

South Australia

Criminal Law (Sentencing) Act 1988

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

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- 1 Reconsideration of authorisations to release on licence under section 24

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

(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 Fines Enforcement and Recovery Officer; or
- (c) a Registrar of the Magistrates Court; or
- (d) the Registrar of the Youth Court; or
- (e) a person appointed 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;

case manager means a person responsible for supervision of a person's participation in an intervention program;

CEO means the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982*;

community corrections officer means an officer or employee of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* 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;

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

ERD Court means the Environment, Resources and Development Court;

Fines Enforcement and Recovery Officer means the Fines Enforcement and Recovery Officer under Part 9 Division 3;

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;

intervention program means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- (e) a combination of any one or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

intervention program manager means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

intruder means a person who commits a criminal trespass;

Minister for Correctional Services means the Minister responsible for the administration of the *Correctional Services Act 1982*;

Minister for Family and Community Services means the Minister responsible for the administration of the *Family and Community Services Act 1972*;

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, extending or negating of a non-parole period; or
- (d) the making of any other order or direction affecting penalty;

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

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

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.

3A—Application of Act to youths

- (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 (ie 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 administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Family and Community Services Act 1972*;
 - (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.

4—Powers conferred by this Act are additional

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.

5—This Act does not affect power to deal with contempt

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

6—Determination of sentence

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; and
- (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

7—Prosecutor to furnish particulars of victim's injury etc

- (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.
- (2a) If the offence is not an offence in relation to which a victim impact statement may be furnished in accordance with section 7A, the court must nevertheless allow particulars furnished under this section to include a victim impact statement unless the court determines that it would not be appropriate in the circumstances of the case (and the other provisions of this Division relating to victim impact statements apply to such a statement as if it were furnished under section 7A).
- (3) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

7A—Victim impact statements

- (1) A person who has suffered injury, loss or damage resulting from an indictable offence or a prescribed summary offence committed by another may furnish the sentencing 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.
- (3) Before determining sentence for the offence, the court—
 - (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, in order to assist a person who wishes to read out a victim impact statement to the court—
- (a) allow an audio or audio visual record of the person reading the statement to be played to the court; or
 - (b) exercise any other powers that it has with regard to a vulnerable witness.
- (3b) Subject to subsection (3c) (but despite any other provision of this Act), the court must, if the person so requested when furnishing the statement, ensure that—
- (a) the defendant; or
 - (b) if the defendant is a body corporate, a director or some other representative of the body corporate satisfactory to the court,
- is present when the statement is read out to the court.
- (3c) Subsection (3b) does not apply if the court is satisfied that special reasons exist which make it inappropriate for the defendant or other person to be present, or that the presence of the defendant or other person may cause a disturbance or a threat to public order and safety (however, in such a case, the court must ensure that the defendant or other person is present by means of an audio visual link or audio link, if such facilities are reasonably available to the court, or that arrangements are otherwise made for the statement to be audiovisually recorded and played to the defendant or other person).
- (4) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.
- (5) In this section—
- prescribed summary offence*** means—
- (a) a summary offence that results in the death of a victim or a victim suffering total incapacity; or
 - (b) a summary offence (other than a summary offence of assault) that results in a victim suffering serious harm;

serious harm means—

- (a) harm that endangers a person's life; or
- (b) harm that consists of loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of serious disfigurement;

total incapacity—a victim suffers total incapacity if the victim is permanently physically or mentally incapable of independent function.

7B—Community impact statements

- (1) Any person may make a submission to the Commissioner for Victims' Rights for the purpose of assisting the Commissioner to compile information which may be included in a statement under this section.

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- (2) In any proceedings to determine sentence for an offence, the prosecutor or the Commissioner for Victims' Rights may, if he or she thinks fit, furnish the sentencing court with—
 - (a) a written statement about the effect of the offence, or of offences of the same kind, on people living or working in the location in which the offence was committed (a *neighbourhood impact statement*); or
 - (b) a written statement about the effect of the offence, or of offences of the same kind, on the community generally or on any particular sections of the community (a *social impact statement*).
 - (3) Before determining sentence for the offence, the court will cause the statement to be read out to the court by the prosecutor, or such other person as the court thinks fit, unless the court determines that it is inappropriate or would be unduly time consuming for the statement to be so read out.
 - (4) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

7C—Statements to be provided in accordance with rules

- (1) A statement to be furnished to a court under section 7A or 7B must comply with and be furnished in accordance with rules of court.
- (2) Nothing prevents a statement to be furnished to a court under section 7A or 7B from containing recommendations relating to the sentence to be determined by the court.
- (3) A copy of a statement to be furnished to a court under section 7A or 7B must be made available for inspection by the defendant or his or her counsel in accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.

8—Pre-sentence reports

- (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.

9—Court to inform defendant of reasons etc for sentence

- (1) A court must, on sentencing a defendant who is present in court (whether in person or by video or audio link) for an offence or offences, state the sentence that it is imposing for the offence or offences and its reasons for imposing that sentence, including (for example) any reason why a sentence that would otherwise have been imposed for the offence or offences has been reduced.
- (1a) Nothing in subsection (1) requires a court to state any information that relates to a person's cooperation, or undertaking to cooperate, with a law enforcement agency.
- (2) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

9A—Rectification of sentencing errors

- (1) A court that imposes, or purports to impose, a sentence on a defendant, or a court of co-ordinate jurisdiction, may, on its own initiative or 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, or purporting to impose, 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 proceedings under this section.

9B—Presence of defendant during sentencing proceedings

- (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.

9C—Sentencing of Aboriginal defendants

- (1) Before sentencing an Aboriginal defendant, the court may, with the defendant's consent, and with the assistance of an Aboriginal Justice Officer—
 - (a) convene a sentencing conference; and
 - (b) take into consideration views expressed at the conference.
- (2) A sentencing conference must comprise—
 - (a) the defendant and, if the defendant is a child, the defendant's parent or guardian; and
 - (b) the defendant's legal representative (if any); and
 - (c) the prosecutor; and
 - (d) if the victim chooses to be present at the conference—the victim, and, if the victim so desires, a person of the victim's choice to provide assistance and support; and
 - (e) if the victim is a child—the victim's parent or guardian.
- (3) A sentencing conference may also include (if the court thinks the person may contribute usefully to the sentencing process) one or more of the following:
 - (a) a person regarded by the defendant, and accepted within the defendant's Aboriginal community, as an Aboriginal elder;
 - (b) a person accepted by the defendant's Aboriginal community as a person qualified to provide cultural advice relevant to sentencing of the defendant;
 - (c) a member of the defendant's family;
 - (d) a person who has provided support or counselling to the defendant;
 - (e) any other person.
- (4) A person will be taken to be an Aboriginal person for the purposes of this section if—
 - (a) the person is descended from an Aboriginal or Torres Strait Islander; and
 - (b) the person regards himself or herself as an Aboriginal or Torres Strait Islander or, if the person is a young child, at least one of the parents regards the child as an Aboriginal or Torres Strait Islander; and
 - (c) the person is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Islander community.

- (5) In this section—

Aboriginal Justice Officer means a person employed by the South Australian Courts Administration Authority whose duties include—

- (a) assisting the court in sentencing of Aboriginal persons by providing advice on Aboriginal society and culture; and
- (b) assisting the court to convene sentencing conferences under this section; and
- (c) assisting Aboriginal persons to understand court procedures and sentencing options and to comply with court orders;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

domestic partner—a person is the domestic partner of another if he or she lives with the other in a close personal relationship;

family includes—

- (a) the defendant's spouse or domestic partner; and
- (b) any person to whom the defendant is related by blood; and
- (c) any person who is, or has been, a member of the defendant's household; and
- (d) any person held to be related to the defendant according to Aboriginal or Torres Strait Islander kinship rules and observances;

spouse—a person is the spouse of another if they are legally married.

9D—ERD Court sentencing conferences

- (1) Before sentencing a defendant, the ERD Court may, if the defendant expresses contrition for the offence and consents to the convening of a sentencing conference, convene a sentencing conference.
- (2) A sentencing conference is to comprise—
 - (a) the defendant; and
 - (b) the defendant's legal representative (if any); and
 - (c) the prosecutor; and
 - (d) such representatives of persons affected by the commission of the offence as the Court thinks appropriate; and
 - (e) such other persons as the Court thinks may contribute usefully to the sentencing process.
- (3) The primary purpose of a sentencing conference is to negotiate action that the defendant is to take to make reparation for any injury, loss or damage resulting from the offence, or to otherwise show contrition for the offence.

Division 2—General sentencing powers

9E—Purpose and application of Division

- (1) Except where the contrary intention appears, this Division qualifies rather than displaces the common law principles in relation to sentencing.

- (2) Except where the contrary intention expressly appears, this Division is in addition to, and does not derogate from, a provision of this Act or any other Act—
- (a) that expressly prohibits the reduction, mitigation or substitution of penalties or sentences; or
 - (b) that limits or otherwise makes special provision in relation to the way a penalty or sentence for a particular offence under that Act may be imposed.

10—Sentencing considerations

- (1) In determining the sentence for an offence, a court must have regard to such of the following factors and principles as may be relevant:
- (a) the circumstances of the offence;
 - (b) other offences (if any) that are to be taken into account;
 - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
 - (d) the personal circumstances of any victim of the offence;
 - (e) any injury, loss or damage resulting from the offence;
 - (f) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child (other than the victim (if any) of the offence or another offender)—those circumstances;
 - (g) the degree to which the defendant has shown contrition for the offence (including by taking action to make reparation for any injury, loss or damage resulting from the offence);
 - (h) the degree to which the defendant has cooperated in the investigation of the offence;
 - (i) the deterrent effect any sentence under consideration may have on the defendant or other persons;
 - (j) the need to ensure that the defendant is adequately punished for the offence;
 - (k) 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) In determining the sentence for an offence, a court must give proper effect to the following:
- (a) the need to protect the safety of the community;

- (b) the need to protect the security of the lawful occupants of their home from intruders;
 - (c) in the case of an offence involving the sexual exploitation of a child—the need to protect children by ensuring that paramount consideration is given to the need for general and personal deterrence;
 - (d) in the case of an offence involving arson or causing a bushfire—
 - (i) the need to protect the community from offending of such extreme gravity by ensuring that paramount consideration is given to the need for general and personal deterrence; and
 - (ii) the fact that the offender should, to the maximum extent possible, make reparation for the harm done to the community by his or her offending;
 - (e) in the case of an offence involving a firearm—the need to protect the safety of the community by ensuring that paramount consideration is given to the need for general and personal deterrence.
- (3) In determining the sentence for an offence, a court must not have regard to any of the following:
- (a) the fact that a mandatory minimum non-parole period is prescribed in respect of the sentence for the offence under this Act or another Act;
 - (b) any consequences that may arise under the *Child Sex Offenders Registration Act 2006*;
 - (ba) the good character or lack of previous convictions of the defendant if—
 - (i) the offence is a class 1 or class 2 offence within the meaning of the *Child Sex Offenders Registration Act 2006*; and
 - (ii) the court is satisfied that the defendant's alleged good character or lack of previous convictions was of assistance to the defendant in the commission of the offence;
 - (c) the fact that the defendant—
 - (i) has not participated in, or has not had the opportunity to participate in, an intervention program; or
 - (ii) has performed badly in, or has failed to make satisfactory progress in, such a program.

10A—Reduction of sentences for cooperation etc with law enforcement agency

- (1) A court may declare a defendant to be a defendant to whom this section applies if the court is satisfied that the defendant has cooperated or undertaken to cooperate with a law enforcement agency and the cooperation—
- (a) relates directly to combating serious and organised criminal activity; and
 - (b) is provided in exceptional circumstances; and
 - (c) contributes significantly to the public interest.

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- (2) In determining sentence for an offence or offences to which a defendant has pleaded guilty or in respect of which a defendant has been found guilty, the court may, if the defendant is the subject of a declaration under subsection (1), reduce the sentence that it would otherwise have imposed by such percentage as the court thinks appropriate in the circumstances.
- (3) In determining the percentage by which a sentence is to be reduced under this section, the court must have regard to such of the following as may be relevant:
- (a) if the defendant has pleaded guilty to the offence or offences—that fact and the circumstances of the plea;
 - (b) the nature and extent of the defendant's cooperation or undertaking;
 - (c) the timeliness of the cooperation or undertaking;
 - (d) the truthfulness, completeness and reliability of any information or evidence provided by the defendant;
 - (e) the evaluation (if any) by the authorities of the significance and usefulness of the defendant's cooperation or undertaking;
 - (f) any benefit that the defendant has gained or is likely to gain by reason of the cooperation or undertaking;
 - (g) the degree to which the safety of the defendant (or some other person) has been put at risk of violent retribution as a result of the defendant's cooperation or undertaking;
 - (h) whether the cooperation or undertaking concerns an offence for which the defendant is being sentenced or some other offence, whether related or unrelated (and, if related, whether the offence forms part of a criminal enterprise);
 - (i) whether, as a consequence of the defendant's cooperation or undertaking, the defendant would be likely to suffer violent retribution while serving any term of imprisonment, or be compelled to serve any such term in particularly severe conditions;
 - (j) the nature of any steps that would be likely to be necessary to protect the defendant on his or her release from prison;
 - (k) the likelihood that the defendant will commit further offences,
- and may have regard to any other factor or principle the court thinks relevant.
- (4) Nothing in this section affects the operation of sections 15, 16 and 17.
- (5) In this section—

serious and organised criminal activity includes any activity that may constitute a serious and organised crime offence within the meaning of the *Criminal Law Consolidation Act 1935*.

10B—Reduction of sentences for guilty plea in Magistrates Court etc

- (1) This section applies—
- (a) if the sentencing court is the Magistrates Court; or

- (b) if the sentencing court is sentencing in relation to a matter dealt with as a summary offence; or
 - (c) in any other circumstances prescribed by the regulations.
- (2) Subject to this section, if a defendant has pleaded guilty to an offence or offences—
 - (a) not more than 4 weeks after the defendant first appears in a court in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 40%;
 - (b) more than 4 weeks after the defendant first appears in a court in relation to the relevant offence or offences but—
 - (i) if a date has been set for a trial for the offence or offences—not less than 4 weeks before that day; or
 - (ii) in any other case—before the commencement of the trial for the offence or offences,the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30%;
 - (c) less than 4 weeks before the day set for trial for the offence or offences, and if the defendant satisfies the sentencing court that he or she could not reasonably have pleaded guilty at an earlier stage in the proceedings because of circumstances outside of his or her control—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30%;
 - (d) in circumstances other than those referred to in a preceding paragraph—the sentencing court may, if satisfied that there is good reason to do so, reduce the sentence that it would otherwise have imposed by up to 10%.
- (3) If—
 - (a) the maximum reduction available under subsection (2)(a) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the relevant period; and
 - (b) the court is satisfied that the only reason that the defendant did not plead guilty within the relevant period was because—
 - (i) the court did not sit during that period; or
 - (ii) the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or
 - (iii) the court was, because of reasons outside of the control of the defendant, unable to hear the defendant's matter during that period,the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the relevant period.

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- (4) In determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made within a particular period, a court must have regard to such of the following as may be relevant:
- (a) whether the reduction of the defendant's sentence by the percentage contemplated would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of that particular defendant, that it would shock the public conscience;
 - (b) the stage in the proceedings for the offence at which the defendant first indicated his or her intention to plead guilty (including whether it would, in the opinion of the court, have been reasonable to expect the defendant to have done so at an earlier stage in the proceedings);
 - (c) the circumstances surrounding the plea;
 - (d) in the case where the defendant has been charged with more than 1 offence—whether the defendant pleaded guilty to all of the offences;
 - (e) whether or not the defendant was made aware of any relevant matter that would have enabled the defendant to plead guilty at an earlier stage in the proceedings,
- and may have regard to any other factor or principle the court thinks relevant.
- (5) Nothing in this section affects the operation of sections 15, 16 and 17.
- (6) For the purposes of this section, a reference to a defendant appearing in a court will be taken to include a reference to a person appearing in a court on behalf of the defendant.

10C—Reduction of sentences for guilty plea in other cases

- (1) This section applies to a sentencing court other than where section 10B applies.
- (2) If a defendant has pleaded guilty to an offence or offences—
 - (a) not more than 4 weeks after the defendant first appears in a court in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 40%;
 - (b) more than 4 weeks after the defendant first appears in a court in relation to the relevant offence or offences but before the defendant is committed for trial for the offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30%;
 - (c) during the period commencing on the day on which the defendant is committed for trial for the offence or offences and ending 12 weeks after the first date fixed for the arraignment of the defendant (other than in the circumstances referred to in paragraph (d))—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 20%;

- (d) during the period commencing on the day on which the defendant is committed for trial for the offence or offences but before the commencement of a trial for the offence or offences and if the defendant satisfies the sentencing court that he or she could not reasonably have pleaded guilty at an earlier stage in the proceedings because of circumstances outside of his or her control—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30%;
 - (e) within 7 days immediately following—
 - (i) an unsuccessful application by or on behalf of the defendant to quash or stay the proceedings; or
 - (ii) a ruling adverse to the interests of the defendant in the course of a hearing of the proceedings,determined during the period commencing on the day on which the defendant is committed for trial for the offence or offences and ending not less than 5 weeks before the commencement of the trial—the sentencing court may reduce the sentence that it would otherwise have imposed by up to 15%;
 - (f) in circumstances other than those referred to in a preceding paragraph—the sentencing court may, if satisfied that there is good reason to do so, reduce the sentence that it would otherwise have imposed by up to 10%.
- (3) If—
- (a) a maximum reduction available under subsection (2) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the relevant period; and
 - (b) the court is satisfied that the only reason that the defendant did not plead guilty within the relevant period was because—
 - (i) the court did not sit during that period; or
 - (ii) the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or
 - (iii) the court did not list the defendant's matter for hearing during that period; or
 - (iv) the court was, for any other reason outside of the control of the defendant, unable to hear the defendant's matter during that period,the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the relevant period.
- (4) In determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made within a particular period, a court must have regard to such of the following as may be relevant:
- (a) whether the reduction of the defendant's sentence by the percentage contemplated would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of that particular defendant, that it would shock the public conscience;

- (b) the stage in the proceedings for the offence at which the defendant indicated his or her intention to plead guilty (including whether it would, in the opinion of the court, have been reasonable to expect the defendant to have done so at an earlier stage in the proceedings);
- (c) the circumstances surrounding the plea;
- (d) in the case where the defendant has been charged with more than 1 offence—whether the defendant pleaded guilty to all of the offences;
- (e) if the defendant satisfies the court that he or she could not reasonably have been expected to plead guilty at an earlier stage in the proceedings because of circumstances outside of his or her control—that fact;
- (f) whether or not the defendant was made aware of any relevant matter that would have enabled the defendant to plead guilty at an earlier stage in the proceedings,

and may have regard to any other factor or principle the court thinks relevant.

- (5) Nothing in this section affects the operation of sections 15, 16 and 17.
- (6) For the purposes of this section, a reference to a defendant appearing in a court will be taken to include a reference to a person appearing in a court on behalf of the defendant.

11—Imprisonment not to be imposed except in certain circumstances

- (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 policies of the criminal law stated in section 10.
- (2) This section does not apply to a sentence of imprisonment imposed for the enforcement of sentence.

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

- (1) The court must not make an order requiring a defendant to pay a pecuniary sum (other than a VIC levy) if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that—
 - (a) the defendant would be unable to comply with the order; or
 - (b) compliance with the order would unduly prejudice the welfare of dependants of the defendant,

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

- (2) Subject to subsection (3), 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.
- (3) In considering whether the defendant would be able to comply with the order, the court should have regard to—
 - (a) the fact that the defendant could enter into an arrangement under Part 9 Division 3; and
 - (b) any information available to the court as to other pecuniary sums that have been paid, or are payable, by the defendant.

14—Preference must be given to compensation for victims

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.

14A—Court not to fix time for payment of pecuniary sums

- (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.

15—Discharge without penalty

- (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.

16—Imposition of penalty without conviction

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.

17—Reduction of minimum penalty

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

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

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

18—Court may add or substitute certain penalties

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.

18A—Sentencing for multiple offences

- (1) 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.
- (2) However, if any of the offences for which the person is being sentenced is a prescribed designated offence, subsection (1) does not apply to the sentencing of the person for that offence (but nothing in this subsection affects the operation of subsection (1) in respect of the other offences).
- (3) In this section—
prescribed designated offence has the same meaning as in section 38.

19—Limitations on sentencing powers of Magistrates Court

- (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—
 - (i) if the penalty is for 1 offence—5 years; and
 - (ii) if the penalty is for more than 1 offence—10 years; or
 - (b) a fine that exceeds—
 - (i) in the case of an offence under the *Work Health and Safety Act 2012* being heard by an industrial magistrate—\$300 000; or
 - (ii) in any other case—\$150 000.
- (3a) The limits imposed by subsection (3)(b) apply regardless of whether the relevant offence was committed before or after the commencement of that paragraph.
- (4) Subsection (3) applies whether the offence to which the sentence relates is a summary offence or an 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 (3), the Court may remand the defendant to appear for sentence before a superior court.

19AA—Non-association or place restriction orders may be issued on sentence

- (1) A court may, on sentencing a person for a prescribed offence, exercise the powers of the Magistrates Court to issue against the defendant a non-association order or a place restriction order under the *Summary Procedure Act 1921* as if a complaint had been made under that Act against the defendant in relation to that conviction (and if the person is already subject to such an order, the court may vary or revoke that order as if an application for variation or revocation of the order had been made under that Act, regardless of whether the order was made by it or by some other court).

- (2) A non-association order or a place restriction order issued or varied under this section on sentencing a person for a prescribed offence—
- (a) has effect as such an order under the *Summary Procedure Act 1921*; and
 - (b) is not a sentence for the purposes of this Act but may be taken into account in determining the sentence for the prescribed offence.
- (3) In this section—
- prescribed offence** has the same meaning as in Part 4 Division 5 of the *Summary Procedure Act 1921*.

19A—Intervention orders may be issued on finding of guilt or sentencing

- (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 an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* as if a complaint or application 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.
- (1b) If a court, in accordance with this section, determines to exercise the powers of the Magistrates Court to issue a restraining order under section 99AAC of the *Summary Procedure Act 1921*, section 99KA of that Act applies to proceedings relating to the restraining order as if—
- (a) the court were the Magistrates Court; and
 - (b) the proceedings were child protection restraining order proceedings within the meaning of that section.
- (2) An order issued under this section—
- (a) has effect as a restraining order under the *Summary Procedure Act 1921* or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* (as the case may require); and
 - (b) is not a sentence for the purposes of this Act.
- (3) A court must, on finding a person guilty of a sexual offence or on sentencing a person for a sexual offence—
- (a) consider whether or not an order should be issued under this section; and
 - (b) if the court determines that an order should not be issued under this section—give reasons for that determination (and the determination is subject to appeal as if it were an order of the court made on sentence).
- (4) In this section—
- sexual offence** means—
- (a) rape; or
 - (b) compelled sexual manipulation; or

- (c) indecent assault; or
- (d) any offence involving unlawful sexual intercourse or an act of gross indecency; or
- (e) incest; or
- (f) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; or
- (g) any attempt to commit, or assault with intent to commit, any of the foregoing offences.

19B—Deferral of sentence for rehabilitation and other purposes

- (1) A court may, on finding a person guilty of an offence (whether or not it proceeds to conviction), make an order adjourning proceedings to a specified date, and granting bail to the defendant in accordance with the *Bail Act 1985*—
 - (a) for the purpose of assessing the defendant's capacity and prospects for rehabilitation; or
 - (b) for the purpose of allowing the defendant to demonstrate that rehabilitation has taken place; or
 - (c) for the purpose of assessing the defendant's eligibility for participation in an intervention program; or
 - (d) for the purpose of allowing the defendant to participate in an intervention program; or
 - (e) for any other purpose the court considers appropriate in the circumstances.
- (2) As a general rule, proceedings may not be adjourned under this section (whether by a single adjournment or a series of adjournments) for more than 12 months from the date of the finding of guilt (the *usual maximum*).
- (3) A court may adjourn proceedings for a period exceeding the usual maximum if the defendant is, or will be, participating in an intervention program and the court is satisfied that—
 - (a) the defendant has, by participating in, or agreeing to participate in, the intervention program, demonstrated a commitment to addressing the problems out of which his or her offending arose; and
 - (b) if the proceedings were not adjourned for such a period—
 - (i) the defendant would be prevented from completing, or participating in, the intervention program; and
 - (ii) the defendant's rehabilitation would be prejudiced.
- (4) In considering whether to adjourn proceedings for a period exceeding the usual maximum, a court is not bound by the rules of evidence and may (in particular) inform itself on the basis of a written or oral report from a person who may be in a position to provide relevant information.
- (5) A person who provides information to the court by way of a written or oral report is liable to be cross-examined on any of the matters contained in the report.

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- (6) If a statement of fact or opinion in a report is challenged by the prosecutor or the defendant, the court must disregard the fact or opinion unless it is substantiated on oath.
 - (7) This section does not limit any power that a court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.

19C—Mental impairment

- (1) A court that finds a defendant guilty of a summary or minor indictable offence may release the defendant without conviction or penalty if satisfied—
 - (a) that the defendant—
 - (i) suffers from a mental impairment that explains and extenuates, at least to some extent, the conduct that forms the subject matter of the offence; and
 - (ii) has completed, or is participating to a satisfactory extent in, an intervention program; and
 - (iii) recognises that he or she suffers from the mental impairment and is making a conscientious attempt to overcome behavioural problems associated with it; and
 - (b) that the release of the defendant under this subsection would not involve an unacceptable risk to the safety of a particular person or the community.
- (2) A court may, at any time before a charge of a summary or minor indictable offence has been finally determined, dismiss the charge if satisfied—
 - (a) that the defendant—
 - (i) suffers from a mental impairment that explains and extenuates, at least to some extent, the conduct that forms the subject matter of the offence; and
 - (ii) has completed, or participated to a satisfactory extent in, an intervention program; and
 - (iii) recognises that he or she suffers from the mental impairment and is making a conscientious attempt to overcome behavioural problems associated with it; and
 - (b) that dismissal of the charge under this subsection would not involve an unacceptable risk to the safety of a particular person or the community; and
 - (c) that the court would not, if a finding of guilt were made, make an order requiring the defendant to pay compensation for injury, loss or damage resulting from the offence.
- (3) If the defendant is participating in, but has not completed, an intervention program, the court may, instead of dismissing the charge under subsection (2), release the defendant on an undertaking—
 - (a) to complete the intervention program; and
 - (b) to appear before the court for determination of the charge—
 - (i) after the defendant has completed the intervention program; or

- (ii) if the defendant fails to complete the intervention program.
- (4) In deciding whether to exercise its powers under this section, the court—
- (a) may act on the basis of information that it considers reliable without regard to the rules of evidence; and
 - (b) should, if proposing to dismiss a charge under subsection (2) or release a defendant on an undertaking under subsection (3), consider any information about the interests of possible victims that is before it (but is not obliged to inform itself on the matter).

- (5) In this section—

court means—

- (a) the Magistrates Court; or
- (b) the Youth Court; or
- (c) any other court authorised by regulation to exercise the powers conferred by this section;

mental impairment means an impaired intellectual or mental function resulting from a mental illness, an intellectual disability, a personality disorder, or a brain injury or neurological disorder (including dementia).

19D—Deferral of sentence following ERD Court sentencing conference

- (1) The ERD Court may, on finding a person guilty of an offence (whether or not it proceeds to conviction), make an order adjourning proceedings to a specified date for the purpose of allowing the defendant to take action as agreed at a sentencing conference convened by the ERD Court.
- (2) As a general rule, proceedings should not be adjourned under this section (whether by a single adjournment or a series of adjournments) for more than 3 months from the date of the agreement reached at the sentencing conference.
- (3) This section does not limit any power that the Court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.

Division 2AA—Serious firearm offenders

20AA—Interpretation

- (1) In this Division—

serious drug offence means an offence against section 32, 33, 33A, 33B, 33C, 33F, 33G, 33H, 33I, 33J, 33K, 33LA or 33LB of the *Controlled Substances Act 1984*;

serious firearm offender means a person who is, by virtue of the operation of section 20AAB, a serious firearm offender;

serious firearm offence means—

- (a) an offence against the *Criminal Law Consolidation Act 1935* or the *Firearms Act 1977* involving the use or carriage of—
 - (i) a class H firearm—

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- (A) that is unregistered at the time of the offence or is registered in the name of a person other than the defendant; and
 - (B) for which the defendant does not, at the time of the offence, hold a firearms licence authorising possession of the firearm; or
 - (ii) a class C firearm or class D firearm that is an automatic firearm; or
 - (iii) a prescribed firearm (other than a firearm declared by the regulations to be excluded from the ambit of this subparagraph); or
 - (iv) any other firearm declared by the regulations to be included in the ambit of this paragraph; or
 - (b) an offence against the *Criminal Law Consolidation Act 1935* or the *Firearms Act 1977* involving the use or possession of a firearm and committed—
 - (i) while the defendant is the subject of a control order under the *Serious and Organised Crime (Control) Act 2008*; or
 - (ii) in the circumstances contemplated by section 5AA(1)(ga) of the *Criminal Law Consolidation Act 1935*; or
 - (iii) while the defendant is the subject of a firearms prohibition order; or
 - (c) an offence against section 29A of the *Criminal Law Consolidation Act 1935*; or
 - (d) an offence against the *Firearms Act 1977* involving the use or possession of a firearm if the use or possession of the firearm occurred in the course of, or was for a purpose related to, the commission of a serious drug offence; or
 - (e) an offence against the *Firearms Act 1977* committed while the defendant—
 - (i) is on bail (being bail that was, at the relevant time, subject to the condition imposed by section 11(1)(a) of the *Bail Act 1985*); or
 - (ii) is the subject of a bond under this or any other Act (being a bond that was, at the relevant time, subject to the condition imposed by section 42(a1)(a), or a condition of a similar kind); or
 - (iii) is on release from prison on home detention (being a release subject to the condition imposed by section 37A(3)(ca) of the *Correctional Services Act 1982*); or
 - (iv) is on parole (being parole that was, at the relevant time, subject to the condition imposed by section 68(1)(a)(ia) of the *Correctional Services Act 1982*); or
 - (v) is on release on licence from custody under this or any other Act (being a licence that was, at the relevant time, subject to a condition prohibiting the defendant from possessing a firearm, part of a firearm or ammunition).
- (2) In this Division, the following terms have the same meaning as in the *Firearms Act 1977*:
- (a) automatic firearm;
 - (b) class C firearm;

- (c) class D firearm;
 - (d) class H firearm;
 - (e) firearm;
 - (f) firearms prohibition order;
 - (g) prescribed firearm.
- (3) For the purposes of this Division, a reference to imprisonment includes, in the case of a youth, a reference to detention in a training centre or home detention (within the meaning of the *Young Offenders Act 1993*).

20AAB—Serious firearm offenders

- (1) A person will, by force of this section, be taken to be a *serious firearm offender* if he or she is convicted of a serious firearm offence (whether the offence was committed as an adult or as a youth).
- (2) Subsection (1) does not apply in relation to a conviction of a serious firearm offence if—
- (a) the defendant was prosecuted and punished as a principal offender in respect of the offence pursuant to section 267 of the *Criminal Law Consolidation Act 1935*; or
 - (b) the defendant's liability in respect of the offence derives solely from his or her involvement in a joint criminal enterprise (however described).

20AAC—Sentence of imprisonment not to be suspended

- (1) Subject to subsection (2), but despite any other provision of this Act or any other Act or law, the following provisions apply in relation to the sentencing of a person who is a serious firearm offender for a serious firearm offence (including where the offence is the serious firearm offence that resulted in the person being a serious firearm offender):
- (a) if the maximum penalty for the serious firearm offence includes a period of imprisonment—a sentence of imprisonment must be imposed on the person;
 - (b) the sentence of imprisonment cannot be suspended;
 - (c) section 18 does not apply in respect of the sentencing of the person;
 - (d) if—
 - (i) the person is also being sentenced in respect of other offences; and
 - (ii) 1 or more of those offences are not serious firearm offences,section 18A does not apply to the sentencing of the person in respect of the serious firearm offence (however nothing in this paragraph affects the operation of section 18A in respect of the other offences).

- (2) A court sentencing a person who is a serious firearm offender for a serious firearm offence may declare that subsection (1)(b) does not apply to the person if he or she satisfies the court, by evidence given on oath, that—
- (a) his or her personal circumstances are so exceptional as to outweigh the need for general and personal deterrence to be the paramount consideration in the sentencing (as set out in section 10(2)(e)); and
 - (b) it is, in all the circumstances, appropriate to suspend the sentence.
- (3) If subsection (2) applies, section 10(2)(e) is taken not to apply in relation to the sentencing.

Division 2A—Serious repeat adult offenders and recidivist young offenders

20A—Interpretation and application

- (1) In this Division—

category A serious offence means any of the following serious offences:

- (a) home invasion;
- (b) a serious and organised crime offence;
- (c) a serious firearm offence;

home invasion means a criminal trespass committed in a place of residence while a person is lawfully present in the place and the trespasser knows of the person's presence or is reckless about whether anyone is in the place;

serious and organised crime offence has the same meaning as in the *Criminal Law Consolidation Act 1935*;

serious drug offence means—

- (a) an offence against Part 5 Division 2 or 3 of the *Controlled Substances Act 1984* or a substantially similar offence against a corresponding previous enactment; or
- (b) a conspiracy to commit, or an attempt to commit, such an offence;

serious firearm offence means a serious firearm offence within the meaning of Part 2 Division 2AA;

serious offence means—

- (a) a serious drug offence; or
- (ab) an offence against a law of the Commonwealth dealing with the unlawful importation of drugs into Australia; or
- (b) one of the following offences:
 - (i) an offence under Part 3 of the *Criminal Law Consolidation Act 1935*;
 - (ii) an offence of robbery or aggravated robbery;
 - (iii) home invasion;
 - (iv) an offence of damage to property by fire or explosives;

- (v) an offence of causing a bushfire;
- (vi) an offence against a corresponding previous enactment substantially similar to an offence referred to in any of the preceding subparagraphs;
- (vii) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding subparagraphs; or

Note—

A person who acts as an accessory to the commission of an offence described in paragraph (b) is, by virtue of section 267 of the *Criminal Law Consolidation Act 1935*, guilty of the principal offence and has, therefore, committed a serious offence.

- (c) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence; or
- (ca) a serious firearm offence; or
- (cb) a serious and organised crime offence; or
- (d) an offence against the law of another State or a Territory that would, if committed in this State, be a serious offence;

serious repeat offender means—

- (a) a person who is a serious repeat offender pursuant to section 20B(a1); or
- (b) a person declared to be a serious repeat offender under section 20B(1); or
- (c) a person declared to be a serious repeat offender under section 20B as in force immediately before the commencement of section 17 of the *Statutes Amendment (Serious Firearm Offences) Act 2012*;

serious sexual offence means—

- (a) any of the following serious offences:
 - (i) an offence against section 48, 48A, 49, 50, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*;
 - (ia) an offence against a corresponding previous enactment substantially similar to an offence referred to in subparagraph (i);
 - (ii) an attempt to commit or an assault with intent to commit any of those offences; or
 - (b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a).
- (2) For the purposes of this Division, an offence (other than a serious firearm offence) will not be regarded as a serious offence unless the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years.

- (3) An offence is one to which this Division applies if the offence is a serious offence and—
- (a) a sentence of imprisonment (other than a suspended sentence) has been imposed for the offence; or
 - (b) if a penalty is yet to be imposed—a sentence of imprisonment (other than a suspended sentence) is, in the circumstances, the appropriate penalty.

20B—Serious repeat offenders

- (a1) A person will, by force of this subsection, be taken to be a *serious repeat offender* if the person (whether as an adult or as a youth)—
- (a) has committed on at least 3 separate occasions a category A serious offence to which this Division applies (whether or not the same offence on each occasion); and
 - (b) has been convicted of those offences.
- (1) Without limiting subsection (a1), a person is liable to be declared a serious repeat offender if the following conditions apply:
- (a) the person (whether as an adult or as a youth)—
 - (i) has committed on at least 3 separate occasions an offence to which this Division applies (whether or not the same offence on each occasion); and
 - (ii) has been convicted of those offences; or
 - (b) the person (whether as an adult or as a youth)—
 - (i) has committed on at least 2 separate occasions a serious sexual offence against a person or persons under the age of 14 years (whether or not the same offence on each occasion); and
 - (ii) has been convicted of those offences; or
 - (c) the person (whether as an adult or as a youth)—
 - (i) has committed on at least 2 separate occasions a category A serious offence (whether or not the same offence on each occasion); and
 - (ii) has been convicted of those offences.
- (1a) For the purposes of this section, when determining the number of occasions on which a person has committed a particular kind of offence, the offence for which the person is being sentenced is to be included if it is of the relevant kind.
- (3) If a court convicts a person of a serious offence, and the person is liable, or becomes liable as a result of the conviction, to a declaration that he or she is a serious repeat offender, the court—
- (a) must consider whether to make such a declaration; and
 - (b) if of the opinion that the person's history of offending warrants a particularly severe sentence in order to protect the community—should make such a declaration.

20BA—Sentencing of serious repeat offenders

- (1) The following provisions apply in relation to the sentencing of a person who is a serious repeat offender for an offence (including an offence that resulted in the person being a serious repeat offender):
 - (a) the court sentencing the person is not bound to ensure that the sentence it imposes for the offence is proportional to the offence;
 - (b) any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.
- (2) However, a court that is sentencing a person who is a serious repeat offender for an offence may declare that subsection (1) does not apply if the person satisfies the court, by evidence given on oath, that—
 - (a) his or her personal circumstances are so exceptional as to outweigh the primary policy of the criminal law of emphasising public safety; and
 - (b) it is, in all the circumstances, not appropriate that he or she be sentenced as a serious repeat offender.

20C—Declaration that youth is recidivist young offender

- (1) A youth is liable to be declared a recidivist young offender if the following conditions apply:
 - (a) the youth—
 - (i) has committed on at least 3 separate occasions an offence to which this Division applies (whether or not the same offence on each occasion); and
 - (ii) has been convicted of those offences; or
 - (b) the youth—
 - (i) has committed on at least 2 separate occasions a serious sexual offence against a person or persons under the age of 14 years (whether or not the same offence on each occasion); and
 - (ii) has been convicted of those offences.
- (2) If a court convicts a youth of a serious offence, and the youth is liable, or becomes liable as a result of the conviction, to a declaration that he or she is a recidivist young offender, the court—
 - (a) must consider whether to make such a declaration; and
 - (b) if of the opinion that the youth's history of offending warrants a particularly severe sentence in order to protect the community—should make such a declaration.

- (3) If a court convicts a youth of a serious offence, and the youth is declared (or has previously been declared) to be a recidivist young offender—
- (a) the court is not bound to ensure that the sentence it imposes for the offence is proportional to the offence (but, in the case of the Youth Court, the limitations relating to a sentence of detention under section 23 of the *Young Offenders Act 1993* apply to the sentence that may be imposed by the Youth Court on the recidivist young offender); and
 - (b) any non-parole period fixed in relation to the sentence must be at least four-fifths the length of the sentence.

Division 3—Sentences of indeterminate duration

21—Application

- (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*.

23—Offenders incapable of controlling, or unwilling to control, sexual instincts

- (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;

person to whom this section applies means—

- (a) a person convicted by the Supreme Court of a relevant offence; or
- (b) a person remanded by the District Court or the Magistrates Court under subsection (2) to be dealt with by the Supreme Court under this section; or
- (c) a person who is the subject of an application by the Attorney-General under subsection (2a);

relevant offence means—

- (a) an offence under section 48, 48A, 49, 50, 56, 58, 59, 63, 63A, 63B, 69 or 72 of the *Criminal Law Consolidation Act 1935*; or
- (b) an offence under section 23 of the *Summary Offences Act 1953*; or
- (ba) an offence against a corresponding previous enactment substantially similar to an offence referred to in either of the preceding paragraphs; or
- (c) any other offence where the evidence indicates that the defendant may be incapable of controlling, or unwilling to control, his or her sexual instincts; or
- (d) an offence of failing to comply with a reporting obligation relating to reportable contact with a child without a reasonable excuse where the defendant is a registrable offender within the meaning of the *Child Sex Offenders Registration Act 2006*;

unwilling—a person to whom this section applies will be regarded as unwilling to control sexual instincts if there is a significant risk that the person would, given an opportunity to commit a relevant offence, fail to exercise appropriate control of his or her sexual instincts.

- (2) If, in proceedings before the District Court or Magistrates Court, a person is convicted of a relevant offence and—
 - (a) the court is of the opinion that the defendant should be dealt with under this section; or
 - (b) the prosecutor applies to have the defendant dealt with under this section, the court will, instead of sentencing the defendant itself, remand the convicted person, in custody or on bail, to appear before the Supreme Court to be dealt with under this section.
- (2a) If a person has been convicted of a relevant offence, the Attorney-General may, while the person remains in prison serving a sentence of imprisonment, apply to the Supreme Court to have the person dealt with under this section.
- (2b) The Attorney-General may make an application under subsection (2a) in respect of a person serving a sentence of imprisonment whether or not an application to the Supreme Court to have the person dealt with under this section has previously been made (but, if a previous application has been made, a further application cannot be made more than 12 months before the person is eligible to apply for release on parole).
- (3) The Supreme Court must, before determining whether to make an order that a person to whom this section applies be detained in custody until further order, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of a person to whom this section applies and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
- (4) The Supreme Court may order that a person to whom this section applies be detained in custody until further order if satisfied that the order is appropriate.
- (5) The paramount consideration of the Supreme Court in determining whether to make an order that a person to whom this section applies be detained in custody until further order must be the safety of the community.
- (5a) The Supreme Court must also take the following matters into consideration in determining whether to make an order that a person to whom this section applies be detained in custody until further order:
 - (a) the reports of the medical practitioners (as directed and nominated under subsection (3)) furnished to the Court;
 - (b) any relevant evidence or representations that the person may desire to put to the Court;
 - (c) any report required by the Court under section 25;
 - (d) any other matter that the Court thinks relevant.
- (5b) A copy of a report furnished to the Supreme Court under subsection (5a) must be given to each party to the proceedings or to counsel for those parties.

- (5c) If a person to whom this section applies refuses to cooperate with an inquiry or examination for the purposes of this section, the Supreme Court may, if satisfied that the order is appropriate, order that the person be detained in custody until further order having given—
- (a) paramount consideration to the safety of the community; and
 - (b) consideration to any relevant evidence and representations that the person may desire to put to the Court.
- (6) If a person to whom this section applies has not been sentenced for a relevant offence, the Supreme Court will deal with the question of sentence at the same time as it deals with the question whether an order is to be made under this section and, if the Court decides to make such an order, the order may be made in addition to, or instead of, a sentence of imprisonment.
- (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 must be reviewed at least once in each period of 12 months—
- (a) if the person is detained in, or released on licence from, a training centre—by the Training Centre Review Board; or
 - (b) in any other case—by the Parole Board,
- for the purpose of making a recommendation about whether the person is—
- (c) if the person is in custody—suitable for release on licence under section 24; or
 - (d) if the person has been authorised to be released, or has been released, on licence under section 24—suitable to be so released.
- (10) The results of a review under subsection (9), including the recommendation of the relevant Board, must be embodied in a written report, a copy of which must be furnished to the person the subject of the report, the Attorney-General 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.

23A—Discharge of detention order under section 23

- (1) Subject to this Act, a person subject to an order for detention under section 23 will not be released from detention under that section until the Supreme Court, on application by the Director of Public Prosecutions or the person, discharges the order for detention.
- (2) The Supreme Court must, before determining an application under this section for the discharge of an order for detention under section 23, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person subject to the order and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
- (3) The paramount consideration of the Supreme Court when determining an application for the discharge of an order for detention under section 23 must be the safety of the community.
- (4) The Supreme Court must also take the following matters into consideration when determining an application for the discharge of an order for detention under section 23:
 - (a) the reports of the medical practitioners (as directed and nominated under subsection (2)) furnished to the Court;
 - (b) any relevant evidence or representations that the person may desire to put to the Court;
 - (c) a report furnished to the Court by the Training Centre Review Board or Parole Board (as the case may be) in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
 - (i) any opinion that the relevant Board may have about the effect the discharge of the order may have on the safety of the community; and
 - (ii) a report as to the probable circumstances of the person if the order is discharged; and
 - (iii) the recommendation of the relevant Board about whether the order should be discharged;
 - (d) the reports resulting from the periodic reviews under section 23(9) on the progress and circumstances of the person tendered to the Court;
 - (e) any other report required by the Court under section 25;
 - (f) any other matter that the Court thinks relevant.
- (5) A copy of a report furnished to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

24—Release on licence

- (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.

- (1a) The Supreme Court must, before determining an application under this section for the release on licence of a person detained in custody under this Division, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
- (1b) The paramount consideration of the Supreme Court when determining an application under this section for the release on licence of a person detained in custody under this Division must be the safety of the community.
- (1c) The Supreme Court must also take the following matters into consideration when determining an application under this section for the release on licence of a person detained in custody under this Division:
- (a) the reports of the medical practitioners (as directed and nominated under subsection (1a)) furnished to the Court;
 - (b) any relevant evidence or representations that the person may desire to put to the Court;
 - (c) a report furnished to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
 - (i) any opinion of the appropriate board on the effect that the release on licence of the person would have on the safety of the community; and
 - (ii) a report as to the probable circumstances of the person if the person is released on licence; and
 - (iii) the recommendation of the appropriate board as to whether the person should be released on licence;
 - (d) evidence tendered to the Court of the estimated costs directly related to the release of the person on licence;
 - (e) the reports resulting from the periodic reviews under section 23(9) on the progress and circumstances of the person tendered to the Court;
 - (f) any other report required by the Court under section 25;
 - (g) any other matter that the Court thinks relevant.
- (1d) A copy of any report furnished to the Supreme Court under subsection (1c) must be given to each party to the proceedings or to counsel for those parties.
- (2) On the Supreme 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.
- (2a) Subject to this Act, every release of a person on licence under this section is subject to the following conditions:
- (a) a condition prohibiting the person from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;

- (b) a condition requiring the person to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or class of persons or body specified by the appropriate board.
- (3) Without limiting subsection (2a), 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.
- (5b) The appropriate board may only vary or revoke the conditions imposed by subsection (2a) on the release of a person on licence if the board is satisfied that—
 - (a) there are cogent reasons to do so; and
 - (b) the possession of a firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.
- (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.

- (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.

24A—Appropriate board may direct person to surrender firearm etc

- (1) The appropriate board may, in relation to the release of a person on licence under section 24 that is subject to the condition imposed by section 24(2a)(a), direct the person to surrender forthwith at a police station specified by the appropriate board any firearm, ammunition or part of a firearm owned or possessed by the person.
- (2) A person who refuses or fails to comply with a direction under subsection (1) is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (3) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (4) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.
- (5) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
- (6) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.
- (7) In this section—
appropriate board has the same meaning as in section 24.

25—Court may obtain reports

- (1) A court may, for the purpose of obtaining assistance in making a determination under this Division or Schedule 2, 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.

25A—Inquiries by medical practitioners

Where, for the purposes of this Division or Schedule 2, the Supreme Court directs that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority) inquire into the mental condition of a person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts, each medical practitioner so nominated—

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

26—Parties

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

27—Service on guardian

Where the person to whom an application under this Division 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.

27A—Appeals

- (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.

28—Proclamations

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

29—Regulations

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.

Division 4—Sentencing guidelines

29A—Sentencing guidelines

- (1) The Full Court may give a judgment establishing sentencing guidelines.
- (2) A sentencing guideline is to guide a sentencing court in determining sentence for—
 - (a) offences generally or a particular class of offences;
 - (b) offenders generally or a particular class of offenders.
- (3) A sentencing guideline may—
 - (a) indicate an appropriate range of penalties for a particular offence or offences of a particular class; and

- (b) indicate how particular aggravating or mitigating factors (or aggravating or mitigating factors of a particular kind) should be reflected in sentence.
- (4) In particular, a sentencing guideline may indicate (and give guidance about the extent of) a reduction of sentence below the level that would otherwise be appropriate in any of the following cases:
 - (a) where the defendant has cooperated with authorities in the investigation of an offence;
 - (b) where the defendant has pleaded guilty to the charge;
 - (c) where the defendant has contributed in some other way to reducing the burden on the criminal justice system or the burden of crime on the community.
- (5) A sentencing court—
 - (a) should have regard to relevant sentencing guidelines; but
 - (b) is not bound to follow a particular guideline if, in the circumstances of the case, there are good reasons for not doing so.

29B—Power to establish (or review) sentencing guidelines

- (1) The Full Court may establish (or review) sentencing guidelines—
 - (a) on the Full Court's own initiative; or
 - (b) on application by the Director of Public Prosecutions; or
 - (c) on application by the Attorney-General; or
 - (d) on application by the Legal Services Commission.
- (2) Each of the following is entitled to appear and be heard in proceedings in which the Full Court is asked or proposes to establish or review sentencing guidelines:
 - (a) the Director of Public Prosecutions;
 - (b) the Attorney-General;
 - (c) the Legal Services Commission;
 - (ca) the Commissioner for Victims' Rights;
 - (d) the Aboriginal Legal Rights Movement Inc.;
 - (e) an organisation representing the interests of offenders or victims of crime that has, in the opinion of the Full Court, a proper interest in the proceedings.

29C—Conduct of proceedings

- (1) The Full Court may, if it thinks appropriate, establish or review sentencing guidelines in the course of an appeal against sentence.
- (2) However, if sentencing guidelines are to be established or reviewed on the application of the Attorney-General, the proceedings must be separate from other proceedings in the Full Court.
- (3) The Full Court may inform itself in any way it thinks fit on any question affecting the formulation or revision of sentencing guidelines and is not bound by the rules of evidence.

- (4) However, if evidence relevant to the formulation or revision of sentencing guidelines is considered by the Full Court in the course of appellate proceedings, that evidence must not be used by the Court as a basis for increasing the sentence imposed on the offender unless the evidence was before the court that imposed the sentence in the first instance.

Division 5—Offences involving paedophilia

29D—Sentencing standards for offences involving paedophilia

- (1) The Parliament declares that—
- (a) the 1997 amendment of sentencing standards reflected an emerging recognition by the judiciary and the community generally of the inherent seriousness of offences involving paedophilia; and
 - (b) the reformed standards should be applied to offences involving paedophilia committed before or after the enunciation of the 1997 amendment of sentencing standards (or committed in part before, and in part after, the enunciation of the 1997 amendment of sentencing standards).

- (2) In this section—

1997 amendment of sentencing standards means the change to sentencing standards enunciated in R v D (1997) 69 SASR 413;

offences involving paedophilia means all offences to which the 1997 amendment of sentencing standards is applicable (whether individual sentences for the offences have been, or are to be, imposed or a global sentence covering a series of offences¹ or a course of conduct involving a number of criminal incidents²).

reformed standards means sentencing standards as changed by the 1997 amendment of sentencing standards.

Notes—

1 See section 18A of the *Criminal Law (Sentencing) Act 1988*.

2 See section 74 of the *Criminal Law Consolidation Act 1935*.

Division 6—Re-sentencing

29DA—Re-sentencing for failure to cooperate in accordance with undertaking under section 10A

- (1) This section applies if—
- (a) a person is currently serving a sentence of imprisonment for an offence or offences that was reduced by the sentencing court under section 10A (the *relevant sentence*); and
 - (b) the person has failed to cooperate with a law enforcement agency in accordance with the terms of an undertaking given by the person under that section.

- (2) The Director of Public Prosecutions may, with the permission of the court that imposed the relevant sentence on the person, apply to the court to have the sentence quashed and a new sentence imposed, taking into account the person's failure to cooperate with the law enforcement agency in accordance with the terms of an undertaking given by the person under section 10A.
- (3) The Director of Public Prosecutions, the chief officer of the law enforcement agency and the person are parties to the proceedings on the application.
- (4) Nothing in this section authorises a court to impose a new sentence that would exceed the sentence that would, but for the reduction given under section 10A, have been imposed by the sentencing court under that section.

29E—Re-sentencing for subsequent cooperation with law enforcement agency

- (1) This section applies to a person if—
 - (a) the person is currently serving a period of imprisonment for an offence or offences (the *relevant sentence*); and
 - (b) the person has cooperated with a law enforcement agency.
- (2) A person to whom this section applies may, with the permission of the court that imposed the relevant sentence, apply to the court to have the sentence quashed and a new sentence imposed, taking into account the person's cooperation with the law enforcement agency in accordance with this section.
- (3) The court may only grant permission to make an application under this section if the court is satisfied that the cooperation relates directly to an offence that is, in the opinion of the court, a serious offence that has been committed or may be committed in the future (whether in this or any other jurisdiction).
- (4) The chief officer of the law enforcement agency, the Director of Public Prosecutions and the applicant are parties to the proceedings on the application.
- (5) In determining a new sentence on an application under this section, the court must have regard to such of the following as may be relevant:
 - (a) the nature and extent of the person's cooperation;
 - (b) the timeliness of the cooperation;
 - (c) the truthfulness, completeness and reliability of any information or evidence provided by the person;
 - (d) the evaluation (if any) by the authorities of the significance and usefulness of the person's cooperation;
 - (e) any benefit that the person has gained or is likely to gain by reason of the cooperation;
 - (f) the degree to which the safety of the person (or some other person) has been put at risk of violent retribution as a result of the person's cooperation;
 - (g) whether the cooperation concerns the offence for which the person is being sentenced or some other offence, whether related or unrelated;
 - (h) whether, as a consequence of the person's cooperation, the person would be likely to suffer violent retribution while serving any term of imprisonment, or be compelled to serve any such term in particularly severe conditions;

- (i) the nature of any steps that would be likely to be necessary to protect the person on his or her release from prison;
- (j) the likelihood that the person will commit further offences,

and may have regard to any other factor or principle the court thinks relevant.

- (5a) Except as provided in this section, in determining a new sentence on an application under this section the court must apply the law that was applicable in relation to the relevant sentence at the time that sentence was imposed (and this subsection applies to an application under this section, whether made or determined before or after the commencement of this subsection).
- (6) On an application by a person under this section, the court must not impose a sentence that is more severe than the relevant sentence, but the court may extend the non-parole period where the court passes a shorter sentence.
- (7) In this section—

chief officer of a law enforcement agency means—

- (a) in the case of SA Police—the Commissioner of Police;
- (b) in any other case—the person for the time being occupying a position within the agency prescribed by the regulations.

Part 3—Imprisonment

Division 1—Sentences of imprisonment

30—Commencement of sentences and non-parole periods

- (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) If a defendant has spent time in custody in respect of an offence for which the defendant is subsequently sentenced to imprisonment, the court may, when sentencing the defendant, take into account the time already spent in custody and—
 - (a) make an appropriate reduction in the term of the sentence; or
 - (b) direct that the sentence will be taken to have commenced—
 - (i) on the day on which the defendant was taken into custody; or
 - (ii) on a date specified by the court that occurs after the day on which the defendant was taken into custody but before the day on which the defendant is sentenced.
- (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.

31—Cumulative sentences

- (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

31A—Application of Division to youths

- (a1) The following provisions of this Division do not apply in relation to a youth (whether or not 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):
 - (a) section 32(5)(ab);
 - (b) section 32(5)(ba);
 - (c) section 32(5a);
 - (d) section 32A.
- (1) The remaining provisions of this Division do 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.

32—Duty of court to fix or extend non-parole periods

- (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

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- (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.
- (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;
- (ab) if fixing a non-parole period in respect of a person sentenced to life imprisonment for an offence of murder, the mandatory minimum non-parole period prescribed in respect of the offence is 20 years;
- (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;
- (ba) if fixing a non-parole period in respect of a person sentenced to imprisonment for a serious offence against the person, the mandatory minimum non-parole period prescribed in respect of the offence is four-fifths the length of the sentence;
- (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.

(5a) If—

- (a) a court sentences a person under section 18A to the 1 penalty for a number of offences; and
- (b) a mandatory minimum non-parole period is prescribed (*mandatory period*) in respect of any of those offences,

any non-parole period to be fixed by the court under that section—

- (c) must be a period not less than the mandatory period prescribed in respect of the relevant offence; and
- (d) if there is more than 1 such offence in respect of which a mandatory period is prescribed—must be a period not less than the greater of any such mandatory period; and
- (e) must be commenced or be taken to have commenced on the date specified by the court (which may be the day on which the person was first taken into custody or a later date specified by the court that occurs after the day on which the defendant was taken into custody but before the day on which the person is sentenced).

Note—

See PNJ v The Queen [2009] HCA 6.

- (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
 - (ba) a reference to an *offence of murder* includes—
 - (i) an offence of conspiracy to murder; and
 - (ii) an offence of aiding, abetting, counselling or procuring the commission of murder; 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; and
 - (d) a *serious offence against the person* means—
 - (i) a major indictable offence (other than an offence of murder) that results in the death of the victim or the victim suffering total incapacity; or
 - (ii) a conspiracy to commit an offence referred to in subparagraph (i); or
 - (iii) aiding, abetting, counselling or procuring the commission of an offence referred to in subparagraph (i); and
 - (e) a victim suffers *total incapacity* if the victim is permanently physically or mentally incapable of independent function.

32A—Mandatory minimum non-parole periods and proportionality

- (1) If a mandatory minimum non-parole period is prescribed in respect of an offence, the period prescribed represents the non-parole period for an offence at the lower end of the range of objective seriousness for offences to which the mandatory minimum non-parole period applies.
- (2) In fixing a non-parole period in respect of an offence for which a mandatory minimum non-parole period is prescribed, the court may—
 - (a) if satisfied that a non-parole period that is longer than the prescribed period is warranted because of any objective or subjective factors affecting the relative seriousness of the offence, fix such longer non-parole period as it thinks fit; or
 - (b) if satisfied that special reasons exist for fixing a non-parole period that is shorter than the prescribed period, fix such shorter non-parole period as it thinks fit.
- (3) In deciding whether special reasons exist for the purposes of subsection (2)(b), the court must have regard to the following matters and only those matters:
 - (a) the offence was committed in circumstances in which the victim's conduct or condition substantially mitigated the offender's conduct;
 - (b) if the offender pleaded guilty to the charge of the offence—that fact and the circumstances surrounding the plea;
 - (c) the degree to which the offender has cooperated in the investigation or prosecution of that or any other offence and the circumstances surrounding, and likely consequences of, any such co-operation.
- (4) This section applies whether a mandatory minimum non-parole period is prescribed under this Act or some other Act.

Division 3—Dangerous offenders

33—Interpretation

- (1) In this Division—

serious sexual offence means any of the following offences where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

 - (a) —
 - (i) an offence under section 48, 49, 56, 58, 59, 60, 63, 63B, 66, 67, 68, 72 or 74 of the *Criminal Law Consolidation Act 1935*;
 - (ia) an offence against a corresponding previous enactment substantially similar to an offence referred to in subparagraph (i);
 - (ii) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding subparagraphs;
 - (b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a).

- (2) For the purposes of this Division—
- (a) an offence will be taken to have been committed in *prescribed circumstances* if, in the opinion of the Attorney-General—
 - (i) the offence was committed in the course of deliberately and systematically inflicting severe pain on the victim; or
 - (ii) there are reasonable grounds to believe that the offender also committed a serious sexual offence against or in relation to the victim of the offence in the course of, or as part of the events surrounding, the commission of the offence (whether or not the offender was also convicted of the serious sexual offence); and
 - (b) a reference to an *offence of murder* includes—
 - (i) an offence of conspiracy to murder; and
 - (ii) an offence of aiding, abetting, counselling or procuring the commission of murder.
- (3) No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question a decision of the Attorney-General under subsection (2).

33A—Dangerous offenders

- (1) If a person has been convicted, whether before or after the commencement of this Division, of an offence of murder and the offence was committed in prescribed circumstances, the Attorney-General may, while the person remains in prison serving a sentence of imprisonment, apply to the Supreme Court to have the person declared to be a dangerous offender.
- (2) An application cannot be made under subsection (1) more than 12 months before the person is eligible to apply for release on parole.
- (3) The Court must give the person at least 14 days written notice of the date on which it intends to conduct the proceedings to determine the application.
- (4) If the Court is of the opinion that a report from the Parole Board may assist the Court in determining an application under this section, the Court may direct the Board to hold an inquiry and report to the Court.
- (5) The Parole Board may exercise such powers as are conferred on the Board under Part 6 of the *Correctional Services Act 1982* as are necessary or expedient for, or incidental to, the purposes of an inquiry under subsection (4).
- (6) Each of the following persons is entitled to appear and be heard in proceedings under this section and must be afforded a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Court:
 - (a) the person (personally or by counsel);
 - (b) the Director of Public Prosecutions;
 - (c) the Commissioner for Victims' Rights.
- (7) The paramount consideration of the Court when determining an application under this section must be to protect the safety of the community (whether as individuals or in general).

- (8) The Court may also take the following matters into consideration when determining an application under this section:
- (a) any relevant remarks made by the court in passing sentence;
 - (b) the degree to which the person has shown contrition for the relevant offence;
 - (c) the behaviour of the person while in prison;
 - (d) any rehabilitation of the person while in prison;
 - (e) the willingness of the person to cooperate with an inquiry (if any) by the Parole Board under this section;
 - (f) any reports tendered, and submissions made, to the Court under this section;
 - (g) the likelihood of the person committing a serious sexual offence, an offence of murder or some other serious offence of a violent nature should the person be released from prison;
 - (h) whether the non-parole period imposed by the court when sentencing the person for the relevant offence was reduced as a consequence of the commencement of the *Statutes Amendment (Truth in Sentencing) Act 1994*;
 - (i) the character, antecedents, age, means and physical or mental condition of the person;
 - (j) the probable circumstances of the person after release from prison;
 - (k) any other matters that the Court thinks are relevant.
- (9) If the Court is satisfied, on the balance of probabilities, that the release from prison of the person to whom the application relates would involve a serious danger to the community or a member of the community, the Court must—
- (a) declare the person to be a dangerous offender; and
 - (b) order that the non-parole period fixed in respect of the sentence of imprisonment for the murder be negated.
- (10) A person who has been declared to be a dangerous offender under this section—
- (a) will serve his or her sentence of imprisonment as if the fixing of a non-parole period in respect of that sentence of imprisonment had been declined by order of the court under section 32; and
 - (b) may not make an application under that section for the fixing of a non-parole period for at least 12 months after having been so declared.

33AB—Appeal

- (1) An appeal lies to the Full Court against a decision by the Supreme Court—
- (a) to make a declaration and order under this Division; or
 - (b) not to make a declaration and order under this Division.
- (2) An appeal under this section may be instituted by the Attorney-General 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 or annul the decision subject to appeal;
 - (b) remit the decision subject to appeal to the Supreme Court for further consideration or reconsideration;
 - (c) make consequential or ancillary orders.

33B—Division does not affect Governor's powers etc in relation to parole

Nothing in this Division has any effect on the powers and authorities conferred on, or vested in, the Governor in relation to parole.

Division 4—Effect of imprisonment for contempt

33C—Effect of imprisonment for contempt

If a person is imprisoned for contempt of court—

- (a) any sentence of imprisonment that the person has not yet begun to serve (and any non-parole period in respect of that sentence) will not commence until the expiry of the period of imprisonment for contempt; and
- (b) any sentence of imprisonment that the person is then serving (and any non-parole period in respect of that sentence) ceases to run for the period of imprisonment for contempt.

Part 4—Fines

34—Maximum fine where no other maximum provided

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.

Part 5—Bonds

36—Court may not impose bond except under this Part

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.

37—Part does not apply to murder or treason

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.

38—Suspension of imprisonment on defendant entering into bond

- (1) Subject to this section, if a court has imposed a sentence of imprisonment on 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 if the defendant is being sentenced—
 - (a) to a sentence of imprisonment that is to be served cumulatively on another term of imprisonment, or concurrently with another term of imprisonment then being served, or about to be served, by the defendant; or
 - (b) as an adult to a period of imprisonment of 2 years or more for a prescribed designated offence; or
 - (c) as an adult for a serious and organised crime offence or specified offence against police; or
 - (d) as an adult for a designated offence and, during the 5 year period immediately preceding the date on which the relevant offence was committed, a court has suspended a sentence of imprisonment or period of detention imposed on the defendant for a designated offence.
- (2a) Despite subsection (2)(a), if the period of imprisonment to which a defendant is liable under 1 or more sentences is more than 3 months but less than 1 year, the sentencing court may, by order—
 - (a) direct that the defendant serve a specified period (being not less than 1 month) of the imprisonment in prison; and

- (b) suspend the remainder of the sentence 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) Despite subsection (2)(b), if a defendant is being sentenced as an adult to a period of imprisonment of 2 years or more for a prescribed designated offence, the sentencing court may, by order—
 - (a) direct that the defendant serve a specified period of the imprisonment in prison (which, if a non-parole period has been fixed in respect of the defendant, must be a period that is one-fifth of the non-parole period fixed); and
 - (b) suspend the remainder of the sentence 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.
- (2ba) Despite subsection (2)(c) and (d), the court may, if satisfied that exceptional circumstances exist for doing so—
 - (a) suspend a sentence of imprisonment imposed on a defendant for a serious and organised crime offence or specified offence against police, or for a designated offence in the circumstances described in subsection (2)(d), on condition that the defendant enter into a bond of a kind described in subsection (1); or
 - (b) make an order under subsection (2a) in respect of a defendant being sentenced for a serious and organised crime offence or specified offence against police, or for a designated offence in the circumstances described in subsection (2)(d), if the period of imprisonment to which the defendant is liable under 1 or more sentences is more than 3 months but less than 1 year.
- (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.

(4) In this section—

designated offence means any of the following offences under the *Criminal Law Consolidation Act 1935*:

- (a) an offence under section 12, 12A, 13 or 13A;
- (b) an offence under section 19;
- (c) an offence under section 19AA;
- (d) an offence under section 19AC;
- (e) an offence under section 19A;
- (f) an offence under section 23 or 24;
- (g) an offence under section 29A;
- (h) an offence under section 39;
- (i) an offence under section 48, 48A, 49, 50, 56, 58 or 59;
- (j) an offence under section 137;
- (k) an offence under section 170;
- (l) an offence under section 270B if the offence against the person to which that section applies is a relevant offence referred to in a preceding paragraph;

prescribed designated offence means an offence under section 13 or 23 of the *Criminal Law Consolidation Act 1935*;

serious and organised crime offence means—

- (a) any of the following offences under the *Criminal Law Consolidation Act 1935*:
 - (i) an offence under section 83E;
 - (ii) an aggravated offence under section 172 or 251, where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(ga)(i) or (ii) of that Act;
 - (iii) an offence under section 244 or 245; or
- (b) any of the following offences under the *Controlled Substances Act 1984*:
 - (i) an offence under section 32(1);
 - (ii) an aggravated offence under section 32(2), 32(2a) or 32(3);
 - (iii) an offence under section 33(1);
 - (iv) an aggravated offence under section 33(2) or 33(3);
 - (v) an aggravated offence under section 33A(1), 33A(2), 33A(3), 33A(4) or 33A(5);

specified offence against police means—

- (a) an aggravated offence under section 23(1) or 23(3) of the *Criminal Law Consolidation Act 1935* where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(c) of that Act and the victim is a police officer; or

- (b) an offence of attempted murder or attempted manslaughter under the *Criminal Law Consolidation Act 1935* where the victim is a police officer and the offender committed the offence—
 - (i) knowing the victim to be acting in the course of his or her official duty; or
 - (ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty.

39—Discharge without sentence on defendant entering into bond

- (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.

40—Term of bond

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

41—Guarantors etc

- (1) If the court thinks it appropriate—
 - (a) a bond under this Act may oblige the defendant to pay a sum specified in the bond in the event of non-compliance with a condition of the bond; and
 - (b) the court may require the defendant to find one or more guarantors of such an obligation.
- (2) A court—
 - (a) may require a defendant to find one or more persons to guarantee the defendant's compliance with the conditions of the bond; and
 - (b) if such a requirement is made, must specify the amount that any such guarantor will be liable to pay in the event of the defendant's non-compliance with a condition of the bond.

42—Conditions of bond

- (a1) Subject to this Act, every bond under section 38 is subject to the following conditions:
- (a) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
 - (b) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or class of persons or body specified by the court.
- (1) Subject to this Act and without limiting subsection (a1), 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
 - (da) a condition requiring the defendant to undertake an intervention program; 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.
- (6) Before the court imposes a condition requiring a defendant to undertake an intervention program, the court must satisfy itself that—
- (a) the defendant is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
 - (b) the services are available for the defendant at a suitable time and place.
- (7) The court may make appropriate orders for assessment of a defendant to determine—
- (a) a form of intervention program that is appropriate for the defendant; and
 - (b) the defendant's eligibility for the services included on the program,
- and may release the defendant on bail on condition that he or she undertake the assessment as ordered.
- (8) A certificate apparently signed by—
- (a) an intervention program manager as to—
 - (i) whether the services to be included on an intervention program are available for a particular person and, if so, when and where they will be available; or
 - (ii) whether a particular person is eligible for the services to be included on the program; or
 - (b) a case manager as to whether a particular person has complied with conditions regulating his or her participation in an intervention program,
- is admissible as evidence of the matter so certified.

42A—Court may direct person to surrender firearm etc

- (1) A probative court may, in relation to a bond under section 38 that is subject to the condition imposed by section 42(a1)(a), direct the probationer to surrender forthwith at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the probationer.
- (2) No criminal liability attaches to a person to the extent that he or she is complying with a direction under this section.
- (3) The Commissioner of Police must deal with any surrendered firearm, ammunition or part of a firearm in accordance with the scheme set out in the regulations.

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- (4) No compensation is payable by the Crown or any other person in respect of the exercise of a function or power under this section.
 - (5) The regulations may provide for the payment, recovery or waiver of fees in respect of this section.

43—Court to furnish CEO with copy of court order

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.

44—Variation or discharge of bond

- (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.
 - (1c) A probative court may only vary or revoke the conditions imposed by section 42(a1) on a bond if the court is satisfied, by evidence given on oath, that—
 - (a) there are cogent reasons to do so; and
 - (b) the possession of a firearm, ammunition or part of a firearm by the probationer does not represent an undue risk to the safety of the public.
- (2) Subject to subsection (2a), 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.
- (2a) The Minister for Correctional Services must, before deciding whether to waive the obligation of a probationer to comply any further with a condition requiring supervision, take into account the likely impact on a victim to which this subsection applies if the probationer is no longer required to remain under supervision.
- (2b) Subsection (2a) applies to a victim in respect of whom a victim impact statement was furnished to the sentencing court when the probationer was sentenced (whether the statement was furnished under section 7 or 7A).
- (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.

Part 6—Community service and supervision

45—Notification of court if suitable community service placement is not available

- (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.

46—Ancillary orders for supervision

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.

47—Special provisions relating to community service

- (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 15 or more than 300; 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 300; 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 7.5 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.¹

Note—

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

48—Special provisions relating to supervision

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; and
- (d) the person must not, during the period of supervision, leave the State for any reason except in accordance with the written permission of the CEO.

49—CEO must assign community corrections officer

- (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.

50—Community corrections officer to give reasonable directions

- (1) A community corrections officer responsible for supervising a person—
- (aa) must give reasonable directions to the person requiring the person to report to the officer on a regular basis; and
 - (a) may give reasonable directions to the person—
 - (ii) requiring the person to notify the officer of any change in the person's place of residence or employment; 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.

50AA—Powers of community corrections officer in the case of home detention

- (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.

50A—Variation of community service order

- (a1) 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 the person will not complete the community service in the time provided for in the order or the bond; and
 - (b) that sufficient reason exists for the person not being able to complete the community service in the required time,

the Minister may, by instrument in writing, extend the period within which the person must complete the performance of the community service.

- (1) The court that ordered a person to perform 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 period within which community service must be performed cannot be extended under this section, whether by the Minister or the court, by a period exceeding 6 months, or periods that, in aggregate, exceed 6 months.
- (3) If the Minister extends the period within which a person must complete the performance of community service under an order or bond, the order or bond will be taken to have been amended accordingly.
- (4) The Minister must notify the probative or sentencing court of any exercise of powers under subsection (a1).

50B—Power of Minister to cancel unperformed hours of community service

- (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).

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

- (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.

Part 7—Restitution and compensation

52—Restitution of property

- (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.

53—Compensation

- (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.

54—Certificate for victims of identity theft

- (1) A court that finds a person guilty of an offence involving—
 - (a) the assumption of another person's identity; or
 - (b) the use of another person's personal identification information,may, on application by a victim of the offence, issue a certificate under subsection (2).
- (2) The certificate is to give details of—
 - (a) the offence; and
 - (b) the name of the victim; and
 - (c) any other matters considered by the court to be relevant.
- (3) In this section—

personal identification information has the same meaning as in Part 5A of the *Criminal Law Consolidation Act 1935*;

victim means a person whose identity has been assumed, or personal identification information has been used, without the person's consent, in connection with the commission of the offence.

Part 9—Enforcement of sentence

Division 1—General

56—Enforcement must be taken under this Part

- (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.

56A—Appointment of authorised officers

- (a1) The Minister may appoint persons (including members of the staff of the State Courts Administration Authority) as authorised officers for the purposes of the enforcement of pecuniary sums under this Act.
- (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 this section may be made subject to conditions limiting the powers exercisable by the authorised officer.
- (3) The Minister or Administrator (as the case requires) 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

56B—Preliminary

Unless the contrary intention appears, a reference in this Division to—

- (a) a *probationer* includes a reference to a debtor who has entered into a bond under Part 9 Division 3 Subdivision 5; and
- (b) a *probative court* includes a reference to a court that made an order pursuant to which a debtor entered into a bond under Part 9 Division 3 Subdivision 5.

57—Non-compliance with bond

- (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.

58—Orders that court may make on breach of bond

- (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—
 - (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 the period within which any uncompleted hours of community service must be performed by not more than 6 months; or

- if the period within which the community service must be performed has expired, impose a period of not more than 6 months within which any uncompleted 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;
 - (baa) may, in the case of a probationer whose sentence of imprisonment was partially suspended under section 38(2b) and even if the term of the sentence now to be served in custody is less than 1 year, fix or extend a non-parole period taking into account the time spent in custody by the probationer before being released on the bond;
 - (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—
 - (i) in the case of a sentence partially suspended under section 38(2a) or (2b)—any part of the sentence that the probationer has not served in custody; or
 - (ii) in any other case—the suspended sentence,be cumulative on 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.

Division 2A—Enforcement of restitution orders

59—Non-compliance with order for restitution of property

- (1) If—
- (a) an order is made under section 52 requiring property to be restored to a person; and
 - (b) the order is not complied with,

the person may request an authorised officer to take action under this section for enforcement of the order.

- (2) On receiving a request under this section in relation to an order requiring the restitution of property, an authorised officer may—
 - (a) enter any land (using such force as may be necessary) on which the officer reasonably suspects the property is situated and seize and remove the property; or
 - (b) cause the property to be valued (in such manner as the officer thinks fit) and make an order requiring the defendant to pay to the person an amount equal to the value of the property.
- (3) In exercising powers under subsection (2)(a), 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.
- (4) An authorised officer who makes an order under subsection (2)(b) must cause a copy of the order to be served on the defendant personally or by post.
- (5) An order under subsection (2)(b)—
 - (a) may be made in the absence of, and without prior notice to, the defendant; and
 - (b) may be varied or cancelled by an authorised officer in such circumstances as the officer considers just; and
 - (c) is enforceable as a pecuniary sum.
- (6) The prescribed fees for issuing, serving and executing an order under subsection (2)(b) are payable in addition to the amount specified in the order as the value of the relevant property and form part of the amount payable under the order.
- (7) In this section—

defendant, in relation to property, means the defendant in the proceedings in which the order requiring restitution of the property was made.

Division 3—Enforcement of pecuniary sums

Subdivision 1—Preliminary

60—Interpretation

- (1) In this Division—

clamp, in relation to a vehicle, means immobilise the vehicle by means of wheel clamps (and *clamped* has a corresponding meaning);

clamping or impounding period means the period for which a vehicle is liable to remain clamped or impounded in accordance with a determination under section 700(1);

Court means—

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

drive includes ride;

driver's licence includes a learner's permit;

land means, according to the context—

- (a) land as a physical entity, including—
 - (i) any building or structure on, or improvement to, land (whether affixed to the land or not); or
 - (ii) land covered by water and, in such a case, the overlying water; or
 - (iii) a lot under the *Community Titles Act 1996* or a unit under the *Strata Titles Act 1988*; or
- (b) a legal estate or interest in, or right in respect of, land;

ordinary business hours means the hours between 9 am and 5 pm on any day other than a Saturday, Sunday or public holiday;

person entitled to custody of a vehicle means—

- (a) an owner of the vehicle; or
- (b) a person authorised by an owner of the vehicle to take custody of the vehicle; or
- (c) a person legally entitled to possession of the vehicle;

protected person has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

registered owner of a vehicle means a person recorded in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth as an owner of the vehicle;

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

- (2) For the purposes of this Division—
 - (a) **enforcement action** includes any action that may be taken by the Fines Enforcement and Recovery Officer in accordance with a determination under section 70I or a penalty enforcement order made under this Act as in force before the commencement of section 11 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*; and
 - (b) a debtor is **subject to a suppression order** if a suppression order forbidding publication of the debtor's name was made in the proceedings in which the pecuniary sum was imposed on the debtor and the order has not subsequently been revoked.
- (3) Unless the contrary intention appears, a reference in this Division to a pecuniary sum includes a reference to—
 - (a) the amount outstanding of such a sum or, if a number of pecuniary sums have been aggregated, the amount outstanding of the aggregated sums; and
 - (b) any fees, charges or other amounts which are, in accordance with this Division, added to and form part of such a sum.

61—Amounts due under expiation notices may be treated as part of pecuniary sum

- (1) Subject to this section, the Fines Enforcement and Recovery Officer may make a determination under this section (an **aggregation determination**) if a debtor who owes a pecuniary sum also has an amount due under an expiation notice (an **expiation amount**) and—
 - (a) the debtor has requested the making of the aggregation determination; or
 - (b) an enforcement determination has been made in relation to the expiation amount under the *Expiation of Offences Act 1996*.
- (2) If the debtor requests the making of the aggregation determination but no enforcement determination has been made under section 13 of the *Expiation of Offences Act 1996* in relation to the expiation amount, the Fines Enforcement and Recovery Officer may refuse to make a determination under this section unless the issuing authority pays the prescribed fee.
- (3) On the making of an aggregation determination—
 - (a) the expiation amount will be taken to be part of the pecuniary sum owed by the debtor; and
 - (b) subject to the regulations, the debtor will, for the purposes of an Act or law other than this Act or the *Expiation of Offences Act 1996*, be taken to have expiated the offence or offences to which the determination relates (unless the debtor is already taken to have expiated the offence in accordance with section 9(14) or section 13 of the *Expiation of Offences Act 1996*); and
 - (c) any enforcement determination under the *Expiation of Offences Act 1996* made in relation to the expiation amount is suspended.
- (4) For the purposes of section 69, an expiation fee that is subject to an aggregation determination is taken to be a pecuniary sum imposed by order of a court and the 28 day period referred to in section 66 is taken to have ended on the day on which the expiation period ended under the *Expiation of Offences Act 1996*.
- (5) The Fines Enforcement and Recovery Officer may revoke an aggregation determination at any time by notice in writing given to the debtor.
- (6) A revocation takes effect 7 days from (and including) the day on which the notice referred to in subsection (5) was given to the debtor.
- (7) On the revocation of an aggregation determination under subsection (5)—
 - (a) the remaining expiation amount must be determined by the Fines Enforcement and Recovery Officer, taking into account—
 - (i) any deductions that should be made on account of amounts that have been paid by or recovered from the debtor since the making of the determination; and
 - (ii) any additions that should be made on account of amounts that have accrued in accordance with section 69 since the making of the determination; and
 - (b) the remaining expiation amount so determined will no longer be taken to be part of the pecuniary sum; and

- (c) —
- (i) if an enforcement determination had been made under the *Expiation of Offences Act 1996* prior to the making of the aggregation determination—the enforcement determination comes back into force (and the *Expiation of Offences Act 1996* applies to the remaining expiation amount as if the aggregation determination had not been made); or
 - (ii) in any other case—the Fines Enforcement and Recovery Officer may make an enforcement determination in relation to the remaining expiation amount under section 13 of the *Expiation of Offences Act 1996* (and any procedural or other requirements relating to the making of such determinations will be taken to have been complied with).

62—Enforcement against youths

This Division applies to a debtor who is a youth (ie 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) but an additional power exists for the youth or the Fines Enforcement and Recovery Officer to apply, at any time, to the Youth Court for the making of a community service order in respect of the youth (as if Subdivision 5 applied in respect of the pecuniary sum).

63—Service of notices etc

- (1) A notice, determination or other document required or authorised to be given or served under this Division may be given or served personally or by post.
- (2) If—
 - (a) the Fines Enforcement and Recovery Officer is required under any provision of this Division to give to or serve on a debtor a notice, determination or other document; and
 - (b) the whereabouts of the debtor cannot, after reasonable enquiries, be ascertained,

the following provisions apply:

- (c) subject to paragraph (d), the Fines Enforcement and Recovery Officer must instead publish details of the notice, determination or other document on a website determined by the Fines Enforcement and Recovery Officer (and on publishing such details the Fines Enforcement and Recovery Officer will, for the purposes of this Division, be taken to have given the debtor, or served the debtor with, the notice, determination or document);
- (d) if the debtor is a youth, is subject to a suppression order or is a protected person, the requirement to give the debtor, or serve the debtor with, the notice, determination or other document does not apply but—
 - (i) the Fines Enforcement and Recovery Officer may cause details of the notice, determination or other document to be provided to the debtor by any other means reasonably available that do not involve public disclosure of the debtor's name; and

- (ii) on providing such details the Fines Enforcement and Recovery Officer will, for the purposes of this Division, be taken to have given the debtor, or served the debtor with, the notice, determination or document.

Subdivision 2—Fines Enforcement and Recovery Officer

64—Fines Enforcement and Recovery Officer

- (1) There is to be a *Fines Enforcement and Recovery Officer*.
- (2) The Fines Enforcement and Recovery Officer will be a person employed in the Public Service of the State.
- (3) The Fines Enforcement and Recovery Officer may, in addition to carrying out functions and exercising powers under this Act, carry out any other functions, or exercise any other powers, assigned to the Fines Enforcement and Recovery Officer by or under any other Act or law or by the Minister.
- (4) If the Fines Enforcement and Recovery Officer carries out functions under any Act on behalf of a public sector agency, Local Government agency or other person or body, the Fines Enforcement and Recovery Officer may charge the agency, person or body a fee of such amount as may be agreed between the Fines Enforcement and Recovery Officer and the agency, person or body.

65—Delegation

- (1) The Fines Enforcement and Recovery Officer may, by instrument in writing, delegate a power or function under this Act or any other Act—
 - (a) to a particular person or committee; or
 - (b) to the person for the time being performing particular duties or holding or acting in a particular position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - (c) is revocable at will.

65A—Annual report

- (1) The Chief Executive of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act must, not later than 31 October in each year, submit to the Minister a report on the work of the Fines Enforcement and Recovery Officer for the financial year ending on the preceding 30 June.
- (2) The report must include information prescribed by the regulations or required by the Minister.
- (3) The Minister must, as soon as practicable after receipt of a report submitted under this section, cause a copy of the report to be laid before each House of Parliament.

Subdivision 3—Payment of pecuniary sums

66—Pecuniary sum is payable within 28 days

Subject to any arrangement under section 70, 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.

67—Payment of pecuniary sum to Fines Enforcement and Recovery Officer

- (1) A pecuniary sum is payable as follows (despite the fact that the order is in favour of some person):
 - (a) to the Fines Enforcement and Recovery Officer; or
 - (b) to any agent appointed by the Fines Enforcement and Recovery Officer for the purpose.
- (2) On receipt of the whole or part of a pecuniary sum, the Fines Enforcement and Recovery Officer 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.

68—Payment by credit card etc

A pecuniary sum may be paid by using a credit card, charge card or debit card if facilities for their use are available in relation to the payment to be made.

69—Amounts unpaid or unrecovered for more than certain period

- (1) Subject to subsection (2), if any part of a pecuniary sum imposed by order of a court remains—
 - (a) unpaid by the debtor under this Subdivision; or
 - (b) unrecovered from the debtor under Subdivision 4,

on the expiration of the 28 day period referred to in section 66 an amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the pecuniary sum payable by the debtor.

- (2) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of the whole or any part of an amount payable by a debtor in accordance with this section.

70—Arrangements as to manner and time of payment

- (1) Subject to this section, a debtor who pays to the Fines Enforcement and Recovery Officer the prescribed fee—
 - (a) may, at any time during the 28 day period referred to in section 66, enter into an arrangement with the Fines Enforcement and Recovery Officer for payment of a pecuniary sum by instalments over a period determined by the Fines Enforcement and Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into); or
 - (b) if the Fines Enforcement and Recovery Officer agrees, may enter into some other kind of arrangement with the Fines Enforcement and Recovery Officer for payment of a pecuniary sum in accordance with subsection (3).
- (2) An arrangement for payment by instalments referred to in subsection (1)(a) must provide for instalments to be paid to the Fines Enforcement and Recovery Officer by direct debits by or through some other person or agency (eg deductions from an ADI account or wages).
- (3) Other kinds of arrangements under this section may consist of or include—
 - (a) payment by instalments (including instalments paid over a period exceeding 12 months);
 - (b) an extension of time to pay;
 - (c) the taking of a charge over land;
 - (d) the surrender of property to the Fines Enforcement and Recovery Officer;
 - (e) payment of any amount, including by direct credit, by or through some other person or agency (eg deductions from an ADI account or wages);
 - (f) any other form of arrangement agreed by the Fines Enforcement and Recovery Officer and the debtor.
- (4) If—
 - (a) a debtor has previously been subject to enforcement action under this Division (whether in relation to the same, or a different, pecuniary sum); or
 - (b) a debtor is an undischarged bankrupt or is subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; or
 - (c) a debtor is of a class prescribed by the regulations,the Fines Enforcement and Recovery Officer may—
 - (d) refuse to enter into an arrangement under this section, or a particular type of arrangement under this section, with the debtor; or
 - (e) require the debtor to provide an irrevocable authority to obtain (in accordance with any prescribed requirements) financial and contact information about the debtor from any Commonwealth, State or Local Government agency, any ADI or an employer of the debtor; or
 - (f) require the debtor to provide security or obtain guarantees (as the Fines Enforcement and Recovery Officer thinks fit).

- (5) An arrangement under this section may be varied by agreement between the debtor and the Fines Enforcement and Recovery Officer.
- (6) If an arrangement is entered into or varied under this section, the Fines Enforcement and Recovery Officer must give a copy of the arrangement or varied arrangement (as the case requires) to the debtor.
- (7) For the purposes of entering into, or varying, an arrangement, any number of pecuniary sums payable by the debtor may be aggregated.
- (8) If a debtor fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates.

70A—Minister may declare amnesty from payment of costs, fees and charges

- (1) The Minister may from time to time declare an amnesty from the payment of the whole or any part of 1 or more of the following:
 - (a) costs, fees and other charges under this Division;
 - (b) costs and fees under Part 9 Division 3 of the Act as in force immediately before the commencement of section 11 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.
- (2) An amnesty—
 - (a) must be declared by notice in the Gazette; and
 - (b) applies—
 - (i) in relation to a debtor, or a class of debtors; and
 - (ii) to the extent,
specified in the notice; and
 - (c) is subject to the terms and conditions (if any) set out in the notice.
- (3) The Minister may vary or revoke the declaration of an amnesty under subsection (1) by notice in the Gazette.

70B—Investigation of debtor's financial position

- (1) The Fines Enforcement and Recovery Officer may, at any time, investigate a debtor's means of satisfying a pecuniary sum and may give a written notice to a person requiring the person to produce to the Fines Enforcement and Recovery Officer, within a period stated in the notice, documents or other material relevant to the investigation.
- (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
Maximum penalty: \$10 000.

70C—Power to require information

- (1) If a public sector agency is in possession of a debtor's contact details, the agency must, on request from the Fines Enforcement and Recovery Officer, provide those details to the Fines Enforcement and Recovery Officer.
- (2) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

70D—Disclosure of information to prescribed interstate authority

The Fines Enforcement and Recovery Officer may disclose prescribed particulars of a debtor to a prescribed interstate authority.

70E—Power to require identification

- (1) An authorised officer may require a person who the officer has reasonable cause to suspect may be a debtor to produce evidence of the person's identity.
- (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$10 000.

70F—Publication of names of debtors who cannot be found

- (1) If the whereabouts of a debtor cannot, after reasonable enquiries, be ascertained, the Fines Enforcement and Recovery Officer may cause a notice to be published on a website determined by the Fines Enforcement and Recovery Officer, and in such other manner (if any) as he or she thinks fit, seeking information as to the debtor's whereabouts.
- (2) A notice under subsection (1)—
 - (a) must be in a form determined by the Fines Enforcement and Recovery Officer; 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 former addresses; and
 - (iii) date of birth.
- (3) However, a notice cannot be published under this section in relation to a debtor if the debtor is—
 - (a) a youth; or
 - (b) subject to a suppression order; or
 - (c) a protected person.

70G—Charge on land

- (1) The Fines Enforcement and Recovery Officer may, at any time, apply to the Registrar-General in the form determined by the Registrar-General to register a charge over land owned (whether solely or as a co-owner) by the debtor for the amount of the pecuniary sum outstanding from time to time.
- (2) On receipt of an application under subsection (1), the Registrar-General must enter an appropriate note in the Register Book and, when that entry is made, a charge is created over the land in favour of the Crown.
- (3) The effect of the charge is as follows:
 - (a) the Registrar-General must not, after entry of the note under subsection (2), register an instrument affecting the land over which the charge exists unless—

- (i) the instrument—
 - (A) was executed before the entry was made; or
 - (B) has been executed under or pursuant to an agreement entered into before the entry was made; or
 - (C) relates to an instrument registered before the entry was made; or
 - (ii) the instrument is an instrument of a prescribed class; or
 - (iii) the instrument is expressed to be subject to the operation of the charge; or
 - (iv) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made; and
- (b) the Fines Enforcement and Recovery Officer (on behalf of the Crown) has the same powers in respect of the land over which the charge exists as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.
- (4) An instrument registered under subsection (3)(a)(i) or (ii) has effect, in relation to the charge, as if it had been registered before the entry was made.
- (5) If an instrument is registered under subsection (3)(a)(iv), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must take whatever action the Registrar-General considers appropriate to give effect to the cancellation.
- (6) The Fines Enforcement and Recovery Officer will apply to the Registrar-General, in the form determined by the Registrar-General, to have the registration of a charge under this section cancelled—
- (a) on the pecuniary sum being fully satisfied; or
 - (b) if the Fines Enforcement and Recovery Officer considers, in the circumstances of the particular case, that it is just to do so,
- (and the Registrar-General must then cancel the relevant entry).
- (7) Any fees incurred in relation to registration (or cancellation of registration) under this section are added to and form part of the pecuniary sum.

70H—Reminder notice

- (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, the Fines Enforcement and Recovery Officer must cause a reminder notice to be given to the debtor.
- (2) A reminder notice must—
 - (a) be in a form determined by the Fines Enforcement and Recovery Officer; 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 pecuniary sum in respect of which the notice is issued.
- (4) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of a reminder notice fee.

70I—Enforcement actions

- (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 to the debtor in accordance with section 70H, paid the sum or entered into an arrangement under section 70 in respect of the sum; or
 - (b) an arrangement under section 70 has terminated,the Fines Enforcement and Recovery Officer may determine, at any time, in his or her absolute discretion, to do any of the following:
 - (c) enter into an arrangement, or further arrangement, with the debtor under section 70(1)(b);
 - (d) exercise any 1 or more of the powers under Subdivision 4 or Subdivision 5;
 - (e) waive payment of the pecuniary sum or any part of the pecuniary sum.
- (2) If the Fines Enforcement and Recovery Officer determines to waive payment of any part of a pecuniary sum that includes an amount of compensation, the Fines Enforcement and Recovery Officer must take reasonable action to notify the person to whom the compensation is payable and that person may then recover the amount of the compensation as a debt from the debtor.

Subdivision 4—Powers relating to enforcement action

70J—Aggregation of pecuniary sums for the purposes of enforcement

Any number of pecuniary sums owed by a debtor may be aggregated for the purposes of exercising powers under this Subdivision.

70K—Seizure and sale of assets

- (1) The Fines Enforcement and Recovery Officer may, by written determination, determine to sell the debtor's land or personal property to satisfy a pecuniary sum.
- (2) A determination under this section authorises the Fines Enforcement and Recovery Officer to—
 - (a) enter any land (using such force as may be necessary) on which the Fines Enforcement and Recovery Officer reasonably suspects personal property of the debtor is situated; and
 - (b) seize and remove any personal property found on land referred to in paragraph (a) that apparently belongs (wholly or partly) to the debtor; and
 - (c) affix clamps or any other locking device to any vehicle that is to be seized and removed from land referred to in paragraph (a) in order to secure the vehicle until it can be so seized and removed; 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 real or personal property owned (whether solely or as a co-owner) by the debtor.
- (3) However—
- (a) powers under this section may not be exercised in relation to personal property, or property of a class, prescribed by the regulations; and
 - (b) this section does not authorise the sale of land unless the amount of the pecuniary sum exceeds \$10 000; and
 - (c) any amount realised from the sale of the debtor's real or personal property in excess of the pecuniary sum owed by a debtor must be paid to the debtor by the Fines Enforcement and Recovery Officer.
- (4) The Fines Enforcement and Recovery Officer may exercise powers under this section in the absence of, and without prior notice to, the debtor.
- (5) When property is seized or removed from land, a copy of the written determination under this section and a notice listing the property seized—
- (a) must be given personally to the debtor or to any other person apparently in charge of the land 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.
- (6) The Fines Enforcement and Recovery Officer may, if he or she thinks fit, 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 the Fines Enforcement and Recovery 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 vehicle has been seized but left in the debtor's possession pending sale, the debtor must not, except with the written approval of the Fines Enforcement and Recovery 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 (of whole months only) not exceeding 6 months.
- (9) A person must not interfere in any way—
- (a) with any written determination attached by the Fines Enforcement and Recovery 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 this section cannot be sold until 14 days have elapsed from (and including) the day on which it was seized.
- (11) If—
- (a) the debtor or any other person claims that property seized under this section is not liable to seizure and sale under this section; or
 - (b) a person (other than the debtor) claims an interest in property seized under this section,
- the Court may, if satisfied, on application by the debtor or other person, of the validity of the claim—
- (c) exclude the property from the sale; or
 - (d) direct the application of the proceeds of the sale of the property in such manner as the Court considers just.
- (12) A sale of land or tangible property under this section is to be conducted in a manner determined by the Fines Enforcement and Recovery Officer.
- (13) If land is sold in pursuance of this section, an instrument of transfer or conveyance (as appropriate) signed by the Fines Enforcement and Recovery Officer will, on registration, operate to vest title to the land in the purchaser.
- (14) The title vested in a purchaser under subsection (13) will be free of—
- (a) all mortgages and charges; and
 - (b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.
- (15) An instrument of transfer or conveyance in pursuance of a sale under this section must, when lodged with the Registrar-General for registration, be accompanied by a statutory declaration made by the Fines Enforcement and Recovery Officer stating that the requirements of this section in relation to the sale of the land have been observed.
- (16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section (or other relevant instrument), the Registrar-General may register a transfer or conveyance despite the non-production of the duplicate (or instrument), but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.
- (17) Where any part of the debtor's property consists of intangible property, the Fines Enforcement and Recovery Officer may sign any transfer or do anything else necessary to convert that property into money as if the Fines Enforcement and Recovery Officer were the debtor.
- (18) If the proceeds from a sale of property under this section exceed the amount necessary to satisfy the pecuniary sum owed by the debtor, the amount remaining after deduction of the pecuniary sum from the proceeds must be returned to the debtor.

- (19) If the Fines Enforcement and Recovery Officer determines not to sell any personal property seized under this section, the property must be returned to the debtor or left at the land from which it was seized.

70L—Garnishment

- (1) The Fines Enforcement and Recovery Officer may, by written determination, provide 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 an ADI account),

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

- (2) A determination under this section may authorise the garnishee to retain from the money subject to the attachment a reasonable sum, fixed by the written determination, as compensation for the garnishee's expenses in complying with the determination.
- (3) The Fines Enforcement and Recovery Officer must cause a copy of a written determination under this section to be given to the debtor and the garnishee.
- (4) A garnishee must comply with a determination under this section.
Maximum penalty: \$10 000.
- (5) If the garnishee does not comply with a determination under this section, the garnishee becomes personally liable for payment to the Fines Enforcement and Recovery Officer of the amount subject to attachment.
- (6) If, because a determination 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
 - (c) alters the employee's position to the employee's prejudice,
- the employer is guilty of an offence.
Maximum penalty: \$10 000.
- (7) A reference in this section to a *third person* includes the Crown or any person or body holding money on behalf of the Crown.

70M—Suspension of driver's licence

- (1) The Fines Enforcement and Recovery Officer may, by written determination, suspend a debtor's driver's licence (and such a determination may be issued despite the fact that the debtor is currently disqualified from holding or obtaining a licence).
- (2) The Fines Enforcement and Recovery Officer must—
- (a) cause a copy of the written determination under subsection (1) to be given to the debtor; and
 - (b) notify the Registrar of Motor Vehicles of the determination.

- (3) A licence suspension under this section—
- (a) takes effect 14 days from (and including) the day on which the determination under subsection (1) was given to the debtor; and
 - (b) may be cancelled by the Fines Enforcement and Recovery Officer by written determination (provided that the Fines Enforcement and Recovery Officer must make such a written determination if all pecuniary sums owed by the debtor are paid in full).
- (4) If the Fines Enforcement and Recovery Officer makes a determination under subsection (3)(b)—
- (a) the Fines Enforcement and Recovery Officer must notify the Registrar of Motor Vehicles of the determination; and
 - (b) the licence suspension continues in operation until the Registrar of Motor Vehicles is so notified.

70N—Restriction on transacting business with Registrar of Motor Vehicles

- (1) The Fines Enforcement and Recovery Officer may, by written determination, impose a prohibition on the debtor transacting any business with the Registrar of Motor Vehicles.
- (2) The Fines Enforcement and Recovery Officer must—
- (a) cause a copy of the written determination under subsection (1) to be given to the debtor; and
 - (b) notify the Registrar of Motor Vehicles of the determination.
- (3) A prohibition under this section—
- (a) takes effect on the Registrar of Motor Vehicles being notified under subsection (2); and
 - (b) may be cancelled by the Fines Enforcement and Recovery Officer by written determination (provided that the Fines Enforcement and Recovery Officer must make such a written determination if all pecuniary sums owed by the debtor are paid in full).
- (4) If the Fines Enforcement and Recovery Officer makes a determination under subsection (3)(b)—
- (a) the Fines Enforcement and Recovery Officer must notify the Registrar of Motor Vehicles of the determination; and
 - (b) the prohibition continues in operation until the Registrar of Motor Vehicles is so notified.
- (5) The effect of a prohibition under this section is that, while the prohibition continues 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 prohibition took effect.
- (6) However, subsection (5) does not apply in relation to an application to transfer the registration of a vehicle of which the debtor is a registered owner—
- (a) to a person who is not a joint registered owner of the vehicle; or

- (b) to a person where the transfer has been ordered by a court.

700—Clamping or impounding of vehicle

- (1) The Fines Enforcement and Recovery Officer may, by written determination, determine to clamp or impound any vehicle that the debtor owns or is accustomed to drive, or that was used in the commission of an offence to which action under this Division relates, for a period specified in the determination or until the Fines Enforcement and Recovery Officer determines to end the clamping or impounding period under this section.
- (2) The Fines Enforcement and Recovery Officer must cause a copy of the written determination to clamp or impound a vehicle to be given to the debtor and to each registered owner of the vehicle.
- (3) A determination under this section authorises the Fines Enforcement and Recovery Officer—
 - (a) to clamp a vehicle referred to in subsection (1); or
 - (b) to seize such a vehicle for the purpose of clamping or impounding it.
- (4) If a determination has been made under this section in relation to a vehicle, the Fines Enforcement and Recovery Officer may do anything reasonably necessary for the purposes of carrying out functions under this section, including exercising any of the following powers in relation to the vehicle:
 - (a) giving an owner of the vehicle written notice in the prescribed form requiring the owner to produce the vehicle at a time and place specified in the notice;
 - (b) entering any place, including a public place, (using such force as may be necessary) at which the Fines Enforcement and Recovery Officer reasonably suspects the vehicle is situated and breaking into or opening any garage or other structure in which the vehicle can be seen to be stored at the place;
 - (c) requiring a person to stop the vehicle;
 - (d) causing a locking device or other feature of the vehicle to be removed, dismantled or neutralised;
 - (e) requiring a person to surrender the keys to the vehicle, or starting the vehicle by other means;
 - (f) temporarily affixing clamps or any other locking device to the vehicle on a public road or in any other place in order to secure the vehicle until it can be seized and moved;
 - (g) moving the vehicle to a place determined by the Fines Enforcement and Recovery Officer and clamping or impounding the vehicle at that place (and, if the Fines Enforcement and Recovery Officer so determines, subsequently moving the vehicle to, and clamping or impounding the vehicle at, some other place);
 - (h) driving, towing or pushing the vehicle, or moving the vehicle in any other manner.

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- (5) A person must not, without reasonable excuse (proof of which lies on the person), refuse or fail to comply with a notice or requirement under subsection (4).
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (6) The Fines Enforcement and Recovery Officer—
- (a) must determine to end the clamping or impounding period if all pecuniary sums owed by the debtor are paid in full; and
 - (b) may determine to end the clamping or impounding period at any other time in his or her absolute discretion.
- (7) At the end of the clamping or impounding period, the Fines Enforcement and Recovery Officer may—
- (a) remove the clamps; or
 - (b) release the vehicle, including to a person who applies for release of the vehicle and satisfies the Fines Enforcement and Recovery Officer that he or she is entitled to custody of the vehicle.
- (8) However, the Fines Enforcement and Recovery Officer is not obliged to remove clamps from a vehicle or release a vehicle—
- (a) outside of ordinary business hours; or
 - (b) if the Fines Enforcement and Recovery Officer believes that the removal or release would result in the vehicle being left in the custody of a person not entitled to custody of the vehicle.
- (9) The Fines Enforcement and Recovery Officer may ask a person questions for the purpose of carrying out functions under this section, including questions for the purpose of determining whether a particular vehicle is liable to be clamped or impounded under this section and questions for the purpose of determining whether a person who applies for release of a vehicle is entitled to custody of the vehicle.
- (10) A person who—
- (a) refuses or fails, without reasonable excuse, to answer a question under subsection (9); or
 - (b) in response to a question under subsection (9) gives an answer that is false or misleading in a material particular,
- is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.

70P—Power to dispose of uncollected seized vehicles

- (1) Despite this or any other law, if no person who is entitled to custody of a vehicle that has been seized and clamped or impounded under section 70O applies to the Fines Enforcement and Recovery Officer for release of the vehicle within 28 days of the vehicle ceasing to be liable to be so clamped or impounded, the Fines Enforcement and Recovery Officer may, subject to this section, dispose of the vehicle.
- (2) A vehicle must not be disposed of under subsection (1) unless, not less than 14 days before the disposal, notice of the disposal—
- (a) was sent by post to—

- (i) in the case of a registered vehicle—the registered address of each registered owner of the vehicle; or
 - (ii) in any other case—the address of any owner of the vehicle of which the Fines Enforcement and Recovery Officer is aware; and
 - (b) was given to each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the vehicle is collateral; and
 - (c) was published on a website determined by the Fines Enforcement and Recovery Officer.
- (3) Subject to subsection (4), a disposal of a vehicle under this section is to be by sale by public auction or public tender.
- (4) A vehicle may be disposed of under this section otherwise than by sale if—
- (a) the Fines Enforcement and Recovery Officer believes on reasonable grounds that the vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of the sale; or
 - (b) the vehicle has been offered for sale and was not sold.
- (5) Subject to subsection (6), the proceeds of the sale of a vehicle under this section must be dealt with as follows:
- (a) if the debtor is the owner of the vehicle—the proceeds must be applied towards satisfaction of the pecuniary sum owed and any remaining amount must be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found;
 - (b) in any other case—the proceeds must be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found.
- (6) If, before the disposal of a vehicle under this section, a person (other than the debtor) claims an interest in a vehicle that has been seized and clamped or impounded under section 700 the Court may, if satisfied, on application by the person, of the validity of the claim direct—
- (a) that the vehicle be released into the custody of the person; or
 - (b) the application of the proceeds of the sale of the vehicle in such manner as the Court considers just.
- (7) Despite any other Act or law, if a vehicle is sold or otherwise disposed of under this section—
- (a) any interests in the vehicle existing prior to the sale or disposal are extinguished; and
 - (b) any purchaser of the vehicle, or of any part of the vehicle, acquires a good title.

70Q—Publication of names of debtors subject to enforcement action

- (1) The Fines Enforcement and Recovery Officer may cause a notice to be published on a website determined by the Fines Enforcement and Recovery Officer, and in such other manner (if any) as he or she thinks fit, identifying a debtor who is subject to enforcement action under this Division and specifying the amount of the pecuniary sum that is payable at the date of the notice.
- (2) A notice under subsection (1)—
 - (a) must be in a form determined by the Fines Enforcement and Recovery Officer; and
 - (b) must not include any identifying information relating to the debtor other than the debtor's—
 - (i) actual name and any assumed name; and
 - (ii) date of birth.
- (3) However, a notice cannot be published under this section in relation to a debtor if the debtor is—
 - (a) a youth; or
 - (b) subject to a suppression order; or
 - (c) a protected person.
- (4) The Fines Enforcement and Recovery Officer must remove a notice published under subsection (1) from the website as soon as is reasonably practicable after the debtor has paid in full the pecuniary sum to which the notice relates.

70R—Costs

Any costs incurred by the Fines Enforcement and Recovery Officer in relation to the exercise of powers and functions under this Subdivision are added to and form part of the pecuniary sum owed by the debtor.

70S—Liability

- (1) No civil liability is incurred by the Crown, the Fines Enforcement and Recovery Officer or a public sector employee (within the meaning of the *Public Sector Act 2009*) in respect of the exercise, or purported exercise, of powers or functions under this Subdivision.
- (2) A person—
 - (a) to whom powers or functions under this Subdivision are delegated by the Fines Enforcement and Recovery Officer; and
 - (b) who is not a public sector employee within the meaning of the *Public Sector Act 2009*,

does not incur any civil liability in respect of the exercise, or purported exercise, in good faith of those powers or functions.

70T—Fines Enforcement and Recovery Officer may be assisted by others

The Fines Enforcement and Recovery Officer or an authorised officer may, in the exercise of any powers or functions under this Subdivision, be assisted by such other persons (including a member of the police force) as the Fines Enforcement and Recovery Officer or authorised officer considers necessary in the circumstances.

Subdivision 5—Failure of enforcement process

70U—Community service orders

- (1) The Court may, on application by the Fines Enforcement and Recovery Officer, make a community service order in relation to a debtor, if the Court is satisfied that the debtor 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.
- (2) If a community service order is made by the Court under this section, the following provisions apply:
 - (a) the number of hours of community service to be performed by the debtor is—
 - (i) if the pecuniary sum is equal to or less than the prescribed unit—7.5 hours; or
 - (ii) if the pecuniary sum exceeds the prescribed unit—7.5 hours for each prescribed unit of the pecuniary sum and for any fraction left after dividing the sum by that unit, up to a maximum of 500 hours;
 - (b) the debtor must not, during the period for which the order applies, leave the State for any reason except in accordance with the written permission of the Fines Enforcement and Recovery Officer.
- (3) The Fines Enforcement and Recovery Officer must give the debtor a notice specifying—
 - (a) the number of hours of community service to be performed in accordance with subsection (2)(a); and
 - (b) the requirement set out in subsection (2)(b); and
 - (c) any other matter prescribed by regulation.
- (4) The requirements specified in subsection (2) apply and are enforceable as if they were terms of the order under subsection (1).
- (5) Subject to this section, Part 6 applies to an order for community service under this section as if it were a sentence of community service.
- (6) Section 47(1)(a) and (b) do not apply to an order for community service under this section.
- (7) Part 6 of the *Young Offenders Act 1993* applies, with necessary modifications, in relation to an order under this section made in relation to a youth as if it were an order for community service under that Act.
- (8) The pecuniary sum to which a community service order relates is reduced by 1 prescribed unit for each 7.5 hours of community service performed under the order.

- (9) 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.
- (10) However, if the Court, on application by the Fines Enforcement and Recovery Officer at any time, is satisfied that a person subject to a community service order under this section 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) order the restoration of the pecuniary sum in respect of which the community service order was made (and for the purposes of taking enforcement action against the person, the pecuniary sum so restored is to be treated as having been imposed on the day on which the Court makes an order under this paragraph).
- (11) In restoring a pecuniary sum under subsection (10), the Court must take into account the number of hours of community service (if any) that the person performed under the revoked community service order.

Division 4—Enforcement of community service orders and other orders of a non-pecuniary nature

71—Community service orders may be enforced by imprisonment

- (1) Subject to this section, an order 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 7.5 hours of community service remaining to be performed under the order; or
 - (b) the prescribed period,whichever is the lesser.
- (3) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring performance of community service, the court may—
 - (a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why a warrant of commitment should not be issued against the person for the default; or
 - (b) issue a warrant for the person's arrest.
- (4) If a person fails to appear before the court as required by a notice issued under subsection (3), the court may issue a warrant for the person's arrest.
- (5) If the court is satisfied that the person has failed to comply with the order requiring performance of community service—
 - (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 who has failed to comply with the order requiring performance of community service 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.
- (10) In this section—
- prescribed period* means—
- (a) in relation to an order made under section 70U—12 months;
 - (b) in any other case—6 months.

71A—Other non-pecuniary orders may be enforced by imprisonment

- (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.

71AB—Registrar may exercise jurisdiction under this Division

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

71B—Detention in prison

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.

Part 10—Miscellaneous

72—Identification of authorised officers

- (1) An authorised officer must be issued with an identity card in a form approved by the Minister—
 - (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.
- (4) A person appointed as an authorised officer by the Minister must, within 2 days after ceasing to be an authorised officer, return his or her identity card to the Minister.
Maximum penalty: \$250.

72A—Hindering authorised officer or assistant

- (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 appointed by the Administrator 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.

72C—Power of delegation—intervention program manager

- (1) An intervention program manager may, by instrument in writing, delegate a power or function under this Act—
 - (a) to a particular person; or
 - (b) to the person for the time being occupying a particular position.
- (2) A power or function so delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act in a matter; and
 - (c) is revocable at will.

73—Abolition of hard labour¹

- (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*.

Note—

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

74—Evidentiary

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.

75—Regulations

- (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 or any other matter relating to the functions of authorised officers;
 - (c) prescribe, or provide for the calculation of, costs, fees or charges for the purposes of this Act;
 - (d) exempt any person or class of persons from the obligation to pay any costs, fees or charges so prescribed;
 - (e) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.
- (3) The regulations may—
 - (a) be of general or limited application; and
 - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, an authorised officer or another prescribed person.
- (4) The regulations may make provisions of a savings or transitional nature consequent on the commencement of any provisions of this Act (including provisions of a transitional nature modifying any provisions of this Act).

Schedule 1—Review of reduction of sentences

1—Inquiry into and report on operation of reduction of sentence scheme

- (1) The Minister must, at the end of 2 years from the commencement of this clause, appoint a person recommended by the Chief Justice of the Supreme Court, to conduct an inquiry into—
 - (a) the operation of Part 2 Division 2 of this Act as amended by the *Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012* and the *Criminal Law (Sentencing) (Supergrass) Amendment Act 2012*; and
 - (b) report on the effect (if any) that the operation of that Division as so amended has had on—
 - (i) providing transparency in respect of sentences given to offenders; and
 - (ii) improving the operation and effectiveness of the criminal justice system.
- (2) A report on the inquiry must be provided to the Minister who must cause a copy of the report to be laid before each House of Parliament within 3 months after receipt of the report.
- (3) Nothing in this clause requires a person conducting an inquiry to disclose information in the report that identifies, or could tend to identify, a person if, in the opinion of the person conducting the inquiry, disclosure of the information would put at risk the safety of any person or would otherwise not be in the public interest.

Schedule 2—Reconsideration of authorisations to release on licence under section 24

1—Reconsideration of authorisations to release on licence under section 24

- (1) This clause applies to a person subject to an order for detention under section 23 who, before the commencement of this clause, has been authorised by the Supreme Court under section 24 to be released on licence.
- (2) After the commencement of this clause, the Supreme Court may, on application by the Director of Public Prosecutions—
 - (a) cancel the release on licence of a person to whom this clause applies; or
 - (b) confirm the release on licence of a person to whom this clause applies.
- (3) For the purposes of proceedings under this clause, the Director of Public Prosecutions may apply to a justice for a warrant for the apprehension and detention of the person pending determination of the proceedings.
- (4) A justice must, on application under subclause (3), issue a warrant for the apprehension and detention of a person unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.

- (5) The Supreme Court must, before determining an application under this clause, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
- (6) The paramount consideration of the Supreme Court when determining an application under this clause must be the safety of the community.
- (7) The Supreme Court must also take the following matters into consideration when determining an application under this clause:
- (a) the reports of the medical practitioners (as directed and nominated under subclause (5)) furnished to the Court;
 - (b) any relevant evidence or representations that the person the subject of the proceedings may desire to put to the Court;
 - (c) a report furnished to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
 - (i) any opinion of the appropriate board on the effect that the release on licence of the person has had, or would have, on the safety of the community; and
 - (ii) —
 - (A) if the person has been released on licence—a report as to the current circumstances of the person; or
 - (B) if the person has not yet been released on licence—a report as to the probable circumstances of the person if the person is so released; and
 - (iii) the recommendation of the appropriate board about whether the person is suitable for release on licence;
 - (d) evidence tendered to the Court of the estimated costs directly related to the release of the person the subject of the proceedings;
 - (e) any other report required by the Court under section 25;
 - (f) any other matter that the Court thinks relevant.
- (8) A copy of any report furnished to the Supreme Court under subclause (7) must be given to each party to the proceedings or to counsel for those parties.
- (9) For the purposes of this clause—
- appropriate board**, in relation to proceedings under this clause, 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.

Legislative history

Notes

- This version is comprised of the following:

Part 1	3.2.2014
Part 2	11.12.2014
Part 3	24.11.2013
Part 4	1.1.2003 (Reprint No 25)
Part 5	2.11.2014
Part 6	3.2.2014
Part 7	5.9.2004
Part 9	2.11.2014
Part 10	3.2.2014
Schedules	12.12.2013
- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1988	50	<i>Criminal Law (Sentencing) Act 1988</i>	5.5.1988	12.5.1988 (<i>Gazette 12.5.1988 p1180</i>) except ss 4—20 & 30—75—1.1.1989 (<i>Gazette 15.12.1988 p2009</i>)
1988	76	<i>Criminal Law (Sentencing) Act Amendment Act 1988</i>	1.12.1988	1.12.1988
1989	47	<i>Criminal Law (Sentencing) Act Amendment Act 1989</i>	31.8.1989	31.8.1989
1990	27	<i>Statutes Amendment (Victims of Crime) Act 1990</i>	26.4.1990	1.9.1990 (<i>Gazette 16.8.1990 p582</i>)
1991	22	<i>Statutes Amendment (Criminal Law Sentencing) Act 1991</i>	18.4.1991	30.5.1991 (<i>Gazette 30.5.1991 p1702</i>)
1991	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1991</i>	24.4.1991	6.6.1991 (<i>Gazette 6.6.1991 p1776</i>)
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 (<i>Gazette 25.6.1992 p1869</i>)

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1991	69	<i>Statutes Repeal and Amendment (Courts) Act 1991</i>	12.12.1991	6.7.1992 (<i>Gazette</i> 2.7.1992 p209)
1992	34	<i>Statutes Amendment (Sentencing) Act 1992</i>	21.5.1992	30.9.1992 (<i>Gazette</i> 24.9.1992 p1150)
1992	73	<i>Criminal Law (Sentencing) (Suspension of Vehicle Registration) Amendment Act 1992</i>	19.11.1992	1.7.1993 (<i>Gazette</i> 1.7.1993 p198)
1993	33	<i>Criminal Law (Sentencing) (Education Programmes) Amendment Act 1993</i>	13.5.1993	1.7.1994 (<i>Gazette</i> 9.6.1994 p1668)
1993	94	<i>Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993</i>	4.11.1993	1.1.1994 (<i>Gazette</i> 4.11.1993 p2177)
1994	21	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1994</i>	26.5.1994	7.7.1994 (<i>Gazette</i> 7.7.1994 p4)
1994	22	<i>Domestic Violence Act 1994</i>	26.5.1994	1.8.1994 (<i>Gazette</i> 14.7.1994 p68)
1994	35	<i>Statutes Amendment (Truth in Sentencing) Act 1994</i>	2.6.1994	1.8.1994 (<i>Gazette</i> 14.7.1994 p69)
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 (<i>Gazette</i> 8.12.1994 p1942)
1995	69	<i>Criminal Law (Sentencing) (Miscellaneous) Amendment Act 1995</i>	2.11.1995	18.12.1995 (<i>Gazette</i> 14.12.1995 p1640) except ss 10 & 11—2.11.1997 (s 7(5) <i>Acts Interpretation Act 1915</i>)
1996	68	<i>Statutes Amendment (Sentencing of Young Offenders) Act 1996</i>	15.8.1996	8.10.1996 (<i>Gazette</i> 29.8.1996 p810)
1997	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1997</i>	31.7.1997	Pt 2 (s 4)—14.9.1997 (<i>Gazette</i> 11.9.1997 p704)
1998	41	<i>Statutes Amendment (Young Offenders) Act 1998</i>	13.8.1998	Pt 2 (ss 4—8)—1.10.1998 (<i>Gazette</i> 10.9.1998 p815)
1998	48	<i>Criminal Law (Sentencing) (Victim Impact Statements) Amendment Act 1998</i>	3.9.1998	6.4.1999 (<i>Gazette</i> 1.4.1999 p1514)
1998	60	<i>Statutes Amendment (Fine Enforcement) Act 1998 as amended by 42/1999</i>	3.9.1998	Pt 5 (ss 11—30)—6.3.2000 (<i>Gazette</i> 18.11.1999 p2358)
1999	13	<i>Statutes Amendment (Sentencing—Miscellaneous) Act 1999</i>	18.3.1999	Pt 3 (ss 6—14)—16.5.1999 (<i>Gazette</i> 13.5.1999 p2502)
1999	24	<i>Statutes Amendment (Restraining Orders) Act 1999</i>	1.4.1999	Pt 2 (s 4)—16.5.1999 (<i>Gazette</i> 13.5.1999 p2502)
1999	42	<i>Statutes Amendment and Repeal (Justice Portfolio) Act 1999</i>	5.8.1999	Pt 7 (ss 34—45) and Pt 10 (ss 52 & 53)—3.10.1999 (<i>Gazette</i> 23.9.1999 p1208)
1999	79	<i>Criminal Law (Sentencing) (Sentencing Principles) Amendment Act 1999</i>	2.12.1999	25.12.1999 (<i>Gazette</i> 23.12.1999 p3668)
2000	18	<i>Statutes Amendment (Warrants of Apprehension) Act 2000</i>	1.6.2000	Pt 3 (s 5)—1.7.2000 (<i>Gazette</i> 15.6.2000 p3131)

2000	57	<i>Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000</i>	20.7.2000	Pt 8 (ss 18—21)—14.8.2000 (<i>Gazette 10.8.2000 p444</i>); except s 22—31.3.2001 (<i>Gazette 16.2.2001 p705</i>)
2001	10	<i>Legal Assistance (Restrained Property) Amendment Act 2001</i>	12.4.2001	s 4—30.12.2001 (<i>Gazette 13.12.2001 p5352</i>)
2001	37	<i>Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001</i>	3.8.2001	3.8.2001
2001	58	<i>Victims of Crime Act 2001</i>	15.11.2001	Sch 2 (cl 3)—1.1.2003 (<i>Gazette 19.12.2002 p4736</i>)
2002	24	<i>Statutes Amendment (Bushfires) Act 2002</i>	31.10.2002	Pt 3 (s 5)—31.10.2002 (<i>Gazette 31.10.2002 p3979</i>)
2002	26	<i>Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002</i>	31.10.2002	Sch 3 (cl 2)—5.7.2003 (<i>Gazette 15.5.2003 p1979</i>)
2002	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i>	28.11.2002	Pt 4 (s 6)—3.3.2003 (<i>Gazette 27.2.2003 p807</i>)
2003	23	<i>Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003</i>	24.7.2003	27.7.2003 (<i>Gazette 24.7.2003 p3104</i>)
2003	29	<i>Criminal Law (Sentencing) (Sentencing Guidelines) Amendment Act 2003</i>	24.7.2003	27.7.2003 (<i>Gazette 24.7.2003 p3103</i>)
2003	60	<i>Criminal Law Consolidation (Identity Theft) Amendment Act 2003</i>	11.12.2003	Sch 1 (cl 2)—5.9.2004 (<i>Gazette 2.9.2004 p3544</i>)
2005	31	<i>Statutes Amendment (Sentencing of Sex Offenders) Act 2005</i>	14.7.2005	Pt 2 (ss 4—9)—11.8.2005 (<i>Gazette 11.8.2005 p3011</i>)
2005	49	<i>Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005</i>	27.10.2005	Pt 3 (ss 6—11) and Sch 1—19.12.2005 (<i>Gazette 15.12.2005 p4326</i>)
2005	62	<i>Statutes Amendment and Repeal (Aggravated Offences) Act 2005</i>	1.12.2005	Pt 3 (s 25)—15.5.2006 (<i>Gazette 20.4.2006 p1127</i>)
2005	80	<i>Controlled Substances (Serious Drug Offences) Amendment Act 2005</i>	8.12.2005	Sch 1 (cll 4 & 6)—3.12.2007 (<i>Gazette 22.11.2007 p4294</i>)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 23 (s 102)—4.9.2006 (<i>Gazette 17.8.2006 p2831</i>)
2006	32	<i>Child Sex Offenders Registration Act 2006</i>	30.11.2006	Sch 3 (cl 2)—18.10.2007 (<i>Gazette 18.10.2007 p3969</i>)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 24 (s 70)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)
2007	27	<i>Criminal Law (Sentencing) (Dangerous Offenders) Amendment Act 2007</i>	2.8.2007	1.11.2007 (<i>Gazette 1.11.2007 p4143</i>)
2007	47	<i>Victims of Crime (Commissioner for Victims' Rights) Amendment Act 2007</i>	8.11.2007	Sch 1 (cl 1)—17.7.2008 (<i>Gazette 17.7.2008 p3373</i>)
2007	57	<i>Statutes Amendment (Young Offenders) Act 2007</i>	29.11.2007	Pt 3 (s 5)—3.2.2008 (<i>Gazette 31.1.2008 p349</i>)
2008	10	<i>Criminal Law Consolidation (Rape and Sexual Offences) Amendment Act 2008</i>	17.4.2008	Sch 1 (cll 3 & 4)—23.11.2008 (<i>Gazette 20.11.2008 p5171</i>)

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2009	52	<i>Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009</i>	5.11.2009	Pt 3 (ss 5—11) and Pt 5 (s 24)—27.6.2010 (<i>Gazette 17.6.2010 p3077</i>)
2009	78	<i>Statutes Amendment (Children's Protection) Act 2009</i>	10.12.2009	Pt 3 (s 7)—1.8.2010 (<i>Gazette 17.6.2010 p3077</i>)
2009	79	<i>Statutes Amendment (Victims of Crime) Act 2009</i>	10.12.2009	Pt 2 (ss 4—13 & 15)—19.9.2010 (<i>Gazette 16.9.2010 p4868</i>); s 14—10.12.2011 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 42 (ss 81—83)—1.2.2010 (<i>Gazette 28.1.2010 p320</i>)
2009	85	<i>Intervention Orders (Prevention of Abuse) Act 2009</i>	10.12.2009	Sch 1 (cl 6)—9.12.2011 (<i>Gazette 20.10.2011 p4269</i>)
2011	1	<i>Criminal Law (Sentencing) (Sentencing Powers of Magistrates Court) Amendment Act 2011</i>	17.2.2011	14.7.2011 (<i>Gazette 14.7.2011 p3049</i>)
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 5 (ss 26 & 27)—17.6.2012 (<i>Gazette 14.6.2012 p2756</i>)
2012	17	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2012</i>	24.5.2012	Pt 3 (ss 5—12)—5.8.2012 (<i>Gazette 2.8.2012 p3302</i>)
2012	33	<i>Statutes Amendment (Serious Firearm Offences) Act 2012</i>	27.9.2012	Pt 4 (ss 14—23)—4.3.2013 (<i>Gazette 21.2.2013 p485</i>)
2012	40	<i>Work Health and Safety Act 2012</i>	15.11.2012	Sch 6 (cl 2)—1.1.2013: s 2
2012	43	<i>Statutes Amendment (Courts Efficiency Reforms) Act 2012</i>	22.11.2012	Pt 5 (ss 13—17)—1.7.2013 (<i>Gazette 16.5.2013 p1541</i>)
2012	49	<i>Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012</i>	6.12.2012	11.3.2013 (<i>Gazette 7.3.2013 p759</i>)
2012	51	<i>Criminal Law (Sentencing) (Supergrass) Amendment Act 2012</i>	6.12.2012	11.3.2013 (<i>Gazette 7.3.2013 p759</i>)
2013	11	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2013</i>	18.4.2013	Pt 4 (ss 6 & 7)—9.6.2013 (<i>Gazette 6.6.2013 p2498</i>)
2013	31	<i>Statutes Amendment (Fines Enforcement and Recovery) Act 2013</i>	1.8.2013	Pt 4 (ss 6—16)—3.2.2014 (<i>Gazette 30.1.2014 p422</i>)
2013	47	<i>Statutes Amendment (Attorney-General's Portfolio No 2) Act 2013</i>	24.10.2013	Pt 3 (s 5)—17.5.2014 (<i>Gazette 8.5.2014 p1630</i>)
2013	53	<i>Criminal Law (Sentencing) (Suspended Sentences) Amendment Act 2013</i>	7.11.2013	24.11.2013 (<i>Gazette 21.11.2013 p4276</i>)
2013	61	<i>Statutes Amendment (Young Offenders) Act 2013</i>	14.11.2013	Pt 3 (s 6)—14.11.2013
2013	77	<i>Criminal Law (Sentencing) (Sentences of Indeterminate Duration) Amendment Act 2013</i>	5.12.2013	12.12.2013 (<i>Gazette 12.12.2013 p4630</i>)
2013	78	<i>Statutes Amendment (Electronic Monitoring) Act 2013</i>	5.12.2013	Pt 4 (s 9)—uncommenced
2014	5	<i>Criminal Law (Sentencing) (Character Evidence) Amendment Act 2014</i>	10.7.2014	3.8.2014 (<i>Gazette 31.7.2014 p3711</i>)

2014	10	<i>Criminal Law (Sentencing) (Suspended Sentences) Amendment Act 2014</i>	2.10.2014	2.11.2014 (<i>Gazette 30.10.2014 p6217</i>)
2014	25	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2014</i>	11.12.2014	Pt 5 (s 11)—11.12.2014 (<i>Gazette 11.12.2014 p6687</i>)
2015	14	<i>Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015</i>	9.7.2015	Sch 1 (cll 2 & 3)—1.12.2015 (<i>Gazette 19.11.2015 p4975</i>)
2015	40	<i>Statutes Amendment (Firearms Offences) Act 2015</i>	26.11.2015	Pt 3 (s 5)—uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>deleted by 69/1995 s 12 (Sch)</i>	<i>18.12.1995</i>
<i>s 3</i>		
<i>s 3(1)</i>		
<i>appropriate officer</i>	<i>substituted by 34/1992 s 4(a)</i>	<i>30.9.1992</i>
	<i>substituted by 94/1993 s 7(a)</i>	<i>1.1.1994</i>
	<i>deleted by 60/1998 s 11(a)</i>	<i>6.3.2000</i>
the Administrator	inserted by 60/1998 s 11(a)	6.3.2000
authorised officer	inserted by 60/1998 s 11(a)	6.3.2000
	amended by 31/2013 s 6(1), (2)	3.2.2014
case manager	inserted by 49/2005 s 6(1)	19.12.2005
<i>the CEO</i>	<i>inserted by 69/1995 s 12 (Sch)</i>	<i>18.12.1995</i>
	<i>deleted by 84/2009 s 81</i>	<i>1.2.2010</i>
CEO	inserted by 84/2009 s 81	1.2.2010
<i>CIC levy</i>	<i>inserted by 60/1998 s 11(b)</i>	<i>6.3.2000</i>
	<i>deleted by 58/2001 Sch 2 cl 3(a)</i>	<i>1.1.2003</i>
community corrections officer	inserted by 42/1999 s 34(a)	3.10.1999
	substituted by 84/2009 s 81	1.2.2010
<i>community service officer</i>	<i>amended by 69/1995 s 12 (Sch)</i>	<i>18.12.1995</i>
	<i>deleted by 42/1999 s 34(a)</i>	<i>3.10.1999</i>
conditional release	inserted by 57/2000 s 18(a)	14.8.2000
court	substituted by 34/1992 s 4(b)	30.9.1992
	amended by 94/1993 s 7(b)	1.1.1994
debtor	inserted by 31/2013 s 6(3)	3.2.2014
<i>the Director</i>	<i>deleted by 69/1995 s 12 (Sch)</i>	<i>18.12.1995</i>
ERD Court	inserted by 69/1995 s 12 (Sch)	18.12.1995

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Fines Enforcement and Recovery Officer	inserted by 31/2013 s 6(4)	3.2.2014
<i>goods</i>	<i>deleted by 60/1998 s 11(c)</i>	6.3.2000
home	inserted by 79/1999 s 3(a)	25.12.1999
intruder	inserted by 79/1999 s 3(b)	25.12.1999
intervention program	inserted by 49/2005 s 6(2)	19.12.2005
intervention program manager	inserted by 49/2005 s 6(2)	19.12.2005
<i>the Manager, Penalty Management or the Manager</i>	<i>inserted by 60/1998 s 11(d)</i>	6.3.2000
	<i>deleted by 31/2013 s 6(5)</i>	3.2.2014
Minister for Correctional Services	inserted by 11/2013 s 6	9.6.2013
Minister for Family and Community Services	inserted by 11/2013 s 6	9.6.2013
pecuniary sum	amended by 60/1998 s 11(e)	6.3.2000
	amended by 58/2001 Sch 2 cl 3(b)	1.1.2003
<i>prescribed unit</i>	<i>amended by 68/1996 s 5(a)</i>	8.10.1996
	<i>deleted by 60/1998 s 11(f)</i>	6.3.2000
<i>probation officer</i>	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>deleted by 42/1999 s 34(b)</i>	3.10.1999
probative court	amended by 34/1992 s 4(c)	30.9.1992
	substituted by 69/1995 s 12 (Sch)	18.12.1995
	substituted by 68/1996 s 5(b)	8.10.1996
sale	inserted by 57/2000 s 18(b)	14.8.2000
sentence	amended by 27/2007 s 4	1.11.2007
VIC levy	inserted by 58/2001 Sch 2 cl 3(c)	1.1.2003
youth	inserted by 94/1993 s 7(c)	1.1.1994
Youth Court	inserted by 94/1993 s 7(c)	1.1.1994
s 3(3)	amended by 58/2001 Sch 2 cl 3(d)	1.1.2003
s 3A	inserted by 68/1996 s 6	8.10.1996
s 3A(3)	amended by 42/1999 s 35	3.10.1999
	amended by 84/2009 s 82	1.2.2010
Pt 2		
Pt 2 Div 1		
s 6	amended by 79/2009 s 4	19.9.2010
s 7		
s 7(2a)	inserted by 79/2009 s 5	19.9.2010
s 7A	inserted by 48/1998 s 3	6.4.1999
s 7A(1)	amended by 79/2009 s 6(1), (2)	19.9.2010

s 7A(2)	<i>deleted by 79/2009 s 6(3)</i>	19.9.2010
s 7A(3)	amended by 79/2009 s 6(4)	19.9.2010
s 7A(3a)	inserted by 37/2001 s 2	3.8.2001
	substituted by 79/2009 s 6(5)	19.9.2010
s 7A(3b) and (3c)	inserted by 79/2009 s 6(5)	19.9.2010
s 7A(5)	inserted by 79/2009 s 6(6)	19.9.2010
ss 7B and 7C	inserted by 79/2009 s 7	19.9.2010
s 9		
s 9(1)	amended by 47/1989 s 2	31.8.1989
	(c) deleted by 35/1994 s 17	1.8.1994
	substituted by 49/2012 s 4	11.3.2013
s 9(1a)	inserted by 49/2012 s 4	11.3.2013
s 9A	inserted by 21/1994 s 4	7.7.1994
s 9A(1)	substituted by 43/2012 s 13(1)	1.7.2013
s 9A(2)	amended by 43/2012 s 13(2)	1.7.2013
s 9B	inserted by 37/2001 s 3	3.8.2001
s 9C	inserted by 49/2005 s 7	19.12.2005
s 9C(5)		
close personal relationship	inserted by 43/2006 s 70(1)	1.6.2007
domestic partner	inserted by 43/2006 s 70(1)	1.6.2007
family	amended by 43/2006 s 70(2)	1.6.2007
spouse	inserted by 43/2006 s 70(3)	1.6.2007
s 9D	inserted by 17/2012 s 5	5.8.2012
Pt 2 Div 2		
s 9E	inserted by 49/2012 s 5	11.3.2013
<i>s 10 before substitution by 49/2012</i>		
s 10(1)	<i>s 10 amended and redesignated as s 10(1) by 79/1999 s 4(a), (b)</i>	25.12.1999
	<i>amended by 10/2001 s 4</i>	30.12.2001
	<i>amended by 24/2002 s 5(a)</i>	31.10.2002
	<i>amended by 31/2005 s 4(1)</i>	11.8.2005
	<i>amended by 27/2007 s 5(1)</i>	1.11.2007
	<i>(i) deleted by 27/2007 s 5(2)</i>	1.11.2007
	<i>amended by 57/2007 s 5</i>	3.2.2008
s 10(1a) and (1b)	<i>inserted by 27/2007 s 5(3)</i>	1.11.2007
s 10(2)	<i>inserted by 79/1999 s 4(b)</i>	25.12.1999
s 10(3)	<i>inserted by 24/2002 s 5(b)</i>	31.10.2002
s 10(3a)	<i>inserted by 33/2012 s 14</i>	4.3.2013
s 10(4)	<i>inserted by 31/2005 s 4(2)</i>	11.8.2005
s 10(4a)	<i>inserted by 32/2006 Sch 3 cl 2</i>	18.10.2007
s 10(5) and (6)	<i>inserted by 49/2005 s 8</i>	19.12.2005

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s 10	substituted by 49/2012 s 6	11.3.2013
s 10(2)	amended by 11/2013 s 7	9.6.2013
s 10(3)	amended by 5/2014 s 4	3.8.2014
s 10A	inserted by 51/2012 s 4	11.3.2013
ss 10B and 10C	inserted by 49/2012 s 7	11.3.2013
s 11		
s 11(1)	substituted by 79/1999 s 5	25.12.1999
	amended by 27/2007 s 6	1.11.2007
s 11(2)	substituted by 68/1996 s 7	8.10.1996
s 12	<i>amended by 47/1989 s 3</i>	<i>31.8.1989</i>
	<i>deleted by 35/1994 s 18</i>	<i>1.8.1994</i>
s 13		
s 13(1)	amended by 59/1997 s 4	14.9.1997
	amended by 79/2009 s 8	19.9.2010
s 13(1a)	<i>inserted by 60/1998 s 12</i>	<i>6.3.2000</i>
	<i>deleted by 31/2013 s 7</i>	<i>3.2.2014</i>
s 13(2)	substituted by 31/2013 s 7	3.2.2014
s 13(3)	inserted by 31/2013 s 7	3.2.2014
s 14A	inserted by 60/1998 s 13	6.3.2000
s 15		
s 15(2)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 16	amended by 22/1991 s 4	30.5.1991
s 18	amended by 22/1991 s 5	30.5.1991
s 18A		
s 18A(1)	s 18A inserted by 34/1992 s 5	30.9.1992
	s 18A amended by 69/1995 s 3	18.12.1995
	s 18A amended by 13/1999 s 6	16.5.1999
	s 18A redesignated as s 18A(1) by 10/2014 s 4	2.11.2014
s 18A(2) and (3)	inserted by 10/2014 s 4	2.11.2014
s 19	amended by 69/1991 s 13(a)	6.7.1992
	substituted by 69/1995 s 4	18.12.1995
s 19(3)	amended by 68/1996 s 8	8.10.1996
	amended by 1/2011 s 4(1)	14.7.2011
	amended by 40/2012 Sch 6 cl 2	1.1.2013
	amended by 43/2012 s 14(1)	1.7.2013
s 19(3a)	inserted by 1/2011 s 4(2)	14.7.2011
s 19(4)	amended by 43/2012 s 14(2)	1.7.2013
s 19(5)	amended by 43/2012 s 14(3)	1.7.2013
s 19AA	inserted by 12/2012 s 26	17.6.2012
s 19A	inserted by 22/1994 Sch cl 3	1.8.1994
s 19A(1)	amended by 68/1996 s 9(a), (b)	8.10.1996
	amended by 85/2009 Sch 1 cl 6(1)	9.12.2011
s 19A(1a)	inserted by 24/1999 s 4	16.5.1999

s 19A(1b)	inserted by 78/2009 s 7	1.8.2010
s 19A(2)	amended by 68/1996 s 9(c), (d)	8.10.1996
	amended by 85/2009 Sch 1 cl 6(2)	9.12.2011
s 19A(3) and (4)	inserted by 79/2009 s 9	19.9.2010
ss 19B and 19C	inserted by 49/2005 s 9	19.12.2005
s 19D	inserted by 17/2012 s 6	5.8.2012
s 20	<i>deleted by 49/2012 s 8</i>	11.3.2013
Pt 2 Div 2AA	inserted by 33/2012 s 15	4.3.2013
Pt 2 Div 2A	inserted by 23/2003 s 4	27.7.2003
heading	amended by 52/2009 s 5	27.6.2010
s 20AAC		
s 20AAC(2)	amended by 5/2014 s 5(1)	3.8.2014
s 20AAC(3)	inserted by 5/2014 s 5(2)	3.8.2014
s 20A		
s 20A(1)		
category A serious offence	inserted by 33/2012 s 16(1)	4.3.2013
serious and organised crime offence	inserted by 33/2012 s 16(2)	4.3.2013
serious drug offences	substituted by 80/2005 Sch 1 cl 4	3.12.2007
	amended by 52/2009 s 6(1)	27.6.2010
serious firearm offence	inserted by 33/2012 s 16(3)	4.3.2013
serious offence	amended by 62/2005 s 25	15.5.2006
	amended by 52/2009 s 6(2)—(5)	27.6.2010
	amended by 33/2012 s 16(4)	4.3.2013
serious repeat offender	inserted by 33/2012 s 16(5)	4.3.2013
serious sexual offence	inserted by 31/2005 s 5	11.8.2005
	amended by 10/2008 Sch 1 cl 3(1), (2)	23.11.2008
	amended by 52/2009 s 6(6)	27.6.2010
s 20A(2)	substituted by 52/2009 s 6(7)	27.6.2010
	amended by 33/2012 s 16(6)	4.3.2013
s 20A(3)	inserted by 52/2009 s 6(7)	27.6.2010
s 20B		
s 20B(a1)	inserted by 33/2012 s 17(1)	4.3.2013
s 20B(1)	amended by 31/2005 s 6	11.8.2005
	amended by 52/2009 s 7(1)—(3)	27.6.2010
	amended by 33/2012 s 17(2), (3)	4.3.2013
s 20B(1a)	inserted by 33/2012 s 17(4)	4.3.2013
s 20B(2)	<i>deleted by 52/2009 s 7(4)</i>	27.6.2010
s 20B(4)	<i>deleted by 33/2012 s 17(5)</i>	4.3.2013

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s 20BA	inserted by 33/2012 s 18	4.3.2013
s 20C	inserted by 52/2009 s 8	27.6.2010
Pt 2 Div 3		
s 21	substituted by 94/1993 s 8	1.1.1994
s 22		
s 22(1)	<i>amended by 49/1991 Sch 2</i>	6.7.1992
	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>amended by 26/2002 s 19(2) (Sch 3 cl 2)</i>	5.7.2003
	<i>deleted by 23/2003 s 5</i>	27.7.2003
s 23		
s 23(1)		
institution	amended by 68/1996 s 10	8.10.1996
<i>offence to which this section applies</i>	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>deleted by 31/2005 s 7(1)</i>	11.8.2005
person to whom this section applies	inserted by 31/2005 s 7(1)	11.8.2005
relevant offence	inserted by 31/2005 s 7(1)	11.8.2005
	amended by 10/2008 Sch 1 cl 4(1), (2)	23.11.2008
	amended by 52/2009 s 9	27.6.2010
	amended by 77/2013 s 4(1)	12.12.2013
unwilling	inserted by 31/2005 s 7(1)	11.8.2005
s 23(2)	amended by 69/1995 s 12 (Sch)	18.12.1995
	substituted by 31/2005 s 7(2)	11.8.2005
s 23(2a)	inserted by 31/2005 s 7(2)	11.8.2005
s 23(2b)	inserted by 27/2007 s 7	1.11.2007
s 23(3)	substituted by 31/2005 s 7(2)	11.8.2005
	substituted by 77/2013 s 4(2)	12.12.2013
s 23(4)	amended by 42/1999 s 36	3.10.1999
	substituted by 31/2005 s 7(2)	11.8.2005
	substituted by 77/2013 s 4(2)	12.12.2013
s 23(5)	substituted by 31/2005 s 7(2)	11.8.2005
	substituted by 77/2013 s 4(2)	12.12.2013
s 23(5a)—(5c)	inserted by 77/2013 s 4(2)	12.12.2013
s 23(6)	substituted by 31/2005 s 7(2)	11.8.2005
s 23(8)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 23(9)	substituted by 77/2013 s 4(3)	12.12.2013
s 23(10)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 77/2013 s 4(4), (5)	12.12.2013
s 23(11)	<i>amended by 49/1991 Sch 2</i>	6.7.1992
	<i>deleted by 77/2013 s 4(6)</i>	12.12.2013
s 23(12)	<i>deleted by 77/2013 s 4(6)</i>	12.12.2013
s 23A	inserted by 77/2013 s 5	12.12.2013

s 24		
s 24(1)	amended by 49/1991 Sch 2	6.7.1992
s 24(1a)—(1d)	inserted by 77/2013 s 6(1)	12.12.2013
s 24(2)	amended by 77/2013 s 6(2)	12.12.2013
s 24(2a)	inserted by 33/2012 s 19(1)	4.3.2013
s 24(3)	amended by 33/2012 s 19(2)	4.3.2013
	amended by 78/2013 s 9	uncommenced—not incorporated
s 24(5)	amended by 49/1991 Sch 2	6.7.1992
	amended by 34/1992 s 6(a), (b)	30.9.1992
s 24(5a)	inserted by 34/1992 s 6(c)	30.9.1992
s 24(5b)	inserted by 33/2012 s 19(3)	4.3.2013
s 24(6)	substituted by 34/1992 s 6(d)	30.9.1992
	amended by 18/2000 s 5(a), (b)	1.7.2000
s 24(7)	amended by 34/1992 s 6(e)	30.9.1992
	amended by 18/2000 s 5(c)	1.7.2000
s 24(8a)	inserted by 18/2000 s 5(d)	1.7.2000
s 24(11)	amended by 49/1991 Sch 2	6.7.1992
s 24(12)		
the appropriate board	amended by 34/1992 s 6(f), (g)	30.9.1992
s 24A	inserted by 33/2012 s 20	4.3.2013
s 25		
s 25(1)	amended by 77/2013 s 7	12.12.2013
s 25A	inserted by 77/2013 s 8	12.12.2013
s 26	amended by 49/1991 Sch 2	6.7.1992
s 27	amended by 68/1996 s 11	8.10.1996
	amended by 29/2003 s 3	27.7.2003
s 27A	inserted by 76/1988 s 2	1.12.1988
s 27A(1), (2), (5) and (6)	amended by 49/1991 Sch 2	6.7.1992
Pt 2 Div 4	inserted by 29/2003 s 4	27.7.2003
s 29B		
s 29B(2)	amended by 47/2007 Sch 1 cl 1	17.7.2008
Pt 2 Div 5	inserted by 31/2005 s 8	11.8.2005
Pt 2 Div 6	inserted by 12/2012 s 27	17.6.2012
heading	substituted by 51/2012 s 5	11.3.2013
s 29DA	inserted by 51/2012 s 6	11.3.2013
s 29E		
s 29E(5a)	inserted by 25/2014 s 11	11.12.2014
Pt 3		
Pt 3 Div 1		
s 30		
s 30(2)	substituted by 27/2007 s 8	1.11.2007

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s 31		
s 31(1)	amended by 57/2000 s 19(a)	14.8.2000
s 31(2)	amended by 57/2000 s 19(b)	14.8.2000
s 31(3)	substituted by 59/1994 Sch 2	1.1.1995
s 31(4)	inserted by 68/1996 s 12	8.10.1996
Pt 3 Div 2		
s 31A	inserted by 68/1996 s 13	8.10.1996
s 31A(a1)	inserted by 61/2013 s 6(1)	14.11.2013
s 31A(1)	s 31A amended and redesignated as s 31A(1) by 41/1998 s 4(a), (b)	1.10.1998
	amended by 61/2013 s 6(2)	14.11.2013
s 31A(2)	inserted by 41/1998 s 4(b)	1.10.1998
s 32		
s 32(1)	amended by 34/1992 s 7(a)	30.9.1992
s 32(2)	amended by 57/2000 s 20(a)—(c)	14.8.2000
s 32(3)	substituted by 34/1992 s 7(b)	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
s 32(5)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 41/1998 s 5	1.10.1998
	amended by 57/2000 s 20(d), (e)	14.8.2000
	amended by 27/2007 s 9(1), (2)	1.11.2007
s 32(5a)	inserted by 27/2007 s 9(3)	1.11.2007
	substituted by 52/2009 s 10	27.6.2010
s 32(6)	amended by 49/1991 Sch 2	6.7.1992
	amended by 34/1992 s 7(c)	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 57/2000 s 20(f)	14.8.2000
s 32(6a)	inserted by 34/1992 s 7(d)	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 57/2000 s 20(g)	14.8.2000
s 32(7)	amended by 49/1991 Sch 2	6.7.1992
	amended by 34/1992 s 7(e)	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 57/2000 s 20(h)—(j)	14.8.2000
s 32(9)	amended by 57/2000 s 20(k)	14.8.2000
s 32(10)	amended by 49/1991 Sch 2	6.7.1992
	amended by 34/1992 s 7(f)	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 57/2000 s 20(l)	14.8.2000
	amended by 27/2007 s 9(4), (5)	1.11.2007
s 32A	inserted by 27/2007 s 10	1.11.2007
s 33	<i>deleted by 60/1998 s 14</i>	6.3.2000
Pt 3 Div 3	inserted by 27/2007 s 10	1.11.2007

s 33		
s 33(1)		
serious sexual offence	amended by 52/2009 s 11(1), (2)	27.6.2010
Pt 3 Div 4	inserted by 17/2012 s 7	5.8.2012
Pt 4		
s 34	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 68/1996 s 14	8.10.1996
s 35	<i>amended by 34/1992 s 8</i>	<i>30.9.1992</i>
	<i>deleted by 60/1998 s 15</i>	<i>6.3.2000</i>
Pt 5	heading substituted by 94/1993 s 9	1.1.1994
	amended by 68/1996 s 15	8.10.1996
ss 36 and 37	amended by 69/1995 s 12 (Sch)	18.12.1995
s 38		
s 38(1)	amended by 53/2013 s 4(1)	24.11.2013
s 38(2)	substituted by 10/2014 s 5(1)	2.11.2014
s 38(2a)	inserted by 13/1999 s 7	16.5.1999
	substituted by 10/2014 s 5(1)	2.11.2014
s 38(2b)	inserted by 13/1999 s 7	16.5.1999
	substituted by 53/2013 s 4(2)	24.11.2013
	substituted by 10/2014 s 5(1)	2.11.2014
s 38(2ba)	inserted by 53/2013 s 4(2)	24.11.2013
	amended by 10/2014 s 5(2), (3)	2.11.2014
s 38(2c)	inserted by 13/1999 s 7	16.5.1999
	amended by 42/1999 s 37	3.10.1999
s 38(4)	inserted by 53/2013 s 4(3)	24.11.2013
prescribed designated offence	inserted by 10/2014 s 5(4)	2.11.2014
s 39		
s 39(1)	amended by 69/1995 s 5(a)	18.12.1995
	amended by 13/1999 s 8(a)	16.5.1999
s 39(1a)	inserted by 13/1999 s 8(b)	16.5.1999
s 39(2)	amended by 69/1995 s 5(b)	18.12.1995
s 40	amended by 34/1992 s 9	30.9.1992
s 42		
s 42(a1)	inserted by 33/2012 s 21(1)	4.3.2013
s 42(1)	amended by 33/1993 s 3(a)	1.7.1994
	amended by 13/1999 s 9(a)	16.5.1999
	amended by 42/1999 s 38	3.10.1999
	amended by 60/1998 s 16	6.3.2000
	amended by 49/2005 s 10(1)	19.12.2005
	amended by 33/2012 s 21(2)	4.3.2013
s 42(1a)	<i>inserted by 69/1995 s 6(a)</i>	<i>18.12.1995</i>

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	<i>deleted by 13/1999 s 9(b)</i>	16.5.1999
s 42(2)	amended by 13/1999 s 9(c), (d)	16.5.1999
s 42(3)	<i>deleted by 69/1995 s 6(b)</i>	18.12.1995
s 42(5)	inserted by 33/1993 s 3(b)	1.7.1994
s 42(6)—(8)	inserted by 49/2005 s 10(2)	19.12.2005
s 42A	inserted by 33/2012 s 22	4.3.2013
s 43	amended by 69/1995 s 12 (Sch)	18.12.1995
s 44		
s 44(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 44(1a)	inserted by 34/1992 s 10	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
s 44(1b)	inserted by 34/1992 s 10	30.9.1992
s 44(1c)	inserted by 33/2012 s 23	4.3.2013
s 44(2)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 47/2013 s 5(1)	17.5.2014
s 44(2a) and (2b)	inserted by 47/2013 s 5(2)	17.5.2014
s 44A	<i>inserted by 94/1993 s 10</i>	1.1.1994
	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>deleted by 68/1996 s 16</i>	8.10.1996
Pt 6		
s 45	substituted by 69/1995 s 7	18.12.1995
s 45(1)	amended by 68/1996 s 17(a)	8.10.1996
s 45(2)	amended by 68/1996 s 17(b), (c)	8.10.1996
s 46	amended by 34/1992 s 11	30.9.1992
	amended by 42/1999 s 39	3.10.1999
s 47		
s 47(1)	s 47 amended by 34/1992 s 12	30.9.1992
	s 47 amended by 69/1995 s 12 (Sch)	18.12.1995
	s 47 amended and redesignated as s 47(1) by 68/1996 s 18	8.10.1996
	amended by 42/1999 s 40	3.10.1999
	amended by 60/1998 s 17	6.3.2000
	amended by 57/2000 s 21	14.8.2000
	amended by 31/2013 s 8(1)—(3)	3.2.2014
s 47(2)	inserted by 68/1996 s 18(d)	8.10.1996
s 48	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 13/1999 s 10	16.5.1999
	amended by 42/1999 s 41	3.10.1999
	amended by 17/2012 s 8	5.8.2012
s 49		
s 49(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 68/1996 s 19	8.10.1996
	amended by 42/1999 s 42(a)	3.10.1999

s 49(2)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 13/1999 s 11	16.5.1999
	amended by 42/1999 s 42(b)	3.10.1999
s 49(3)	amended by 42/1999 s 42(c)	3.10.1999
s 50		
s 50(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 42/1999 s 43(a)	3.10.1999
	amended by 17/2012 s 9(1)	5.8.2012
	(a)(i) deleted by 17/2012 s 9(2)	5.8.2012
	(a)(iii) deleted by 17/2012 s 9(3)	5.8.2012
s 50(2)	amended by 69/1995 s 12 (Sch)	18.12.1995
	substituted by 42/1999 s 43(b)	3.10.1999
s 50AA	inserted by 13/1999 s 12	16.5.1999
s 50AA(1)—(3)	amended by 42/1999 s 44	3.10.1999
s 50A	inserted by 34/1992 s 13	30.9.1992
s 50A(a1)	inserted by 43/2012 s 15(1)	1.7.2013
s 50A(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 60/1998 s 18	6.3.2000
	amended by 43/2012 s 15(2)	1.7.2013
s 50A(2)	substituted by 43/2012 s 15(3)	1.7.2013
s 50A(3) and (4)	inserted by 43/2012 s 15(3)	1.7.2013
s 50B	inserted by 34/1992 s 13	30.9.1992
s 50B(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 51		
s 51(1)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 42/1999 s 45	3.10.1999
s 51(3)	amended by 69/1995 s 12 (Sch)	18.12.1995
	amended by 68/1996 s 20	8.10.1996
s 51(4)	amended by 69/1995 s 12 (Sch)	18.12.1995
Pt 7		
s 53		
s 53(2a)	inserted by 27/1990 s 3(a)	1.9.1990
s 53(5)	substituted by 27/1990 s 3(b)	1.9.1990
	amended by 69/1995 s 12 (Sch)	18.12.1995
s 53(6)	<i>deleted by 27/1990 s 3(b)</i>	1.9.1990
s 53(7)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 53(8)	<i>deleted by 60/1998 s 19</i>	6.3.2000
s 54 before deletion by amended by 34/1992 s 14 60/1998		30.9.1992
	<i>deleted by 60/1998 s 20</i>	6.3.2000
s 54	inserted by 60/2003 Sch 1 cl 2	5.9.2004
Pt 8		
	<i>amended by 69/1991 s 13(b)</i>	6.7.1992
	<i>amended by 34/1992 ss 14, 15</i>	30.9.1992

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	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>deleted by 60/1998 s 21</i>	6.3.2000
Pt 9		
Pt 9 Div 1		
s 56		
s 56(1)	s 56 redesignated as s 56(1) by 57/2000 s 22	31.3.2001
s 56(2)	inserted by 57/2000 s 22	31.3.2001
s 56A	inserted by 60/1998 s 22 as amended by 42/1999 s 52	6.3.2000
s 56A(a1)	inserted by 31/2013 s 9(1)	3.2.2014
s 56A(2)	amended by 31/2013 s 9(2)	3.2.2014
s 56A(3)	amended by 31/2013 s 9(3)	3.2.2014
Pt 9 Div 2		
s 56B	inserted by 31/2013 s 10	3.2.2014
s 57		
s 57(3)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 57(4)	substituted by 34/1992 s 16(a)	30.9.1992
s 57(4a)	inserted by 69/1995 s 8(a)	18.12.1995
s 57(6)		
court of an inferior jurisdiction	deleted by 34/1992 s 16(b)	30.9.1992
	inserted by 69/1995 s 8(b)	18.12.1995
court of a superior jurisdiction	amended by 69/1995 s 8(c)	18.12.1995
s 58		
s 58(1)	amended by 69/1995 s 9	18.12.1995
	amended by 60/1998 s 23	6.3.2000
s 58(3)	amended by 34/1992 s 17	30.9.1992
	amended by 17/2012 s 10	5.8.2012
s 58(4)	amended by 13/1999 s 13	16.5.1999
	amended by 10/2014 s 6(1), (2)	2.11.2014
s 58(5)	amended by 69/1995 s 12 (Sch)	18.12.1995
s 59	<i>amended by 34/1992 s 18</i>	30.9.1992
	<i>deleted by 60/1998 s 24</i>	6.3.2000
s 59AA	<i>inserted by 94/1993 s 11</i>	1.1.1994
	<i>deleted by 68/1996 s 21</i>	8.10.1996
Pt 9 Div 2A	inserted by 79/2009 s 10	19.9.2010
<i>Pt 9 Div 3 before substitution by 31/2013</i>		
<i>Pt 9 Div 3 Subdiv 1</i>	<i>amended by 33/1991 s 10</i>	6.6.1991
	<i>amended by 34/1992 ss 19—28</i>	30.9.1992
	<i>amended by 73/1992 s 3</i>	1.7.1993
	<i>amended by 94/1993 ss 12—15</i>	1.1.1994
	<i>amended by 21/1994 ss 5, 6</i>	7.7.1994

	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
	<i>amended by 69/1995 ss 10, 11</i>	2.11.1997
	<i>amended by 68/1996 ss 22—26</i>	8.10.1996
	<i>amended by 41/1998 s 6</i>	1.10.1998
	<i>substituted by 60/1998 s 25 as amended by 42/1999 s 53(a)—(f)</i>	6.3.2000
s 62		
s 62(2)	<i>amended by 58/2001 Sch 2 cl 3(e), (f)</i>	1.1.2003
s 64		
s 64(1)	<i>amended by 79/2009 s 11</i>	19.9.2010
Pt 9 Div 3 Subdiv 4		
s 70I		
s 70I(2)	<i>amended by 17/2006 s 102</i>	4.9.2006
s 70I(3)	<i>amended by 79/2009 s 12</i>	19.9.2010
	<i>substituted by 17/2012 s 11(1)</i>	5.8.2012
s 70I(3a)	<i>inserted by 17/2012 s 11(1)</i>	5.8.2012
s 70I(4)	<i>amended by 17/2012 s 11(2)</i>	5.8.2012
s 70I(5)	<i>amended by 17/2012 s 11(3)</i>	5.8.2012
s 70I(6)	<i>amended by 17/2012 s 11(4)</i>	5.8.2012
Pt 9 Div 3 Subdiv 5 before deletion by 79/2009		
s 70J	<i>amended by 58/2001 Sch 2 cl 3(g), (h)</i>	1.1.2003
Pt 9 Div 3 Subdiv 5	<i>deleted by 79/2009 s 13</i>	19.9.2010
Pt 9 Div 3 Subdiv 6		
s 70L		
s 70L(1), (2), (4) and (5)	<i>amended by 79/2009 s 14</i>	10.12.2011
s 70L(5a)—(5c)	<i>inserted by 43/2012 s 16(1)</i>	1.7.2013
s 70L(6)	<i>amended by 79/2009 s 14</i>	10.12.2011
s 70L(6a)	<i>inserted by 43/2012 s 16(2)</i>	1.7.2013
Pt 9 Div 3	<i>substituted by 31/2013 s 11</i>	3.2.2014
Pt 9 Div 4		
s 71	<i>substituted by 34/1992 s 29</i>	30.9.1992
s 71(1)	<i>amended by 60/1998 s 26(a)</i>	6.3.2000
	<i>amended by 31/2013 s 12(1)</i>	3.2.2014
s 71(2)	<i>amended by 31/2013 s 12(2), (3)</i>	3.2.2014
s 71(5)	<i>substituted by 60/1998 s 26(b)</i>	6.3.2000
s 71(7)	<i>amended by 69/1995 s 12 (Sch)</i>	18.12.1995
s 71(8)	<i>inserted by 94/1993 s 16</i>	1.1.1994
	<i>deleted by 68/1996 s 27</i>	8.10.1996
	<i>inserted by 13/1999 s 14</i>	16.5.1999
	<i>amended by 33/2002 s 6</i>	3.3.2003
	<i>amended by 17/2012 s 12</i>	5.8.2012

s 71(9)	inserted by 13/1999 s 14	16.5.1999
s 71(10)	inserted by 31/2013 s 12(4)	3.2.2014
s 71A	inserted by 34/1992 s 29	30.9.1992
s 71A(5)	<i>inserted by 94/1993 s 17</i>	<i>1.1.1994</i>
	<i>deleted by 68/1996 s 28</i>	<i>8.10.1996</i>
s 71AB	s 71B inserted by 60/1998 s 27	6.3.2000
	s 71B redesignated as s 71AB in pursuance of the <i>Acts Republication Act 1967</i>	6.3.2000
s 71B	<i>inserted by 41/1998 s 7</i>	<i>1.10.1998</i>
	<i>deleted by 84/2009 s 83</i>	<i>1.2.2010</i>
Pt 10		
s 72	substituted by 34/1992 s 30	30.9.1992
	amended by 69/1995 s 12 (Sch)	18.12.1995
	substituted by 60/1998 s 28	6.3.2000
s 72(1)	amended by 31/2013 s 13(1)	3.2.2014
s 72(4)	inserted by 31/2013 s 13(2)	3.2.2014
s 72A	inserted by 60/1998 s 28 as amended by 42/1999 s 53(g)	6.3.2000
s 72A(2)	amended by 31/2013 s 14	3.2.2014
s 72B	inserted by 60/1998 s 28	6.3.2000
s 72C	inserted by 49/2005 s 11	19.12.2005
s 74	amended by 60/1998 s 29	6.3.2000
s 75		
s 75(2)	amended by 60/1998 s 30	6.3.2000
	amended by 31/2013 s 15(1), (2)	3.2.2014
s 75(3) and (4)	inserted by 31/2013 s 15(3)	3.2.2014
Sch	<i>deleted by 49/2012 s 9</i>	<i>11.3.2013</i>
Sch 1	inserted by 49/2012 s 9	11.3.2013
cl 1		
cl 1(1)	amended by 51/2012 s 7(1)	11.3.2013
cl 1(3)	inserted by 51/2012 s 7(2)	11.3.2013
Sch 2	inserted by 77/2013 s 9	12.12.2013

Transitional etc provisions associated with Act or amendments

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

20—Reduction of existing sentences and non-parole periods

- (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).

21—Sentences imposed after commencement of this Act

- (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.

Statutes Amendment (Young Offenders) Act 1998

8—Transitional

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.

Statutes Amendment (Fine Enforcement) Act 1998, Sch

2—Application of amended principal Act

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

3—Imprisonment for non-payment under repealed section 61

- (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.

4—Orders against youths under repealed section 61AA

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.

5—Suspension of driver's licence under repealed section 61A

- (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.

6—Suspension of motor vehicle registration under repealed section 61B

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.

7—Community service under repealed section 67

- (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).

8—Court orders as to time and manner of payment

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);
- (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.

Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001

5—Transitional provision

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

Statutes Amendment (Sentencing of Sex Offenders) Act 2005

9—Transitional provision

An amendment made by this Act to the *Criminal Law (Sentencing) Act 1988* applies whether the relevant offence occurred before or after the commencement of the amendment.

Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005, Sch 1

1—Review of services included on intervention programs

- (1) Either House of Parliament may, not before the first anniversary of the commencement of this Act, require the Ombudsman to carry out an investigation concerning the value and effectiveness of all services included on intervention programs (within the meaning of the *Bail Act 1985* and the *Criminal Law (Sentencing) Act 1988*) in the 12 month period following that commencement (or another period specified by the House).
- (2) For the purposes of the investigation, the Ombudsman may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act.
- (3) The Ombudsman must, after completing the investigation, submit a report on the outcome of the investigation to—
 - (a) if the investigation was required by the Legislative Council—the President of the Legislative Council; or
 - (b) if the investigation was required by the House of Assembly—the Speaker of the House of Assembly.

- (4) If the Ombudsman is required to carry out an investigation in accordance with this clause, the Attorney-General must ensure that the Ombudsman is provided with the resources the Ombudsman reasonably requires for the purposes of carrying out the investigation.

Criminal Law (Sentencing) (Dangerous Offenders) Amendment Act 2007

11—Transitional provision

An amendment made by Part 2 of this Act to the *Criminal Law (Sentencing) Act 1988* applies whether the offence to which a sentence of imprisonment or non-parole period relates was committed before or after the commencement of that Part.

Controlled Substances (Serious Drug Offences) Amendment Act 2005, Sch 1

6—Transitional provision

An amendment to the principal Act effected by a provision of this Act only applies in relation to an offence if the offence is committed on or after the commencement of the provision.

Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009, Pt 5

24—Social Development Committee to inquire into and report on operation of Act

The Social Development Committee of the Parliament must, within 3 years after the commencement of Parts 3 and 4 of the *Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009*, in consultation with the Attorney-General, inquire into, consider and report on the operation of the Act (including any effect the operation of the Act has had on the criminal justice system in South Australia).

Statutes Amendment (Victims of Crime) Act 2009, Pt 2

15—Enquiry in relation to section 7A of *Criminal Law (Sentencing) Act 1988*

- (1) The Minister must, at the end of 2 years from the commencement of section 6, appoint a person to conduct an enquiry into—
- (a) the operation of section 7A of the *Criminal Law (Sentencing) Act 1988* as amended by section 6; and
 - (b) the likely impacts (including the costs) of extending the definition of ***prescribed summary offence*** in that section to include a broader range of summary offences.
- (2) A report on the enquiry must be provided to the Minister and the Minister must cause a copy of the report to be laid before each House of Parliament as soon as practicable after receipt of the report.

Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012, Sch 1

1—Transitional provision

The amendments made by this Act to the *Criminal Law (Sentencing) Act 1988* apply to proceedings relating to an offence instituted after the commencement of this Act, regardless of when the offence occurred.

Criminal Law (Sentencing) (Supergrass) Amendment Act 2012, Sch 1

1—Transitional provision

The amendments made by this Act to the *Criminal Law (Sentencing) Act 1988* apply to proceedings relating to an offence instituted after the commencement of this Act, regardless of when the offence occurred.

Statutes Amendment (Courts Efficiency Reforms) Act 2012

17—Transitional provisions

- (1) The amendments made to sections 9A, 50A and 70L of the *Criminal Law (Sentencing) Act 1988* by sections 13, 15 and 16 are to be considered procedural rather than substantive.
- (2) The amendments made to section 19 of the *Criminal Law (Sentencing) Act 1988* by section 14—
 - (a) do not apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and
 - (b) apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

Criminal Law (Sentencing) (Suspended Sentences) Amendment Act 2013, Sch 1

1—Transitional provision

The amendments made by this Act to the *Criminal Law (Sentencing) Act 1988* apply in relation to the sentencing of a person following the commencement of this Act in relation to an offence committed on or after that commencement.

Statutes Amendment (Fines Enforcement and Recovery) Act 2013

16—Transitional provisions

- (1) Subject to this section and to any regulations made under section 75(4) of the principal Act (as inserted by this Act)—
 - (a) Part 9 Division 3 of the principal Act as in force immediately after the commencement day applies in relation to enforcement of a pecuniary sum regardless of whether the liability to pay the pecuniary sum arose before or after the commencement day; and

- (b) section 61 of the principal Act (as inserted by this Act) applies to an expiation amount regardless of whether the liability to pay the expiation amount arose before or after the commencement day.
- (2) If, immediately before the commencement day, a debtor is subject to an arrangement with an authorised officer under section 64 of the principal Act, or is subject, or apparently subject, to any requirement as to the manner and time of payment of a pecuniary sum pursuant to an order made, or purportedly made, under Part 9 Division 3 of the principal Act, that arrangement or requirement continues as if it were an arrangement with the Fines Enforcement and Recovery Officer under section 70 of the principal Act as in force after the commencement day (but such an arrangement or requirement is, despite the provisions of section 70, to have effect according to its terms).
- (3) A charge on land imposed under section 68 of the principal Act as in force before the commencement day continues as if it were a charge on land imposed under section 70G of the principal Act after the commencement day.
- (4) Without derogating from any powers or functions that may be exercised in accordance with subsection (1), a relevant order continues in operation after the commencement day (whether or not the order had taken effect before the commencement day).
- (5) Part 9 Division 3 of the principal Act as in force before the commencement day (other than Subdivision 7) continues to apply in relation to a relevant order continued in operation under subsection (4) as if references in that Division to the Manager, the Registrar or an authorised officer were references to the Fines Enforcement and Recovery Officer.
- (6) However, the Fines Enforcement and Recovery Officer may, with the consent of the relevant debtor, revoke a relevant order continued in operation under subsection (4).
- (7) Despite section 69 of the principal Act (as inserted by this Act) no amount is payable under that section in relation to an amount that is taken to be a pecuniary sum imposed by order of a court by virtue of the making of an enforcement order under section 13 of the *Expiation of Offences Act 1996* before the commencement of section 26 of this Act.
- (8) In this section—

commencement day means the day on which section 11 of this Act comes into operation;

principal Act means the *Criminal Law (Sentencing) Act 1988*;

relevant order means a penalty enforcement order (and any warrant or order issued in relation to the penalty enforcement order) made under Part 9 Division 3 of the principal Act as in force before the commencement day.

Historical versions

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Reprint No 2—6.7.1992

Reprint No 3—30.9.1992

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Reprint No 7—1.8.1994
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Reprint No 12—2.11.1997
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Reprint No 17—25.12.1999
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Reprint No 22—3.8.2001
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Reprint No 24—31.10.2002
Reprint No 25—1.1.2003
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Reprint No 27—5.7.2003
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