal Law (Sentencing) (Education Programmes) Amendment Act 1993 No. 33 of 1993 [Assented to
13 May 1993]⁹
Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993 No. 94 of 1993
[Assented to 4 November 1993]¹⁰
Statutes Amendment (Attorney-General's Portfolio) Act 1994 No. 21 of 1994 [Assented to 26 May 1994]¹¹
Domestic Violence Act 1994 No. 22 of 1994 [Assented to 26 May 1994]¹²
Statutes Amendment (Truth in Sentencing) Act 1994 No. 35 of 1994 [Assented to 2 June 1994]¹³
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to
27 October 1994]¹⁴
Criminal Law (Sentencing) (Miscellaneous) Amendment Act 1995 No. 69 of 1995 [Assented to
2 November 1995]¹⁵
Statutes Amendment (Sentencing of Young Offenders) Act 1996 No. 68 of 1996 [Assented to
15 August 1996]¹⁶
Statutes Amendment (Attorney-General's Portfolio) Act 1997 No. 59 of 1997 [Assented to 31 July 1997]¹⁷
Statutes Amendment (Young Offenders) Act 1998 No. 41 of 1998 [Assented to 13 August 1998]¹⁸
**Criminal Law (Sentencing) (Victim Impact Statements) Amendment Act 1998 No. 48 of 1998 [Assented
to 3 September 1998]¹⁹**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

- ¹ Came into operation (except ss. 4-20 & 30-75) 12 May 1988: *Gaz.* 12 May 1988, p. 1180; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.
- ² Came into operation 1 September 1990: *Gaz.* 16 August 1990, p. 582.
- ³ Came into operation 30 May 1991: *Gaz.* 30 May 1991, p. 1702.
- ⁴ Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.
- ⁵ Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
- ⁶ Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- ⁷ Came into operation 30 September 1992: *Gaz.* 24 September 1992, p. 1150.
- ⁸ Came into operation 1 July 1993: *Gaz.* 1 July 1993, p. 198.
- ⁹ Came into operation 1 July 1994: *Gaz.* 9 June 1994, p. 1668.
- ¹⁰ Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2177.
- ¹¹ Came into operation 7 July 1994: *Gaz.* 7 July 1994, p. 4.
- ¹² Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 68.
- ¹³ Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 69.
- ¹⁴ Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- ¹⁵ Came into operation (except ss. 10 & 11) 18 December 1995: *Gaz.* 14 December 1995, p. 1640; ss. 10 & 11 came into operation 2 November 1997 (by virtue of the Acts Interpretation Act 1915, s. 7(5)).
- ¹⁶ Came into operation 8 October 1996: *Gaz.* 29 August 1996, p. 810.
- ¹⁷ Part 2 (s. 4) came into operation 14 September 1997: *Gaz.* 11 September 1997, p. 704.
- ¹⁸ Part 2 (ss. 4-8) came into operation 1 October 1998: *Gaz.* 10 September 1998, p. 815.
- ¹⁹ **Came into operation 6 April 1999: *Gaz.* 1 April 1999, p. 1514.**

N.B. The amendments effected to this Act by the *Statutes Amendment (Fine Enforcement) Act 1998*, the *Statutes Amendment (Restraining Orders) Act 1999* and the *Statutes Amendment (Sentencing—Miscellaneous) Act 1999* had not been brought into operation at the date of, and have not been included in, this reprint.

Criminal Law (Sentencing) Act 1988

An Act to consolidate and amend the law relating to sentencing and the enforcement of sentences; and to provide for other related matters.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Criminal Law (Sentencing) Act 1988*.

* * * * *

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**appropriate officer**" means—

- (a) the Sheriff; or
- (b) a registrar of the Magistrates Court; or
- (c) the Registrar of the Youth Court;

"**bond**" means an agreement (not being a bail agreement) entered into pursuant to the sentence of a court under which the defendant undertakes to the Crown to comply with the conditions of the agreement;

"**the CEO**" means the Chief Executive Officer of the Department for Correctional Services;

"**community service officer**" means an employee in the Department for Correctional Services assigned to the position of community service officer;

"**court**"—

- (a) means any court of criminal jurisdiction; and
- (b) in relation to the exercise of powers under this Act with respect to the variation, revocation or enforcement of an order of court or other related matters, means the court that made the order or a court of co-ordinate jurisdiction;

"**ERD Court**" means the Environment, Resources and Development Court;

"**goods**" includes money;

"**injury**", in relation to an offence, includes pregnancy, mental injury, shock, fear, grief, distress or embarrassment resulting from the offence;

"**the Parole Board**" means the Parole Board of South Australia established under the *Correctional Services Act 1982*;

"pecuniary sum" means—

- (a) a fine; or
- (b) compensation; or
- (c) costs; or
- (d) a sum payable pursuant to a bond or to a guarantee ancillary to a bond; or
- (e) any other amount payable pursuant to an order or direction of a court,

and includes a levy imposed under the *Criminal Injuries Compensation Act 1978*;

"prescribed unit", in relation to a sum in default, means—

- (a) where a term of imprisonment is to be fixed for enforcement—
 - (i) \$50; or
 - (ii) if some other amount is prescribed, that amount;
- (b) where an order is made against a youth fixing a period of detention or home detention or a number of hours of community service for enforcement—
 - (i) \$50; or
 - (ii) if some other amount is prescribed, that amount;
- (c) where an undertaking is entered into under section 67 to work off the sum in default by the performance of community service—
 - (i) \$100; or
 - (ii) if some other amount is prescribed, that amount,

and includes any fraction left after dividing the sum in default by the relevant amount;

"probationer" means a defendant who has entered into a bond pursuant to this Act;

"probation officer" means an employee in the Department for Correctional Services assigned to the position of probation officer;

"probative court" means—

- (a) in the case of a bond entered into pursuant to an order of an appellate court on an appeal against sentence—the court that imposed that sentence;
- (b) in any other case—the court that made the order pursuant to which the defendant entered into the bond;

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"**sentence**" means—

- (a) the imposition of a penalty; or
- (b) the decision of a court to offer a defendant an opportunity to enter into a bond; or
- (c) the fixing or extending of a non-parole period; or
- (d) the making of any other order or direction affecting penalty;

"**sentence of indeterminate duration**" means detention in custody until further order;

"**special Act**" means an Act, regulation, rule, by-law or other legislative instrument that creates an offence or prescribes a penalty for an offence;

"**working day**" means any day other than a Saturday, Sunday or public holiday;

"**youth**" has the same meaning as in the *Young Offenders Act 1993*;

"**Youth Court**" means the *Youth Court of South Australia*.

(2) For the purposes of this Act, a person who pleads guilty to a charge of an offence will be taken to have been found guilty of the offence unless—

- (a) the plea is subsequently withdrawn; or
- (b) the person is adjudged incompetent to have made the plea.

(3) For the purposes of this Act, a levy imposed on a person by virtue of the *Criminal Injuries Compensation Act 1978* will be taken to have been imposed by order of the court that found the person guilty of the offence that gave rise to the levy.

Application of Act to youths

3A. (1) Subject to any provision of this Act to the contrary, this Act applies in relation to the sentencing of a youth and the enforcement of a sentence against a youth.

(2) However, in the event of conflict between a provision of this Act and a provision of the *Young Offenders Act 1993* or the *Youth Court Act 1993*, the latter provision prevails to the extent of that conflict.

(3) In applying a provision of this Act to a youth who is being or has been dealt with as a youth (i.e., not as an adult)—

- (a) a reference to imprisonment is to be read as a reference to detention;
- (b) a reference to a warrant of commitment is to be read as an order for detention;
- (c) a reference to a prison is to be read as a reference to a training centre;
- (d) a reference to the CEO is to be read as a reference to the Chief Executive of the Department for Family and Community Services;

- (e) a reference to a community service officer is to be read as a reference to a person authorised (individually or by class) by the Minister for Family and Community Services to exercise the powers of a community service officer in relation to youths;
- (f) a reference to a bond, or to entering into a bond, is to be read as a reference to an order under section 26 of the *Young Offenders Act 1993*, or to becoming subject to such an order;
- (g) a reference to a probationer is to be read as a reference to a youth the subject of such an order;
- (h) a reference to a probation officer is to be read as a reference to a person authorised (individually or by class) by the Minister for Family and Community Services to exercise the powers of a probation officer in relation to youths.

Powers conferred by this Act are additional

4. Subject to this Act, the powers conferred on a court by this Act are in addition to, and do not derogate from, the powers conferred by any other Act or law to impose a penalty upon, or make any order or give any direction in relation to, a person found guilty of an offence.

This Act does not affect power to deal with contempt

5. Nothing in this Act affects the powers of a court to punish a person for contempt of that court.

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**PART 2
GENERAL SENTENCING PROVISIONS**

DIVISION 1—PROCEDURAL PROVISIONS

Determination of sentence

6. For the purpose of determining sentence, a court—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself on matters relevant to the determination as it thinks fit.

Prosecutor to furnish particulars of victim's injury, etc.

7. (1) Subject to subsection (2), the prosecutor must, for the purpose of assisting a court to determine sentence for an offence, furnish the court with particulars (that are reasonably ascertainable and not already before the court in evidence or a pre-sentence report) of—

- (a) injury, loss or damage resulting from the offence; and
- (b) injury, loss or damage resulting from—
 - (i) any other offence that is to be taken into account specifically in the determination of sentence; or
 - (ii) a course of conduct consisting of a series of criminal acts of the same or a similar character of which the offence for which sentence is to be imposed forms part.

(2) The prosecutor may refrain from furnishing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor.

(3) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

Victim impact statements

7A. (1) A person who has suffered injury, loss or damage resulting from an indictable offence committed by another may furnish the trial court with a written personal statement (a "**victim impact statement**") about the impact of that injury, loss or damage on the person and his or her family.

(2) A victim impact statement must comply with and be furnished in accordance with rules of court.

(3) The court, on convicting the defendant of the offence—

- (a) will, if the person so requested when furnishing the statement, allow the person an opportunity to read the statement out to the court; and
- (b) in any other case, will cause the statement to be read out to the court.

(4) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

Pre-sentence reports

8. (1) A court may, if of the opinion that it would assist in determining sentence, order the preparation of pre-sentence reports on the physical or mental condition of the defendant, or on the personal circumstances and history of the defendant.

(2) The court should not order the preparation of a pre-sentence report—

(a) where the information sought by the court cannot be furnished within a reasonable time; or

(b) where the penalty to be imposed is a mandatory penalty for which no other penalty can be substituted and a non-parole period is not in question.

(3) A pre-sentence report may be given orally or in writing.

(4) A copy of every written pre-sentence report received by a court must be furnished to the prosecutor and to the defendant or his or her counsel.

(5) The person by whom a pre-sentence report is given is liable to be examined or cross-examined on any of the matters contained in the report and, in the case of a written report, must appear before the court for that purpose if requested to do so.

(6) Where a statement of fact or opinion in a pre-sentence report is challenged by the prosecutor or the defendant, the court must disregard the fact or opinion unless it is substantiated on oath.

Court to inform defendant of reasons, etc., for sentence

9. (1) A court must, upon sentencing a defendant who is present in court—

(a) state its reasons for imposing the sentence; and

(b) cause an explanation of the legal effect and obligations of the sentence and, where appropriate, of the consequences of non-compliance with it, to be given in simple language to the defendant.

* * * * *

(2) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

Rectification of sentencing errors

9A. (1) A court that imposes a sentence on a defendant, or a court of co-ordinate jurisdiction, may, on application by the Director of Public Prosecutions or the defendant, make such orders as the court is satisfied are required to rectify an error of a technical nature made by the sentencing court in imposing the sentence, or to supply a deficiency or remove an ambiguity in the sentencing order.

(2) The Director of Public Prosecutions and the defendant are both parties to an application under this section.

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DIVISION 2—GENERAL SENTENCING POWERS

Matters to which a sentencing court should have regard

10. A court, in determining sentence for an offence, should have regard to such of the following matters as are relevant and known to the court:

- (a) the circumstances of the offence;
- (b) other offences (if any) that are to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
- (d) the personal circumstances of any victim of the offence;
- (e) any injury, loss or damage resulting from the offence;
- (f) the degree to which the defendant has shown contrition for the offence—
 - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence; or
 - (ii) in any other manner;
- (g) if the defendant has pleaded guilty to the charge of the offence—that fact;
- (h) the degree to which the defendant has co-operated in the investigation of the offence;
- (i) the need to protect the community from the defendant's criminal acts;
- (j) the deterrent effect any sentence under consideration may have on the defendant or other persons;
- (k) the need to ensure that the defendant is adequately punished for the offence;
- (l) the character, antecedents, age, means and physical or mental condition of the defendant;
- (m) the rehabilitation of the defendant;
- (n) the probable effect any sentence under consideration would have on dependants of the defendant;
- (o) any other relevant matter.

Imprisonment not to be imposed except in certain circumstances

11. (1) A sentence of imprisonment must not be imposed for an offence unless, in the opinion of the court—

- (a) the defendant has shown a tendency to violence towards other persons; or
- (b) the defendant is likely to commit a serious offence if allowed to go at large; or

- (c) the defendant has previously been convicted of an offence punishable by imprisonment; or
- (d) any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence.

(2) This section does not apply to a sentence of imprisonment imposed for the enforcement of sentence.

* * * * *

Order for payment of pecuniary sum not to be made in certain circumstances

13. (1) The court must not make an order requiring a defendant to pay a pecuniary sum if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that—

- (a) the defendant would be unable to comply with the order; or
- (b) compliance with the order would unduly prejudice the welfare of dependants of the defendant,

(and in such a case the court may, if it thinks fit, order the payment of a lesser amount).

(2) The court is not obliged to inform itself as to the defendant's means, but it should consider any evidence on the subject that the defendant or the prosecutor has placed before it.

Preference must be given to compensation for victims

14. Where a court considers—

- (a) that it is appropriate—
 - (i) to make an order for compensation (under this Act or any other Act); and
 - (ii) to impose a fine or make any other order for the payment of a pecuniary sum; but
- (b) that the defendant has insufficient means to pay both the compensation and the fine or other pecuniary sum,

the court must give preference to compensation.

Discharge without penalty

15. (1) Where a court finds a person guilty of an offence but finds the offence so trifling that it is inappropriate to impose any penalty, it may—

- (a) without recording a conviction, dismiss the charge; or
- (b) upon recording a conviction, discharge the defendant without penalty.

(2) A court may exercise the powers conferred by this section despite any minimum penalty fixed by a special Act.

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Imposition of penalty without conviction

16. Where a court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service, or both and the court is of the opinion—

- (a) that the defendant is unlikely to commit such an offence again; and
- (b) that, having regard to—
 - (i) the character, antecedents, age or physical or mental condition of the defendant; or
 - (ii) the fact that the offence was trifling; or
 - (iii) any other extenuating circumstances,good reason exists for not recording a conviction,

the court may impose the penalty without recording a conviction.

Reduction of minimum penalty

17. Where a special Act fixes a minimum penalty in respect of an offence and the court, having regard to—

- (a) the character, antecedents, age or physical or mental condition of the defendant; or
- (b) the fact that the offence was trifling; or
- (c) any other extenuating circumstances,

is of the opinion that good reason exists for reducing the penalty below the minimum, the court may so reduce the penalty.

Court may add or substitute certain penalties

18. Where, on convicting a defendant or finding a defendant guilty of an offence, the court thinks that good reason exists for departing from the penalty provided by the special Act, the court may sentence the defendant as follows:

- (a) where the special Act prescribes a sentence of imprisonment only for the offence, the court may instead impose—
 - (i) a fine; or
 - (ii) a sentence of community service; or
 - (iii) both a fine and a sentence of community service; or
- (b) where the special Act prescribes a sentence of both imprisonment and a fine for the offence, the court may instead impose—
 - (i) a sentence of imprisonment only; or
 - (ii) a fine only; or

- (iii) a sentence of community service; or
- (iv) both a fine and a sentence of community service; or
- (c) where the special Act prescribes a sentence of imprisonment or a fine in the alternative for the offence, the court may instead impose—
 - (i) a sentence of community service; or
 - (ii) both a fine and a sentence of community service; or
- (d) where the special Act prescribes a fine only for the offence, the court may instead impose a sentence of community service.

Sentencing for multiple offences

18A. If a person is found guilty of a number of offences for which he or she was charged on the one complaint or information, the court may sentence the person to the one penalty for all or some of those offences, but the sentence cannot exceed the total of the maximum penalties that could be imposed in respect of each of the offences to which the sentence relates.

Limitations on sentencing powers of Magistrates Court

19. (1) The Magistrates Court does not, unless it is constituted of a Magistrate, have the power to impose a sentence of imprisonment.

(2) If the Court, constituted otherwise than by a Magistrate, is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before the Court constituted of a Magistrate.

(3) The Magistrates Court does not have the power to impose—

- (a) a sentence of imprisonment that exceeds 2 years; or
- (b) a fine that exceeds \$150 000.

(4) Subsection (3) applies whether the offence to which the sentence relates is a summary offence or a minor indictable offence.

(5) If the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limits prescribed by subsection (4), the Court may remand the defendant to appear for sentence before the District Court.

Restraining orders may be issued on finding of guilt or sentencing

19A. (1) A court may, on finding a person guilty of an offence or on sentencing a person for an offence, exercise the powers of the Magistrates Court to issue against the defendant a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* as if a complaint had been made under that Act against the defendant in relation to the matters alleged in the proceedings for the offence.

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(2) An order issued under this section—

- (a) has effect as a restraining order under the *Summary Procedure Act 1921* or a domestic violence restraining order under the *Domestic Violence Act 1994* (as the case may require); and
- (b) is not a sentence for the purposes of this Act.

This Division does not affect mandatory sentences

20. Nothing in this Division—

- (a) affects the sentence to be imposed by a court for murder or treason; or
- (b) derogates from a provision of a special Act that expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

DIVISION 3—SENTENCES OF INDETERMINATE DURATION**Application**

21. (1) Subject to subsection (2), this Division does not apply in relation to a youth.

(2) The Supreme Court may exercise its powers under section 23 in relation to a youth who is sentenced as an adult pursuant to the *Young Offenders Act 1993*.

Habitual criminals

22. (1) This section applies in relation to offences of the following classes, whether committed before or after the commencement of this Act:

- Class 1: Sections 21 to 25—Wounding
- Class 2: Section 27—Poisoning
- Class 3: Sections 48, 49, 56, 59, 69 and 72—Sexual Offences
- Class 4: Sections 81 and 82—Abortion
- Class 5: Sections 155 to 158—Robbery
Sections 159, 160, 161, 162, 164 and 165—Extortion
Sections 167 to 171—Burglary
Sections 131, 132 and 173—Larceny
Sections 176 to 178 and 182 to 192—Embezzlement, etc.
Sections 195, 196, 197 and 199—False pretences, receiving
- Class 6: Section 85(1)—Arson
- Class 7: Part 6—Forgery

(Classes 1 to 7 refer to offences under the *Criminal Law Consolidation Act 1935*)

- Class 8: Part IV of the *Crimes Act 1914* of the Commonwealth—Coinage.

(2) Where—

- (a) a defendant is convicted of an offence that falls within Class 1, 2, 3 or 4 and has had two or more previous convictions of an offence of the same class; or
- (b) a defendant is convicted of an offence that falls within Class 5, 6, 7 or 8 and has had three or more previous convictions of an offence of the same class,

the Supreme Court may, on application by the Director of Public Prosecutions, in addition to any other sentence imposed in respect of the offence by the court by which the defendant was convicted, declare that the defendant is an habitual criminal and direct that he or she be detained in custody until further order.

(3) A previous conviction for an offence committed outside South Australia will be regarded as a previous conviction for the purposes of subsection (2) if it is substantially similar to an offence of the relevant class of offences.

(4) The detention of a person under this section will commence on the expiration of all terms of imprisonment that the person is liable to serve.

(5) Subject to subsection (6), a person detained under this section will be detained in such prison as the Minister for Correctional Services from time to time directs.

(6) Subject to the *Correctional Services Act 1982*, that Act applies to a person detained under this section as if the person were serving a sentence of imprisonment.

(7) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Director of Public Prosecutions or the person, discharges the order for detention.

Offenders incapable of controlling sexual instincts

23. (1) In this section—

"**institution**" means—

- (a) a prison; and
- (b) a place declared by the Governor by proclamation to be a place in which persons may be detained under this section; and
- (c) in relation to a youth, includes a training centre;

"**offence to which this section applies**" means—

- (a) an offence under section 48, 49, 56, 58, 58A, 59, 69 or 72 of the *Criminal Law Consolidation Act 1935*;
- (b) an offence under section 23 of the *Summary Offences Act 1953*;
- (c) any other offence where the evidence indicates that the defendant may be incapable of controlling his or her sexual instincts.

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(2) Where a defendant is convicted of an offence to which this section applies by the District Court or the Magistrates Court, the court may, if of the opinion that the powers under this section should be exercised in relation to the defendant, remand the defendant in custody or on bail to appear for sentence before the Supreme Court.

(3) The Supreme Court may, in relation to—

- (a) a defendant convicted of an offence to which this section applies by the Court; or
- (b) a defendant remanded to appear for sentence before the Court pursuant to subsection (2),

before determining sentence, direct that at least two legally qualified medical practitioners, specified by the Court, inquire into the defendant's mental condition and report to the Court as to whether the defendant is incapable of controlling his or her sexual instincts.

(4) For the purposes of an inquiry under subsection (3), each medical practitioner—

- (a) must carry out an independent personal examination of the defendant; and
- (b) may have access to any evidence before the court by which the defendant was convicted; and
- (c) may obtain the assistance of a psychologist, social worker, probation officer or any other person.

(5) If—

- (a) each of the medical practitioners reports to the Supreme Court, on oath, that the defendant is incapable of controlling his or her sexual instincts; and
- (b) the Court, after hearing any evidence or representations adduced or made by the defendant, is satisfied that the defendant is so incapable,

the Court may declare accordingly and direct that the defendant be detained in custody until further order.

(6) The Supreme Court may exercise its powers under subsection (5) in addition to, or instead of, imposing a sentence of imprisonment for the offence.

(7) If the detention is in addition to a sentence of imprisonment, the detention will commence on the expiration of the term of imprisonment, or of all terms of imprisonment that the person is liable to serve.

(8) A person detained in custody under this section will be detained—

- (a) if the defendant is under 18 years of age—in such institution (not being a prison) as the Minister for Family and Community Services from time to time directs;
- (b) in any other case—in such institution as the Minister for Correctional Services from time to time directs.

(9) The progress and circumstances of a person subject to an order under this section (whether in custody or not) must be reviewed at least once in each period of six months by—

- (a) in the case of a person detained in, or released on licence from, a training centre—the Training Centre Review Board;
- (b) in any other case—the Parole Board.

(10) The results of a review under subsection (9) must be embodied in a written report, a copy of which must be furnished to the person the subject of the report and—

- (a) in the case of a report of the Training Centre Review Board—to the Minister for Family and Community Services;
- (b) in the case of a report of the Parole Board—to the Minister for Correctional Services.

(11) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Director of Public Prosecutions or the person, discharges the order for detention.

(12) The Supreme Court may not discharge an order for detention under this section unless—

- (a) it has first obtained and considered the report of at least two legally qualified medical practitioners each of whom has independently examined the person; and
- (b) having taken into account both the interests of the person and of the community, it is of the opinion that the order for detention should be discharged.

Release on licence

24. (1) The Supreme Court may, on application by the Director of Public Prosecutions or the person, authorise the release on licence of a person detained in custody under this Division.

(2) On the Court authorising the release of a person under subsection (1), the appropriate board must order the release of the person on licence on the day specified by the Court.

(3) The release of a person on licence under this section will be subject to such conditions as the appropriate board thinks fit and specifies in the licence.

(4) Where the Supreme Court has refused a person's application for release on licence, the person may not further apply for release for a period of six months, or such lesser or greater period as the Court may have directed on refusing the application.

(5) The appropriate board may—

- (a) on application by the Director of Public Prosecutions or the person, or of its own motion, vary or revoke a condition of a licence or impose further conditions; or
- (b) on application by the Director of Public Prosecutions, or of its own motion, cancel the release of a person on licence, if satisfied that the person has contravened, or is likely to contravene, a condition of the licence.

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(5a) A board cannot exercise its powers under subsection (5) of its own motion in relation to a person released on licence unless the person and the Crown have been afforded a reasonable opportunity to make submissions to the board on the matter, and the board has considered any submissions so made.

(6) For the purposes of proceedings under subsection (5), a member of the appropriate board may, on behalf of the board—

- (a) summon the person the subject of the proceedings to appear before the board; or
- (b) in the case of proceedings for cancellation of release, apply to a justice for a warrant for the apprehension and detention of the person pending determination of the proceedings.

(7) Where a person who has been summoned to appear before the appropriate board fails to attend in compliance with the summons, the board may—

- (a) determine the proceedings in his or her absence; or
- (b) direct a member of the board to apply to a justice for a warrant for the apprehension and detention of the person for the purpose of bringing him or her before the board.

(8) A member of the appropriate board may apply to a justice for a warrant for the apprehension and return to custody of a person whose release on licence has been cancelled by the board.

(9) The appropriate board may, if it thinks good reason exists for doing so, cancel a warrant issued under this section at any time before its execution.

(10) Where a person who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment for the offence, the release on licence is, by virtue of this subsection, cancelled.

(11) Where a person has been subject to a licence under this section for a continuous period of three years, the order for his or her detention under this Division will, unless the Supreme Court, on application by the Director of Public Prosecutions, orders otherwise, be taken to have been discharged on the expiration of that period.

(12) For the purposes of this section—

"the appropriate board", in relation to proceedings under this section, means—

- (a) if the person the subject of the proceedings is being detained in a training centre, or has been released on licence from a training centre—the Training Centre Review Board;
- (b) in any other case—the Parole Board.

Court may obtain reports

25. (1) A court may, for the purpose of obtaining assistance in making a determination under this Division, require the Parole Board, the Training Centre Review Board or any other body or person to furnish the court with a report on any matter.

(2) A copy of any report furnished to a court under subsection (1) must be given to each party to the proceedings or to counsel for those parties.

Parties

26. Both the Director of Public Prosecutions and the person to whom an application under this Division relates are parties to the application.

Service on guardian

27. Where the person to whom an application under this section relates is under 18 years of age, a copy of the application must be served on a guardian of the child, unless—

- (a) it is not practicable to do so; or
- (b) the whereabouts of all of the guardians of the child cannot, after reasonable inquiries, be ascertained.

Appeals

27A. (1) An appeal lies to the Full Court against—

- (a) a decision of the Supreme Court on an application to discharge an order for detention under this Division;
- (b) a decision of the Supreme Court on an application to release a person on licence under this Division;
- (c) a decision of the Supreme Court on an application by the Director of Public Prosecutions under section 24(11).

(2) An appeal under this section may be instituted by the Director of Public Prosecutions or by the person to whom the particular decision relates.

(3) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.

(4) On an appeal, the Full Court may—

- (a) confirm, reverse or annul the decision subject to appeal;
- (b) make any order that it considers should have been made in the first instance;
- (c) make any consequential or ancillary orders.

(5) Subject to subsection (6), where—

- (a) the Supreme Court decides—
 - (i) to discharge an order for detention under this Division; or
 - (ii) to release a person on licence under this Division; or
 - (iii) to refuse an application by the Director of Public Prosecutions under section 24(11); and

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- (b) counsel appearing on behalf of the Director of Public Prosecutions gives immediate notice that an appeal against the decision will be instituted,

the decision has no force or effect pending the outcome of the appeal.

(6) If the Director of Public Prosecutions gives notice under subsection (5) of an appeal against a decision of the Supreme Court but then a person acting on behalf of the Director subsequently files with the Supreme Court a notice that the Director does not desire to proceed with the appeal, the decision will take effect.

Proclamations

28. The Governor may, by proclamation, vary or revoke a proclamation under this Division.

Regulations

29. The Governor may make regulations—

- (a) providing for the care, treatment, rights and duties of persons detained in custody under this Division in consequence of being found to be incapable of controlling his or her sexual instincts;
- (b) providing for the granting of periods of leave for persons so detained;
- (c) providing for any other related matter.

**PART 3
IMPRISONMENT**

DIVISION 1—SENTENCES OF IMPRISONMENT

Commencement of sentences and non-parole periods

30. (1) Where a court imposes a sentence of imprisonment and does not suspend the sentence, the court must specify the date on which, or the time at which, the sentence is to commence or is to be taken to have commenced.

(2) Where a defendant has been in custody in respect of an offence for which the defendant is subsequently sentenced to imprisonment, the court may—

- (a) make an appropriate reduction in the term of the sentence, having regard to the period for which the defendant has been in custody; or
- (b) direct that the sentence be taken to have commenced on the day on which the defendant was taken into custody.

(3) Where a court imposes a sentence of imprisonment on a defendant who is not present in court, the court must direct that the sentence is to commence—

- (a) on the day on which the defendant is taken into custody pursuant to the warrant of commitment issued in respect of the sentence; or
- (b) if the defendant is subject to some other sentence of imprisonment—on the completion of that other sentence of imprisonment or at some earlier time fixed by the court.

(4) Where a court fixes a non-parole period, the court must specify the date on which the non-parole period is to commence or is to be taken to have commenced.

(5) Where a court directs that a sentence of imprisonment is to be taken to have commenced on the day on which the defendant was taken into custody, any non-parole period fixed by the court in respect of that sentence will be taken to have commenced on that day.

(6) If, on imposing a sentence of imprisonment, the court fails to specify the date on which or the time at which the sentence is to commence or is to be taken to have commenced, the sentence—

- (a) will, in the case of a defendant not then in custody, commence on the day on which the defendant is subsequently taken into custody for the offence; or
- (b) will, in the case of a defendant already in custody for the offence, be taken to have commenced on the day on which the defendant was last so taken into custody; or
- (c) will, in the case of a defendant in custody for some other offence, commence on the day on which the sentence is imposed, unless the sentence is to be served cumulatively pursuant to this Act or any other Act.

Cumulative sentences

31. (1) Subject to subsection (2), the court by which a sentence of imprisonment is imposed may direct that the sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the defendant.

(2) Where a sentence of imprisonment is imposed for an offence committed by the defendant—

(a) during a period of release on parole; or

(b) while serving a period of imprisonment pursuant to an order of the Parole Board for breach of parole conditions,

the sentence will (except where one of the sentences to which the defendant is subject is life imprisonment) be cumulative upon the sentence, or sentences, in respect of which the defendant was on parole.

(3) A direction may be given under subsection (1) irrespective of the number of cumulative sentences that the defendant is already serving or will, in consequence of the direction, be liable to serve.

(4) This section does not apply in relation to a youth unless the youth is sentenced as an adult.

DIVISION 2—NON-PAROLE PERIODS

Application of Division to youths

31A. (1) This Division does not apply in relation to a youth 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 detention in a prison.

(2) Section 32 applies in relation to a person who is serving concurrent sentences of imprisonment and detention in a prison as if the person were serving concurrent sentences of imprisonment.

Duty of court to fix or extend non-parole periods

32. (1) Subject to this section, where a court, on convicting a person of an offence, sentences the person to imprisonment, the court must—

(a) if the person is not subject to an existing non-parole period—fix a non-parole period; or

(b) if the person is subject to an existing non-parole period—review the non-parole period and extend it by such period as the court thinks fit (but not so that the period of extension exceeds the period of imprisonment that the person becomes liable to serve by virtue of the sentence, or sentences, imposed by the court); or

(c) if the person is serving a minimum term imposed in respect of an offence against a law of the Commonwealth or is liable to serve such a term on the expiry of an existing non-parole period—fix a non-parole period in respect of the sentence, or sentences, to be served upon the expiry of that minimum term.

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(2) Where the sentence of imprisonment is imposed for an offence committed during a period of release on parole from a previous sentence of imprisonment, the court, in fixing a non-parole period under subsection (1)(a), must have regard to the total period of imprisonment that the person is, by virtue of the new sentence and the balance of the previous sentence, liable to serve.

(3) Where a prisoner is serving a sentence of imprisonment but is not subject to an existing non-parole period, the sentencing court may, subject to subsection (5), fix a non-parole period, on application by the prisoner or the presiding member of the Parole Board.

(4) The fact that the prisoner has completed a non-parole period previously fixed in respect of the same sentence of imprisonment or that a court has previously declined to fix a non-parole period in respect of that sentence does not preclude an application under subsection (3).

(5) The above provisions are subject to the following qualifications:

- (a) a non-parole period may not be fixed in respect of a person who is liable to serve a total period of imprisonment of less than one year;
- (b) where a person who is subject to a sentence of life imprisonment is further sentenced to imprisonment by the Magistrates Court or the Youth Court, the question of whether a non-parole period should be fixed or extended must be referred to the court by which the sentence of life imprisonment was imposed;
- (c) a court may, by order, decline to fix a non-parole period in respect of a person sentenced to imprisonment if the court is of the opinion that it would be inappropriate to fix such a period because of—
 - (i) the gravity of the offence or the circumstances surrounding the offence; or
 - (ii) the criminal record of the person; or
 - (iii) the behaviour of the person during any previous period of release on parole; or
 - (iv) any other circumstance.

(6) The Director of Public Prosecutions or the presiding member of the Parole Board may apply to the sentencing court for an order extending a non-parole period fixed in respect of the sentence, or sentences, of a prisoner, whether the non-parole period was fixed before or after the commencement of this Act.

(6a) The Director of Public Prosecutions must be notified of any application made by the presiding member of the Parole Board under this section.

(7) In fixing or extending a non-parole period, the court—

- (a) must, if the person in respect of whom the non-parole period is to be fixed or extended is in prison serving a sentence of imprisonment, take into account the period already served; and
- (b) in the case of an application by the Director of Public Prosecutions or the presiding member of the Parole Board under subsection (6), must have regard to—

- (i) the likely behaviour of the prisoner should the prisoner be released on parole; and
- (ii) the necessity (if any) to protect some other person or persons generally from the prisoner should the prisoner be released on parole; and
- (iii) the behaviour of the prisoner while in prison but only insofar as it may assist the court to determine how the prisoner is likely to behave should the prisoner be released on parole; and
- (iv) such other matters as the court thinks relevant.

(8) This section does not apply in relation to a person who is serving, or is liable to serve, a sentence of indeterminate duration.

(9) The Parole Board must, at the request of a sentencing court, make a report to the court on any person in respect of whom the court proposes to fix or extend a non-parole period.

(10) For the purposes of this section—

- (a) a court that orders that a suspended sentence of imprisonment be carried into effect will be taken to have sentenced the person to whom the order relates to imprisonment; and
- (b) the prisoner is a party to an application by the Director of Public Prosecutions or the presiding member of the Parole Board under this section and the Director of Public Prosecutions is a party to an application by a prisoner; and
- (c) "**the sentencing court**" means—
 - (i) where the prisoner is subject to a single sentence of imprisonment, or a number of sentences imposed by the one court or by a number of courts of co-ordinate jurisdiction—that court, or a court of co-ordinate jurisdiction; or
 - (ii) where the prisoner is subject to a number of sentences of imprisonment imposed by courts of different jurisdiction—the court of the highest jurisdiction or a court whose jurisdiction is co-ordinate with the jurisdiction of that court.

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**PART 4
FINES**

Court to have regard to defendant's means

33. (1) On imposing a fine upon a defendant, a court may, by order—

- (a) specify a period within which the fine must be paid; or
- (b) direct that the fine be paid in instalments of a specified amount at specified times or at specified intervals.

(2) Subject to subsection (3), a court, in determining the time within which a fine is to be paid, must have regard to the effect of the fine—

- (a) on the welfare of dependants of the defendant; and
- (b) on the defendant's ability to satisfy any order or direction for compensation made, or to be made, by the court under this Act or any other Act.

(3) The court is not obliged to inform itself as to the matters referred to in subsection (2), but it should consider any evidence on those matters that the defendant or the prosecutor has placed before it.

Maximum fine where no other maximum provided

34. Where a fine is imposed in respect of an offence for which the special Act does not prescribe a fine—

- (a) if the special Act provides that imprisonment of a particular division may be imposed for the offence, the fine may not exceed a fine of the equivalent division; and
- (b) in any other case, the fine may not exceed—
 - (i) where the Supreme Court imposes the fine—\$75 000; and
 - (ii) where the District Court or the ERD Court imposes the fine—\$35 000; and
 - (iii) where the Magistrates Court imposes the fine—\$10 000.

Variation of manner of payment of fine

35. (1) A defendant upon whom a fine has been imposed by a court may apply to the court for an order varying the time or manner of payment of the fine.

(2) Upon an application under subsection (1), the court may make such order as the court thinks appropriate.

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**PART 5
BONDS**

Court may not impose bond except under this Part

36. Despite any other Act or law to the contrary, a defendant may not enter into a bond except under and in accordance with this Act.

Part does not apply to murder or treason

37. The powers vested in a court by this Part—

- (a) are exercisable despite the fact that a special Act prescribes a minimum penalty; but
- (b) are not exercisable in relation to—
 - (i) murder or treason; or
 - (ii) any other offence in respect of which a special Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

Suspension of imprisonment upon defendant entering into a bond

38. (1) Where a court has imposed a sentence of imprisonment upon a defendant, the court may, if it thinks that good reason exists for doing so, suspend the sentence on condition that the defendant enter into a bond—

- (a) to be of good behaviour; and
- (b) to comply with the other conditions (if any) of the bond.

(2) A sentence of imprisonment may not be suspended under this section where the sentence is to be served cumulatively upon another term of imprisonment, or concurrently with another term then being served, or about to be served, by the defendant.

(3) If a probationer under a bond entered into pursuant to this section complies with the conditions of the bond, the sentence of imprisonment is, on the expiration of the bond, wholly extinguished.

Discharge without sentence upon defendant entering into a bond

39. (1) Where a court finds a person guilty of an offence the court may, if it thinks that good reason exists for doing so, discharge the defendant with or without recording a conviction and without imposing a penalty, upon condition that the defendant enter into a bond—

- (a) to be of good behaviour and to comply with the other conditions (if any) of the bond; and
- (b) if the terms of the bond so require, to appear before the court for sentence, or conviction and sentence, if the defendant fails during the term of the bond to comply with a condition of the bond.

(2) Where a defendant is discharged under this section—

- (a) no fresh prosecution may be commenced in respect of the offence; and

- (b) the defendant will only be liable to sentence, or conviction and sentence, if he or she fails to comply with a condition of the bond and the terms of the bond require the defendant to appear before the court for sentencing in that event.

Term of bond

40. Subject to this Act, a bond under this Act is effective for such term, not exceeding three years, as is specified in the bond.

Guarantors, etc.

41. (1) If the court thinks it appropriate—

- (a) a bond under this Act may oblige the defendant to pay a sum specified in the bond in the event of non-compliance with a condition of the bond; and
- (b) the court may require the defendant to find one or more guarantors of such an obligation.

(2) A court—

- (a) may require a defendant to find one or more persons to guarantee the defendant's compliance with the conditions of the bond; and
- (b) if such a requirement is made, must specify the amount that any such guarantor will be liable to pay in the event of the defendant's non-compliance with a condition of the bond.

Conditions of bond

42. (1) Subject to this section, a bond under this Act may include such of the following conditions as the court thinks appropriate and directs be included:

- (a) a condition requiring the defendant to be under the supervision of a probation officer for a specified period; or
- (b) a condition requiring the defendant to reside with a specified person or in a specified place or area; or
- (c) a condition requiring the defendant not to reside with a specified person or in a specified place or area; or
- (d) a condition requiring the defendant to perform a specified number of hours of community service; or
- (e) a condition requiring the defendant to undergo medical or psychiatric treatment in accordance with the terms of the bond; or
- (f) a condition requiring the defendant to abstain from drugs of a specified class or from alcohol; or
- (g) a condition requiring the defendant—
 - (i) to restore misappropriated property to any person apparently entitled to possession of it; or

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- (ii) to pay compensation of a specified amount (in a lump sum or in instalments) to any person for injury, loss or damage resulting from the offence; or
- (ga) a condition requiring the defendant to attend and complete, within the term of the bond or such lesser period as the court may specify, a specified education programme approved by the Attorney-General for the offence of which the defendant has been found guilty; or
- (h) any other condition that the court thinks appropriate.

(1a) This section applies only to a bond that requires the defendant to appear before the court for sentencing in the event of failure to comply with a condition of the bond.

(2) A court must not include a condition requiring the defendant to reside with a specified person or in a specified place unless the court is satisfied that accommodation is available for the defendant with that person or in that place.

* * * * *

(4) A court must not include a condition requiring the defendant to undergo specified medical or psychiatric treatment unless it is satisfied that treatment of the nature specified in the bond has been recommended for the defendant by a legally qualified medical practitioner and is available to the defendant.

(5) The following provisions apply in relation to education programmes approved or to be approved for the purposes of this section:

- (a) the Attorney-General may approve such a programme unconditionally or subject to such conditions as the Attorney-General thinks fit and specifies in the instrument of approval; and
- (b) the Attorney-General may, by written notice to the programme provider, revoke an approval or vary the conditions of an approval; and
- (c) any fees for undertaking an approved education programme are to be borne by the defendant, subject to any relief from payment given by the programme provider in accordance with conditions imposed by the Attorney-General pursuant to this subsection.

Court to furnish CEO with copy of court order

43. Where a defendant enters into a bond, the conditions of a bond are varied, the term of a bond is extended or a bond is discharged, the court must notify the CEO of the terms of the bond, variation or extension, or of the discharge, as the case may require.

Variation or discharge of bond

44. (1) A probative court may, on the application of a probationer or the Minister for Correctional Services, vary or revoke any condition of a bond.

(1a) If, on an application for variation under subsection (1), a probative court extends, beyond the term of the bond, the period within which community service is to be performed by the probationer, the term of the bond is extended accordingly, despite the fact that the term, as so extended, exceeds three years.

(1b) A probative court cannot extend the period within which community service is to be performed by more than six months.

(2) If the Minister for Correctional Services is satisfied, on the application of a probationer—

(a) that it is no longer necessary for the probationer to remain under supervision; and

(b) that it would not be in the best interests of the probationer to remain under supervision,

the Minister may, by instrument in writing, waive the obligation of the probationer to comply any further with the condition requiring supervision.

(3) Where a probative court is satisfied, on the application of a probationer, that it is no longer necessary for the probationer to remain subject to the bond, the court may, by order, discharge the bond.

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**PART 6
COMMUNITY SERVICE AND SUPERVISION**

Notification of court if suitable community service placement is not available

45. (1) If the CEO, on being notified that a court has made an order for community service or has included in a bond a condition requiring the performance of community service, is of the opinion that suitable community service work cannot be found for the defendant because of his or her physical or mental infirmity, the CEO must notify the court in writing of that fact.

(2) On receiving a notification under subsection (1), the court may discharge the community service order or revoke the condition, as the case may be, and may require the defendant to appear before the court for further order.

Ancillary orders for supervision

46. A court may, in addition to sentencing a defendant to community service, order that the defendant be under supervision by a probation officer for the duration of the sentence and make such other orders as the court thinks necessary for securing compliance with this Part.

Special provisions relating to community service

47. (1) Where a court imposes a sentence of community service, or includes in a bond a condition requiring the performance of community service, the following provisions apply:

- (a) the court must specify the number of hours of community service to be performed by the person to whom the sentence or bond relates, being not less than 40 or more than 320; and
- (b) the court must not specify a number of hours of community service to be performed by a person who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours previously specified would exceed 320; and
- (c) the court must specify a period, not exceeding 18 months, within which the community service is to be performed; and
- (d) the person is required to report to a specified place not later than two working days after the date of the order or bond unless, within that period, the person receives a notice from the Director to the contrary; and
- (e) the person is required to perform community service for not less than 4 hours each week and on such day, or days, as the community service officer to whom the person is assigned may direct; and
- (f) the person may not, except in circumstances approved by the Minister, be required to perform community service for a continuous period exceeding eight hours; and
- (g) if on any day a period of community service is to exceed four continuous hours, the next hour must be a meal break; and

- (h) the person may not be required to perform community service at a time that would interfere with his or her remunerated employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, remunerated employment, or that would cause unreasonable disruption of the person's commitments in caring for his or her dependants; and
- (i) the person may not be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises; and
- (j) the attendance of the person at any educational or recreational course of instruction approved by the Minister for Correctional Services will be taken to be performance of community service; and
- (k) the person will not be remunerated for the performance of any community service pursuant to the order or bond; and
- (l) the person must obey the lawful directions of the community service officer to whom he or she is assigned.

(2) This section does not apply in relation to the performance of community service by a youth.¹

¹ See *Young Offenders Act 1993* section 49A for similar restrictions on the performance of community service by youths.

Special provisions relating to supervision

48. Where a court makes an order, or includes a condition in a bond, requiring the person to whom the order or bond relates to be under supervision by a probation officer, the following provisions apply:

- (a) the court must, in the case of a probationer, specify the period during which the probationer is to be under supervision; and
- (b) the person is required to report to a specified place not later than two working days after the date of the order or bond unless, within that period, the defendant receives a notice from the CEO to the contrary; and
- (c) the person must obey the lawful directions of the probation officer to whom he or she is assigned.

CEO must assign a probation officer or community service officer

49. (1) The CEO must, on receiving a copy of an order or a bond requiring supervision or the performance of community service, and may thereafter from time to time, assign the person to whom the order or bond relates to a probation officer or a community service officer, as the case may require.

(2) The CEO must ensure that the person is notified in writing of the name of the probation officer or community service officer to whom he or she has been assigned and of the place and time at which he or she must first report to that officer.

(3) It is the duty of each probation officer and community service officer to endeavour to ensure that any person assigned to the officer complies with the conditions of the order or bond.

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Probation officer or community service officer may give reasonable directions

50. (1) A probation officer responsible for supervising a person—

- (a) may give reasonable directions to the person—
 - (i) requiring the person to report to the officer on a regular basis; or
 - (ii) requiring the person to notify the officer of any change in the person's place of residence or employment; or
 - (iii) requiring the person to obtain the officer's written permission before leaving the State for any reason; or
 - (iv) requiring the person to reside, or not to reside, in any particular place or area or with any particular person; or
 - (v) requiring the person to take up, or not to take up, any particular employment, to be punctual in reporting to work or not to give up some particular employment; and
- (b) may give the person other directions of a kind authorised by the Minister for Correctional Services, either generally or in relation to that person.

(2) A community service officer to whom a person is assigned—

- (a) may give reasonable directions to the person—
 - (i) requiring the person to report to a community service centre or other place at certain times; or
 - (ii) requiring the person to notify the officer of any change in the person's place of residence or employment; or
 - (iii) requiring the person to obtain the officer's written permission before leaving the State for any reason; or
 - (iv) requiring the person to perform certain projects or tasks as community service; or
 - (v) requiring the person to undertake, or participate in, courses of instruction at a community service centre or other place; or
 - (vi) requiring the person to behave in a particular manner while undertaking community service; and
- (b) may give the person other directions of a kind authorised by the Minister for Correctional Services, either generally or in relation to that person.

Variation of community service order

50A. (1) The court that sentenced a person to community service, or a court of co-ordinate jurisdiction, may, on application by the person, the Minister for Correctional Services or an appropriate officer, vary the terms of the order for community service, or vary or revoke any ancillary order.

(2) The court cannot, on an application under subsection (1), extend the period within which the community service is to be performed by more than six months.

Power of Minister to cancel unperformed hours of community service

50B. (1) If, on the application of a person required to perform community service pursuant to a bond or an order of a court, the Minister for Correctional Services is satisfied—

- (a) that, although some hours of community service remain unperformed, the person has substantially complied with the requirement;
- (b) that there is no apparent intention on the person's part to deliberately evade his or her obligations under the bond or order; and
- (c) that sufficient reason exists for not insisting on performance of some or all of those hours,

the Minister may, by instrument in writing, waive compliance with the requirement to perform those hours, or a specified number of them.

(2) The Minister cannot exercise his or her powers under subsection (1) to waive performance of more than ten hours under the one bond or order.

(3) The Minister must notify the probative or sentencing court of any exercise of powers under subsection (1).

Power of Minister in relation to default in performance of community service

51. (1) Where the Minister for Correctional Services is satisfied that a person who is required to perform community service has failed to obey a direction given by the community service officer to whom the person is assigned, the Minister, instead of commencing proceedings for breach of order or bond, may, by notice in writing served personally, increase the number of hours of community service that the person is required to perform.

(2) Where the Minister increases the hours of community service to be performed under an order or bond, the order or bond will be taken to have been amended accordingly.

(3) The number of hours of community service may not be increased under subsection (1) by more than 24 in aggregate, but such an increase may be made despite the fact that its effect is to increase the total number of hours to be performed beyond the normal limit.

(4) Where the Minister for Correctional Services is satisfied that a person has failed to comply with an order or bond requiring performance of community service, the Minister may, by notice in writing served personally or by post, suspend the operation of the order or the relevant condition of the bond until proceedings for breach of order or bond have been determined.

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**PART 7
RESTITUTION AND COMPENSATION**

Restitution of property

52. (1) Where the offence of which the defendant has been found guilty, or any other offence that is to be taken into account by the court in determining sentence, involves the misappropriation of property, the court may order the defendant, or any other person in possession of the property, to restore the property to any person who appears to be entitled to possession of the property.

(2) An order under subsection (1) does not prejudice any person's title to the property.

Compensation

53. (1) Subject to this section, a court may make an order requiring a defendant to pay compensation for injury, loss or damage resulting from the offence of which the defendant has been found guilty or for any offence taken into account by the court in determining sentence for that offence.

(2) An order for compensation may be made under this section—

(a) either on application by the prosecutor or on the court's own initiative; and

(b) instead of, or in addition to, dealing with the defendant in any other way.

(2a) Where—

(a) a court finds a defendant guilty of an offence, or takes an offence into account in determining sentence; and

(b) the circumstances of the offence are such as to suggest that a right to compensation has arisen, or may have arisen, under this section,

the court must, if it does not make an order for compensation, give its reasons for not doing so.

(3) Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the defendant.

(4) Where any property of which a person was dispossessed as a result of the offence is recovered, any damage to the property while it was out of the person's possession is to be treated for the purposes of this section as having resulted from the offence.

(5) The power of a court to award compensation under this section is subject to the following qualifications:

(a) no compensation may be awarded for injury, loss or damage caused by, or arising out of the use of, a motor vehicle except damage to property;

(b) no compensation may be awarded against an employer in favour of an employee or former employee if—

(i) the offence arises from breach of a statutory duty related to employment; and

- (ii) the injury, loss or damage is compensable under the *Workers Rehabilitation and Compensation Act 1986*;
- (c) the Magistrates Court may not award more than \$20 000 (or if a greater amount is prescribed—the prescribed amount) by way of compensation.

* * * * *

(7) Compensation may be ordered under this section in relation to an offence despite the fact that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

(8) Upon making an order for compensation, the court may, by order—

- (a) specify a period within which the compensation must be paid;
- (b) direct that the compensation be paid in instalments of a specified amount at specified times or at specified intervals.

(9) The amount paid to a person pursuant to an order under this section for compensation for injury, loss or damage must be taken into consideration by a court or any other body in awarding compensation for that injury, loss or damage pursuant to any other Act or law.

Variation of manner of payment of compensation

54. (1) A defendant who has been ordered to pay compensation may apply to the court for an order varying the time or manner of payment of the compensation.

(2) Upon an application under subsection (1), the court may make such order as the court thinks appropriate.

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**PART 8
COSTS IN MAGISTRATES COURT**

Costs

55.

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(2) A defendant who has been ordered by the Magistrates Court to pay costs may apply to the court for an order varying the time or manner of payment of the costs.

(3) Upon an application under subsection (2), the court may make such order as the court thinks appropriate.

Criminal Law (Sentencing) Act 1988

**PART 9
ENFORCEMENT OF SENTENCE**

DIVISION 1—GENERAL

Enforcement proceedings must be taken under this Act

56. Proceedings for enforcement of a sentence may not be commenced except under and in accordance with this Act.

DIVISION 2—ENFORCEMENT OF BONDS

Non-compliance with bond

57. (1) If it appears to a probative court, by evidence given on oath, that a probationer may have failed to comply with a condition of the probationer's bond, the court may—

- (a) (i) issue a summons to the probationer requiring the probationer to appear before the court at the time and place specified in the summons; or
- (ii) issue a warrant for the probationer's arrest; and
- (b) issue a summons to any guarantor.

(2) If a person fails to appear before the court as required by a summons issued under this section, the court may issue a warrant for the person's arrest.

(3) Where a person is arrested pursuant to a warrant issued under this section, the person must be brought before the probative court or the Magistrates Court not later than the next working day and may be remanded in custody or released on bail pending determination of the proceedings.

(4) If a probationer is found guilty of an offence by a court of a superior jurisdiction to that of the probative court, being an offence committed during the term of the bond, any proceedings for breach of condition arising out of the offence are to be taken in the court of superior jurisdiction.

(4a) If a probationer is found guilty of an offence by a court of an inferior jurisdiction to that of the probative court, being an offence committed during the term of the bond, the court of an inferior jurisdiction must—

- (a) sentence the probationer for the offence and remand him or her to the probative court to be dealt with for breach of the conditions of the bond; or
- (b) remand the probationer to the probative court to be sentenced for the offence and dealt with for breach of the conditions of the bond.

(5) The court dealing with a probationer for breach of condition must hear any evidence adduced tending to establish that the probationer has failed to comply with a condition of the bond and any evidence or representations that the probationer may wish to adduce or make in reply.

(6) In this section—

"court of an inferior jurisdiction" means—

- (a) if the probative court is the Supreme Court—the District Court, the ERD Court or the Magistrates Court;
- (b) if the probative court is the District Court or the ERD Court—the Magistrates Court;

"court of a superior jurisdiction" means—

- (a) if the probative court is the Magistrates Court—the Supreme Court, the District Court or the ERD Court;
- (b) if the probative court is the District Court or the ERD Court—the Supreme Court.

Orders that court may make on breach of bond

58. (1) Where the court is satisfied that the probationer has failed to comply with a condition of the bond, the court—

- (a) may, if the bond requires the probationer to pay a sum in the event of non-compliance with a condition of the bond, order that the probationer pay the whole or a part of that sum and direct the manner and time in which payment is to be made;
- (b) may order a guarantor to pay the whole or a part of the amount due under the guarantee and direct the time and manner in which payment is to be made;
- (c) may, if the probationer has not been sentenced for the original offence and the terms of the bond require the defendant to appear before the court for sentencing in the event of failure to comply with a condition of the bond—
 - (i) sentence the probationer for the offence, or convict and sentence the probationer for the offence, as the case may require; or
 - (ii) if the court is satisfied that the failure of the probationer to comply with the conditions of the bond was trivial or that there are proper grounds upon which the failure should be excused, refrain from taking any action in respect of the failure;
- (d) if the probationer has been sentenced to imprisonment for the original offence and that sentence has been suspended—must, subject to subsection (3), revoke the suspension and order that the sentence be carried into effect.

(2) The court may not order a person to pay an amount pursuant to subsection (1)(a) unless the court is satisfied—

- (a) that the person has, or will within a reasonable time have, the means to pay the amount; and

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(b) that payment of the amount would not unduly prejudice the welfare of dependants of the person.

(3) Where a probationer is subject to a suspended sentence of imprisonment and the court is satisfied that the failure of the probationer to comply with the conditions of the bond was trivial or that there are proper grounds upon which the failure should be excused, the court—

(a) may refrain from revoking the suspension; and

(b) may—

(i) —

(A) extend the term of the bond by such period, not exceeding one year, as the court thinks fit; or

(B) in the case of a bond requiring performance of community service, extend, by not more than six months, the period within which any remaining hours of community service must be performed; or

(C) cancel the whole or a number of any unperformed hours of community service; or

(D) revoke or vary any other condition of the bond; or

(ii) if the bond has expired, require the probationer to enter into a further bond, the term of which must not exceed one year.

(4) Where a court revokes the suspension of a sentence of imprisonment, the court—

(a) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the suspended sentence;

(b) may direct that time spent by the probationer in custody pending determination of the proceedings for breach of condition be counted as part of the term of the suspended sentence;

(c) may direct that the suspended sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.

(5) Where a court other than the probative court sentences a probationer for the original offence, the court cannot impose a sentence that the probative court could not have imposed.

Variation of manner of payment of sum under a bond

59. (1) A probationer or guarantor who has been ordered to pay a sum under a bond or guarantee may apply to the court for an order varying the time or manner of payment of the sum.

(2) Upon an application under subsection (1), the court may make such order as the court thinks appropriate.

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DIVISION 3—ENFORCEMENT OF PECUNIARY SUMS

Payment of pecuniary sum to the court

59A. Subject to any order of a court or direction of an appropriate officer to the contrary, a pecuniary sum, or any instalment of a pecuniary sum, is payable to a court, despite the fact that the order for the pecuniary sum is in favour of some person.

Whole sum is due and payable upon default in payment of instalment

60. If, where a court has directed that a person pay a pecuniary sum in instalments, the person defaults in payment of an instalment, the whole of the balance of the pecuniary sum becomes due and payable upon that default.

Reminder notice fees

60A. (1) Where a person has been in default of payment of a pecuniary sum for 14 days or more, the appropriate officer may cause a reminder notice to be issued and sent by post to the person.

(2) Subject to subsection (3), the prescribed costs of issuing a reminder notice under this section will be added to the amount in respect of which the notice was issued.

(3) The appropriate officer may waive payment of the costs of issuing a reminder notice in such circumstances as the officer thinks just.

Imprisonment or detention in default of payment

61. (1) Subject to this Act, an order for payment of a pecuniary sum is enforceable by imprisonment in default of payment.

(2) The term of imprisonment to be served in default of payment will be—

(a) a term calculated on the basis of one day for each prescribed unit of the amount outstanding; or

(b) six months,

whichever is the lesser.

(3) Where a person is in default of payment of a pecuniary sum, the court may, subject to subsection (4), issue a warrant of commitment for the term of imprisonment appropriate to the amount outstanding under the order.

(4) A warrant must not be issued until the person has been in default of payment for one month, unless—

(a) the court is satisfied that there are reasonable grounds for suspecting that the person will abscond without making payment; or

(b) the person in default is already serving some other term of imprisonment.

(5) The imprisonment to which a person becomes liable by virtue of a warrant issued under this section (after this section comes into operation) will be cumulative on any other term of imprisonment that the person is liable to serve by virtue of any other such warrant.

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(5a) However, where the warrant relates to a levy payable under the *Criminal Injuries Compensation Act 1978*, the imprisonment to be served in respect of the levy is to be served after all other terms of imprisonment to which the person is liable (whether under this section or not) have been served.

(6) This section does not apply in relation to a youth.

Community service in default of payment by a youth

61AA. (1) An order for payment of a pecuniary sum made against a youth is enforceable by community service in default of payment.

(2) The hours of community service to be performed in default of payment are as follows:

- eight hours for each prescribed unit of the pecuniary sum or the balance outstanding.

(3) However, if an order under this section would bring the total number of hours of community service that the youth is required to perform under this Act or the *Young Offenders Act 1993* to more than 500, the order must be reduced accordingly.

(4) Where a youth has been in default of payment of a pecuniary sum for one month or more, the court may make an order for community service against the youth.

(5) The order must specify the period, not exceeding 18 months, over which the community service is to be performed.

(6) However, if the youth previously entered into an undertaking to perform community service under section 67 in relation to the pecuniary sum but the undertaking was cancelled for non-compliance, the court may, instead of making an order under subsection (4), sentence the youth to a period of detention or home detention for enforcement of the pecuniary sum.

(6a) If the court sentences a youth to detention under subsection (6)—

- (a) where the youth is already in custody in a prison, the youth will serve the detention in a prison; or
- (b) where the youth has previously served a sentence of imprisonment or detention in a prison, the court may direct that the youth serve the detention in a prison,

and the *Correctional Services Act 1982* applies to and in relation to a youth serving detention in a prison under this subsection.

(7) A period of detention or home detention imposed under subsection (6)—

- (a) cannot (despite section 66) be imposed *ex parte*; and
- (b) will be calculated at the rate of one day of detention for each prescribed unit of the pecuniary sum or the balance outstanding; and
- (c) will be cumulative on any other period of detention or home detention that the youth is liable to serve under this section.

Driver's licence disqualification for default

61A. (1) Where a person is in default of payment of a pecuniary sum imposed in relation to an offence committed by him or her, being an offence arising out of the use of a motor vehicle, and the default has endured for one month or more, the court may disqualify the person from holding or obtaining a driver's licence until the pecuniary sum has been fully satisfied.

(2) On receiving notification from the court of a disqualification under this section, the Registrar of Motor Vehicles must cause written notice of the disqualification to be given personally or by post to the person in default.

(2a) Subject to subsection (2b), the prescribed cost of issuing a notice of disqualification under this section will be added to the amount in respect of which the person is in default.

(2b) The appropriate officer may waive payment of the cost of issuing a notice of disqualification in such circumstances as he or she thinks just.

(3) A disqualification under this section takes effect 14 days after notice is given in accordance with subsection (2) unless the sum in default is paid before that time.

(4) The court—

(a) may, on application by the person in default, revoke the disqualification if the court is satisfied that the sum in default, although not paid in full, has been reduced and that continued disqualification would result in undue hardship to the person; and

(b) must, on the person entering into an undertaking under section 67 to work off the sum in default by community service, revoke the disqualification.

(5) Nothing in this section prevents the court from taking other proceedings against a person for the enforcement of a pecuniary sum during a period of disqualification imposed under this section in respect of that sum, if the court is of the opinion that it is appropriate to do so.

(6) The court must, on a pecuniary sum in respect of which disqualification under this section has been imposed being fully satisfied (whether by payment, imprisonment, detention or community service) or a disqualification being revoked under subsection (4), notify the Registrar of Motor Vehicles in writing accordingly.

(7) In this section—

"**driver's licence**" includes a learner's permit.

Suspension of motor vehicle registration for default by body corporate

61B. (1) Where a body corporate (in this section referred to as "the company") is in default of payment of a pecuniary sum imposed on it for an offence arising out of the use of a motor vehicle of which it was the registered owner at the time the offence was committed, and the default has endured for one month or more, the court may, instead of initiating any other enforcement proceedings, suspend the registration of all motor vehicles of which the company is the registered owner until the pecuniary sum has been fully satisfied.

(2) On receiving notification from the court of an order suspending registration under this section, the Registrar of Motor Vehicles must cause written notice of the order to be given personally or by post to the company in default.

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(2a) Subject to subsection (2b), the prescribed cost of issuing a notice of an order suspending registration under this section will be added to the amount in respect of which the company is in default.

(2b) The appropriate officer may waive payment of the cost of issuing a notice of an order suspending registration in such circumstances as he or she thinks just.

(3) An order for suspension of registration takes effect 28 days after notice is given in accordance with subsection (2) unless the sum in default is paid before that time.

(4) While an order for suspension of registration is in force under this section in relation to a motor vehicle—

- (a) the registration of the motor vehicle and the policy of insurance in force under Part 4 of the *Motor Vehicles Act 1959* in respect of the vehicle have no force or effect; and
- (b) the Registrar of Motor Vehicles is not empowered to register or renew the registration of any motor vehicle in the name of the company to which the order relates.

(5) Nothing in this section prevents the Registrar of Motor Vehicles from recording a transfer of the registration or ownership of a motor vehicle to which an order for suspension of registration under this section relates.

(6) The court may, on application by the company in default, revoke the order for suspension, or revoke it insofar as it relates to any particular motor vehicle, if the court is satisfied that the sum in default, although not paid in full, has been reduced and that continued suspension of registration would result in undue hardship to the company.

(7) Nothing in this section prevents the court from initiating any other proceedings against a body corporate for enforcement of a pecuniary sum while an order for suspension of registration is in force under this section in respect of that sum, if the court is of the opinion that it is appropriate to do so.

(8) The court must, on a pecuniary sum in respect of which an order for suspension of registration has been made being fully satisfied (whether by payment or pursuant to any other enforcement proceedings) or on such an order being wholly or partially revoked under subsection (6), notify the Registrar of Motor Vehicles accordingly.

Warrants for sale of land or goods

62. (1) Where a person has been in default of payment of a pecuniary sum for more than one month the court may, if of the opinion that to do so would supply, or substantially reduce, the amount outstanding, order the sale of land or goods owned by the person, and issue a warrant authorising the seizure and sale of that land or those goods.

(2) The power to order the sale of land is not exercisable where the amount outstanding, or the aggregate of the amounts outstanding, is less than—

- (a) \$10 000; or
- (b) if some other amount is prescribed—that amount.

(3) The goods that may be seized pursuant to a warrant under this section are those that could be taken in bankruptcy proceedings.

(4) If the person in default or any other person alleges that any particular land or goods are not liable to seizure and sale under this section, the person executing the warrant must not proceed to sell that land or those goods until a court has, on the application of an appropriate officer, determined the matter.

(5) For the purposes of determining an application under subsection (4), the court may issue a summons requiring the attendance of such persons as the court thinks fit to call before it.

(6) Where a person other than the person in default claims an interest in land or goods the subject of a warrant under this section, a court may, if satisfied of the validity of the claim—

- (a) exclude the land or goods from the warrant; or
- (b) direct the application of the proceeds of the sale in such manner as the court considers just.

(7) The surplus proceeds from a sale pursuant to a warrant under this section must be returned to the person in default.

(8) Goods seized pursuant to a warrant but not sold must be returned to the person in default or left at the place from which they were taken.

(9) If the proceeds from the sale of land or goods pursuant to a warrant are insufficient to meet the amount in respect of which the warrant was issued (including any costs of issue and execution of the warrant), the balance outstanding is enforceable by imprisonment in accordance with this Part.

Costs of warrant will be added

63. The costs of issuing and executing a warrant under this Part will be added to the amount in respect of which the warrant was issued.

Person in default may pay person executing the warrant

64. (1) Where a person against whom a warrant has been issued under this Part pays to the person executing the warrant the amount in respect of which the warrant was issued, together with the costs of issuing and executing the warrant, the warrant is satisfied.

(2) A person to whom any money has been paid in accordance with subsection (1) must issue a receipt for the payment and forward the amount to the court.

Postponement or suspension of warrants

65. (1) Where a person in default of payment of a pecuniary sum applies to the court for relief under this section, the court may, subject to such conditions as to payment of the sum as the court thinks fit, postpone the issue of a warrant under this Part or suspend its operation (as the case may require).

(2) The conditions referred to in subsection (1) may include a condition requiring that specified security for payment be given.

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(3) A postponement or suspension under this section may be revoked by the court for breach of condition.

Ex-parte orders

66. (1) The power to issue a warrant of commitment or make an order for community service against a youth under this Division, to disqualify a person from holding or obtaining a driver's licence or to suspend the registration of a motor vehicle will, unless the court decides otherwise, be exercised without hearing the person in default.

(2) Any other order under this Division may, at the discretion of the court, be made without hearing the person in default and, if so made, must be served on the person personally.

(3) Where the order is for sale of land or goods, no action for enforcement of the order may be taken until ten days after service of the order.

Application to work off pecuniary sums by community service

67. (1) If the payment of a pecuniary sum (not being a levy payable under the *Criminal Injuries Compensation Act 1978*) would cause severe hardship, the person liable to pay the sum may apply for permission to work off the sum, or the balance outstanding, by community service.

(2) An application under this section—

(a) must be made in writing to the court; and

(b) must include—

(i) a statement of the applicant's assets and liabilities; and

(ii) a statement of the applicant's income and recurrent expenditure; and

(iii) the prescribed information.

(3) The information contained in the application must be verified by statutory declaration.

(4) If the court is satisfied that the payment of the pecuniary sum would cause severe hardship to the applicant or his or her dependants, the court must, within two working days after reaching that decision, refer the application to the CEO.

(5) On receiving an application under subsection (4), the CEO will permit the applicant to enter into an undertaking to perform community service in a form and on terms approved by the CEO.

(6) The undertaking must comply with the following provisions:

(a) the period of the community service will be calculated at the rate of eight hours for each prescribed unit of the pecuniary sum or of the balance outstanding; and

(b) the community service must be performed over a period not exceeding 18 months.

(7) Where a person enters into an undertaking under this section—

(a) the CEO must, within two business days of the date of the undertaking, file a copy of the undertaking with the court; and

- (b) any process for enforcement of payment of the pecuniary sum will be suspended unless and until notice of the cancellation of the undertaking is filed under this section.

* * * * *

(10) If a person fails to comply with the terms of an undertaking under this section, the CEO may, by notice in writing to that person, cancel the undertaking.

(11) The CEO must file a copy of the notice of cancellation in the court together with a statement of the period of community service (if any) served by the applicant before the date of cancellation (and the period will be expressed in multiples of eight hours, so that if the period amounts to less than eight hours it will be ignored, as will any remainder of less than eight hours).

(12) If the person performs community service in pursuance of an undertaking under this section, the outstanding amount of the pecuniary sum is reduced by one prescribed unit for each eight hours of community service completed by the person.

(13) If the person at any time pays to the CEO a part of the amount then outstanding, the number of hours of community service still to be performed will be reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or part of an hour).

(14) The CEO will release a person from an undertaking if the balance of the amount then outstanding is paid to the CEO.

(15) Where a person completes the entire period of community service to be performed in pursuance of an undertaking, the CEO must file a notice of that fact in the court.

(16) Any notice to be given under this section may be given personally or by post.

(17) This section does not apply where the amount outstanding, or the aggregate of the amounts outstanding, exceeds—

(a) \$2 000; or

(b) if some other amount is prescribed—that amount.

* * * * *

Remission of pecuniary sum

68. (1) A court may, on the application of an appropriate officer or of the person liable under an order for payment of a pecuniary sum, remit the outstanding amount under the order if the court is satisfied that, in all the circumstances of the case, no other order under this Part would be appropriate.

(2) Upon a court making an order under subsection (1), the liability of the person in default to comply with the order for payment of the sum is wholly extinguished.

Amount in default is reduced by imprisonment served

69. (1) Where a warrant issued under this Part for the imprisonment of a person is executed, the amount in respect of which the warrant was issued is reduced by one prescribed unit for each day served in prison pursuant to the warrant.

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(2) If the person at any time pays to the court or the manager of the prison the amount then outstanding under the warrant, together with the costs of issuing and executing the warrant, the sentence of imprisonment is wholly extinguished.

(3) If the person at any time pays to the court or the manager of the prison a part of the amount then outstanding under the warrant, the balance of the term of imprisonment still to be served will be reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or any part of a day).

(4) A prison manager to whom any money has been paid must issue a receipt for the payment and forward the amount to the court.

(5) Where a person has served a term of imprisonment fixed under this Part, the whole of the amount in respect of which the warrant of commitment was issued is extinguished.

(6) For the purposes of this section, the deduction from a prisoner's earnings of the amount of a levy payable under the *Criminal Injuries Compensation Act 1978* will be taken to be payment by the prisoner of that amount.

* * * * *

Civil liability cannot be diminished

70. Despite any other provision of this Division, a person cannot diminish a civil liability by undergoing imprisonment or performing community service pursuant to this Division.

DIVISION 4—ENFORCEMENT OF COMMUNITY SERVICE ORDERS AND OTHER ORDERS OF A NON-PECUNIARY NATURE

Community service orders may be enforced by imprisonment

71. (1) Subject to this section, an order of a court requiring performance of community service is enforceable by imprisonment in default of compliance.

(2) The term of imprisonment to be served in default of compliance will be—

(a) a term calculated on the basis of one day for each eight hours of community service remaining to be performed under the order; or

(b) six months,

whichever is the lesser.

(3) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring performance of community service, the court may—

(a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why a warrant of commitment should not be issued against the person for the default; or

(b) issue a warrant for the person's arrest.

(4) If a person fails to appear before the court as required by a notice issued under subsection (3), the court may issue a warrant for the person's arrest.

(5) If the court is satisfied that the person has failed to comply with the order requiring performance of community service, the court may issue a warrant of commitment for the appropriate term of imprisonment determined in accordance with subsection (2).

(6) The court may, on issuing a warrant under subsection (5), direct that the imprisonment to which the person becomes liable by virtue of the warrant be cumulative on any other term of imprisonment being served, or to be served, by the person.

(7) Despite subsection (5), if the court is satisfied that the failure of a person to comply with an order requiring performance of community service was trivial or that there are proper grounds on which the failure should be excused, the court—

- (a) may refrain from issuing a warrant of commitment; and
- (b) may—
 - (i) extend the term of the order by such period, not exceeding six months, as the court thinks necessary for the purpose of enabling the person to perform the remaining hours of community service (if any);
 - (ii) if the order has expired, impose a further order, for a term not exceeding six months, requiring the person to perform the number of hours of community service unperformed under the previous order;
 - (iii) cancel the whole or a number of the unperformed hours of community service under the order.

* * * * *

Other non-pecuniary orders may be enforced by imprisonment

71A. (1) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring the person to do some act (other than the performance of community service or the payment of a pecuniary sum), the court may—

- (a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why the person should not be dealt with for the default; or
- (b) issue a warrant for the person's arrest.

(2) If a person fails to appear before the court as required by a notice issued under subsection (1), the court may issue a warrant for the person's arrest.

(3) If the court is satisfied that the person has failed to comply with the order, the court may sentence the person to such term of imprisonment (not exceeding six months) as the court thinks fit and issue a warrant of commitment accordingly.

(4) The court may, on issuing a warrant under subsection (3), direct that the imprisonment to which the person becomes liable by virtue of the warrant be cumulative on any other term of imprisonment being served, or to be served by the person.

* * * * *

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Detention in prison

71B. If the court issues an order for detention of a youth or sentences a youth to detention under this Division—

- (a) where the youth is already in custody in a prison, the youth will serve the detention in a prison; or
- (b) where the youth has previously served a sentence of imprisonment or detention in a prison, the court may direct that the youth serve the detention in a prison,

and the *Correctional Services Act 1982* applies to and in relation to a youth serving detention in a prison under this section.

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**PART 10
MISCELLANEOUS**

Appropriate officers

72. (1) Subject to rules of court or the regulations, the powers of a court under section 35, 54, 55 or 59 or Division 3 or 4 of Part 9 are exercisable by any appropriate officer.

(2) Where the Sheriff exercises powers under this Act as an appropriate officer in relation to an order of the Magistrates Court, the Sheriff must, as soon as practicable after doing so, notify a Registrar of that Court of the manner in which the powers have been exercised.

(3) Where a Registrar of the Magistrates Court exercises powers under this Act as an appropriate officer in relation to an order of the Supreme Court, the District Court or the ERD Court, the Registrar must, as soon as practicable after doing so, notify the Sheriff of the manner in which the powers have been exercised.

(4) A Registrar of the Magistrates Court must observe any conditions imposed by the Sheriff—

(a) limiting the exercise by Registrars of that Court of powers as an appropriate officer in relation to orders of the Supreme Court, the District Court or the ERD Court; or

(b) as to the manner in which those powers are to be exercised.

(5) Subject to rules of court or the regulations, where an appropriate officer exercises the powers of a court pursuant to this section in relation to a person and the person is aggrieved by a decision or order made by the appropriate officer, the person may apply to the court for a review of the decision or order.

(6) The court may, on completion of the review—

(a) confirm the decision or order;

(b) quash the decision or order and substitute any decision or order that the court thinks should have been made in the first instance;

(c) make any ancillary order (including an order as to costs) it thinks fit.

Abolition of hard labour¹

73. (1) No order or direction for hard labour will be made by a court in respect of a person sentenced to imprisonment.

(2) No person serving a sentence of imprisonment will be required to perform hard labour.

(3) Nothing in this section prevents a prisoner from performing any work, or from being directed to perform any work, pursuant to the *Correctional Services Act 1982*.

¹ For abolition of capital punishment see s. 5A of the *Criminal Law Consolidation Act 1935*. For abolition of certain corporal punishments—see the *Corporal Punishment Abolition Act 1971*.

Evidentiary

74. In proceedings under this Act for the enforcement of an order of a court, a certificate apparently under the hand of an appropriate officer and specifying the default of any person under the order will, in the absence of proof to the contrary, be proof of the facts certified.

Regulations

75. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe forms for the purposes of this Act;

(b) regulate the practice and procedure of proceedings before appropriate officers.

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SCHEDULE

Transitional Provisions

1. (1) Subject to this clause, this Act applies in relation to a person found guilty of an offence before or after the commencement of this Act.

(2) This Act does not affect a term of imprisonment for the enforcement, or in default of payment, of a pecuniary sum where the term was fixed before the commencement of this Act.

2. In determining an application made under section 32(3) by a prisoner who was in prison immediately before the commencement of the *Prisons Act Amendment Act (No. 2) 1983*, the court must, if the prisoner has already served a period of imprisonment that would be equal to, or exceed, a non-parole period determined in accordance with this section, as reduced by the total number of days of remission credited to the prisoner after that commencement, make an order fixing a non-parole period in respect of that prisoner that expires 30 days after the day on which the order is made.

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APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provisions from Statutes Amendment (Truth in Sentencing) Act 1994, ss. 20 and 21, as amended by Statutes Amendment (Correctional Services) Act 1995, s. 4)

Reduction of existing sentences and non-parole periods

20. (1) Subject to subsection (2), a sentence of imprisonment (including a suspended sentence) imposed before the commencement of this Act and a non-parole period imposed before the commencement of this Act are, on the commencement of this Act, reduced—

- (a) by the number of days of remission credited to the prisoner or youth; and
- (b) by the maximum number of days of remission that the prisoner or youth could have earned after the commencement of this Act had this Act not repealed Part 7 of the *Correctional Services Act 1982*.

(2) If a prisoner or youth becomes liable to serve the unexpired balance of a term of imprisonment imposed before the commencement of this Act, no reduction of that balance is to be made under this section.

(3) In subsection (1), the "maximum number of days of remission", in relation to a sentence of imprisonment (including a suspended sentence) in respect of which a non-parole period has been fixed, means the maximum number of days of remission that the prisoner or youth could have earned in respect of that non-parole period assuming that he or she was released in accordance with section 66(1) of the *Correctional Services Act 1982* (as in force before the commencement of this Act), whether or not he or she is in fact released at the end of the non-parole period (as reduced under this section).

Sentences imposed after commencement of this Act

21. (1) A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period, must, when considering sentences imposed before the commencement of this Act (but after the commencement of the *Prisons Act Amendment Act (No. 2) 1983*) for comparable offences, take into account the abolition of the previous statutory scheme for remission of sentence.

(2) This section applies whether the offence to which the sentence or non-parole period relates was committed before or after the commencement of this Act.

(Transitional provision from Statutes Amendment (Young Offenders) Act 1998, s. 8)

8. Section 31A of the principal Act, as amended by section 4 of this Act, and section 32 of the principal Act, as amended by section 5 of this Act, apply in relation to a youth detained in a prison, whether so detained before or after the commencement of those sections of this Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 2:	repealed by 69, 1995, s. 12 (Sched.)
Section 3(1):	definition of "appropriate officer" substituted by 34, 1992, s. 4(a); 94, 1993, s. 7(a)
	definition of "the CEO" inserted by 69, 1995, s. 12 (Sched.)
	definition of "community service officer" amended by 69, 1995, s. 12 (Sched.)
	definition of "court" substituted by 34, 1992, s. 4(b); amended by 94, 1993, s. 7(b)

	definition of "the Director" repealed by 69, 1995, s. 12 (Sched.)
	definition of "ERD Court" inserted by 69, 1995, s. 12 (Sched.)
	definition of "prescribed unit" amended by 68, 1996, s. 5(a)
	definition of "probation officer" amended by 69, 1995, s. 12 (Sched.)
	definition of "probative court" amended by 34, 1992, s. 4(c); substituted by 69, 1995, s. 12 (Sched.); 68, 1996, s. 5(b)
	definition of "youth" inserted by 94, 1993, s. 7(c)
	definition of "Youth Court" inserted by 94, 1993, s. 7(c)
Section 3A:	inserted by 68, 1996, s. 6
Section 7A:	inserted by 48, 1998, s. 3
Section 9(1):	amended by 47, 1989, s. 2
Section 9(1)(c):	repealed by 35, 1994, s. 17
Section 9A:	inserted by 21, 1994, s. 4
Section 11(2):	substituted by 68, 1996, s. 7
Section 12:	amended by 47, 1989, s. 3; repealed by 35, 1994, s. 18
Section 13(1):	amended by 59, 1997, s. 4
Section 15(2):	amended by 69, 1995, s. 12 (Sched.)
Section 16:	amended by 22, 1991, s. 4
Section 18:	amended by 22, 1991, s. 5
Section 18A:	inserted by 34, 1992, s. 5; amended by 69, 1995, s. 3
Section 19:	amended by 69, 1991, s. 13(a); substituted by 69, 1995, s. 4
Section 19(3):	amended by 68, 1996, s. 8
Section 19A:	inserted by 22, 1994, Sched. cl. 3
Section 19A(1):	amended by 68, 1996, s. 9(a), (b)
Section 19A(2):	amended by 68, 1996, s. 9(c), (d)
Section 21:	substituted by 94, 1993, s. 8
Section 22(1):	amended by 69, 1995, s. 12 (Sched.)
Section 22(2):	amended by 49, 1991, Sched. 2
Section 22(5):	amended by 69, 1995, s. 12 (Sched.)
Section 22(7):	amended by 49, 1991, Sched. 2
Section 23(1):	definition of "offence to which this section applies" amended by 69, 1995, s. 12 (Sched.)
	definition of "institution" amended by 68, 1996, s. 10
Section 23(2), (8) and (10):	amended by 69, 1995, s. 12 (Sched.)
Section 23(11):	amended by 49, 1991, Sched. 2
Section 24(1):	amended by 49, 1991, Sched. 2
Section 24(5):	amended by 49, 1991, Sched. 2; 34, 1992, s. 6(a), (b)
Section 24(5a):	inserted by 34, 1992, s. 6(c)
Section 24(6):	substituted by 34, 1992, s. 6(d)
Section 24(7):	amended by 34, 1992, s. 6(e)
Section 24(11):	amended by 49, 1991, Sched. 2
Section 24(12):	definition of "the appropriate board" amended by 34, 1992, s. 6(f), (g)
Section 26:	amended by 49, 1991, Sched. 2
Section 27:	amended by 68, 1996, s. 11
Section 27A:	inserted by 76, 1988, s. 2
Section 27A(1), (2), (5) and (6):	amended by 49, 1991, Sched. 2
Section 31(3):	substituted by 59, 1994, Sched. 2
Section 31(4):	inserted by 68, 1996, s. 12
Section 31A:	inserted by 68, 1996, s. 13; amended and redesignated as s. 31A(1) by 41, 1998, s. 4(a), (b)
Section 31A(2):	inserted by 41, 1998, s. 4(b)
Section 32(1):	amended by 34, 1992, s. 7(a)
Section 32(3):	substituted by 34, 1992, s. 7(b); amended by 69, 1995, s. 12 (Sched.)
Section 32(5):	amended by 69, 1995, s. 12 (Sched.); 41, 1998, s. 5

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Section 32(6):	amended by 49, 1991, Sched. 2; 34, 1992, s. 7(c); 69, 1995, s. 12 (Sched.)
Section 32(6a):	inserted by 34, 1992, s. 7(d); amended by 69, 1995, s. 12 (Sched.)
Section 32(7):	amended by 49, 1991, Sched. 2; 34, 1992, s. 7(e); 69, 1995, s. 12 (Sched.)
Section 32(10):	amended by 49, 1991, Sched. 2; 34, 1992, s. 7(f); 69, 1995, s. 12 (Sched.)
Section 34:	amended by 69, 1995, s. 12 (Sched.); 68, 1996, s. 14
Section 35(1):	amended by 34, 1992, s. 8(a)
Section 35(2):	amended by 34, 1992, s. 8(b)
Part 5 heading:	substituted by 94, 1993, s. 9; amended by 68, 1996, s. 15
Sections 36 and 37:	amended by 69, 1995, s. 12 (Sched.)
Section 39(1):	amended by 69, 1995, s. 5(a)
Section 39(2):	amended by 69, 1995, s. 5(b)
Section 40:	amended by 34, 1992, s. 9
Section 42(1):	amended by 33, 1993, s. 3(a)
Section 42(1a):	inserted by 69, 1995, s. 6(a)
Section 42(3):	repealed by 69, 1995, s. 6(b)
Section 42(5):	inserted by 33, 1993, s. 3(b)
Section 43:	amended by 69, 1995, s. 12 (Sched.)
Section 44(1):	amended by 69, 1995, s. 12 (Sched.)
Section 44(1a):	inserted by 34, 1992, s. 10; amended by 69, 1995, s. 12 (Sched.)
Section 44(1b):	inserted by 34, 1992, s. 10
Section 44(2):	amended by 69, 1995, s. 12 (Sched.)
Section 44A:	inserted by 94, 1993, s. 10; amended by 69, 1995, s. 12 (Sched.); repealed by 68, 1996, s. 16
Section 45:	substituted by 69, 1995, s. 7
Section 45(1):	amended by 68, 1996, s. 17(a)
Section 45(2):	amended by 68, 1996, s. 17(b), (c)
Section 46:	amended by 34, 1992, s. 11
Section 47:	amended by 34, 1992, s. 12; 69, 1995, s. 12 (Sched.); amended and redesignated as s. 47(1) by 68, 1996, s. 18
Section 47(2):	inserted by 68, 1996, s. 18(d)
Section 48:	amended by 69, 1995, s. 12 (Sched.)
Section 49(1):	amended by 69, 1995, s. 12 (Sched.); 68, 1996, s. 19
Section 49(2):	amended by 69, 1995, s. 12 (Sched.)
Section 50(1) and (2):	amended by 69, 1995, s. 12 (Sched.)
Section 50A:	inserted by 34, 1992, s. 13
Section 50A(1):	amended by 69, 1995, s. 12 (Sched.)
Section 50B:	inserted by 34, 1992, s. 13
Section 50B(1):	amended by 69, 1995, s. 12 (Sched.)
Section 51(1):	amended by 69, 1995, s. 12 (Sched.)
Section 51(3):	amended by 69, 1995, s. 12 (Sched.); 68, 1996, s. 20
Section 51(4):	amended by 69, 1995, s. 12 (Sched.)
Section 53(2a):	inserted by 27, 1990, s. 3(a)
Section 53(5):	substituted by 27, 1990, s. 3(b); amended by 69, 1995, s. 12 (Sched.)
Section 53(6):	repealed by 27, 1990, s. 3(b)
Section 53(7):	amended by 69, 1995, s. 12 (Sched.)
Section 54(1):	amended by 34, 1992, s. 14(a)
Section 54(2):	amended by 34, 1992, s. 14(b)
Part 8 heading:	amended by 69, 1995, s. 12 (Sched.)
Section 55(1):	repealed by 69, 1991, s. 13(b)
Section 55(2):	amended by 34, 1992, s. 15(a); 69, 1995, s. 12 (Sched.)
Section 55(3):	amended by 34, 1992, s. 15(b)
Section 57(3):	amended by 69, 1995, s. 12 (Sched.)
Section 57(4):	substituted by 34, 1992, s. 16(a)

Section 57(4a):	inserted by 69, 1995, s. 8(a)
Section 57(6):	definition of "court of an inferior jurisdiction" repealed by 34, 1992, s. 16(b); inserted by 69, 1995, s. 8(b) definition of "court of a superior jurisdiction" amended by 69, 1995, s. 8(c)
Section 58(1):	amended by 69, 1995, s. 9
Section 58(3):	amended by 34, 1992, s. 17
Section 58(5):	amended by 69, 1995, s. 12 (Sched.)
Section 59(1):	amended by 34, 1992, s. 18(a)
Section 59(2):	amended by 34, 1992, s. 18(b)
Section 59AA:	inserted by 94, 1993, s. 11; repealed by 68, 1996, s. 21
Section 59A:	inserted by 34, 1992, s. 19; amended by 69, 1995, s. 12 (Sched.)
Section 60A:	inserted by 33, 1991, s. 10
Section 60A(2):	amended by 34, 1992, s. 20(a)
Section 60A(3):	inserted by 34, 1992, s. 20(b)
Section 61:	substituted by 34, 1992, s. 21
Section 61(5a):	inserted by 69, 1995, s. 10
Section 61(6):	inserted by 94, 1993, s. 12; substituted by 68, 1996, s. 22
Section 61AA:	inserted by 68, 1996, s. 23
Section 61AA(6a):	inserted by 41, 1998, s. 6
Section 61A:	inserted by 34, 1992, s. 21
Section 61A(1):	amended by 94, 1993, s. 13(a)
Section 61A(2a) and (2b):	inserted by 21, 1994, s. 5
Section 61A(5):	amended by 94, 1993, s. 13(b)
Section 61A(6):	amended by 94, 1993, s. 13(c)
Section 61B:	inserted by 73, 1992, s. 3
Section 61B(2a) and (2b):	inserted by 21, 1994, s. 6
Section 62(1):	amended by 34, 1992, s. 22(a)
Section 62(4):	amended by 34, 1992, s. 22(b)
Section 62(9):	amended by 34, 1992, s. 22(c)
Section 64(2):	amended by 34, 1992, s. 23
Section 65(1):	amended by 34, 1992, s. 24(a), (b)
Section 65(3):	amended by 34, 1992, s. 24(c)
Section 66(1):	substituted by 34, 1992, s. 25(a); amended by 69, 1995, s. 12 (Sched.); 68, 1996, s. 24
Section 66(2):	substituted by 34, 1992, s. 25(a)
Section 66(3):	amended by 34, 1992, s. 25(b)
Section 67(1):	amended by 69, 1995, s. 11
Section 67(2):	amended by 34, 1992, s. 26(a)
Section 67(4):	amended by 34, 1992, s. 26(b), (c); 69, 1995, s. 12 (Sched.)
Section 67(5):	amended by 69, 1995, s. 12 (Sched.); substituted by 68, 1996, s. 25(a)
Section 67(7):	amended by 34, 1992, s. 26(d); 69, 1995, s. 12 (Sched.)
Section 67(8) and (9):	repealed by 34, 1992, s. 26(e)
Section 67(10):	amended by 69, 1995, s. 12 (Sched.)
Section 67(11):	amended by 34, 1992, s. 26(f); 69, 1995, s. 12 (Sched.)
Section 67(13) and (14):	amended by 69, 1995, s. 12 (Sched.)
Section 67(15):	amended by 34, 1992, s. 26(g); 69, 1995, s. 12 (Sched.)
Section 67(18):	inserted by 94, 1993, s. 14; amended by 69, 1995, s. 12 (Sched.); repealed by 68, 1996, s. 25(b)
Section 68(1):	amended by 34, 1992, s. 27
Section 69(1):	amended by 34, 1992, s. 28(a)
Section 69(2) - (4):	amended by 34, 1992, s. 28(b)
Section 69(7):	inserted by 94, 1993, s. 15; repealed by 68, 1996, s. 26
Section 70:	amended by 69, 1995, s. 12 (Sched.)
Section 71:	substituted by 34, 1992, s. 29
Section 71(7):	amended by 69, 1995, s. 12 (Sched.)
Section 71(8):	inserted by 94, 1993, s. 16; repealed by 68, 1996, s. 27

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Section 71A:	inserted by 34, 1992, s. 29
Section 71A(5):	inserted by 94, 1993, s. 17; repealed by 68, 1996, s. 28
Section 71B:	inserted by 41, 1998, s. 7
Section 72:	substituted by 34, 1992, s. 30
Section 72(2) - (4):	amended by 69, 1995, s. 12 (Sched.)