

# CRIMINAL LAW (SENTENCING) ACT 1988

Reprint No. 1—1.7.91	
Reprint No. 2—6.7.92	
Reprint No. 3—30.9.92	[Whole Act replaced]
Reprint No. 4—1.7.93	[New Part 9 and Appendices]
Reprint No. 5—1.1.94	[Whole Act replaced]
Reprint No. 6—7.7.94	[New Parts 2, 5, 9 and Appendices]
Reprint No. 7—1.8.94	[New Part 2 and Appendices]
Reprint No. 8—1.1.95	[New Part 3 and Appendices]
Reprint No. 9—18.12.95	[Whole Act replaced]
Reprint No. 10—8.10.96	[Whole Act replaced]
Reprint No. 11—14.9.97	[New Part 2 and Appendix]
Reprint No. 12—2.11.97	[New Part 9 and Appendix]
Reprint No. 13—1.10.98	[New Parts 3, 9 and Appendix]
Reprint No. 14—6.4.99	[New Part 2 and Appendix]
Reprint No. 15—16.5.99	[New Parts 2, 5, 6, 9 and Appendix]
Reprint No. 16—3.10.99	[New Parts 1, 2, 5, 6 and Appendix]
Reprint No. 17—25.12.99	[New Parts 1, 2 and Appendix]
Reprint No. 18—6.3.00	[Whole Act replaced]
Reprint No. 19—1.7.00	[New Parts 1, 2 and Appendix]
Reprint No. 20—14.8.00	[New Parts 1, 3, 6 and Appendix]
Reprint No. 21—31.3.01	[New Part 9 and Appendix]
Reprint No. 22—3.8.01	[New Part 2 and Appendix]
Reprint No. 23—30.12.01	[New Part 2 and Appendix]
Reprint No. 24—31.10.02	[New Part 2 and Appendix]
Reprint No. 25—1.1.03	[Whole Act replaced]
Reprint No. 26—3.3.03	[New Part 9 and Appendix]

[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**

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

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*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **3 March 2003**.*

*Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

**CRIMINAL LAW (SENTENCING) ACT 1988**

being

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

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]<sup>2</sup>  
Statutes Amendment (Criminal Law Sentencing) Act 1991 No. 22 of 1991 [Assented to 18 April 1991]<sup>3</sup>  
Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]<sup>4</sup>  
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]<sup>5</sup>  
Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>6</sup>  
Statutes Amendment (Sentencing) Act 1992 No. 34 of 1992 [Assented to 21 May 1992]<sup>7</sup>  
Criminal Law (Sentencing) (Suspension of Vehicle Registration) Amendment Act 1992 No. 73 of 1992  
[Assented to 19 November 1992]<sup>8</sup>  
Criminal Law (Sentencing) (Education Programmes) Amendment Act 1993 No. 33 of 1993 [Assented to  
13 May 1993]<sup>9</sup>  
Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993 No. 94 of 1993  
[Assented to 4 November 1993]<sup>10</sup>  
Statutes Amendment (Attorney-General's Portfolio) Act 1994 No. 21 of 1994 [Assented to 26 May 1994]<sup>11</sup>  
Domestic Violence Act 1994 No. 22 of 1994 [Assented to 26 May 1994]<sup>12</sup>  
Statutes Amendment (Truth in Sentencing) Act 1994 No. 35 of 1994 [Assented to 2 June 1994]<sup>13</sup>  
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to  
27 October 1994]<sup>14</sup>  
Criminal Law (Sentencing) (Miscellaneous) Amendment Act 1995 No. 69 of 1995 [Assented to  
2 November 1995]<sup>15</sup>  
Statutes Amendment (Sentencing of Young Offenders) Act 1996 No. 68 of 1996 [Assented to  
15 August 1996]<sup>16</sup>  
Statutes Amendment (Attorney-General's Portfolio) Act 1997 No. 59 of 1997 [Assented to 31 July 1997]<sup>17</sup>  
Statutes Amendment (Young Offenders) Act 1998 No. 41 of 1998 [Assented to 13 August 1998]<sup>18</sup>  
Criminal Law (Sentencing) (Victim Impact Statements) Amendment Act 1998 No. 48 of 1998 [Assented to  
3 September 1998]<sup>19</sup>  
Statutes Amendment (Fine Enforcement) Act 1998 No. 60 of 1998 [Assented to 3 September 1998]<sup>20</sup> (as  
amended by Statutes Amendment and Repeal (Justice Portfolio) Act 1999<sup>23</sup>)  
Statutes Amendment (Sentencing—Miscellaneous) Act 1999 No. 13 of 1999 [Assented to 18 March 1999]<sup>21</sup>  
Statutes Amendment (Restraining Orders) Act 1999 No. 24 of 1999 [Assented to 1 April 1999]<sup>22</sup>  
Statutes Amendment and Repeal (Justice Portfolio) Act 1999 No. 42 of 1999 [Assented to 5 August 1999]<sup>23</sup>  
Criminal Law (Sentencing) (Sentencing Principles) Amendment Act 1999 No. 79 of 1999 [Assented to  
2 December 1999]<sup>24</sup>  
Statutes Amendment (Warrants of Apprehension) Act 2000 No. 18 of 2000 [Assented to 1 June 2000]<sup>25</sup>  
Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000 No. 57 of 2000 [Assented to 20 July  
2000]<sup>26</sup>  
Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001 No. 37 of 2001 [Assented to  
3 August 2001]  
Legal Assistance (Restrained Property) Amendment Act 2001 No. 10 of 2001 [Assented to 12 April 2001]<sup>27</sup>  
Victims of Crime Act 2001 No. 58 of 2001 [Assented to 15 November 2001]<sup>28</sup>  
Statutes Amendment (Bushfires) Act 2002 No. 24 of 2002 [Assented to 31 October 2002]<sup>29</sup>

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**Statutes Amendment (Attorney-General's Portfolio) Act 2002 No. 33 of 2002 [Assented to 28 November 2002]<sup>30</sup>**

*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.*

- <sup>1</sup> 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.
- <sup>2</sup> Came into operation 1 September 1990: *Gaz.* 16 August 1990, p. 582.
- <sup>3</sup> Came into operation 30 May 1991: *Gaz.* 30 May 1991, p. 1702.
- <sup>4</sup> Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.
- <sup>5</sup> Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869.
- <sup>6</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.
- <sup>7</sup> Came into operation 30 September 1992: *Gaz.* 24 September 1992, p. 1150.
- <sup>8</sup> Came into operation 1 July 1993: *Gaz.* 1 July 1993, p. 198.
- <sup>9</sup> Came into operation 1 July 1994: *Gaz.* 9 June 1994, p. 1668.
- <sup>10</sup> Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2177.
- <sup>11</sup> Came into operation 7 July 1994: *Gaz.* 7 July 1994, p. 4.
- <sup>12</sup> Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 68.
- <sup>13</sup> Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 69.
- <sup>14</sup> Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- <sup>15</sup> 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)).
- <sup>16</sup> Came into operation 8 October 1996: *Gaz.* 29 August 1996, p. 810.
- <sup>17</sup> Part 2 (s. 4) came into operation 14 September 1997: *Gaz.* 11 September 1997, p. 704.
- <sup>18</sup> Part 2 (ss. 4-8) came into operation 1 October 1998: *Gaz.* 10 September 1998, p. 815.
- <sup>19</sup> Came into operation 6 April 1999: *Gaz.* 1 April 1999, p. 1514.
- <sup>20</sup> Part 5 (ss. 11-30) came into operation 6 March 2000: *Gaz.* 18 November 1999, p. 2358.
- <sup>21</sup> Part 3 (ss. 6-14) came into operation 16 May 1999: *Gaz.* 13 May 1999, p. 2502.
- <sup>22</sup> Part 2 (s. 4) came into operation 16 May 1999: *Gaz.* 13 May 1999, p. 2502.
- <sup>23</sup> Part 7 (ss. 34-45) and Part 10 (ss. 52 & 53) came into operation 3 October 1999: *Gaz.* 23 September 1999, p. 1208.
- <sup>24</sup> Came into operation 25 December 1999: *Gaz.* 23 December 1999, p. 3668.
- <sup>25</sup> Part 3 (s. 5) came into operation 1 July 2000: *Gaz.* 15 June 2000, p. 3131.
- <sup>26</sup> Part 8 (except s. 22) came into operation 14 August 2000: *Gaz.* 10 August 2000, p. 444; s. 22 came into operation 31 March 2001: *Gaz.* 16 February 2001, p. 705.
- <sup>27</sup> S. 4 came into operation 30 December 2001: *Gaz.* 13 December 2001, p. 5352.
- <sup>28</sup> Sched. 2 (cl. 3) came into operation 1 January 2003: *Gaz.* 19 December 2002, p. 4736.
- <sup>29</sup> Part 3 (s. 5) came into operation 31 October 2002: *Gaz.* 31 October 2002, p. 3979.
- <sup>30</sup> **Part 4 (s. 6) came into operation 3 March 2003: *Gaz.* 27 February 2003, p. 807.**

N.B. The amendments effected to this Act by the *Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002* had not been brought into operation at the date of, and have not been included in, this reprint.

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LEGISLATIVE HISTORY**

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—

"**the Administrator**" means the person for the time being holding or acting in the office of the State Courts Administrator under the *Courts Administration Act 1993*;

"**authorised officer**" means—

- (a) the Sheriff; or
- (b) the Manager, Penalty Management; or
- (c) a Registrar of the Magistrates Court; or
- (d) the Registrar of the Youth Court; or
- (e) a person appointed by the Administrator under Part 9 as an authorised officer;

"**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 corrections officer**" means an officer or employee of the Department for Correctional Services whose duties include the supervision of offenders in the community;

"**conditional release**" means conditional release from a training centre;

"**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;

"**home**" means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence;

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

"**the Manager, Penalty Management**" or "**the Manager**" means the person for the time being holding or acting in the office of Manager, Penalty Management under the *Magistrates Court Act 1991*;

"**intruder**" means a person who commits a criminal trespass;

"**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 VIC levy;

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

"**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;

"**sale**" of property includes conversion of the property into money by any appropriate means;

"**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;

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

"**VIC levy**" means a levy imposed under the *Victims of Crime Act 2001* or a corresponding previous law;

"**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 VIC levy imposed on a person 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 corrections 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 corrections 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.

\* \* \* \* \*

**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.

## 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.

(3a) If the court considers there is good reason to do so, it may exercise any of the powers that it has with regard to a vulnerable witness in order to assist a victim who wishes to read out a victim impact statement 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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**Presence of defendant during sentencing proceedings**

**9B.** (1) Subject to the following exceptions, a defendant who is to be sentenced for an indictable offence must be present when the sentence is imposed and throughout all proceedings relevant to the determination of sentence.

**Exceptions—**

1. The defendant may, with the prosecutor's consent, be absent during the whole or part of the proceedings.
2. The court may exclude the defendant from the courtroom if satisfied that the exclusion is necessary in the interests of safety or for the orderly conduct of the proceedings. However, if such an exclusion is made, the court should (if practicable) make arrangements to enable the defendant to see and hear the proceedings by videolink.

(2) If the defendant is a body corporate, the requirement is satisfied by the presence of a director or some other representative of the body corporate satisfactory to the court but, in that case, either the prosecutor or the court may waive the requirement.

(3) A court may make any order necessary to secure compliance with this section and, if necessary, issue a warrant to have the defendant (or, if the defendant is a body corporate, a director or other representative of the defendant) arrested and brought before the court.

(4) This section—

- (a) does not prevent the passing of sentence, in the absence of the defendant, in a case where the defendant cannot be found; and
- (b) does not invalidate a sentence passed in the absence of the defendant.

**Division 2—General sentencing powers****Matters to which a sentencing court should have regard**

**10.** (1) 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;
- (ea) in the case of an offence committed by an intruder in the home of another—the need to give proper effect to the policy stated in subsection (2);
- (eb) in the case of arson or causing a bushfire—the need to give proper effect to the policy stated in subsection (3);

- (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;
- (ka) if a forfeiture of property (other than a forfeiture that merely neutralises a benefit that has been obtained through the commission of the offence) is, or is to be imposed, as a result of the commission of the offence—the nature and extent of the forfeiture;
- (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.

(2) A primary policy of the criminal law is to protect the security of the lawful occupants of the home from intruders.

(3) A primary policy of the criminal law in relation to arson or causing a bushfire is—

- (a) to bring home to the offender the extreme gravity of the offence; and
- (b) to exact reparation from the offender, to the maximum extent possible under the criminal justice system, for harm done to the community.

**Examples—**

1. The court may, with the consent of victims of the offence or victims of the kind of harm that the offence could have caused, require the offender (under appropriate supervision) to meet with the victims.
2. The court may direct that the offender (whether in prison, on parole or undertaking community service) participate (under appropriate supervision) in programs to rehabilitate fire damaged land or other property.

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**Imprisonment not to be imposed except in certain circumstances**

**11.** (1) A sentence of imprisonment may only be imposed—

- (a) if, in the opinion of the court—
  - (i) the defendant has shown a tendency to violence towards other persons; or
  - (ii) the defendant is likely to commit a serious offence if allowed to go at large; or
  - (iii) the defendant has previously been convicted of an offence punishable by imprisonment; or
  - (iv) any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence; or
- (b) if a sentence of imprisonment is necessary to give proper effect to the primary policy stated in section 10(2).

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

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**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).

(1a) In considering whether the defendant would be able to comply with the order, the court should have regard to the fact that defendants may enter into arrangements under Division 3 of Part 9 for an extension of time to pay pecuniary sums or for payment by instalments.

(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.

**Court not to fix time for payment of pecuniary sums**

**14A.** (1) Where a court makes an order requiring a defendant to pay a pecuniary sum, the court is not empowered to make any order relating to the time or manner in which the sum is to be paid (*for those powers see Part 9*).

(2) Subsection (1) does not derogate from any order of a court or an officer of a court that was in force immediately before this section came into operation.

**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.

**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,

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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 by a court of a number of offences, 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.

(1a) Before issuing an order under this section the court must consider whether, if the whereabouts of the person for whose benefit the order would be issued are not known to the defendant, the issuing of the order would be counterproductive.

(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:

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- 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.

(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, community corrections 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



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- (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 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.

(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—

- (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—
  - (i) with the concurrence of a second member of the board—issue a warrant for the apprehension and detention of the person pending determination of the proceedings; or
  - (ii) 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—
  - (i) issue a warrant; or
  - (ii) 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.

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(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.

(8a) A justice must, on application under this section, issue a warrant for the apprehension and detention of a person or for the apprehension and return to custody of a person, as the case may require, unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.

(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
- (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.

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**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 or detention in a training centre 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 conditional release; 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.

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

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(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 (or detention and 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 conditional release; or
  - (iv) any other circumstance.

(6) The Director of Public Prosecutions or the presiding member of the Parole Board or the Training Centre Review Board (as the case may require) 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 or Training Centre Review 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 or a training centre serving a sentence of imprisonment or detention, 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 or Training Centre Review Board under subsection (6), must have regard to—
  - (i) the likely behaviour of the person the subject of the application should he or she be released from custody; and



- (ii) the necessity (if any) to protect some other person or persons generally should the person be released from custody; and
- (iii) the behaviour of the person while in custody, but only insofar as it may assist the court to determine how the person is likely to behave should he or she be released; 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 or the Training Centre Review Board (as the case may require) 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 person the subject of an application by the Director of Public Prosecutions or the presiding member of the Parole Board or Training Centre Review Board under this section is a party to the application and the Director of Public Prosecutions is a party to an application under subsection (3); 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**

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**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.

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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 on defendant entering into 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.

(2a) However, if the period of imprisonment to which a defendant is liable under one or more sentences is more than three months but less than one year, the sentencing court may, by order—

- (a) direct that the defendant serve a specified period (being not less than one month) of the imprisonment in prison; and
- (b) suspend the remainder on condition that the defendant enter into a bond of a kind described in subsection (1) that will have effect on the defendant's release from prison.

(2b) The term of a bond under subsection (2a) cannot extend beyond the period of the suspended imprisonment.

(2c) If the court suspends a sentence of imprisonment under this section on the ground that, because of the defendant's ill health, disability or frailty, it would be unduly harsh for the defendant to serve any time in prison, the court may, in addition to any other conditions included in the bond, include a condition (a "home detention condition") requiring the defendant to reside in a specified place and to remain at that place for a specified period of no more than 12 months, not leaving it except for one of the following purposes:

- (a) remunerated employment;

- (b) necessary medical or dental treatment for the defendant;
- (c) averting or minimising a serious risk of death or injury (whether to the defendant or some other person);
- (d) any other purpose approved or directed by the community corrections officer to whom the defendant is assigned,

(and if the court includes a home detention condition it must also include a condition requiring the defendant to be under the supervision of a community corrections officer for at least the same period).

(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 on defendant entering into 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
- (ab) to comply with the other conditions (if any) included in 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.

(1a) However, if the defendant is not to be so required to appear before the court, the court cannot impose any conditions under subsection (1)(ab).

(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.

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(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 Act, 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 community corrections 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
  - (ii) to pay compensation of a specified amount 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.

\* \* \* \* \*

(2) A court must not include a condition (whether under this or any other section) 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 and that the accommodation is suitable in all the circumstances.

\* \* \* \* \*

(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 the supervision of a community corrections 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 16 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 CEO 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 corrections officer to whom the person is assigned may direct; and
- (f) the person may not, except in circumstances approved by the Minister for Correctional Services, 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 corrections 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.<sup>1</sup>

<sup>1</sup> 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 the supervision of a community corrections 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) except in the case of a bond with a home detention condition, 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 community corrections officer to whom he or she is assigned.

#### **CEO must assign community corrections 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 community corrections officer.

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

(3) It is the duty of a community corrections 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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**Community corrections officer may give reasonable directions**

**50.** (1) A community corrections 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) If the person is required to perform community service, the community corrections officer may also give reasonable directions to the person—

- (a) requiring the person to report to a community service centre or other place at certain times; or
- (b) requiring the person to perform certain projects or tasks as community service; or
- (c) requiring the person to undertake or participate in courses of instruction at a community service centre or other place; or
- (d) requiring the person to behave in a particular manner while undertaking community service.

**Powers of community corrections officer in the case of home detention**

**50AA.** (1) A community corrections officer may, at any time—

- (a) enter or telephone the residence of a probationer who is subject to a bond with a home detention condition; or
- (b) telephone the probationer's place of employment or any other place at which the probationer is permitted or required to attend; or
- (c) question any person who is at that residence or place as to the whereabouts of the probationer,

for the purposes of ascertaining whether or not the probationer is complying with the home detention condition.

(2) A person must not—

- (a) hinder a community corrections officer in the exercise of powers under this section; or
- (b) fail to answer truthfully any question put to the person by a community corrections officer pursuant to those powers.

Maximum penalty: \$2 500.

(3) A community corrections officer or a member of the police force who believes on reasonable grounds that a probationer who is subject to a bond with a home detention condition is contravening, has contravened or is about to contravene that condition of the bond may arrest the probationer without warrant and take him or her to the nearest police station at which facilities are continuously available for his or her care and custody.

(4) A probationer arrested pursuant to subsection (3) must be brought as soon as practicable before the sentencing court to be dealt with for breach of bond.

**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 or the Minister for Correctional Services, 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; and
- (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).

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**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 corrections 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.

\* \* \* \* \*

(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.

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## Part 9—Enforcement of sentence

### Division 1—General

#### Enforcement must be taken under this Part

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

(2) Without derogating from the powers of any other public employee, proceedings for enforcement of a bond, community service order or other order of a non-pecuniary nature may be taken by a community corrections officer.

#### Appointment of authorised officers

**56A.** (1) The Administrator may appoint—

- (a) members of the staff of the State Courts Administration Authority; or
- (b) persons appointed by the Sheriff to be deputy sheriffs or sheriff's officers,

as authorised officers.

(2) An appointment under subsection (1) may be made subject to conditions limiting the powers exercisable by the authorised officer.

(3) The Administrator may, by notice in writing served on an authorised officer—

- (a) vary or revoke a condition of the officer's appointment or impose a new condition; or
- (b) revoke the appointment.

### 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;
- (b) may order a guarantor to pay the whole or a part of the amount due under the guarantee;
- (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—

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- (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
  - (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;
- (ba) may, in the case of a bond with a home detention condition, direct that the period of compliance by the probationer with that 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.

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### **Division 3—Enforcement of pecuniary sums**

#### **Subdivision 1—Preliminary**

##### **Interpretation**

**60.** (1) In this Division—

"**the Court**" means—

- (a) in relation to a debtor who is a youth—the Youth Court;
- (b) in any other case—the Magistrates Court;

"**debtor**" means the person by whom a pecuniary sum is payable;

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

"**penalty enforcement order**" means an order under Subdivision 3 or Subdivision 6;

"**the Registrar**" means—

- (a) in relation to a debtor who is a youth—the Registrar of the Youth Court;
- (b) in any other case—a Registrar of the Magistrates Court;

"**road**" has the same meaning as in the *Motor Vehicles Act 1959*.

(2) Unless the contrary intention appears, a reference in this Division to a pecuniary sum includes a reference to the amount outstanding of such a sum or, if a number of pecuniary sums have been aggregated, the amount outstanding of the aggregated sums.

(3) To avoid doubt, a reference in this Division to a pecuniary sum is a reference to a pecuniary sum imposed by any court of criminal jurisdiction.

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**Pecuniary sum is payable within 28 days**

**61.** A pecuniary sum imposed by order of a court is payable within 28 days from (and including) the day on which the order was made.

**Payment of pecuniary sum to the Manager**

**62.** (1) A pecuniary sum is payable as follows (despite the fact that the order is in favour of some person):

- (a) to the Manager; or
- (b) to any agent appointed by the Manager for the purpose.

(2) On receipt of the whole or part of a pecuniary sum, the Manager must pay the amount received as follows:

- (a) firstly, if a VIC levy is payable by the defendant, then into the Victims of Crime Fund in satisfaction of that levy; and
- (b) secondly, if the sentencing court has ordered the defendant to pay any amount by way of compensation or restitution to a particular person, then to that person in satisfaction of that amount; and
- (c) thirdly, if any costs are payable to a party to the proceedings, then in satisfaction of those costs; and
- (d) fourthly, if any other money is payable under the order of the court to the complainant, then to the complainant; and
- (e) fifthly, according to the directions of any other Act or, if no other Act contains directions as to payment, then to Treasury.

**Payment by credit card etc**

**63.** A pecuniary sum may be paid by using a credit card, charge card or debit card if facilities for their use are available at the place at which the payment is to be made.

**Arrangements may be made as to manner and time of payment**

**64.** (1) A debtor may enter into a written arrangement with an authorised officer as to the manner and time of payment of a pecuniary sum.

(2) Arrangements under this section may include all or any of the following:

- (a) payment by instalments;
- (b) an extension of time to pay;
- (c) payment of any amount by or through some other person or agency (eg, deductions from a bank account or wages).

(3) An authorised officer should not enter into an arrangement for an extension of time to pay a pecuniary sum if the officer is of the opinion that the debtor is, without the debtor or his or her dependants suffering hardship, able to pay the sum in instalments of a reasonable amount.

(4) An arrangement under this section may be varied, in writing, by agreement between the debtor and an authorised officer.

(5) For the purposes of entering into or varying an arrangement, any number of pecuniary sums payable by the debtor may be aggregated.

(6) If a debtor fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates and the whole of the amount outstanding under the arrangement is enforceable under this Division (but nothing in this subsection prevents a further arrangement being entered into in respect of the pecuniary sum).

#### **Reminder notice**

**65.** (1) If, at the end of the 28 day period from the making of an order imposing a pecuniary sum, the debtor has not paid the pecuniary sum or entered into an arrangement under this Subdivision in respect of the sum, an authorised officer must cause a reminder notice to be sent by post to the debtor.

(2) A reminder notice must—

(a) be in a form approved by the Minister; and

(b) contain information as to the enforcement action that can be taken against the debtor in the event of continued default.

(3) Subject to subsection (4), a prescribed reminder notice fee will be added to and form part of the amount in respect of which the notice is issued.

(4) An authorised officer may, in such circumstances as the officer thinks just, waive payment of a reminder notice fee.

#### **Investigation of debtor's financial position**

**66.** (1) An authorised officer may investigate a debtor's means of satisfying a pecuniary sum and, for that purpose, may issue a summons to the debtor, or to any other person who may be able to assist with the investigation, to appear for examination before an authorised officer or to produce documents relevant to the investigation to an authorised officer.

(2) Subject to this Act, an investigation under this section need not (but may) be carried out before a penalty enforcement order is made in relation to the debtor.

(3) A summons under subsection (1) may be served personally or by post.

(4) If a person fails to appear as required by the summons, an authorised officer may issue a warrant in a form approved by the Minister for the arrest of the person.

(5) An authorised officer may, on arresting a person pursuant to a warrant issued under subsection (4), bring the person before an authorised officer for examination as soon as reasonably practicable and, in the meantime, if necessary, cause the person to be kept in safe custody at a police station or other suitable place of detention.

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**Publication of names of debtors who cannot be found**

**67.** (1) If the whereabouts of a debtor (other than a debtor who is a youth) cannot, after reasonable enquiries, be ascertained, an authorised officer may cause a notice to be published in a newspaper circulating generally throughout the State and in such other newspaper (if any) as the officer thinks fit seeking information as to the debtor's whereabouts.

(2) A notice under subsection (1)—

- (a) must be in a form approved by the Minister; and
- (b) must not include any information relating to the debtor other than the debtor's—
  - (i) actual name and any assumed name; and
  - (ii) last known and recent addresses; and
  - (iii) date of birth.

(3) However, a notice cannot be published under this section in relation to a debtor if a suppression order forbidding publication of the debtor's name was made in the proceedings in which the pecuniary sum was imposed and the order was not subsequently revoked.

**Charge on land**

**68.** (1) An authorised officer may apply to the Registrar-General in the prescribed manner to register an order of a court imposing a pecuniary sum over land owned (whether solely or jointly) by the debtor.

(2) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the pecuniary sum to which the order relates.

(3) An order registered under this section operates as a charge on the land for the amount outstanding from time to time under the order but does not give rise to a power of sale.

(4) An authorised officer will apply to the Registrar-General in the prescribed manner to have the registration of an order under this section cancelled—

- (a) on the pecuniary sum being fully satisfied; or
- (b) on revocation by the Court of the order under Subdivision 4; or
- (c) if the authorised officer considers, in the circumstances of the particular case, that it is just to do so.

**Subdivision 2—Procedural matters**

**Time at which enforcement action can be taken**

**69.** (1) If—

- (a) a debtor has not, within 14 days of (and including) the date on which a reminder notice relating to a pecuniary sum was given, paid the sum or entered into an arrangement under Subdivision 1 in respect of the sum; or

- (b) an arrangement under Subdivision 1 has terminated and the debtor has not entered into any further such arrangement in respect of the pecuniary sum,

an authorised officer may make such penalty enforcement order or orders in relation to the debtor as appear likely to result in full or substantial satisfaction of the due amount.

(2) However—

- (a) priority should, in the first instance, be given to an order for suspension of a driver's licence or for a restriction on transacting business with the Registrar of Motor Vehicles, or both; and
- (b) in deciding at any time whether to make an order for sale of property or a garnishee order, priority should be given to the former; and
- (c) an order for sale of property, a garnishee order or community service order cannot be made while a penalty enforcement order for suspension of the debtor's driver's licence is in force.

#### **Aggregation of pecuniary sums for the purposes of enforcement**

**70.** Any number of pecuniary sums owed by a debtor may be aggregated for the purposes of making a penalty enforcement order.

#### **Penalty enforcement orders may be made in absence of debtor**

**70A.** A penalty enforcement order may be made in the absence of, and without prior notice to, the debtor.

#### **Authorised officer may be assisted by others in certain circumstances**

**70B.** In—

- (a) serving any document on a person; or
- (b) executing an order for sale of property; or
- (c) arresting any person,

an authorised officer may be assisted by such other persons (including a member of the police force) as the officer considers necessary in the circumstances.

#### **Costs of penalty enforcement orders**

**70C.** The prescribed fees for issuing, serving and executing a penalty enforcement order are added to and form part of the amount in respect of which the order was made.

#### **Cancellation of penalty enforcement orders**

**70D.** A penalty enforcement order will be cancelled by an authorised officer on—

- (a) the debtor entering into an arrangement under Subdivision 1 in relation to the amount outstanding under the order; or
- (b) the pecuniary sum to which the order relates being fully satisfied; or
- (c) the debtor's case being remitted to the Court for reconsideration under Subdivision 4,

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and may be cancelled by an authorised officer in such other circumstances as the officer considers just.

**Subdivision 3—Penalty enforcement orders**

**Suspension of driver’s licence**

**70E.** (1) An authorised officer may make an order suspending a debtor’s driver’s licence for a period of 60 days (and such an order may be made despite the fact that the debtor is currently disqualified from holding or obtaining a licence).

\* \* \* \* \*

(3) The authorised officer will—

- (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
- (b) notify the Registrar of Motor Vehicles of the order.

(4) An order under this section takes effect 21 days from (and including) the day on which the order was made.

(5) A person must not drive a motor vehicle on a road while his or her licence is suspended under this section.

Maximum penalty:

- (a) \$2 500; or
- (b) disqualification from holding or obtaining a driver’s licence for a period not exceeding 6 months; or
- (c) cancellation of the person’s driver’s licence and disqualification from obtaining such a licence for a period not exceeding 6 months.

\* \* \* \* \*

**Restriction on transacting business with the Registrar of Motor Vehicles**

**70F.** (1) An authorised officer may make an order restricting a debtor from transacting any business with the Registrar of Motor Vehicles.

(2) The authorised officer will—

- (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
- (b) notify the Registrar of Motor Vehicles of the order.

(3) An order under this section—

- (a) takes effect on the Registrar of Motor Vehicles being notified under subsection (2); and
- (b) continues in operation until cancelled.

(4) The effect of an order under this section is that, while the order is in operation, the Registrar of Motor Vehicles will not process any application made by or on behalf of the debtor, whether the application was made before or after the order took effect.

(5) However, subsection (4) does not apply in relation to an application—

- (a) to transfer the registration of a motor vehicle of which the debtor is a registered owner; or
- (b) to renew the registration of a motor vehicle of which the debtor is a joint registered owner.

### **Seizure and sale of land or personal property**

**70G.** (1) An authorised officer may make an order for sale of the debtor's land or personal property to satisfy a pecuniary sum.

(2) An order under this section authorises an authorised officer, in relation to the debtor's real or personal property, to—

- (a) enter any land (using such force as may be necessary) on which the officer reasonably suspects personal property of the debtor is situated; and
- (b) seize and remove any personal property found on the land or in a public place that apparently belongs (wholly or partly) to the debtor; and
- (c) immobilise by means of wheel clamps or other means any motor vehicle seized pending its removal (but not if the vehicle is in a public place and to do so would inconvenience other persons); and
- (d) seize and remove any documents evidencing the debtor's title to any real or personal property; and
- (e) place and keep any such personal property or documents in safe custody until completion of sale; and
- (f) sell so much of the debtor's real or personal property as will satisfy, or substantially satisfy, the amount to which the order relates.

(3) However, the order—

- (a) only authorises the seizure and sale of personal property that could be taken in proceedings against the debtor under the laws of bankruptcy, as modified by regulations under this Act; and
- (b) does not authorise the sale of land unless the amount to which the order relates exceeds \$10 000; and
- (c) does not authorise the sale of land if it constitutes the debtor's principal place of residence.

(4) An authorised officer may exercise powers under an order for sale in the absence of, and without prior notice to, the debtor.

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(5) When property is seized or removed, a copy of the order for sale and a notice listing the property seized—

- (a) must be given personally to the debtor or, in the absence of the debtor, to any other person apparently in charge of the premises and apparently of or over the age of 16 years; or
- (b) if paragraph (a) cannot be complied with, must be left in or attached to a conspicuous place on the land or at the premises.

(6) An authorised officer may, in appropriate cases, leave a debtor in possession of property until it is sold pursuant to the order for sale.

(7) If property that has been seized is left in the debtor's possession pending sale, the debtor must not, except with the written approval of an authorised officer, cause, permit or allow the property to be removed from the debtor's possession or to be sold or offered for sale.

Maximum penalty: \$2 500.

(8) If a motor vehicle has been seized but left in the debtor's possession pending sale, the debtor must not, except with the written approval of an authorised officer, drive the vehicle on a road.

Maximum penalty:

- (a) \$2 500; or
- (b) disqualification from holding or obtaining a driver's licence for a period not exceeding 6 months; or
- (c) cancellation of the debtor's driver's licence and disqualification from obtaining such a licence for a period not exceeding 6 months.

(9) A person must not interfere in any way—

- (a) with any notice attached by an authorised officer to seized property left in a debtor's possession signifying that the property has been seized; or
- (b) with the means by which a vehicle has been immobilised pursuant to this section.

Maximum penalty: \$2 500.

(10) Property seized under an order for sale cannot be sold until 14 days have elapsed from (and including) the day on which it was seized.

(11) If the debtor or any other person alleges, by notice in writing to the Manager, that any particular property is not liable to seizure and sale under this section, the sale of the property cannot proceed until the matter has, on the application of an authorised officer, been determined by the Court.

(12) For the purposes of determining an application under subsection (11), the Court may issue a summons requiring the attendance of any person the Court thinks fit.

(13) If a person (other than the debtor) claims an interest in property seized under an order for sale, the Court may, if satisfied of the validity of the claim—



- (a) exclude the property from the sale; or
- (b) direct the application of the proceeds of the sale of the property in such manner as the Court considers just.

(14) The sale of land or tangible property pursuant to an order for sale will be by public auction but, if no bid that the authorised officer conducting the sale considers acceptable is made at auction, the officer may proceed to sell the property by private treaty for a price not less than the highest bid.

(15) Where any part of the debtor's property consists of intangible property, an authorised officer may sign any transfer or do anything else necessary to convert that property into money.

(16) The surplus proceeds from a sale pursuant to an order for sale must be returned to the debtor.

(17) Personal property seized pursuant to an order for sale but not sold must be returned to the debtor or left at the place from which it was taken.

#### **Garnishee order**

**70H.** (1) The Registrar may order that—

- (a) money owing or accruing to a debtor from a third person; or
- (b) money of the debtor in the hands of a third person (including money in a bank account),

be attached to satisfy a pecuniary sum owed by the debtor.

(2) An order cannot be made under subsection (1) unless—

- (a) an investigation into the financial means of the debtor has been carried out under this Division; and
- (b) the Registrar is satisfied that execution of the order will not cause the debtor or the debtor's dependants to suffer hardship.

(3) An order under this section may authorise the garnishee to retain from the money subject to the attachment a reasonable sum, fixed by the order, as compensation for the garnishee's expenses in complying with the order.

(4) The Registrar will cause a copy of an order under this section to be served on the debtor and the garnishee personally or by post.

(5) If, because a garnishee order has been made under this section in relation to an employee, the employer—

- (a) dismisses the employee; or
- (b) injures the employee in employment; or

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(c) alters the employee's position to the employee's prejudice,

the employer is guilty of an offence.

Maximum penalty: \$10 000.

**Subdivision 4—Reconsideration by Court where debtor has no means to pay**

**Court may remit or reduce pecuniary sum or make substitute orders**

**70I.** (1) If the Registrar is satisfied, after an investigation of a debtor's financial means has been carried out under this Division or on such other evidence as the Registrar thinks sufficient, that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or his or her dependants suffering hardship, the Registrar may remit the matter to the Court for reconsideration under this section.

(2) If the Court before which a debtor is appearing in any proceedings under this Part is satisfied that the debtor does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the debtor or his or her dependants suffering hardship, the Court may, of its own motion, proceed to reconsider the matter under this section.

(3) On reconsidering a matter under this section, the Court may, by order—

(a) remit or reduce the pecuniary sum; or

(b) revoke the order (or orders) imposing the pecuniary sum and—

(i) make an order for community service; or

(ii) disqualify the debtor from holding or obtaining a driver's licence for a period not exceeding 6 months; or

(iii) cancel the debtor's driver's licence and disqualify the debtor from obtaining such a licence for a period not exceeding 6 months; or

(c) confirm the order imposing the pecuniary sum,

and the Court may make such ancillary orders as the Court thinks appropriate.

(4) An order under subsection (3)(b) does not affect the original recording (or not) of a conviction against the debtor or the imposition of any other penalty for the offence, or offences, to which the pecuniary sum related.

(5) In making an order for community service, the Court must take into account the amount (if any) by which the original pecuniary sum has been reduced by the debtor.

(6) If the Court remits a pecuniary sum, the order, or orders, by which the sum was imposed will be taken to be fully satisfied.

## **Subdivision 5—Remission of levies where debtor has no means to pay**

### **CIC levies to be remitted if unenforceable**

**70J.** Despite the other provisions of this Division, if the Registrar, an authorised officer or the Court has determined pursuant to Subdivision 4, 6 or 7 that a debtor does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum that consists wholly or partly of a VIC levy or a number of VIC levies—

- (a) the Registrar, authorised officer or Court must remit the whole of the pecuniary sum, or so much of it as consists of such a levy, as the case may require; and
- (b) the debtor's liability to pay any levy or levies so remitted will be taken to be fully satisfied.

## **Subdivision 6—Enforcement against youths**

### **Enforcement against youths**

**70K.** This Division applies to a debtor who is a youth (i.e., a person who was under the age of 18 years at the time when the offence in respect of which the pecuniary sum was imposed was committed) subject to the following modifications:

- (a) if the offence in question was an expiable offence arising out of the driving or parking of a motor vehicle by the youth when the youth was of or over 16 years of age, the pecuniary sum is enforceable against the youth in accordance with the other provisions of this Division, but an additional power exists to make a community service order subject to and in accordance with this Subdivision in respect of the youth;
- (b) if the offence in question does not fall within the ambit of paragraph (a), the pecuniary sum is enforceable against the youth in accordance with the other provisions of this Division, but—
  - (i) an order for sale of property or a garnishee order cannot be made in respect of the youth; and
  - (ii) an additional power exists to make a community service order subject to and in accordance with this Subdivision in respect of the youth.

### **Community service orders**

**70L.** (1) If an authorised officer is satisfied that a debtor who is a youth does not have, and is not likely within a reasonable time to have, the means to satisfy a pecuniary sum without the debtor or his or her dependants suffering hardship, the officer may make a community service order in respect of the debtor.

(2) A community service order must specify—

- (a) the number of hours of community service to be performed by the debtor, computed as follows:
  - (i) if the pecuniary sum is equal to or less than the prescribed unit—8 hours are to be performed;

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- (ii) if the pecuniary sum exceeds the prescribed unit—8 hours are to be performed for each prescribed unit of the pecuniary sum and for any fraction left after dividing the sum by that unit; and
- (b) the period, not exceeding 18 months, within which the community service is to be performed.
- (3) Part 6 of the *Young Offenders Act 1993* applies, with necessary modifications, in relation to an order under this section as if it were an order for community service under that Act.
- (4) The pecuniary sum to which a community service order relates is reduced by one prescribed unit for each 8 hours of community service performed under the order.
- (5) If, while a community service order is in force, part of the pecuniary sum to which it relates is paid, the number of hours of community service to be performed under the order will be reduced by a proportionate amount.
- (6) If an authorised officer is satisfied—
- (a) that a debtor has, although some hours of community service remain unperformed, substantially complied with a community service order; and
- (b) that there is no apparent intention on the debtor's part to evade the obligations under the order; and
- (c) that sufficient reason exists for exercising the powers under this subsection,
- the officer may cancel the remaining number of hours of community service under the order and the pecuniary sum to which the order relates will be taken to be fully satisfied.

(7) In this section—

"prescribed unit" means—

- (a) \$100; or
- (b) if some other amount is prescribed, that amount.

**Subdivision 7—Rights of review and appeal****Review**

**70M.** (1) The person the subject of a penalty enforcement order made by an authorised officer who is not a Registrar may apply in writing in accordance with rules of court to the Registrar for a review of the decision to make the order.

(2) On an application for review being lodged, the penalty enforcement order is suspended pending determination of the review.

(3) The Registrar may, on completing a review under this section—

- (a) confirm the decision; or

- (b) quash the decision and—
  - (i) if the Registrar thinks it appropriate to do so, make some other penalty enforcement order against the applicant; or
  - (ii) if the Registrar is satisfied that the applicant does not have, and is not likely within a reasonable time to have, the means to satisfy the pecuniary sum without the applicant or the applicant's dependants suffering hardship, remit the matter to the Court for reconsideration under Subdivision 4.

### **Appeal**

**70N.** (1) A debtor who is aggrieved by a decision of a Registrar—

- (a) to make a garnishee order; or
- (b) to make any other penalty enforcement order while acting as an authorised officer; or
- (c) made on a review under this Subdivision,

may appeal in accordance with rules of court to the Court against the decision.

(2) On an appeal being lodged, the operation of the decision appealed against is suspended pending determination of the appeal.

(3) On an appeal under this section the Court may—

- (a) confirm the decision; or
- (b) quash the decision and, if the Court thinks it appropriate to do so, substitute any decision that could have been made in the first instance (but in doing so, the Court must take into account any subsequent change in the debtor's circumstances); or
- (c) make any ancillary order (including an order as to costs) the Court thinks fit.

(4) A decision of the Court on an appeal under this section is not subject to appeal.

## **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 or authorised officer 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.

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(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—

- (a) the court may issue a warrant of commitment for the appropriate term of imprisonment fixed in accordance with subsection (2); but
- (b) if the person is a youth, the court may, instead of taking action under paragraph (a), make an order for home detention for a period fixed on the same basis.

(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.

(8) However, if the court is satisfied that the person's failure to comply with the order is excusable on the ground of the person's obligations to remunerated employment gained since the making of the order, and that the person has the means to pay a fine without the person or his or her dependants suffering hardship, the court may—

- (a) revoke the community service order; and

- (b) impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of which the community service order was made (or, if the order was made in respect of more than one offence—the total of the maximum fines that may be imposed for the offences).

(9) In imposing a fine under subsection (8), the court must take into account the number of hours of community service (if any) that the person performed under the revoked 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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**Registrar may exercise jurisdiction under this Division**

**71AB.** (1) Subject to rules of court or the regulations, the powers of a court under sections 71 and 71A are exercisable by—

- (a) if the person in relation to whom the powers are to be exercised is a youth—the Registrar of the Youth Court;
- (b) in any other case—a Registrar of the Magistrates Court.

(2) Subject to rules of court or the regulations, a person who is aggrieved by a decision or order of a Registrar made pursuant to subsection (1) may apply in accordance with rules of court to the court for a review of the decision or order.

(3) 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 could have been made in the first instance;

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- (c) make any ancillary order (including an order as to costs) the court thinks fit.

**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**

### **Identification of authorised officers**

**72.** (1) An authorised officer must be issued with an identity card in a form approved by the Administrator—

- (a) containing the person's name and photograph; and
- (b) stating that the person is an authorised officer appointed under this Act.

(2) If the powers of an authorised officer have been limited by conditions, the identity card must contain a statement of those limitations.

(3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act or any other Act, produce his or her identity card for inspection by the person.

### **Hindering authorised officer or assistant**

**72A.** (1) A person must not hinder an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act.

Maximum penalty: \$2 500 or 6 months imprisonment.

(2) An authorised officer may, without warrant, arrest a person who commits an offence under subsection (1).

(3) A person arrested under subsection (2) must be taken forthwith to the nearest police station at which facilities are continuously available for the care and custody of the arrested person, so that he or she may be dealt with according to law.

### **Immunity of authorised officers and assistants**

**72B.** (1) No liability attaches to an authorised officer or a person assisting an authorised officer for an honest act or omission in the exercise, or purported exercise, of a power of arrest or powers relating to the service or execution of a penalty enforcement order under Part 9.

(2) A liability that would, but for subsection (1), attach to an authorised officer or a person assisting an officer attaches instead to the Crown.

### **Abolition of hard labour<sup>1</sup>**

**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*.

<sup>1</sup> 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 authorised 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 authorised 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.

*(Transitional provisions from Statutes Amendment (Fine Enforcement) Act 1998, Sched., Div. 1, cls. 2-8)*

Application of amended principal Act

2. Subject to this Division, the principal Act, as amended by this Act, applies to all orders imposing pecuniary sums, whenever made.

Imprisonment for non-payment under repealed s. 61

3. (1) If a warrant of commitment has been issued on default by a person in payment of a pecuniary sum, but the person has not, as at the commencement of this Act, started serving the period of imprisonment to which the warrant relates—

- (a) the warrant is cancelled by virtue of this clause; and

- (b) the outstanding amount under the warrant may be enforced in accordance with the principal Act (as amended by this Act).

(2) The repeal of Division 3 of Part 9 of the principal Act does not affect the liability of any person who is, as at the commencement of this Act, serving a period of imprisonment under a warrant of commitment issued for non-payment of a pecuniary sum to complete that period of imprisonment and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

#### Orders against youths under repealed s. 61AA

4. If an order for community service, detention or home detention made under section 61AA of the principal Act in respect of a youth was in force immediately before the commencement of this Act—

- (a) the order is, if the youth has not performed any hours of service under the order or started serving the period of detention or home detention fixed by the order, cancelled by virtue of this clause and the outstanding amount under the order may be enforced in accordance with the principal Act (as amended by this Act); but
- (b) if the youth has performed some hours of service under the order or is serving the detention or home detention, the order continues in force and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

#### Suspension of driver's licence under repealed s. 61A

5. (1) If, as at the commencement of this Act, a person is disqualified from holding or obtaining a driver's licence by virtue of an order under section 61A of the principal Act (as in force immediately before that commencement) the order is, if the disqualification has endured for 60 or more days, cancelled by virtue of this clause and the outstanding amount of the pecuniary sum may be enforced in accordance with the principal Act (as amended by this Act), but an order for suspension of the person's driver's licence cannot be made.

(2) If the disqualification has endured for less than 60 days, the order by which it was imposed will be taken to be an order for suspension and disqualification under section 70E of the principal Act.

#### Suspension of motor vehicle registration under repealed s. 61B

6. If, as at the commencement of this Act, an order for suspension of registration of motor vehicles under section 61B of the principal Act (as in force immediately before that commencement) is in force, the order will be taken to be (and have the same effect as) an order made under section 70F of the principal Act restricting the transaction of business with the Registrar of Motor Vehicles.

#### Community service under repealed s. 67

7. (1) If an undertaking has been entered into by a person under section 67 of the principal Act (as in force immediately before the commencement of this Act) to work off a pecuniary sum by community service, the undertaking continues in force and, for that purpose, the principal Act (as so in force) continues to apply.

(2) However, if an undertaking that continues in force by virtue of subclause (1) is cancelled for non-compliance, the amount of the pecuniary sum outstanding at the time of cancellation is enforceable in accordance with the principal Act (as amended by this Act).

#### Court orders as to time and manner of payment

8. The following provisions apply in relation to an order of a court or officer of a court that is continued in force by virtue of section 14A(2) of the principal Act:

- (a) if the order is for payment of a pecuniary sum in instalments and the person the subject of the order defaults in payment of an instalment, the whole of the balance of the pecuniary sum becomes immediately payable and is enforceable under the principal Act (as amended by this Act);

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- (b) if the order is for an extension of time to pay a pecuniary sum and the person the subject of the order fails to pay the sum within the specified time, the pecuniary sum is enforceable under the principal Act (as amended by this Act), but a reminder notice must be sent in accordance with section 65 of the principal Act before any enforcement action can be taken.

*(Transitional provision from Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001, s. 5)*

5. The amendments made by the Act are to be considered procedural rather than substantive.

**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); repealed by 60, 1998, s. 11(a) definitions of "the Administrator" and "authorised officer" inserted by 60, 1998, s. 11(a) definition of "the CEO" inserted by 69, 1995, s. 12 (Sched.) definition of "CIC levy" inserted by 60, 1998, s. 11(b); repealed by 58, 2001, Sched. 2 cl. 3(a) definition of "community service officer" amended by 69, 1995, s. 12 (Sched.); repealed by 42, 1999, s. 34(a) definition of "community corrections officer" inserted by 42, 1999, s. 34(a) definition of "conditional release" inserted by 57, 2000, s. 18(a) 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 "goods" repealed by 60, 1998, s. 11(c) definition of "home" inserted by 79, 1999, s. 3(a) definition of "intruder" inserted by 79, 1999, s. 3(b) definition of "the Manager, Penalty Management" inserted by 60, 1998, s. 11(d) definition of "pecuniary sum" amended by 60, 1998, s. 11(e); 58, 2001, Sched. 2 cl. 3(b) definition of "prescribed unit" amended by 68, 1996, s. 5(a); repealed by 60, 1998, s. 11(f) definition of "probation officer" amended by 69, 1995, s. 12 (Sched.); repealed by 42, 1999, s. 34(b) 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 "sale" inserted by 57, 2000, s. 18(b) definition of "VIC levy" inserted by 58, 2001, Sched. 2 cl. 3(c) definition of "youth" inserted by 94, 1993, s. 7(c) definition of "Youth Court" inserted by 94, 1993, s. 7(c)
Section 3(3):	amended by 58, 2001, Sched. 2 cl. 3(d)
Section 3A:	inserted by 68, 1996, s. 6
Section 3A(3):	amended by 42, 1999, s. 35
Section 7A:	inserted by 48, 1998, s. 3
Section 7A(3a):	inserted by 37, 2001, s. 2
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 9B:	inserted by 37, 2001, s. 3

Section 10(1): (previously section 10)	amended and redesignated as s. 10(1) by 79, 1999, s. 4(a), (b) amended by 10, 2001, s. 4; 24, 2002, s. 5(a)
Section 10(2):	inserted by 79, 1999, s. 4(b)
Section 10(3):	inserted by 24, 2002, s. 5(b)
Section 11(1):	substituted by 79, 1999, s. 5
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 13(1a):	inserted by 60, 1998, s. 12
Section 14A:	inserted by 60 1998, s. 13
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; 13, 1999, s. 6
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(1a):	inserted by 24, 1999, s. 4
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):	amended by 69, 1995, s. 12 (Sched.)
Section 23(4):	amended by 42, 1999, s. 36
Section 23(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); amended by 18, 2000, s. 5(a), (b)
Section 24(7):	amended by 34, 1992, s. 6(e); 18, 2000, s. 5(c)
Section 24(8a):	inserted by 18, 2000, s. 5(d)
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(1):	amended by 57, 2000, s. 19(a)
Section 31(2):	amended by 57, 2000, s. 19(b)
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(2):	amended by 57, 2000, s. 20(a)-(c)
Section 32(3):	substituted by 34, 1992, s. 7(b); amended by 69, 1995, s. 12 (Sched.)

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Section 32(5):	amended by 69, 1995, s. 12 (Schd.); 41, 1998, s. 5; 57, 2000, s. 20(d), (e)
Section 32(6):	amended by 49, 1991, Schd. 2; 34, 1992, s. 7(c); 69, 1995, s. 12 (Schd.); 57, 2000, s. 20(f)
Section 32(6a):	inserted by 34, 1992, s. 7(d); amended by 69, 1995, s. 12 (Schd.); 57, 2000, s. 20(g)
Section 32(7):	amended by 49, 1991, Schd. 2; 34, 1992, s. 7(e); 69, 1995, s. 12 (Schd.); 57, 2000, s. 20(h)-(j)
Section 32(9):	amended by 57, 2000, s. 20(k)
Section 32(10):	amended by 49, 1991, Schd. 2; 34, 1992, s. 7(f); 69, 1995, s. 12 (Schd.); 57, 2000, s. 20(l)
Section 33:	repealed by 60, 1998, s. 14
Section 34:	amended by 69, 1995, s. 12 (Schd.); 68, 1996, s. 14
Section 35:	amended by 34, 1992, s. 8; repealed by 60, 1998, s. 15
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 (Schd.)
Section 38(2a) and (2b):	inserted by 13, 1999, s. 7
Section 38(2c):	inserted by 13, 1999, s. 7; amended by 42, 1999, s. 37
Section 39(1):	amended by 69, 1995, s. 5(a); 13, 1999, s. 8(a)
Section 39(1a):	inserted by 13, 1999, s. 8(b)
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); 13, 1999, s. 9(a); 42, 1999, s. 38; 60, 1998, s. 16
Section 42(1a):	inserted by 69, 1995, s. 6(a); repealed by 13, 1999, s. 9(b)
Section 42(2):	amended by 13, 1999, s. 9(c), (d)
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 (Schd.)
Section 44(1):	amended by 69, 1995, s. 12 (Schd.)
Section 44(1a):	inserted by 34, 1992, s. 10; amended by 69, 1995, s. 12 (Schd.)
Section 44(1b):	inserted by 34, 1992, s. 10
Section 44(2):	amended by 69, 1995, s. 12 (Schd.)
Section 44A:	inserted by 94, 1993, s. 10; amended by 69, 1995, s. 12 (Schd.); 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; 42, 1999, s. 39
Section 47(1):	amended by 34, 1992, s. 12; 69, 1995, s. 12 (Schd.); amended and redesignated as s. 47(1) by 68, 1996, s. 18; amended by 42, 1999, s. 40; 60, 1998, s. 17; 57, 2000, s. 21
Section 47(2):	inserted by 68, 1996, s. 18(d)
Section 48:	amended by 69, 1995, s. 12 (Schd.); 13, 1999, s. 10; 42, 1999, s. 41
Section 49(1):	amended by 69, 1995, s. 12 (Schd.); 68, 1996, s. 19; 42, 1999, s. 42(a)
Section 49(2):	amended by 69, 1995, s. 12 (Schd.); 13, 1999, s. 11; 42, 1999, s. 42(b)
Section 49(3):	amended by 42, 1999, s. 42(c)
Section 50(1):	amended by 69, 1995, s. 12 (Schd.); 42, 1999, s. 43(a)
Section 50(2):	amended by 69, 1995, s. 12 (Schd.); substituted by 42, 1999, s. 43(b)
Section 50AA:	inserted by 13, 1999, s. 12
Section 50AA(1) - (3):	amended by 42, 1999, s. 44
Section 50A:	inserted by 34, 1992, s. 13
Section 50A(1):	amended by 69, 1995, s. 12 (Schd.); 60, 1998, s. 18
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.); 42, 1999, s. 45
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 53(8):	repealed by 60, 1998, s. 19
Section 54:	amended by 34, 1992, s. 14; repealed by 60, 1998, s. 20
	Part 8 comprising s. 55 and heading amended by 69, 1991, s. 13(b); 34, 1992, ss. 14, 15; 69, 1995, s. 12 (Sched.); repealed by 60, 1998, s. 21
Section 56:	redesignated as s. 56(1) by 57, 2000, s. 22
Section 56(2):	inserted by 57, 2000, s. 22
Section 56A:	inserted by 60, 1998, s. 22 (as amended by 42, 1999, s. 52)
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; 60, 1998, s. 23
Section 58(3):	amended by 34, 1992, s. 17
Section 58(4):	amended by 13, 1999, s. 13
Section 58(5):	amended by 69, 1995, s. 12 (Sched.)
Section 59:	amended by 34, 1992, s. 18; repealed by 60, 1998, s. 24
Section 59AA:	inserted by 94, 1993, s. 11; repealed by 68, 1996, s. 21
	Division 3 of Part 9 comprising ss. 59A - 70 and heading amended by 33, 1991, s. 10; 34, 1992, ss. 19-28; 73, 1992, s. 3; 94, 1993, ss. 12-15; 21, 1994, ss. 5, 6; 69, 1995, ss. 10-12 (Sched.); 68, 1996, ss. 22-26; 41, 1998, s. 6; repealed and ss. 60 - 70N and headings (as amended by 42, 1999, s. 53(a)-(f)) inserted in its place by 60, 1998, s. 25
Section 62(2):	amended by 58, 2001, Sched. 2 cl. 3(e), (f)
Section 70J:	amended by 58, 2001, Sched. 2 cl. 3(g), (h)
Section 71:	substituted by 34, 1992, s. 29
Section 71(1):	amended by 60, 1998, s. 26(a)
Section 71(5):	substituted by 60, 1998, s. 26(b)
Section 71(7):	amended by 69, 1995, s. 12 (Sched.)
<b>Section 71(8):</b>	inserted by 94, 1993, s. 16; repealed by 68, 1996, s. 27; inserted by 13, 1999, s. 14; <b>amended by 33, 2002, s. 6</b>
Section 71(9):	inserted by 13, 1999, s. 14
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 60, 1998, s. 27; redesignated as s. 71AB in pursuance of the <i>Acts Republication Act 1967</i>
Section 71B:	inserted by 41, 1998, s. 7
Section 72:	substituted by 34, 1992, s. 30; amended by 69, 1995, s. 12 (Sched.); substituted by 60, 1998, s. 28
Section 72A:	inserted by 60, 1998, s. 28 (as amended by 42, 1999, s. 53(g))
Section 72B:	inserted by 60, 1998, s. 28

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Section 74: amended by 60, 1998, s. 29  
Section 75(2): amended by 60, 1998, s. 30