South Australia

Sentencing Act 2017

An Act to make provision in relation to the sentencing of offenders in the criminal justice system; to repeal the *Criminal Law (Sentencing) Act 1988*; and for other purposes.

Contents

Part 1—Preliminary

Division 1—Preliminary

1 Short title

Division 2—Sentencing purposes

3 Primary sentencing purpose
4 Secondary sentencing purposes

Division 3—Interpretation and application of Act

5 Interpretation
6 Application of Act to youths
7 Powers conferred by this Act are additional
8 Court may not impose bond except under this Act

Part 2—Sentencing purposes, principles and factors

Division 1—Purposes, principles and factors

9 Primary purpose to be considered
10 General principles of sentencing
11 Individual sentencing factors

Division 2—General sentencing provisions

Subdivision 1—Procedural provisions

12 Determination of sentence
13 Prosecutor to provide particulars of victim's injury etc
14 Victim impact statements
15 Community impact statements
15A Other impact statements
16 Provision and use of statements
17 Pre-sentence reports
18 Expert evidence
19 Court to inform defendant of reasons etc for sentence
20 Rectification of sentencing errors
21 Presence of defendant during sentencing proceedings

22 Sentencing of Aboriginal and Torres Strait Islander defendants

Subdivision 2—General sentencing powers

23 Discharge without penalty
24 Imposition of penalty without conviction
25 Court may reduce, add or substitute certain penalties
26 Sentencing for multiple offences
27 Non-association or place restriction orders may be issued on sentence
28 Intervention orders may be issued on finding of guilt or sentencing
29 Deferral of sentence for rehabilitation and other purposes
30 Mental impairment

Subdivision 4—Sentencing reductions

36 Application of Subdivision
37 Reduction of sentences for cooperation etc with law enforcement agency
39 Reduction of sentences for guilty plea in Magistrates Court etc
40 Reduction of sentences for guilty pleas in other cases
41 Application of sentencing reductions
42 Re-sentencing for failure to cooperate in accordance with undertaking under section 37
43 Re-sentencing for subsequent cooperation with law enforcement agency

Part 3—Custodial sentences

Division 1—Imprisonment

44 Commencement of sentences and non-parole periods
45 Cumulative sentences

Division 2—Non-parole periods

46 Application of Division to youths
47 Duty of court to fix or extend non-parole periods
48 Mandatory minimum non-parole periods and proportionality

Division 2A—Sentencing of serious child sex offenders

Subdivision 1—Preliminary

48A Interpretation
48B Capable of controlling, and willing to control, sexual instincts
48C Prescribed child sex offences
48D Triggering child sex offences
48E Application of Division to youths
48F Disapplication of certain provisions of Act

Subdivision 2—Serious child sex offenders

48G Serious child sex offenders
48H Effect of spent convictions

Subdivision 3—Sentencing of serious child sex offenders for triggering child sex offences

48I Sentencing of serious child sex offenders for triggering child sex offences

Subdivision 4—Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

48J Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

Subdivision 5—Release of serious child sex offenders on licence

48K Release on licence
48L Arrest and detention of serious child sex offender released on licence without warrant

Subdivision 6—Extinguishment of sentence

48M Extinguishment of sentence

Subdivision 7—Miscellaneous

48N Inquiries by medical practitioners

Division 3—Serious firearm offenders

49 Interpretation
50 Serious firearm offenders
51 Sentence of imprisonment not to be suspended

Division 4—Serious repeat adult offenders and recidivist young offenders

52 Interpretation
53 Serious repeat offenders
54 Sentencing of serious repeat offenders
55 Recidivist young offenders

Division 5—Offenders incapable of controlling, or unwilling to control, sexual instincts

56 Application of this Division
57 Offenders incapable of controlling, or unwilling to control, sexual instincts
58 Discharge of detention order under section 57
59 Release on licence
59A Arrest and detention of person released on licence without warrant
60 Appropriate board may direct person to surrender firearm etc
61 Court may obtain reports
62 Inquiries by medical practitioners
63 Parties
64 Service on guardian
65 Appeals
66 Proclamations
67 Regulations

Division 6—Sentencing standards for offences involving child sexual abuse

68 Sentencing standards for offences involving child sexual abuse

Division 7—Community based custodial sentences

Subdivision 1—Home detention

69 Purpose of home detention
70 Home detention not available for certain offences
71 Home detention orders
72 Conditions of home detention order
73 Orders that court may make on breach of condition of home detention order etc
74 Court to provide CE with copy of home detention order
75 CE must assign home detention officer
76 Powers of home detention officers

77 Apprehension and detention of person subject to home detention order without warrant
78 Offence to contravene or fail to comply with condition of home detention order

Subdivision 2—Intensive correction

79 Purpose of intensive correction order
80 Intensive correction not available for certain offences
81 Intensive correction orders
82 Conditions of intensive correction order
83 Orders that court may make on breach of condition of intensive correction order etc
84 Court to provide CE with copy of intensive correction order
85 CE must assign community corrections officer
86 Provisions relating to community service
87 Court to be notified if suitable community service placement not available
88 Community corrections officer to give reasonable directions
89 Power of Minister in relation to default in performance of community service
90 Apprehension and detention of person subject to intensive correction order without warrant
91 Offence to contravene or fail to comply with condition of intensive correction order

Subdivision 3—General

92 Court may direct person to surrender firearm etc

Division 8—Effect of imprisonment for contempt

93 Effect of imprisonment for contempt

Part 4—Other community based sentences

Division 1—Purpose, interpretation and application

94 Purpose of Part
95 Interpretation and application of Part

Division 2—Bonds, community service and supervision in community

96 Suspension of imprisonment on defendant entering into bond
97 Discharge of other defendants on entering into good behaviour bond
98 Conditions of bonds under this Act
99 Term of bond
100 Guarantors etc
101 Court may direct person to surrender firearm etc
102 Court to provide CE with copy of court order
103 Variation or discharge of bond
104 Court to be notified if suitable community service placement not available
105 Provisions relating to community service
106 Provisions relating to supervision in the community
107 CE must assign community corrections officer
108 Community corrections officer to give reasonable directions
110 Variation of community service order
111 Power of Minister to cancel unperformed hours of community service
112 Power of Minister in relation to default in performance of community service

Division 3—Enforcement of bonds, community service orders and other orders of a non-pecuniary nature

Subdivision 1—Bonds

113 Non-compliance with bond
114 Orders that court may make on breach of bond

Subdivision 2—Community service orders and other orders of a non-pecuniary nature

115 Community service orders may be enforced by imprisonment
116 Other non-pecuniary orders may be enforced by imprisonment
117 Registrar may exercise jurisdiction under this Division
118 Detention in prison

Part 5—Financial penalties

119 Maximum fine if no other maximum provided
120 Order for payment of pecuniary sum not to be made in certain circumstances
121 Preference must be given to compensation for victims
122 Court not to fix time for payment of pecuniary sums

Part 6—Restitution and compensation

Division 1—Restitution and compensation generally

123 Restitution of property
124 Compensation
125 Certificate for victims of identity theft

Division 2—Enforcement of restitution orders

126 Non-compliance with order for restitution of property

Part 7—Miscellaneous

127 Power of delegation—intervention program manager
128 Regulations

Schedule 1—Repeal and transitional provisions

Part 1—Repeal of *Criminal Law (Sentencing) Act 1988*

1 Repeal of Act

Part 2—Transitional provisions

2 Transitional provisions

Part 3—Transitional provisions relating to *Sentencing (Release on Licence) Amendment Act 2018*

3 Transitional provisions

Schedule 2—Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act

1 Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Division 1—Preliminary

1—Short title

This Act may be cited as the *Sentencing Act 2017*.

Division 2—Sentencing purposes

3—Primary sentencing purpose

The primary purpose for sentencing a defendant for an offence is to protect the safety of the community (whether as individuals or in general).

4—Secondary sentencing purposes

(1) The secondary purposes for sentencing a defendant for an offence are as follows:

(a) to ensure that the defendant—

(i) is punished for the offending behaviour; and

(ii) is held accountable to the community for the offending behaviour;

(b) to publicly denounce the offending behaviour;

(c) to publicly recognise the harm done to the community and to any victim of the offending behaviour;

(d) to deter the defendant and others in the community from committing offences;

(da) to deter the defendant and others in the community from harming or assaulting prescribed emergency workers (within the meaning of section 20AA of the *Criminal Law Consolidation Act 1935*) acting in the course of official duties;

(e) to promote the rehabilitation of the defendant.

(2) Nothing about the order in which the secondary purposes are listed in subsection (1) implies that any 1 of those secondary purposes is to be given greater weight than any other secondary purpose.

Division 3—Interpretation and application of Act

5—Interpretation

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

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 (see Part 4 Division 2);

CE means the chief executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982*;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their sex or gender identity) 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.

cognitive impairment includes—

(a) a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder); and

(b) an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder); and

(c) a mental illness;

community based custodial sentence—see Part 3 Division 7;

community corrections officer means an officer or employee of the administrative unit of the Public Service that is responsible for assisting a Minister in 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;

consumption of a drug includes—

(a) injection of the drug (either by the person to whom the drug is administered or someone else); and

(b) inhalation of the drug; and

(c) any other means of introducing the drug into the body;

court—

(a) means a 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 a court or other related matters, means the court that made the order or a court of coordinate jurisdiction;

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

DPP means the Director of Public Prosecutions;

drug means alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

home detention officer means a home detention officer appointed by the Minister for Correctional Services under Part 4 Division 6A of the *Correctional Services Act 1982*;

home detention condition—see section 72;

home detention order—see section 71;

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

intensive correction condition—see section 82;

intensive correction order—see section 81;

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 1 or more of the above,

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

intervention program manager means—

(a) for the purposes of sections 29 and 30—a person employed by the South Australian Courts Administration Authority (including a delegate of such a person) to have general oversight of intervention programs referred to in those sections and to coordinate the implementation of relevant court orders under those sections; or

(b) for the purposes of this Act (other than sections 29 and 30)—a person employed in the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982* (including a delegate of such a person) to have general oversight of intervention programs and coordinate the implementation of relevant court orders;

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

Minister for Youth Justice means the Minister responsible for the administration of the *Youth Justice Administration Act 2016*;

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 under a bond or to a guarantee ancillary to a bond; or

(e) any other amount payable under an order or direction of a court,

and includes a VIC levy;

primary purpose—the primary purpose for sentencing a defendant for an offence is as set out in section 3;

prisoner—a reference to a ***prisoner*** includes, where the context so requires, a reference to a person serving a sentence—

(a) on home detention subject to a home detention order; or

(b) in the community subject to an intensive correction order;

probationer means a defendant who has entered into a bond under Part 4;

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; or

(b) in any other case—the court that made the order pursuant to which the defendant entered into the bond;

recreational use of a drug—consumption of a drug is to be regarded as recreational use of the drug unless—

(a) the drug is administered against the will, or without the knowledge, of the person who consumes it; or

(b) the consumption occurs accidentally; or

(c) the person who consumes the drug does so under duress, or as a result of fraud or reasonable mistake; or

(d) the consumption is therapeutic;

residence includes, if the defendant is an Aboriginal or Torres Strait Islander person, any place specified by the court as the person's residence;

secondary purposes—the secondary purposes for sentencing a defendant for an offence are as set out in section 4;

self-induced—see subsections (2) and (3);

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, including the decision of a court to discharge a defendant—

(i) without imposing a penalty; or

(ii) without recording a conviction;

sentence of indeterminate duration means detention in custody until further order (and see Part 3 Division 5);

serious child sex offender has the same meaning as in Part 3 Division 2A;

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

therapeutic—the consumption of a drug is to be regarded as therapeutic if—

(a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner; or

(b) the drug—

(i) is a drug of a kind available, without prescription, from registered pharmacists; and

(ii) is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions;

triggering child sex offence has the same meaning as in Part 3 Division 2A;

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) Intoxication resulting from the recreational use of a drug is to be regarded as self-induced.

(3) If a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication is to be regarded as self-induced even though in part attributable to therapeutic consumption.

(4) For the purposes of this Act—

(a) 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; and

(b) a person who pleads guilty to a charge of an offence will be taken to have been found guilty of the offence unless—

(i) the plea is subsequently withdrawn; or

(ii) the person is adjudged incompetent to have made the plea.

(5) For the purposes of this Act, a reference to an offence committed by a serious child sex offender, or to the sentencing of a serious child sex offender for an offence, will be taken to include a reference to an offence that resulted in the person being a serious child sex offender.

6—Application of Act to youths

(1) Subject to a 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 (and not as an adult)—

(a) a reference to imprisonment is to be read as a reference to detention; and

(b) a reference to a warrant of commitment is to be read as an order for detention; and

(c) a reference to a prison is to be read as a reference to a training centre; and

(d) a reference to the CE is to be read as a reference to the chief executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*; and

(e) a reference to a community corrections officer is to be read as a reference to a community youth justice officer under the *Youth Justice Administration Act 2016*; and

(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; and

(g) a reference to a probationer is to be read as a reference to a youth the subject of such an order; and

(h) a reference to the Minister for Correctional Services is to be read as a reference to the Minister for Youth Justice.

7—Powers conferred by this Act are additional

(1) 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 another Act or law to impose a penalty on, or make an order or give a direction in relation to, a person found guilty of an offence.

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

8—Court may not impose bond except under this Act

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

Part 2—Sentencing purposes, principles and factors

Division 1—Purposes, principles and factors

9—Primary purpose to be considered

For the avoidance of doubt, the primary purpose for sentencing a defendant for an offence must be the paramount consideration when a court is determining and imposing the sentence.

10—General principles of sentencing

(1) Subject to this Act or any other Act, in determining a sentence for an offence, a court must apply (although not to the exclusion of any other relevant principle) the common law concepts reflected in the following principles:

(a) proportionality;

(b) parity;

(c) totality;

(d) the rule that a defendant may not be sentenced on the basis of having committed an offence in respect of which the defendant was not convicted.

(2) Subject to this Act or any other Act, a court must not impose a sentence of imprisonment on a defendant unless the court decides that—

(a) the seriousness of the offence is such that the only penalty that can be justified is imprisonment; or

(b) it is required for the purpose of protecting the safety of the community (whether as individuals or in general).

11—Individual sentencing factors

(1) In determining a sentence for an offence, a court must take into account such of the factors as are known to the court that relate to the following matters as may be relevant:

(a) the nature, circumstances and seriousness of the offence;

(b) the personal circumstances and vulnerability of any victim of the offence whether because of the victim's age, occupation, relationship to the defendant, disability or otherwise;

(c) the extent of any injury, emotional harm, loss or damage resulting from the offence or any significant risk or danger created by the offence, including any risk to national security;

(ca) whether the offence was wholly or partly motivated by hatred for, or prejudice against, a group of people to which the defendant believed the victim belonged (including, without limiting this paragraph, people of a particular race, religion, sex, sexual orientation, gender identity or age, or people having an intersex variation or a particular disability);

(d) the defendant's character, general background and offending history;

(e) the likelihood of the defendant re-offending;

(f) the defendant's age, and physical and mental condition (including any cognitive impairment);

(g) the extent of the defendant's remorse for the offence, having regard in particular as to whether—

(i) the defendant has provided evidence that the defendant has accepted responsibility for the defendant's actions; and

(ii) the defendant has acknowledged any injury, loss or damage caused by the defendant's actions, or voluntarily made reparation for any such injury, loss or damage, or both;

(h) the defendant's prospects of rehabilitation.

(2) The matters referred to in subsection (1) are in addition to any other matter the court is required or permitted to take into account under this Act or any other Act or law.

(3) The court must not have regard to any of the factors in sentencing if it would be contrary to an Act or law to do so (and the fact that any such factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence).

(4) A court must determine the sentence for an offence without regard to—

(a) the fact that this Act or another Act prescribes a mandatory minimum non-parole period in respect of the offence; or

(b) any consequences that may arise under the *Child Sex Offenders Registration Act 2006*; or

(c) 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.

(5) For the purposes of subsection (1)(a), the court must only have regard to the matters personal to the defendant that the court is satisfied are causally connected with, or have materially contributed to, the commission of the offence, including (for example) the defendant's motivation in committing the offence and the degree to which the defendant participated in its commission.

(6) If a defendant has participated in an intervention program, a court may treat the defendant's participation in the program, and the defendant's achievements in the program, as relevant to sentence.

(7) However, the fact that a defendant—

(a) has not participated in, or has not had the opportunity to participate in, an intervention program; or

(b) has performed badly in, or has failed to make satisfactory progress in, such a program,

is not relevant to sentence.

Division 2—General sentencing provisions

Subdivision 1—Procedural provisions

12—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.

13—Prosecutor to provide 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, provide 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 providing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor.

(3) If the offence is not an offence in relation to which a victim impact statement may be provided in accordance with section 14, the court must still allow particulars provided 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 provided under section 14).

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

14—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 provide 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 the person's family.

(2) Before determining sentence for the offence, the court may, if the person so requested when providing the statement—

(a) allow the person an opportunity to read the statement aloud to the court; or

(b) cause the statement to be read aloud to the court; or

(c) give consideration to the statement without the statement being read aloud to the court.

(3) If the court considers there is good reason to do so, it may, in order to assist a person who wishes to read aloud a victim impact statement to the court—

(a) allow an audio visual record or audio 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.

(4) Subject to subsection (5) (but despite any other provision of this Act), the court must, if the person so requested when providing 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 aloud to the court.

(5) Subsection (4) 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 an audio visual record of the statement to be made and played to the defendant or other person).

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

(7) 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.

15—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.

(2) In proceedings to determine sentence for an offence, the prosecutor or the Commissioner for Victims' Rights may, if they think fit, provide 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 aloud 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.

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

15A—Other impact statements

(1) If a person has died or suffered an injury resulting in total incapacity as a result of any conduct occurring in connection with the commission of an offence, the sentencing court may, if it considers it appropriate to do so, allow a person who has suffered injury, loss or damage from that death or injury to provide a written personal statement.

(2) Subsections (2) to (5) (inclusive) of section 14 apply to a statement provided under this section as if it were provided under that section.

(3) Nothing in this section requires the court to have regard to a statement provided under this section in determining sentence.

(4) For the purposes of this section, conduct will be taken to occur ***in connection with*** an offence if it occurs in circumstances arising out of the offence or as a result of any physical element of the offence or otherwise arises from any act or omission by the offender that is proximate to the offence.

16—Provision and use of statements

(1) Subject to this section, a statement to be provided to a court under section 14, 15 or 15A must comply with and be provided in accordance with rules of court.

(1a) The court must, on application by the prosecution, adjourn sentencing proceedings for the purposes of allowing a person referred to in section 14(1) to prepare a victim impact statement if—

(a) the court is of the opinion that the person has not been provided a reasonable opportunity to prepare a victim impact statement; or

(b) the person has requested more time to prepare a victim impact statement.

(1b) Subsection (1a) does not apply if the court is satisfied that special reasons exist that justify refusing the adjournment.

(1c) A court must not refuse to receive a victim impact statement provided by a person under section 14(1) on the grounds that the statement includes material that is irrelevant or otherwise should not be included in the statement (but nothing in this section requires the court to have regard to any such material in determining sentence).

(2) Nothing prevents a statement to be provided to a court under section 14 or 15 from containing recommendations relating to the sentence to be determined by the court.

(3) A copy of a statement to be provided to a court under section 14, 15 or 15A must be made available for inspection by the defendant or the defendant's counsel in accordance with rules of court and the defendant is entitled to make submissions to the court in relation to the statement.

17—Pre-sentence reports

(1) A court may, if of the opinion that it would assist in determining sentence, order the preparation of a pre-sentence report on any or all of the following matters:

(a) the physical or mental condition of the defendant;

(b) the personal circumstances and history of the defendant;

(c) any other matter that would assist the court in determining sentence.

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

(a) if the information sought by the court cannot be provided within a reasonable time; or

(b) if 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 provided to the prosecutor and to the defendant or the defendant's 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) If 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.

18—Expert evidence

(1) If a defendant is to be sentenced for an indictable offence and expert evidence is to be presented to the court by the defendant or the defendant's counsel, written notice of intention to introduce the evidence must be given to the DPP—

(a) at least 28 days before the date appointed for submissions on sentence; or

(b) if the evidence does not become available to the defence until later—as soon as practicable after it becomes available to the defence.

(2) The notice must—

(a) set out the name and qualifications of the expert; and

(b) describe the general nature of the evidence and what it tends to establish.

(3) The court may, on application by a defendant, exempt the defendant from the obligation imposed by this section.

(4) If the defence proposes to introduce expert psychiatric evidence or other expert medical evidence relevant to the defendant's mental state or medical condition at the time of an alleged offence, the court may, on application by the prosecutor, require the defendant to submit, at the prosecutor's expense, to an examination by an independent expert approved by the court.

(5) If a defendant fails to comply with a requirement of or under this section, the evidence will not be admitted without the court's permission (but the court cannot allow the admission of evidence if the defendant fails to submit to an examination by an independent expert under subsection (4)).

(6) If the DPP receives notice under this section of an intention to introduce expert evidence less than 28 days before the day appointed for submissions on sentence, the court may, on application by the prosecutor, adjourn the sentencing to allow the prosecution a reasonable opportunity to obtain expert advice on the proposed evidence.

(7) The court should grant an application for an adjournment under subsection (6) unless there are good reasons to the contrary.

(8) The court may, on application by the prosecution, require the defendant to provide to the prosecution a copy of any report obtained by the defendant from a person proposed to be called to give expert evidence at the sentencing.

19—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 audio visual link 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.

(2) 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.

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

20—Rectification of sentencing errors

(1) A court that imposes, or purports to impose, a sentence on a defendant, or a court of coordinate jurisdiction, may, on its own initiative or on application by the DPP 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 DPP and the defendant are both parties to proceedings under this section.

21—Presence of defendant during sentencing proceedings

(1) Subject to the exceptions set out in subsection (2), 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.

(2) The following exceptions apply:

(a) the defendant may, with the court's consent, be absent during the whole or part of the proceedings;

(b) if facilities exist for dealing with proceedings by means of an audio visual link or audio link, the court may, if of the opinion that it is appropriate in the circumstances to do so, deal with the proceedings by audio visual link or audio link without requiring the personal attendance of the defendant, provided that, in the case of a defendant who is not in custody, the defendant has consented to the use of the link;

(c) 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 audio visual link).

(3) 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).

(4) 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.

(5) 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.

22—Sentencing of Aboriginal and Torres Strait Islander defendants

(1) Before sentencing an Aboriginal or Torres Strait Islander defendant, the court may, with the defendant's consent, and with the assistance of an Aboriginal and Torres Strait Islander Justice Officer—

(a) convene a sentencing conference; and

(b) take into consideration views expressed at the conference.

(2) Nothing in subsection (1) is to be taken to require the court to convene a sentencing conference if the court, after taking into account all relevant sentencing purposes, principles and factors, determines not to convene a sentencing conference.

(3) 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.

(4) A sentencing conference may also include (if the court thinks the person may contribute usefully to the sentencing process) 1 or more of the following:

(a) a person regarded by the defendant, and accepted within the defendant's Aboriginal or Torres Strait Islander community, as an Aboriginal or Torres Strait Islander elder;

(b) a person accepted by the defendant's Aboriginal or Torres Strait Islander 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.

(5) A person will be taken to be an Aboriginal or Torres Strait Islander 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 themself as an Aboriginal or Torres Strait Islander or, if the person is a young child, at least 1 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.

(6) In this section—

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

(a) assisting the court in sentencing Aboriginal or Torres Strait Islander persons by providing advice on Aboriginal or Torres Strait Islander society and culture; and

(b) assisting the court to convene sentencing conferences under this section; and

(c) assisting Aboriginal or Torres Strait Islander persons to understand court procedures and sentencing options and to comply with court orders;

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.

Subdivision 2—General sentencing powers

23—Discharge without penalty

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

(a) without recording a conviction—dismiss the charge; or

(b) on recording a conviction—discharge the defendant without penalty.

(2) If a court finds a person guilty of an offence and—

(a) the defendant has spent time in custody in respect of the offence; and

(b) the court is satisfied there is good reason not to impose any further penalty on the defendant,

the court may—

(c) without recording a conviction—dismiss the charge; or

(d) on recording a conviction—discharge the defendant without further penalty.

(3) A court may exercise the powers conferred by this section despite any minimum penalty fixed by an Act or statutory instrument.

24—Imposition of penalty without conviction

If 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.

25—Court may reduce, add or substitute certain penalties

(1) Subject to this Act or any other Act that prohibits the substitution or mitigation of a penalty prescribed under the Act, if, on convicting a defendant or finding a defendant guilty of an offence and after 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,

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

(2) Subject to this Act or any other Act that prohibits the substitution or mitigation of a penalty prescribed under the Act, if, 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 for the offence under the Act, the court may—

(a) impose another type of sentence for the sentence prescribed under the Act for the offence; or

(b) impose more than 1 type of sentence as the court thinks appropriate in the circumstances.

(3) For the purposes of subsection (2)—

(a) if the Act prescribes a sentence of imprisonment only for the offence, the court may instead impose—

(i) a sentence of imprisonment (including a community based custodial sentence or a suspended sentence); or

(ii) a fine; or

(iii) a sentence of community service; or

(iv) both a fine and a sentence of community service; or

(b) if the Act prescribes a sentence of both imprisonment and a fine for the offence, the court may instead impose—

(i) a sentence of imprisonment (including a community based custodial sentence or a suspended sentence) 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) if the 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) if the Act prescribes a fine only for the offence, the court may instead impose a sentence of community service.

(4) In this section—

Act includes a statutory instrument;

community based custodial sentence means—

(a) a sentence on home detention under a home detention order; or

(b) a sentence to be served in the community while subject to intensive correction under an intensive correction order;

suspended sentence means a sentence of imprisonment that is suspended on condition that the defendant enter into a bond under Part 4 Division 2.

26—Sentencing for multiple offences

(1) If a person is to be sentenced by a court for a number of offences, the court may sentence the person to the 1 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.

(1a) If—

(a) the person being sentenced is a serious child sex offender; and

(b) any of the offences for which the person is being sentenced is a triggering child sex offence; and

(c) the person is sentenced to a sentence of indeterminate duration in relation to that triggering child sex offence,

then 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).

(2) 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).

(2a) If any of the offences in respect of which a single sentence is being imposed under this section—

(a) involve different victims; or

(b) were committed on different occasions,

the court must indicate the sentence that would have been imposed in respect of each such offence had this provision not been applied.

(3) In this section—

prescribed designated offence has the same meaning as in section 96.

27—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 *Criminal 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 *Criminal 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 *Criminal Procedure Act 1921*.

28—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 *Criminal Procedure Act 1921* or an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* as if an application had been made under the relevant Act against the defendant in relation to the matters alleged in the proceedings for the offence.

(2) 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.

(3) 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 *Criminal 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.

(4) An order issued under this section—

(a) has effect—

(i) as a restraining order under the *Criminal Procedure Act 1921*; or

(ii) as a final intervention order issued by the court 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.

(5) 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).

(6) 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) an offence of sexual exploitation of a person with a cognitive impairment under section 51 of the *Criminal Law Consolidation Act 1935*; or

(h) an attempt to commit, or assault with intent to commit, any of the offences referred to in a preceding paragraph.

29—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 the defendant's 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.

(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.

30—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, a suitable intervention program; and

(iii) recognises that the defendant 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, a suitable intervention program; and

(iii) recognises that the defendant 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);

suitable intervention program, in respect of a defendant, means an intervention program that, in the opinion of the court, 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 1 or more of the above,

that is suited to address the particular behavioural problems of the defendant relating to the defendant's mental impairment.

Subdivision 4—Sentencing reductions

36—Application of Subdivision

Except where the contrary intention expressly appears, this Subdivision 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.

37—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.

(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 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) 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*.

39—Reduction of sentences for guilty plea in Magistrates Court etc

(1) This section applies—

(a) if the offence is a summary offence; or

(b) if the sentencing court is sentencing in relation to a minor indictable offence that has been tried in the same way 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's first court appearance 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's first court appearance 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 the defendant could not reasonably have pleaded guilty at an earlier stage in the proceedings because of circumstances outside of the defendant's 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) 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; or

(v) the prosecution was, for any reason outside of the control of the defendant, unable to finalise negotiations with the defendant in relation to the plea 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.

(3a) Without limiting subsection (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 period specified in that subsection (the ***designated period***); and

(b) the defendant pleads guilty no more than 14 days after the expiration of the designated period; and

(c) the court is satisfied that the defendant was unable to obtain legal advice within the designated period as a result of—

(i) the defendant residing in a remote location; or

(ii) the defendant leading an itinerant lifestyle; or

(iii) communication difficulties arising from the defendant being unable to speak reasonably fluent English,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the designated 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, or may, affect public confidence in the administration of justice;

(b) the stage in the proceedings for the offence at which the defendant first indicated the defendant's 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) whether the defendant was initially charged with a different offence in respect of the same conduct and whether (and at what stage in the proceedings) negotiations occurred with the prosecution in relation to the offence charged;

(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;

(f) whether at any stage in the proceedings for the offence—

(i) the defendant disputed the factual basis of the plea; and

(ii) a hearing occurred in relation to the dispute; and

(iii) the dispute was not resolved in favour of the defendant;

(g) if the prosecution satisfies the court that the defendant intentionally concealed the commission of the offence to which the defendant's sentence relates—that fact, and the period of time for which the concealment persisted;

(h) whether the prosecution's case against the defendant (the assessment of which should ordinarily be made by reference to evidence in the form of an affidavit, or any other documentary evidence) is so overwhelming that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice;

(i) whether any genuine remorse on behalf of the defendant for the commission of the offence is so lacking that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice,

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

(5) 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.

40—Reduction of sentences for guilty pleas in other cases

(1) This section applies to a court sentencing a defendant for an offence other than an offence described in section 39(1).

(2) If—

(a) a defendant in any proceedings is pleading guilty to more than 1 offence; and

(b) this section applies to at least 1 of the offences,

this section will be taken to apply to all of the offences (despite section 39(1)).

(3) Subject to this section, if a defendant has pleaded guilty to an offence or offences—

(a) not more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 25%; or

(ii) in any other case—up to 35%; or

(b) more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences but on the day of, or before, the defendant's committal appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 15%; or

(ii) in any other case—up to 25%; or

(c) during the period commencing on the day after the defendant's committal appearance in relation to the relevant offence or offences and ending immediately 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—

(i) in the case of a serious indictable offence—up to 10%; or

(ii) in any other case—up to 15%; or

Note—

See also section 110(3) of the *Criminal Procedure Act 1921*.

(d) during the period commencing immediately after the defendant is committed for trial for the relevant offence or offences and ending immediately after the first date fixed for the arraignment of the defendant in a superior court—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 5%; or

(ii) in any other case—up to 10%; or

(e) during the period commencing immediately after the first date fixed for the arraignment of the defendant in a superior court in relation to the relevant offence or offences and ending at the commencement of the defendant's trial for the relevant offence or offences—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 5%.

(4) If—

(a) a maximum reduction available under subsection (3) 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; or

(v) after the making of the charge determination (within the meaning of section 106 of the *Criminal Procedure Act 1921*)—the prosecution was, for any reason outside of the control of the defendant, unable to finalise negotiations with the defendant in relation to the plea 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.

(4a) Without limiting subsection (4), if—

(a) the maximum reduction available under subsection (3)(a) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the period specified in that subsection (the ***designated period***); and

(b) the defendant pleads guilty no more than 14 days after the expiration of the designated period; and

(c) the court is satisfied that the defendant was unable to obtain legal advice within the designated period as a result of—

(i) the defendant residing in a remote location; or

(ii) the defendant leading an itinerant lifestyle; or

(iii) communication difficulties arising from the defendant being unable to speak reasonably fluent English,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the designated period.

(5) 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, or may, affect public confidence in the administration of justice;

(b) the stage in the proceedings for the offence at which the defendant indicated an 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) whether the defendant was initially charged with a different offence in respect of the same conduct and whether (and at what stage in the proceedings) negotiations occurred with the prosecution in relation to the offence charged;

(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 the defendant could not reasonably have been expected to plead guilty at an earlier stage in the proceedings because of circumstances outside of the defendant's 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;

(g) whether at any stage in the proceedings for the offence—

(i) the defendant disputed the factual basis of the plea; and

(ii) a hearing occurred in relation to the dispute; and

(iii) the dispute was not resolved in favour of the defendant;

(h) if the prosecution satisfies the court that the defendant intentionally concealed the commission of the offence to which the defendant's sentence relates—that fact, and the period of time for which the concealment persisted;

(i) whether the prosecution's case against the defendant (the assessment of which should ordinarily be made by reference to evidence in the form of an affidavit, or any other documentary evidence) is so overwhelming that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice;

(j) whether any genuine remorse on behalf of the defendant for the commission of the offence is so lacking that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice,

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

(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.

(7) Where proceedings have been instituted in a superior court by the DPP laying an information ex officio in accordance with section 103 of the *Criminal Procedure Act 1921*, this section applies in relation to those proceedings with the modifications prescribed by the regulations.

(8) In this section—

committal appearance has the same meaning as in section 109 of the *Criminal Procedure Act 1921*;

serious harm has the same meaning as in section 21 of the *Criminal Law Consolidation Act 1935*;

serious indictable offence means an offence that is—

(a) a serious offence of violence for which the maximum penalty prescribed is, or includes, imprisonment for at least 5 years; or

(b) a serious sexual offence for which the maximum penalty prescribed is, or includes, imprisonment for at least 5 years; or

(c) any other offence prescribed by the regulations for the purposes of this definition;

serious offence of violence means—

(a) an offence under section 11, 13, 13A, 19A(1), 19AB(1), 23, 29(1), 29(2), 29A(1) or 31(1) of the *Criminal Law Consolidation Act 1935*; or

(b) an offence under section 14 of the *Criminal Law Consolidation Act 1935* where the victim died or suffered serious harm; or

(c) an offence under section 19A(3) or 19AB(2) of the *Criminal Law Consolidation Act 1935* where serious harm was caused to a person; or

(d) an offence under a corresponding previous enactment substantially similar to an offence referred to in any of the preceding paragraphs; or

(e) an attempt to commit or an assault with intent to commit any of the offences referred to in any of the preceding paragraphs;

serious sexual offence means—

(a) an offence under section 48, 48A, 49, 50, 51, 56, 58, 59, 60, 63, 63AA, 63A, 63AAB, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*; or

(b) an offence under a corresponding previous enactment substantially similar to an offence referred to in the preceding paragraph; or

(c) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding paragraphs.

41—Application of sentencing reductions

(1) For the purpose of applying section 37, 38, 39 or 40 in sentencing a defendant for a particular offence, the sentencing court must—

(a) first determine the sentence that the court would apply but for the existence of those provisions; and

(b) then determine the maximum percentage reduction that is applicable to the sentencing in accordance with those provisions; and

(c) then determine the percentage reduction that is, in the opinion of the court, appropriate in the particular case (being not more than the maximum percentage determined in accordance with paragraph (b)); and

(d) finally, apply the percentage reduction determined in accordance with paragraph (c) to the sentence determined in accordance with paragraph (a).

(2) A sentencing court that wants to apply section 26 to sentence a defendant to a single penalty for more than 1 offence must, if the court would otherwise be required to apply section 37, 38, 39 or 40 in sentencing the defendant for any 1 or more of those offences (the ***discounted offences***), determine, in accordance with subsection (1), the appropriate sentence for each discounted offence before applying section 26 to determine the total sentence (and for the purposes of section 26, a reference to the maximum penalty that could be imposed in respect of an offence will, in the case of each discounted offence, be a reference to the sentence determined, in accordance with subsection (1), for that discounted offence).

(3) Nothing in this Subdivision affects the operation of section 23, 24 or 25.

42—Re-sentencing for failure to cooperate in accordance with undertaking under section 37

(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 37 (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 DPP 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 37.

(3) The DPP, 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 37, have been imposed by the sentencing court under that section.

43—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 DPP 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 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.

(6) 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).

(7) 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.

(8) In this section—

chief officer of a law enforcement agency means—

(a) in the case of SA Police—the Commissioner of Police;

(b) in the case of the Independent Commissioner Against Corruption—the Independent Commissioner Against Corruption;

(c) in any other case—the person for the time being occupying a position within the agency prescribed by the regulations.

Part 3—Custodial sentences

Division 1—Imprisonment

44—Commencement of sentences and non-parole periods

(1) If a court imposes a sentence of imprisonment and does not suspend the sentence under Part 4 Division 2, 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) If 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 under 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) If 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) If 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 will—

(a) 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) 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) 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 under this Act or any other Act.

45—Cumulative sentences

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

(2) If 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 under an order of the Parole Board for breach of parole conditions,

the sentence will (except where 1 of the sentences to which the defendant is subject is life imprisonment) be cumulative on 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

46—Application of Division to youths

(1) The following provisions of this Division do not apply in relation to a youth unless the youth is sentenced as an adult:

(a) section 47(5)(b);

(b) section 47(5)(d);

(c) section 47(6);

(d) section 48.

(2) 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.

(3) Section 47 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.

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

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

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

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

(c) if the person is serving a minimum term imposed in respect of an offence under 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 on the expiry of that minimum term.

(2) If 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) If 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—

(i) in respect of a person who is liable to serve a total period of imprisonment (or detention and imprisonment) of less than 12 months; or

(ii) in respect of a person who is liable to serve a sentence in the community while subject to an intensive correction order;

(b) 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;

(c) if 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;

(d) 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;

(e) a court may, by order, decline to fix a non-parole period in respect of a person sentenced to imprisonment if the court is of the opinion that it would be inappropriate to fix such a period because of—

(i) the gravity of the offence or the circumstances surrounding the offence; or

(ii) the criminal record of the person; or

(iii) the behaviour of the person during any previous period of release on parole or conditional release; or

(iv) any other circumstance.

(6) If—

(a) a court sentences a person under section 26 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.

(7) The DPP 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.

(8) The DPP must be notified of an application made by the presiding member of the Parole Board or Training Centre Review Board under this section.

(9) 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 DPP or the presiding member of the Parole Board or Training Centre Review Board under subsection (7), must have regard to—

(i) the likely behaviour of the person the subject of the application should the person 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 the person be released); and

(iv) such other matters as the court thinks relevant.

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

(11) 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.

(12) For the purposes of this section—

(a) a court that orders a suspended sentence of imprisonment to 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 DPP or the presiding member of the Parole Board or Training Centre Review Board under this section is a party to the application and the DPP is a party to an application under subsection (3); and

(c) 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

(d) the ***sentencing court*** means—

(i) if the prisoner is subject to a single sentence of imprisonment, or a number of sentences imposed by the 1 court or by a number of courts of coordinate jurisdiction—that court, or a court of coordinate jurisdiction; or

(ii) if 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 coordinate with the jurisdiction of that court; and

(e) 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

(f) a victim suffers ***total incapacity*** if the victim is permanently physically or mentally incapable of independent function.

48—Mandatory minimum non-parole periods and proportionality

(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) in the circumstances (if any) prescribed by the regulations for the purposes of this paragraph, or otherwise in exceptional circumstances, fix a non-parole period that is shorter than the prescribed period.

(3) Without limiting subsection (2)(b), exceptional circumstances may include the following:

(a) the offence was committed in circumstances in which the victim's conduct or condition substantially mitigated the offender's conduct;

(ab) the offence was committed in circumstances of family violence (being circumstances in which the offender, or a member of the offender's family, was a victim of family violence committed by the victim of the offence);

(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 cooperation.

(3a) In deciding whether exceptional circumstances exist for the purposes of subsection (2)(b) in relation to an offence committed in circumstances of family violence, the court must have regard to any evidence of family violence admitted in the course of the trial for the relevant offence or otherwise before the court.

(4) This section applies whether a mandatory minimum non-parole period is prescribed under this Act or some other Act.

(5) In this section—

circumstances of family violence has the same meaning as in section 34V of the *Evidence Act 1929*;

evidence of family violence has the same meaning as in section 34W of the *Evidence Act 1929*.

Division 2A—Sentencing of serious child sex offenders

Subdivision 1—Preliminary

48A—Interpretation

(1) In this Division—

appropriate board—see subsection (3);

child means a person under the age of 18 years;

correctional facility means—

(a) a correctional institution within the meaning of the *Correctional Services Act 1982*; or

(b) a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*;

prescribed child sex offence—see section 48C;

senior police officer means a police officer of or above the rank of Inspector;

serious child sex offender means a person taken to be a serious child sex offender under section 48G;

triggering child sex offence—see section 48D.

(2) For the purposes of this Division, a reference to a ***sentence of indeterminate duration*** will be taken to be a reference to the detention of a person in custody until the sentence of imprisonment is extinguished by order of the Supreme Court under section 48M.

(3) For the purposes of this Division, the ***appropriate board***, in relation to proceedings under this Division, means—

(a) if the serious child sex offender 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.

(4) To avoid doubt, a reference in this Division to a period of imprisonment imposed on a person will be taken not to include a period of imprisonment that is suspended, or is to be served on home detention.

48B—Capable of controlling, and willing to control, sexual instincts

(1) For the purposes of this Division, a serious child sex offender will, in the absence of evidence to the contrary, be presumed not to be capable of controlling, or willing to control, their sexual instincts.

(2) For the purposes of this Division, a person is only to be regarded as being capable of controlling, and willing to control, their sexual instincts if the Supreme Court is satisfied that, if the person were given an opportunity to commit a triggering child sex offence, the person would be unlikely to commit the offence, or to otherwise fail to exercise appropriate control of their sexual instincts.

(3) In proceedings under this or any other Act, the onus is on a serious child sex offender to prove that they are capable of controlling, and willing to control, their sexual instincts.

48C—Prescribed child sex offences

For the purposes of this Division, the following offences (whether committed before or after the commencement of this section) are ***prescribed child sex offences***:

(a) an offence referred to in section 48D when committed against or in relation to a child;

(b) an offence against a law previously in force in this State that corresponds to an offence referred to in section 48D when committed against or in relation to a child;

(c) an offence against the law of another State or Territory that corresponds to an offence referred to in a preceding paragraph when committed against or in relation to a child;

(d) an offence against a following provision of the *Criminal Code* of the Commonwealth when committed against or in relation to a child:

(i) section 271.4;

(ii) section 271.7;

(iii) section 272.8;

(iv) section 272.9;

(v) section 272.10;

(vi) section 272.11;

(vii) section 272.12;

(viii) section 272.13;

(ix) section 272.14;

(x) section 272.15;

(xi) section 272.15A;

(xii) section 272.18;

(xiii) section 272.19;

(xiv) section 272.20;

(xv) section 273.6;

(xvi) section 273.7;

(xvii) section 471.16;

(xviii) section 471.17;

(xix) section 471.19;

(xx) section 471.20;

(xxi) section 471.22;

(xxii) section 471.24;

(xxiii) section 471.25;

(xxiv) section 471.25A;

(xxv) section 471.26;

(xxvi) section 474.19;

(xxvii) section 474.20;

(xxviii) section 474.22;

(xxix) section 474.22A;

(xxx) section 474.23;

(xxxi) section 474.23A;

(xxxii) section 474.24A;

(xxxiii) section 474.25A;

(xxxiv) section 474.25B;

(xxxv) section 474.25C (other than paragraph (a)(i));

(xxxvi) section 474.26;

(xxxvii) section 474.27;

(xxxviii) section 474.27A; or

(xxxix) section 474.27AA;

(e) an offence against a law of the Commonwealth previously in force that corresponds to an offence referred to in paragraph (d) when committed against or in relation to a child; or

(f) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs; or

(g) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs; or

(h) an offence against the law of a foreign jurisdiction that corresponds to an offence referred to in any of the preceding paragraphs,

but does not include an offence of a kind declared by the regulations to be excluded from the ambit of this definition.

48D—Triggering child sex offences

For the purposes of this Division, an offence against the following provisions of the *Criminal Law Consolidation Act 1935* (being an offence committed after the commencement of this section) is, when committed against or in relation to a child, a ***triggering child sex offence***:

(a) section 48;

(b) section 48A;

(c) section 49;

(d) section 50;

(e) section 51;

(f) section 56;

(g) section 58;

(h) section 59, if the offender is sentenced on the basis that the offender committed the offence with the intent of having sexual intercourse with the child;

(i) section 60;

(j) section 63;

(k) section 63AA;

(l) section 63AB(1) or (5);

(m) section 63B;

(n) section 66;

(o) section 67;

(p) section 68;

(q) section 72;

(r) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs;

(s) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in any of the preceding paragraphs.

48E—Application of Division to youths

This Division does not apply in relation to a youth unless the youth is sentenced for a triggering child sex offence as an adult.

48F—Disapplication of certain provisions of Act

(1) Subject to subsection (2), the following provisions of this Act do not apply in relation to the sentencing of a serious child sex offender for a triggering child sex offence:

(a) section 10;

(b) section 29;

(c) Part 2 Division 2 Subdivision 4;

(d) Part 3 Division 2;

(e) section 54;

(f) Part 3 Division 6;

(g) Part 3 Division 7;

(h) Part 4.

(2) Section 10 and Part 3 Division 6 continue to apply to a determination of a court under section 48I(1)(a).

Subdivision 2—Serious child sex offenders

48G—Serious child sex offenders

(1) A person is, by force of this subsection, taken to be a serious child sex offender if—

(a) the person has been found guilty of, and a period of imprisonment imposed in relation to, a prescribed child sex offence; and

(b) the person served all or part of the period of imprisonment in relation to the prescribed child sex offence in a correctional facility; and

(c) the person is found guilty of a triggering child sex offence committed after the person is released from the correctional facility after serving the period of imprisonment.

(2) A person ceases to be a serious child sex offender if a finding of guilt in respect of a prescribed child sex offence or a triggering child sex offence is quashed or set aside by a court (being an offence or offences without which the person would not be a serious child sex offender).

48H—Effect of spent convictions

(1) The fact that a prescribed child sex offence or a triggering child sex offence in respect of which a person becomes a serious child sex offender becomes spent does not affect the status of the offence in determining whether a person is a serious child sex offender.

(2) For the purposes of this section, an offence becomes spent if, under a law in any jurisdiction, the offender is permitted to not disclose the fact that they were convicted or found guilty of the offence.

Subdivision 3—Sentencing of serious child sex offenders for triggering child sex offences

48I—Sentencing of serious child sex offenders for triggering child sex offences

(1) Subject to this Division, the following provisions apply in relation to the sentencing of a serious child sex offender for a triggering child sex offence:

(a) the court sentencing the serious child sex offender must first determine whether—

(i) a sentence of imprisonment is to be imposed in relation to the triggering child sex offence; and

(ii) that sentence of imprisonment is to be wholly or partly served in a correctional facility,

(and in doing so, the court must not have regard to the fact that a mandatory penalty of indeterminate duration may be imposed in relation to the triggering child sex offence);

(b) if the court determines that a sentence of imprisonment is to be imposed in relation to the triggering child sex offence, and that sentence of imprisonment is to be wholly or partly served in a correctional facility, then—

(i) the mandatory penalty for offence pursuant to section 5AB(1) of the *Criminal Law Consolidation Act 1935* must be imposed; and

Note—

This is a sentence of indeterminate duration.

(ii) that sentence of imprisonment—

(A) must not be suspended; and

(B) must not be served on home detention; and

(C) must be served in a correctional facility.

(c) if the court determines that a sentence of imprisonment is not to be imposed in relation to the triggering child sex offence, then the court is to sentence the serious child sex offender in accordance with this Act as it applies generally in relation to an offence of the relevant kind.

(2) If a court sentences a serious child sex offender to a sentence of indeterminate duration for a triggering child sex offence, the court—

(a) must not fix a non-parole period; and

(b) must not reduce, substitute or mitigate the sentence in any way; and

(c) must specify the term of imprisonment that would, but for this section, have been imposed on the serious child sex offender for the triggering child sex offence; and

(d) must fix a minimum period of imprisonment (being a period not less than four-fifths the length of the sentence referred to in paragraph (c)) that must be served before the serious child sex offender can apply for release on licence under section 48K; and

(e) must fix a minimum period (being not less than 5 years or one-fifth of the length of the sentence referred to in paragraph (c), whichever is the greater) that the serious child sex offender must spend on release on licence before the serious child sex offender can apply for extinguishment of a sentence under section 48M.

(3) In determining a period of imprisonment under subsection (2) the court must not have regard to the matters set out in section 11(4), nor to the fact that the serious child sex offender will be sentenced to a sentence of indeterminate duration.

(4) Nothing in this section limits Part 8A of the *Criminal Law Consolidation Act 1935*.

Subdivision 4—Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

48J—Court may declare that Subdivision 3 does not apply to certain serious child sex offenders

(1) A court that is sentencing a serious child sex offender for a triggering child sex offence may declare that Subdivision 3 does not apply to the sentencing of the serious child sex offender for the offence if the court is satisfied that—

(a) exceptional circumstances exist for doing so; and

(b) it is not, in all the circumstances, appropriate that the person be sentenced in accordance with that Subdivision.

(2) If a court makes a declaration under subsection (1) in relation to the sentencing of a serious child sex offender for a triggering child sex offence, this Act will be taken to apply in relation to the sentencing of the serious child sex offender for the offence as if the person were not, in fact, a serious child sex offender.

Subdivision 5—Release of serious child sex offenders on licence

48K—Release on licence

(1) The Supreme Court may, on application by the DPP or the serious child sex offender, authorise the release on licence of a serious child sex offender serving a sentence of indeterminate duration for a triggering child sex offence.

(2) However, an application may only be made under this section by a serious child sex offender if the serious child sex offender has served the minimum period of imprisonment fixed under section 48I(2)(d).

(3) The Supreme Court must not authorise the release on licence of a serious child sex offender unless the serious child sex offender satisfies the Supreme Court that—

(a) they are capable of controlling, and willing to control, their sexual instincts; or

(b) they no longer present an appreciable risk to the safety of the community (whether as individuals or in general).

(4) The Supreme Court must, before authorising the release on licence of a serious child sex offender, direct that at least 2 legally qualified medical practitioners (to be nominated by the Supreme Court for the purpose) inquire into the mental condition of the serious child sex offender and report to the Supreme Court on whether the serious child sex offender is, or is not, capable of controlling, and willing to control, their sexual instincts.

(5) The appropriate board must, at the request of the Supreme Court, make a report to the Supreme Court on the serious child sex offender addressing the matters specified by the Supreme Court.

(6) 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 serious child sex offender:

(a) the reports of the medical practitioners (as directed and nominated under subsection (4)) provided to the Court;

(b) any relevant evidence or representations that the serious child sex offender may desire to put to the Court;

(c) a report provided 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 serious child sex offender would have on the safety of the community; and

(ii) a report as to the probable circumstances of the serious child sex offender if they are released on licence; and

(iii) the recommendation of the appropriate board as to whether the serious child sex offender 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 57(15) on the progress and circumstances of the serious child sex offender tendered to the Court;

(f) any other matter that the Court thinks relevant.

(7) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the serious child sex offender has spent in custody or may spend in custody if the serious child sex offender is not released on licence.

(8) The paramount consideration of the Supreme Court when determining an application under this section for the release on licence of a serious child sex offender must be to protect the safety of the community (whether as individuals or in general).

(9) On the Supreme Court authorising the release of a serious child sex offender under subsection (1), the appropriate board must order the release of the serious child sex offender on licence on the day specified by the Court.

(10) Subject to this Act, every release of a serious child sex offender on licence under this section is subject to the following conditions:

(a) a condition that the serious child sex offender wear or carry a tracking device for the purpose of monitoring the serious child sex offender's whereabouts at all times;

(b) a condition prohibiting the serious child sex offender from possessing a firearm or ammunition or any part of a firearm;

(c) a condition requiring the serious child sex offender 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.

(11) Without limiting subsection (10), the release of a serious child sex offender on licence under this section will be subject to such conditions as the appropriate board thinks fit and specifies in the licence.

(12) If the Supreme Court has refused a serious child sex offender's application for release on licence, the serious child sex offender may not further apply for release for a period of 6 months, or such lesser or greater period as may be specified by the Court.

(13) The appropriate board may—

(a) on application by the DPP or the serious child sex offender, or on its own initiative, vary or revoke a condition of a licence (other than the condition imposed by subsection (10)(a)) or impose further conditions; or

(b) on application by the DPP, or on its own initiative, cancel the release of a serious child sex offender on licence, if satisfied that the serious child sex offender has contravened, or is likely to contravene, a condition of the licence.

(14) A board cannot exercise its powers under subsection (13) on its own initiative in relation to a serious child sex offender released on licence unless the serious child sex offender 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.

(15) The appropriate board may only vary or revoke the conditions imposed by subsection (10)(b) or (c) on the release of a serious child sex offender 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 serious child sex offender does not represent an undue risk to the safety of the public.

(16) For the purposes of proceedings under subsection (13), a member of the appropriate board may—

(a) summon the serious child sex offender 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 serious child sex offender pending determination of the proceedings; or

(ii) apply to a magistrate for a warrant for the apprehension and detention of the serious child sex offender pending determination of the proceedings.

(17) If a serious child sex offender 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 the serious child sex offender's absence; or

(b) direct a member of the board to—

(i) issue a warrant; or

(ii) apply to a magistrate for a warrant,

for the apprehension and detention of the offender for the purpose of bringing the serious child sex offender before the board.

(18) A member of the appropriate board may apply to a magistrate for a warrant for the apprehension and return to custody of a serious child sex offender whose release on licence has been cancelled by the board.

(19) A magistrate must, on application under this section, issue a warrant for the apprehension and detention of a serious child sex offender or for the apprehension and return to custody of a serious child sex offender, 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.

(20) 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.

(21) If a serious child sex offender 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.

48L—Arrest and detention of serious child sex offender released on licence without warrant

(1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a serious child sex offender released on licence under section 48K if the police officer suspects on reasonable grounds that the serious child sex offender has breached a condition of the release on licence.

(2) If a serious child sex offender is arrested under subsection (1)—

(a) the serious child sex offender must be taken to the nearest police station; and

(b) within 12 hours of the arrest—the presiding member or deputy presiding member of the appropriate board (or, if neither of those members is available, a magistrate) must be notified of the arrest; and

(c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member of the appropriate board, or the magistrate, (as the case requires) must, by order, direct that the serious child sex offender—

(i) be detained in custody pending attendance before the appropriate board; or

(ii) be released and summoned to attend before the appropriate board; or

(iii) be released from custody.

Subdivision 6—Extinguishment of sentence

48M—Extinguishment of sentence

(1) Subject to this Division and the *Correctional Services Act 1982*, a serious child sex offender serving a sentence of indeterminate duration for a triggering child sex offence will not be released from detention until the Supreme Court, on application by the DPP or the serious child sex offender, orders that the sentence be wholly extinguished.

(2) However, an application may only be made under this section by a serious child sex offender if the serious child sex offender—

(a) has served the minimum period of imprisonment fixed under section 48I(2)(d); and

(b) has been released on licence for at least the minimum period fixed under section 48I(2)(e); and

(c) has not, during the period referred to in paragraph (b), breached a condition of the release on licence.

(3) The Supreme Court must not make an order under subsection (1) extinguishing a sentence unless the serious child sex offender satisfies the Supreme Court that—

(a) they are capable of controlling, and willing to control, their sexual instincts; or

(b) they no longer present an appreciable risk to the safety of the community (whether as individuals or in general).

(4) The Supreme Court must, before making an order under subsection (1) extinguishing a sentence, direct that at least 2 legally qualified medical practitioners (to be nominated by the Supreme Court for the purpose) inquire into the mental condition of the serious child sex offender and report to the Supreme Court on whether the serious child sex offender is, or is not, capable of controlling, and willing to control, their sexual instincts.

(5) The appropriate board must, at the request of the Supreme Court, make a report to the Supreme Court on the serious child sex offender addressing the matters specified by the Supreme Court.

(6) The Supreme Court must, before making an order under subsection (1) extinguishing a sentence, also take the following matters into consideration:

(a) the reports of the medical practitioners (as directed and nominated under subsection (4)) provided to the Court;

(b) any relevant evidence or representations that the serious child sex offender may desire to put to the Court;

(c) a report provided 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 serious child sex offender would have on the safety of the community; and

(ii) a report as to the probable circumstances of the serious child sex offender if they are released on licence; and

(iii) the recommendation of the appropriate board as to whether the serious child sex offender should be released on licence;

(d) the reports resulting from the periodic reviews under section 57(15) on the progress and circumstances of the serious child sex offender tendered to the Court;

(e) any other matter that the Court thinks relevant.

(7) The paramount consideration of the Supreme Court in determining whether to make an order under subsection (1) extinguishing a sentence of imprisonment must be to protect the safety of the community (whether as individuals or in general).

(8) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the serious child sex offender has spent in custody or may spend in custody if the sentence is not extinguished.

(9) A copy of a report provided to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

(10) The Supreme Court may order that the release of a serious child sex offender from detention is not to take effect for such time as it considers necessary for the purpose of enabling the serious child sex offender to undergo a suitable pre-release program.

Subdivision 7—Miscellaneous

48N—Inquiries by medical practitioners

If, for the purposes of this Division, the Supreme Court directs that at least 2 legally qualified medical practitioners 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, the person's 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.

Division 3—Serious firearm offenders

49—Interpretation

(1) In this Division—

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

serious firearm offence means—

(a) an offence under the *Criminal Law Consolidation Act 1935* or the *Firearms Act 2015* involving the use or carriage of—

(i) a category H firearm—

(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 category C firearm or category 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 under the *Criminal Law Consolidation Act 1935* or the *Firearms Act 2015* 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 under section 29A of the *Criminal Law Consolidation Act 1935*; or

(d) an offence under the *Firearms Act 2015* 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 under the *Firearms Act 2015* 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 96(2)(a), or a condition of a similar kind); or

(iii) is serving a sentence on home detention under a home detention order subject to the condition imposed by section 72(1)(e); or

(iv) 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

(v) 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

(vi) 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); or

(f) an offence under section 45(9) of the *Firearms Act 2015*; or

(g) an offence under section 22(2)(a) of the *Firearms Act 2015*; or

(h) an offence that was a ***serious firearms offence*** within the meaning of section 20AA of the *Criminal Law (Sentencing) Act 1988* at the time of the commission of the offence;

serious firearm offender means a person who is, by virtue of the operation of section 50, a serious firearm offender.

(2) In this Division, the following terms have the same meaning as in the *Firearms Act 2015*:

(a) automatic firearm;

(b) category C firearm;

(c) category D firearm;

(d) category 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*).

50—Serious firearm offenders

(1) A person will, by force of this section, be taken to be a ***serious firearm offender*** if the person 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 under section 267 of the *Criminal Law Consolidation Act 1935*; or

(b) the defendant's liability in respect of the offence derives solely from the defendant's involvement in a joint criminal enterprise (however described).

51—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 25 does not apply in respect of the sentencing of the person.

(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 the person satisfies the court, by evidence given on oath, that—

(a) the person's personal circumstances are so exceptional as to outweigh the paramount consideration of protecting the safety of the community (whether as individuals or in general) and personal and general deterrence; and

(b) it is, in all the circumstances, appropriate to suspend the sentence.

Division 4—Serious repeat adult offenders and recidivist young offenders

52—Interpretation

In this Division—

community based custodial sentence has the same meaning as in section 25;

conviction means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded;

serious offence means—

(a) a serious firearm offence within the meaning of Division 3; or

(b) any of the following offences if the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(i) an offence under Part 5 Division 2 or 3 of the *Controlled Substances Act 1984*;

(ii) an offence under a law of the Commonwealth dealing with the unlawful importation of drugs into Australia;

(iii) an offence involving a terrorist act (within the meaning of Part 5.3 of the *Criminal Code* of the Commonwealth);

(iv) an offence under Part 3 of the *Criminal Law Consolidation Act 1935*;

(v) an offence under section 137 of the *Criminal Law Consolidation Act 1935*;

(vi) an offence under section 170 of the *Criminal Law Consolidation Act 1935*;

(vii) an aggravated offence under section 170A of the *Criminal Law Consolidation Act 1935*;

(viii) an offence under section 85(1) of the *Criminal Law Consolidation Act 1935*;

(ix) an offence under section 85B of the *Criminal Law Consolidation Act 1935*;

(x) a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*);

(xa) an offence against section 31(2aa)(b) of the *Intervention Orders (Prevention of Abuse) Act 2009*;

(xi) an offence under a corresponding previous enactment substantially similar to an offence referred to in a preceding subparagraph;

(xii) a conspiracy to commit, or an attempt to commit, an offence referred to in a preceding subparagraph;

(xiii) an offence under the law of another State or a Territory involving conduct that would, if committed in this State, be a serious offence,

provided that an offence listed in paragraph (a) or (b) is not a serious offence unless a sentence of imprisonment (other than a wholly suspended sentence or a sentence that consists only of a community based custodial sentence) has been, or is to be, imposed for the offence;

serious repeat offender—see section 53;

serious sexual offence means a serious offence that is—

(a) an offence under section 48, 48A, 49, 50, 56, 58, 59, 60, 63, 63B(1), 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935* where the victim was under the age of 14 years at the time of the offence; or

(ab) an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935* where—

(i) the victim was under the age of 14 years at the time of the offence; or

(ii) the victim was a fictitious person represented to the defendant as a real person whom the defendant believed to be under the age of 14 years at the time of the offence; or

(b) an offence under section 51 of the *Criminal Law Consolidation Act 1935*; or

(c) an offence under a corresponding previous enactment substantially similar to an offence referred to in a preceding paragraph; or

(d) an attempt to commit or an assault with intent to commit an offence referred to in a preceding paragraph; or

(e) an offence under the law of another State or a Territory involving conduct that would, if committed in this State, be a serious sexual offence.

53—Serious repeat offenders

(1) A person (including a youth that is being dealt with as an adult) is, by force of this subsection, taken to be a ***serious repeat offender*** if the person has committed and been convicted of—

(a) at least 3 serious offences committed on separate occasions (whether or not the same offence on each occasion); or

(b) at least 2 serious sexual offences committed on separate occasions (whether or not the same offence on each occasion).

(2) For the purposes of this section, when determining the number of occasions on which a person has committed a particular kind of offence—

(a) offences committed by the person as a youth are not to be included unless the youth was dealt with as an adult; and

(b) the offence for which the person is being sentenced is to be included if it is of the relevant kind.

54—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) the person's personal circumstances are so exceptional as to outweigh the paramount consideration of protecting the safety of the community (whether as individuals or in general) and personal and general deterrence; and

(b) it is, in all the circumstances, not appropriate that the person be sentenced as a serious repeat offender.

55—Recidivist young offenders

(1) A youth is, by force of this subsection, taken to be a recidivist young offender if the youth has been convicted of—

(a) at least 3 serious offences committed on separate occasions (whether or not the same offence on each occasion); or

(b) at least 2 serious sexual offences committed on separate occasions (whether or not the same offence on each occasion).

(2) For the purposes of this section, when determining the number of occasions on which a person has committed a particular kind of offence—

(a) only offences committed by the person as a youth are to be included (but such offences are to be included regardless of whether the youth was dealt with as an adult or as a youth); and

(b) 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 youth who is a recidivist young offender of a serious offence (including an offence that resulted in the youth being 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.

(4) Subsection (3) does not apply in relation to a youth if—

(a) Part 3 Division 2A applies to the youth; and

(b) the youth being sentenced is a serious child sex offender; and

(c) the youth is being sentenced for a triggering child sex offence.

(5) If a court that is sentencing a youth who is a recidivist young offender for an offence is satisfied that special circumstances exist and that it is, in all the circumstances, not appropriate that the youth be treated as a recidivist young offender, the court may declare—

(a) that sections 39, 41 and 41A of the *Young Offenders Act 1993* are to apply to the youth as if they were not a recidivist young offender; and

(b) if the youth is being sentenced for a serious offence—that subsection (3) does not apply to the youth.

Division 5—Offenders incapable of controlling, or unwilling to control, sexual instincts

56—Application of this Division

(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 57 in relation to a youth who is sentenced as an adult under the *Young Offenders Act 1993*.

57—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 (3);

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

(c) an offence under a corresponding previous enactment substantially similar to an offence referred to in either of the preceding paragraphs; or

(d) any other offence where the evidence indicates that the defendant may be incapable of controlling, or unwilling to control, the defendant's sexual instincts; or

(e) 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 the person's 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) Subsection (2) does not apply in relation to a serious child sex offender being sentenced for a triggering child sex offence.

(3) 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.

(4) The Attorney-General may make an application under subsection (3) 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).

(5) The Supreme Court may, if the Attorney-General has made an application under subsection (3) in respect of a person who is in prison serving a sentence of imprisonment, make an interim order that the person is to remain in custody pending determination by the Supreme Court as to whether to make an order under this section that the person be detained in custody until further order.

(6) 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, the person's sexual instincts.

(7) 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.

(8) 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 to protect the safety of the community (whether as individuals or in general).

(9) 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 (6)) provided 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 61;

(d) any other matter that the Court thinks relevant.

(10) A copy of a report provided to the Supreme Court under subsection (9) must be given to each party to the proceedings or to counsel for those parties.

(11) 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 protecting the safety of the community (whether as individuals or in general); and

(b) consideration to any relevant evidence and representations that the person may desire to put to the Court.

(12) 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.

(13) 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.

(14) 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 Youth Justice from time to time directs;

(b) in any other case—in such institution as the Minister for Correctional Services from time to time directs.

(15) 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 59; or

(d) if the person has been authorised to be released, or has been released, on licence under section 59—suitable to be so released.

(16) The results of a review under subsection (15), including the recommendation of the relevant Board, must be embodied in a written report, a copy of which must be provided 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—the Minister for Youth Justice;

(b) in the case of a report of the Parole Board—the Minister for Correctional Services.

58—Discharge of detention order under section 57

(1) Subject to this Act, a person subject to an order for detention under section 57 will not be released from detention under that section until the Supreme Court, on application by the DPP or the person, discharges the order for detention.

(1a) An order for detention under section 57 cannot be discharged unless the person subject to the order satisfies the Supreme Court that—

(a) the person is both capable of controlling and willing to control the person's sexual instincts; or

(b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.

(2) The Supreme Court must, before determining an application under this section for the discharge of an order for detention under section 57, 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, the person's sexual instincts.

(3) The paramount consideration of the Supreme Court when determining an application for the discharge of an order for detention under section 57 must be to protect the safety of the community (whether as individuals or in general).

(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 57:

(a) the reports of the medical practitioners (as directed and nominated under subsection (2)) provided to the Court;

(b) any relevant evidence or representations that the person may desire to put to the Court;

(c) a report provided 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 57(15) on the progress and circumstances of the person tendered to the Court;

(e) any other report required by the Court under section 61;

(f) any other matter that the Court thinks relevant.

(4a) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the person subject to the order may spend in custody if the order is not discharged.

(5) A copy of a report provided to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

(6) If the discharge of an order for detention would result in the immediate release of a person subject to the order from custody, the Supreme Court may order that the discharge is not to take effect for such time as it considers necessary for the purpose of enabling the person to undergo a suitable pre-release program.

59—Release on licence

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

(1a) A person detained in custody under this Division cannot be released on licence unless the person satisfies the Supreme Court that—

(a) the person is both capable of controlling and willing to control the person's sexual instincts; or

(b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.

(2) 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, the person's sexual instincts.

(3) 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 to protect the safety of the community (whether as individuals or in general).

(4) 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 (2)) provided to the Court;

(b) any relevant evidence or representations that the person may desire to put to the Court;

(c) a report provided 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 57(15) on the progress and circumstances of the person tendered to the Court;

(f) any other report required by the Court under section 61;

(g) any other matter that the Court thinks relevant.

(4a) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the person has spent in custody or may spend in custody if the person is not released on licence.

(5) A copy of any report provided to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

(6) 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.

(7) 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 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.

(8) Without limiting subsection (7), 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 (including a condition that the person be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*).

(9) If 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 6 months, or such lesser or greater period as the Court may have directed on refusing the application.

(10) The appropriate board may—

(a) on application by the DPP or the person, or on its own initiative, vary or revoke a condition of a licence or impose further conditions; or

(b) on application by the DPP, or on its own initiative, cancel the release of a person on licence, if satisfied that—

(i) in the case of a person released on licence on the ground referred to in subsection (1a)(b)—there is evidence suggesting that the person may now present an appreciable risk to the safety of the community (whether as individuals or in general); or

(ii) in any case—the person has contravened, or is likely to contravene, a condition of the licence.

(11) A board cannot exercise its powers under subsection (10) on its own initiative in relation to a person released on licence unless the person and the DPP have been afforded a reasonable opportunity to make submissions to the board on the matter, and the board has considered any submissions so made.

(12) The appropriate board may only vary or revoke the conditions imposed by subsection (7) 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.

(13) For the purposes of proceedings under subsection (10), 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 magistrate for a warrant for the apprehension and detention of the person pending determination of the proceedings.

(14) If 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 the person's absence; or

(b) direct a member of the board to—

(i) issue a warrant; or

(ii) apply to a magistrate for a warrant,

for the apprehension and detention of the person for the purpose of bringing the person before the board.

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

(16) A magistrate 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.

(17) 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.

(18) If 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.

(20) 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.

59A—Arrest and detention of person released on licence without warrant

(1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a person released on licence under section 59 if the police officer suspects on reasonable grounds that the person has breached a condition of the release on licence.

(2) If a person is arrested under subsection (1)—

(a) the person must be taken to the nearest police station; and

(b) within 12 hours of the arrest—the presiding member or deputy presiding member of the appropriate board (or, if neither of those members is available, a magistrate) must be notified of the arrest; and

(c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member of the appropriate board, or the magistrate, (as the case requires) must, by order, direct that the person—

(i) be detained in custody pending attendance before the appropriate board; or

(ii) be released and summoned to attend before the appropriate board; or

(iii) be released from custody.

(3) In this section—

appropriate board has the same meaning as in section 59;

senior police officer means a police officer of or above the rank of Inspector.

60—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 59 that is subject to the condition imposed by section 59(7)(a), direct the person to immediately surrender 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 the person 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 59.

61—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 provide the court with a report on any matter.

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

62—Inquiries by medical practitioners

If, 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, the person's 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.

63—Parties

Both the DPP and the person to whom an application under this Division or Schedule 2 relates are parties to the application.

64—Service on guardian

If the person to whom an application under this Division or Schedule 2 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.

65—Appeals

(1) An appeal lies to the Court of Appeal 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.

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

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

(4) On an appeal, the Court of Appeal 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), if—

(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; and

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

66—Proclamations

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

67—Regulations

The Governor may make regulations—

(a) providing for the care, treatment, rights and duties of a person detained in custody under this Division in consequence of being found to be incapable of controlling the person's sexual instincts;

(b) providing for the granting of periods of leave for a person so detained;

(c) providing for any other related matter.

Division 6—Sentencing standards for offences involving child sexual abuse

68—Sentencing standards for offences involving child sexual abuse

(1) A court that is sentencing an offender in relation to a child sexual offence must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed.

(2) Nothing in this section requires a court to apply a maximum penalty that is greater than the maximum penalty that was applicable at the time the offence was committed.

(3) In this section—

child sexual offence means a sexual offence committed in relation to a person under the age of 18 years;

sexual offence has the same meaning as in section 28.

Division 7—Community based custodial sentences

Subdivision 1—Home detention

69—Purpose of home detention

(1) The purpose of a home detention order is to allow a court to impose a custodial sentence but direct that the sentence be served on home detention.

(2) The paramount consideration of the court when determining whether to make a home detention order must be to protect the safety of the community (whether as individuals or in general).

70—Home detention not available for certain offences

(1) The powers vested in a court by this Subdivision—

(a) are exercisable despite the fact that an Act prescribes a minimum penalty; but

(b) are not exercisable in relation to—

(i) a defendant who is serving or is liable to serve a sentence of indeterminate duration and who has not had a non-parole period fixed; or

(ii) a defendant who is being sentenced for—

(A) an offence of murder; or

(B) treason; or

(C) an offence involving a terrorist act; or

(D) any other offence in respect of which an Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

(2) In this section—

Act includes a statutory instrument;

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code* of the Commonwealth.

(3) For the purposes of this Division, a reference to an ***offence of murder*** includes—

(a) an offence of conspiracy to murder; and

(b) an offence of aiding, abetting, counselling or procuring the commission of murder.

71—Home detention orders

(1) Subject to this section, if—

(a) a court has imposed a sentence of imprisonment on a defendant; and

(b) the court considers that the sentence should not be suspended under Part 4 Division 2; and

(c) the court considers that the defendant is a suitable person to serve the sentence on home detention,

the court may order that the defendant serve the sentence on home detention (a ***home detention order***).

(2) The following provisions apply to a home detention order:

(a) a home detention order must not be made if the court considers that the making of such an order would, or may, affect public confidence in the administration of justice;

(b) a home detention order must not be made if the defendant is being sentenced—

(i) as an adult to a period of imprisonment with a non-parole period of 2 years or more for a prescribed designated offence; or

(ii) as an adult for a serious sexual offence unless—

(A) the offence is a prescribed serious sexual offence that occurred in prescribed circumstances; or

(B) if subsubparagraph (A) does not apply, the court is satisfied that special reasons exist for the making of a home detention order; or

(iii) as an adult for a serious and organised crime offence or specified offence against police; or

(iv) 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 sentenced the defendant to imprisonment (other than where the sentence is suspended), home detention or an intensive correction order for a designated offence;

(c) a home detention order must not be made unless the court is satisfied that the residence the court proposes to specify in its order is suitable and available for the detention of the defendant and that the defendant will be properly maintained and cared for while detained in that place;

(d) a home detention order must not be made if the home detention is to be served cumulatively on another term of imprisonment (other than a term of imprisonment to be served subject to a home detention order), or concurrently with another term of imprisonment then being served, or about to be served, by the defendant;

(e) a home detention order should not be made unless the court is satisfied that adequate resources exist for the proper monitoring of the defendant while on home detention by a home detention officer.

(3) The court must take the following matters into consideration when determining whether to make a home detention order:

(a) the impact that the home detention order is likely to have on—

(i) any victim of the offence for which the defendant is being sentenced; and

(ii) any spouse or domestic partner of the defendant; and

(iii) any person residing at the residence at which the prisoner would, if released, be required to reside;

(b) the pre-sentence report (if any) ordered by the court;

(c) any other matter the court thinks relevant.

(4) The following provisions apply for the purposes of subsection (2)(b)(ii)(B):

(a) the court cannot be satisfied that special reasons exist for the purposes of subsection (2)(b)(ii)(B) unless the court is satisfied that—

(i) the defendant's advanced age or permanent infirmity means that the defendant no longer presents an appreciable risk to the safety of the community (whether as individuals or in general); and

(ii) the interest of the community as a whole would be better served by the defendant serving the sentence on home detention rather than in custody;

(b) the court must not have regard to any other matter in determining whether it is satisfied that special reasons exist for the purposes of subsection (2)(b)(ii)(B).

(5) In this section—

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

(a) an offence under section 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 137;

(j) an offence under section 170;

(k) 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;

foster parent, of a child, includes—

(a) an approved carer of the child; and

(b) a person in whose care the child is placed under section 77 of the *Children and Young People (Safety) Act 2017*;

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

prescribed serious sexual offence means—

(a) any of the following offences under the *Criminal Law Consolidation Act 1935* where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(i) an offence under section 49 (unlawful sexual intercourse);

(ii) an offence under section 56 (indecent assault);

(iii) an offence under section 58 (gross indecency);

(iv) an offence under section 63 (production or dissemination of child exploitation material);

(v) an offence under section 63B (procuring child to commit an indecent act etc); or

(b) an offence against a corresponding previous enactment substantially similar to an offence referred to in paragraph (a); or

(c) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding paragraphs;

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;

(iv) an attempt to commit any of the offences referred to in any of the preceding subparagraphs; 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);

(va) an offence under section 33F, 33G or 33H;

(vi) an attempt to commit any of the offences referred to in any of the preceding subparagraphs;

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, 48A, 49, 50, 51, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*;

(ii) an offence against a corresponding previous enactment substantially similar to an offence referred to in subparagraph (i);

(iii) 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);

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 the victim's official duty; or

(ii) in retribution for something the offender knows or believes to have been done by the victim in the course of the victim's official duty.

(6) For the purposes of this section, an offence occurred in ***prescribed circumstances*** if—

(a) the defendant was, at the time of the offence, 20 years of age or less; and

(b) the circumstances of the offending, including the victim's age and the age difference between the defendant and the victim, are such that it is appropriate that a home detention order be made; and

(c) the defendant was not, at the time of the offence, a person in a position of authority in relation to the victim.

(6a) If—

(a) the defendant commits an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935*; and

(b) by reason of that offence, the defendant is taken to have committed a serious sexual offence or a prescribed serious sexual offence for the purposes of this section; and

(c) the victim of the offence is a fictitious person represented to the defendant as a real person,

the court may, in considering the circumstances of the offending for the purposes of subsection (6)(b) in relation to the victim's age and the age difference between the defendant and the victim, take into consideration the age that the defendant believed the victim to be at the time of the offence.

(7) For the purposes of subsection (6), a person is in ***a position of authority*** in relation to a victim (the ***child***) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(i) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

(8) A description of an offence appearing in brackets in this section is for convenience of reference only.

72—Conditions of home detention order

(1) A home detention order is subject to the following conditions:

(a) a condition requiring the person subject to the order to remain at the residence specified by the court throughout the period of the home detention order and not to leave that residence at any time during that period except for the following purposes:

(i) attendance at such remunerated employment at such times and places as approved from time to time by the home detention officer to whom the person is assigned during the period of the home detention order;

(ii) urgent medical or dental treatment for the person;

(iii) attendance at—

(A) a place for the purpose of undergoing assessment or treatment (or both) relating to the person's mental or physical condition; or

(B) an intervention program; or

(C) any other course of education, training or instruction, or other activity,

as approved or directed by the home detention officer to whom the person is assigned;

(iv) any other purposes as approved or directed by the home detention officer to whom the person is assigned;

(b) a condition requiring the person to be of good behaviour;

(c) a condition requiring the person to be under the supervision of a home detention officer;

(d) a condition requiring the person to obey the lawful directions of the home detention officer to whom the person is assigned;

(e) a condition prohibiting the person from possessing a firearm or ammunition or any part of a firearm;

(f) a condition relating to the use of drugs by the person other than for therapeutic purposes;

(g) a condition requiring the person to submit to such tests (including testing without notice)—

(i) for gunshot residue; or

(ii) relating to drug use,

as a home detention officer may reasonably require;

(h) a condition that the person be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*;

(i) such other conditions as the court thinks appropriate and specifies in the order.

(2) A person subject to a home detention order will, unless the home detention order is earlier revoked, remain on home detention—

(a) in the case of a person subject to a non-parole period—until the person is released on parole; or

(b) in the case of any other person—in accordance with Part 4 Division 7 of the *Correctional Services Act 1982*.

(3) Subject to subsection (4), the court may vary or revoke a condition imposed under this section.

(4) The court may only vary or revoke the following conditions in the following circumstances:

(a) the conditions imposed by subsection (1)(e) and (g)(i)—if the court is satisfied, by evidence given on oath, that—

(i) there are cogent reasons to do so; and

(ii) 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;

(b) the condition imposed by subsection (1)(h)—if the court is satisfied, by evidence given on oath, that removal of the electronic device is necessary for medical reasons.

73—Orders that court may make on breach of condition of home detention order etc

(1) Subject to this section, if the court that imposed a home detention order on a person is satisfied that—

(a) a person subject to a home detention order has breached a condition of the order; or

(b) the residence specified by the court at which the person is required to remain throughout the period of the home detention order is no longer suitable for the person and no other suitable residence is available for the person's detention,

the court must revoke the home detention order and order that the balance of the sentence the person was serving on home detention be served in custody.

(2) Despite subsection (1)(a), if the court is satisfied that the failure of the person to comply with the conditions of the home detention order was trivial or there are proper grounds on which the failure should be excused, the court—

(a) may refrain from revoking the order; and

(b) may impose a further condition on, or revoke or vary a condition of, the order.

(3) A person subject to a home detention order is not in breach of a condition requiring the person to remain at the person's residence if the person leaves the residence for the purpose of averting or minimising a serious risk of death or injury (either to the person or some other person).

(4) If a court revokes a home detention order and orders that the balance of the sentence be served in custody in the circumstances referred to in subsection (1)(b), the court—

(a) must take the following periods into account:

(i) the period of compliance by the person with the conditions of the home detention order;

(ii) the period spent by the person on home detention or in custody pending determination of the proceedings under this section; and

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

(4a) If a court revokes a home detention order for breach of a condition of the order and orders that the balance of the sentence be served in custody—

(a) the balance of the sentence is the balance remaining as at the day on which the breach was committed, but the court may reduce the sentence after taking into account both of the following:

(i) any period spent by the person on home detention after the day on which the breach was committed pending determination of the proceedings for the breach;

(ii) any period spent by the person in custody pending determination of the proceedings for the breach of condition; and

(b) the court may direct that the sentence be cumulative on any other sentence, or sentences, of imprisonment then being served, or to be served, by the person.

(4b) In relation to the breach of a condition of a home detention order, a reference in subsection (4a) to the day on which the breach was committed will, in the case of proceedings relating to more than 1 breach, be taken to be a reference to the day on which the first breach was committed.

(5) The court may, if it thinks it is necessary to do so for the purpose of proceedings under this section—

(a) issue a summons to a person subject to a home detention order requiring the person to appear before the court at the time and place specified in the summons; or

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

(6) A person who appears before the court as required by a summons issued under this section may be remanded in custody pending determination of the proceedings.

(7) 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.

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

(9) A warrant issued under this section authorises the detention of the person in custody pending appearance before the court.

(10) The obligations of a person subject to a home detention order are suspended during any period the person is in custody.

(11) If a person subject to a home detention order is found guilty of an offence by a court of a superior jurisdiction to that of the court that made the order, being an offence committed during the period of the home detention order, any proceedings for breach of condition arising out of the offence are to be taken in the court of superior jurisdiction.

(12) If a person subject to a home detention order is found guilty of an offence by a court of an inferior jurisdiction to that of the court that made the order, being an offence committed during the period of the home detention order, the court of inferior jurisdiction must—

(a) sentence the person for the offence and remand the person to the court that made the home detention order to be dealt with for breach of condition of the order; or

(b) remand the person to the court that made the home detention order to be sentenced for the offence and dealt with for breach of condition of the order.

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

(14) In this section—

court of an inferior jurisdiction means—

(a) if the court that made the home detention order is the Supreme Court—the District Court or the Magistrates Court;

(b) if the court that made the home detention order is the District Court—the Magistrates Court;

court of a superior jurisdiction means—

(a) if the court that made the home detention order is the Magistrates Court—the Supreme Court or the District Court;

(b) if the court that made the home detention order is the District Court—the Supreme Court.

74—Court to provide CE with copy of home detention order

If a home detention order is made in respect of a person, or the order or conditions of the order are varied or revoked, or a further order is made in respect of the person, the court must notify the CE of the terms of the order, variation, revocation or further order, as the case may require.

75—CE must assign home detention officer

(1) The CE must, on receiving a copy of a home detention order (and may after then from time to time) assign the person to whom the order relates to a home detention officer.

(2) The CE must ensure that the person is notified in writing of the name of the home detention officer to whom the person has been assigned and, if necessary, of the place and time at which the person must first report to that officer.

(3) It is the duty of a home detention officer to endeavour to ensure that any person assigned to the officer complies with the conditions of the order.

76—Powers of home detention officers

(1) A home detention officer may, at any time—

(a) enter or telephone the residence of a person to whom the officer has been assigned; or

(b) telephone the person's place of employment or any other place at which the person is permitted or required to attend; or

(c) question any person who is at that residence or place as to the whereabouts of the person to whom the officer has been assigned,

for the purposes of ascertaining whether or not the person is complying with a condition of the home detention order.

(2) A person must not—

(a) hinder a home detention officer in the exercise of powers under this section; or

(b) fail to answer truthfully any question put to the person by a home detention officer under those powers.

Maximum penalty: $2 500.

77—Apprehension and detention of person subject to home detention order without warrant

(1) If the CE suspects on reasonable grounds that a person subject to a home detention order has breached a condition of the order, the person may be apprehended, without warrant, by a police officer or home detention officer and detained in custody for the purposes of proceedings relating to the suspected breach under section 73 before the court that imposed the order.

(2) Section 73(8) to (10) (inclusive) apply to a person apprehended under this section as if the person were arrested pursuant to a warrant issued under section 73.

78—Offence to contravene or fail to comply with condition of home detention order

A person subject to a home detention order who contravenes or fails to comply with a condition of the order is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

Subdivision 2—Intensive correction

79—Purpose of intensive correction order

(1) The purpose of an intensive correction order is to provide a court with an alternative sentencing option for a defendant where the court—

(a) is considering imposing a sentence of imprisonment of 2 years or less; and

(b) considers there is a genuine risk that the defendant will re-offend if not provided with a suitable intervention program for rehabilitation purposes.

(2) The court should not impose an intensive correction order on a defendant unless the court considers that, given the short custodial sentence that the court would otherwise have imposed, rehabilitation of the defendant is more likely to be achieved by allowing the defendant to serve the sentence in the community while subject to strict conditions of intensive correction.

(3) Despite the preceding subsections, the paramount consideration of the court when determining whether to make an intensive correction order must be to protect the safety of the community (whether as individuals or in general).

80—Intensive correction not available for certain offences

(1) The powers vested in a court by this Subdivision—

(a) are exercisable despite the fact that an Act prescribes a minimum penalty; but

(ab) are not exercisable in relation to an offence involving a terrorist act; or

(b) are not exercisable in relation to any offence in respect of which an Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

(2) In this section—

Act includes a statutory instrument;

terrorist act has the same meaning as Part 5.3 of the *Criminal Code* of the Commonwealth.

81—Intensive correction orders

(1) Subject to this section, if—

(a) a court has imposed a sentence of imprisonment on a defendant of a term that is 2 years or less; and

(b) the court considers that the sentence should not be suspended under Part 4 Division 2; and

(c) the court determines that there is good reason for the defendant to serve the sentence in the community while subject to intensive correction,

the court may order that the defendant serve the sentence in the community while subject to intensive correction (an ***intensive correction order***).

(2) For the purposes of subsection (1)(c), the court may determine that, even though a custodial sentence is warranted and there is a moderate to high risk of the defendant re-offending, any rehabilitation achieved during the period that would be spent in prison is likely to be limited compared to the likely rehabilitative effect if the defendant were instead to spend that period in the community while subject to intensive correction.

(3) The following provisions apply to an intensive correction order:

(a) an intensive correction order must not be made if the sentence is to be served cumulatively on another term of imprisonment (other than a term of imprisonment to be served subject to an intensive correction order), or concurrently with another term of imprisonment then being served, or about to be served, by the defendant;

(ab) an intensive correction order must not be made if the defendant is being sentenced—

(i) as an adult for a serious sexual offence; or

(ii) as an adult for a serious and organised crime offence or specified offence against police; or

(iii) 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 sentenced the defendant to imprisonment (other than where the sentence is suspended), home detention or an intensive correction order for a designated offence;

(b) an intensive correction order should not be made if the court is not satisfied that adequate resources exist for the proper monitoring of the defendant while subject to an intensive correction order by a community corrections officer.

(4) The court must take the following matters into consideration when determining whether to make an intensive correction order:

(a) the impact that the intensive correction order is likely to have on—

(i) any victim of the offence for which the defendant is being sentenced; and

(ii) any spouse or domestic partner of the defendant; and

(iii) any person residing at the residence at which the defendant may, if released, reside;

(b) the pre-sentence report (if any) ordered by the court;

(c) any other matter the court thinks relevant.

(5) In this section—

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

(a) an offence under section 12 (conspiring or soliciting to commit murder);

(b) an offence under section 13 (manslaughter);

(c) an offence under section 13A (criminal liability in relation to suicide);

(d) an offence under section 19 (unlawful threats);

(e) an offence under section 19AA (stalking and harassment);

(f) an offence under section 19AC (dangerous driving to escape police pursuit);

(g) an offence under section 19A (causing death or harm by use of vehicle or vessel);

(h) an offence under section 23 (causing serious harm);

(i) an offence under section 24 (causing harm);

(j) an offence under section 29A (shooting at police officers);

(k) an offence under section 39 (kidnapping);

(l) an offence under section 137 (robbery);

(m) an offence under section 170 (serious criminal trespass—places of residence);

(n) an offence under section 270B (assaults with intent) if the offence against the person to which that section applies is a relevant offence referred to in a preceding paragraph;

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 (participation in criminal organisation);

(ii) an aggravated offence under—

(A) section 172 (blackmail); or

(B) section 251 (abuse of public office),

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 (offences relating to witnesses);

(iv) an offence under section 245 (offences relating to jurors);

(v) an attempt to commit any of the offences referred to in any of the preceding subparagraphs; or

(b) any of the following offences under the *Controlled Substances Act 1984*:

(i) an offence under section 32(1) (trafficking (large commercial quantity controlled drug));

(ii) an aggravated offence under section 32(2) (trafficking (commercial quantity controlled drug));

(iii) an aggravated offence under section 32(2a) (trafficking (controlled drug in prescribed area));

(iv) an aggravated offence under section 32(3) (trafficking (controlled drug));

(v) an offence under section 33(1) (manufacturing controlled drug for sale (large commercial quantity));

(vi) an aggravated offence under section 33(2) (manufacturing controlled drug for sale (commercial quantity));

(vii) an aggravated offence under section 33(3) (manufacturing controlled drug for sale);

(viii) an aggravated offence under section 33A(1) (sale/manufacture etc controlled precursor (large commercial quantity));

(ix) an aggravated offence under section 33A(2) (sale/manufacture etc controlled precursor (commercial quantity));

(x) an aggravated offence under section 33A(3) (sale/manufacture etc controlled precursor);

(xi) an aggravated offence under section 33A(4) (manufacture etc controlled precursor);

(xii) an aggravated offence under section 33A(5) (manufacture etc controlled precursor);

(xiii) an offence under section 33F (sale, supply or administration of controlled drug to child);

(xiv) an offence under section 33G (sale, supply or administration of controlled drug in school zone);

(xv) an offence under section 33H (procuring child to commit offence (relating to controlled drug, precursor or plant));

(xvi) an attempt to commit any of the offences referred to in any of the preceding subparagraphs;

serious sexual offence means—

(a) any of the following offences under the *Criminal Law Consolidation Act 1935* where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(i) an offence under section 48 (rape);

(ii) an offence under section 48A (compelled sexual manipulation);

(iii) an offence under section 49 (unlawful sexual intercourse);

(iv) an offence under section 50 (sexual abuse of a child);

(v) an offence under section 51 (sexual exploitation of person with a cognitive impairment);

(vi) an offence under section 56 (indecent assault);

(vii) an offence under section 58 (gross indecency);

(viii) an offence under section 59 (abduction);

(ix) an offence under section 60 (procuring sexual intercourse);

(x) an offence under section 63 (production or dissemination of child exploitation material);

(xi) an offence under section 63B (procuring child to commit an indecent act etc);

(xii) an offence under section 66 (sexual servitude and related offences);

(xiii) an offence under section 67 (deceptive recruiting for commercial sexual services);

(xiv) an offence under section 68 (use of children in commercial sexual services);

(xv) an offence under section 72 (incest);

(xvi) an offence against a corresponding previous enactment substantially similar to an offence referred to in any of the preceding subparagraphs;

(xvii) an attempt to commit or an assault with intent to commit any of the offences referred to in any of the preceding subparagraphs; or

(b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a);

specified offence against police means—

(a) an aggravated offence under—

(i) section 23(1) of the *Criminal Law Consolidation Act 1935* (intentionally causing serious harm); or

(ii) section 23(3) of the *Criminal Law Consolidation Act 1935* (recklessly causing serious harm),

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 the victim's official duty; or

(ii) in retribution for something the offender knows or believes to have been done by the victim in the course of the victim's official duty.

(6) A description of an offence appearing in brackets in this section is for convenience of reference only.

82—Conditions of intensive correction order

(1) An intensive correction order is subject to the following conditions:

(a) a condition requiring the person to be of good behaviour;

(b) a condition requiring the person to be under the supervision of a community corrections officer;

(c) a condition requiring the person to obey the lawful directions of the community corrections officer to whom the person is assigned;

(d) a condition requiring the person to report to a specified place not later than 2 working days after the date of the order unless, within that period, the defendant receives a notice from the CE to the contrary;

(e) a condition prohibiting the person from possessing a firearm or ammunition or any part of a firearm;

(f) a condition requiring the person to submit to such tests (including testing without notice) for gunshot residue as a community corrections officer may reasonably require;

(g) a condition that the person undergo assessment or treatment (or both) relating to the person's mental or physical condition;

(ga) a condition requiring the person to undertake an intervention program as directed by the community corrections officer to whom the person is assigned;

(h) a condition requiring the person to report to the community corrections officer to whom the person is assigned any change of address or employment, not later than 2 working days after the date of the change;

(i) a condition that the person must not leave the State for any reason except in accordance with the written permission of the CE;

(j) if the defendant is unemployed—a condition requiring the person to perform a specified number of hours of community service;

(k) a condition requiring the person to comply with the following:

(i) regulations made for the purposes of this section;

(ii) the lawful directions of the CE;

(l) such other conditions as the court thinks appropriate and specifies in the order.

(2) Without limiting the generality of subsection (1)(l), an intensive correction order may (for example) be subject to any of the following conditions:

(a) a condition that the person subject to the order reside at specified premises;

(b) a condition that the defendant be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*;

(c) a condition requiring the defendant to abstain from drugs of a specified class (including alcohol);

(e) a condition requiring the person to submit to such tests (including testing without notice) relating to drug use, as a community corrections officer may reasonably require;

(f) a condition that the person contribute financially to any course or treatment program that the person is required to undertake;

(g) any other condition that the court thinks fit.

(3) Without limiting the generality of subsection (1)(k)(ii), the CE may (for example) direct the person subject to the order to do 1 or more of the following during the period of the order:

(a) reside at specified premises;

(b) be monitored (for a period not exceeding 28 days) by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*;

(c) submit to such tests (including testing without notice) relating to drug use, as a community corrections officer may reasonably require;

(d) if the defendant is unemployed—perform a specified number of hours of community service per week (which must be at least 12 hours but not more than 20 hours per week).

(4) A person subject to an intensive correction order will, unless the intensive correction order is earlier revoked, remain subject to intensive correction in the community until the expiry of the order.

(5) Subject to subsection (6), the court may vary or revoke a condition imposed under this section.

(6) The court may only vary or revoke the conditions imposed by subsection (1)(e) and (f) 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 person does not represent an undue risk to the safety of the public.

83—Orders that court may make on breach of condition of intensive correction order etc

(1) Subject to this section, if the court that imposed an intensive correction order on a person is satisfied that a person subject to an intensive correction order has breached a condition of the order, the court must revoke the intensive correction order and order that the balance of the sentence the person was serving in the community be served in custody.

(2) Despite subsection (1), if the court is satisfied that the failure of the person to comply with the conditions of the intensive correction order was trivial or there are proper grounds on which the failure should be excused, the court—

(a) may refrain from revoking the order; and

(b) may vary the order (including by extending the term of the order but not so that the order would exceed in aggregate a period of 2 years or imposing a condition of home detention); and

(c) may impose a further condition on, or revoke or vary a condition of, the order.

(3) If a court revokes an intensive correction order for a breach of a condition of the order and orders that the balance of the sentence be served in custody under subsection (1)—

(a) the balance of the sentence is the balance remaining as at the day on which the breach was committed, but the court may reduce the sentence after taking into account both of the following:

(i) any period spent by the person subject to the intensive correction order after the day on which the breach was committed pending determination of the proceedings for the breach;

(ii) any period spent by the person in custody pending determination of the proceedings for the breach of condition; and

(b) the court may direct that the sentence be cumulative on any other sentence, or sentences, of imprisonment then being served, or to be served, by the person.

(3a) A reference in subsection (3) to the day on which the breach (of a condition) was committed will, in the case of proceedings relating to more than 1 breach, be taken to be a reference to the day on which the first breach was committed.

(4) If the court imposes a condition of home detention, the terms of the condition require the defendant to reside in a specified place and to remain at that place for a specified period (which may not exceed the balance of the term of the sentence), not leaving it except for 1 of the following purposes:

(a) attendance at remunerated employment at such times and places as are approved from time to time by the community corrections officer to whom the person is assigned;

(b) urgent medical or dental treatment for the defendant;

(ba) attendance at—

(i) a place for the purpose of undergoing assessment or treatment (or both) relating to the defendant's mental or physical condition; or

(ii) an intervention program; or

(iii) any other course of education, training or instruction, or other activity,

as approved or directed by the community corrections officer to whom the person is assigned;

(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.

(5) The court may, if it thinks it is necessary to do so for the purpose of proceedings under this section—

(a) issue a summons to a person subject to an intensive correction order requiring the person to appear before the court at the time and place specified in the summons; or

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

(6) A person who appears before the court as required by a summons issued under this section may be remanded in custody pending determination of the proceedings.

(7) 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.

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

(9) A warrant issued under this section authorises the detention of the person in custody pending appearance before the court.

(10) The obligations of a person subject to an intensive correction order are suspended during any period the person is in custody.

(11) If a person subject to an intensive correction order is found guilty of an offence by a court of a superior jurisdiction to that of the court that made the order, being an offence committed during the period of the intensive correction order, any proceedings for breach of condition arising out of the offence are to be taken in the court of superior jurisdiction.

(12) If a person subject to an intensive correction order is found guilty of an offence by a court of an inferior jurisdiction to that of the court that made the order, being an offence committed during the period of the intensive correction order, the court of inferior jurisdiction must—

(a) sentence the person for the offence and remand the person to the court that made the intensive correction order to be dealt with for breach of condition of the order; or

(b) remand the person to the court that made the intensive correction order to be sentenced for the offence and dealt with for breach of condition of the order.

(13) The court dealing with a person for breach of condition of an intensive correction order must hear any evidence adduced tending to establish that the person has failed to comply with a condition of the order and any evidence or representations that the person may wish to adduce or make in reply.

(14) In this section—

court of an inferior jurisdiction means—

(a) if the court that made the intensive correction order is the Supreme Court—the District Court or the Magistrates Court;

(b) if the court that made the intensive correction order is the District Court—the Magistrates Court;

court of a superior jurisdiction means—

(a) if the court that made the intensive correction order is the Magistrates Court—the Supreme Court or the District Court;

(b) if the court that made the intensive correction order is the District Court—the Supreme Court.

84—Court to provide CE with copy of intensive correction order

If an intensive correction order is made in respect of a person, or the order or conditions of the order are varied or revoked, or a further order is made in respect of the person, the court must notify the CE of the terms of the order, variation, revocation or further order, as the case may require.

85—CE must assign community corrections officer

(1) The CE must, on receiving a copy of an intensive correction order (and may after then from time to time) assign the person to whom the order relates to a community corrections officer.

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

86—Provisions relating to community service

(1) The following provisions apply to an intensive correction order that includes a condition requiring the performance of community service:

(a) the court must specify the number of hours of community service to be performed by the person to whom the sentence relates, being not less than 15 or more than 300;

(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;

(c) the court must specify a period, not exceeding 18 months, within which the community service is to be performed;

(d) the person is required to report to a specified place not later than 2 working days after the date of the order unless, within that period, the person receives a notice from the CE to the contrary;

(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;

(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;

(g) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;

(h) the person may not be required to perform community service at a time that would interfere with the person's remunerated employment or with a course of training or instruction relating to, or likely to assist the person to obtain, remunerated employment, or that would cause unreasonable disruption of the person's commitments in caring for the person's dependants;

(i) the person may not be required to perform community service at a time that would cause the person to offend against a rule of a religion that the person practises;

(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;

(k) the person will not be remunerated for the performance of community service under the order;

(l) the person must obey the lawful directions of the community corrections officer to whom the person is assigned.

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

87—Court to be notified if suitable community service placement not available

(1) If the CE, on being notified that a court has included in an intensive correction order a condition requiring the performance of community service, is of the opinion that suitable community service work cannot be found for the defendant, whether because of the defendant's physical or mental disability, the location of the defendant, or for some other reason, the CE must notify the court in writing of that fact.

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

88—Community corrections officer to give reasonable directions

(1) A community corrections officer responsible for supervising a person in the community under this Subdivision—

(a) must give reasonable directions to the person requiring the person to report to the officer on a regular basis; and

(b) may give reasonable directions to the person—

(i) requiring the person to notify the officer of any change in the person's place of residence or employment; or

(ii) requiring the person to reside, or not to reside, in any particular place or area or with any particular person; or

(iii) 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

(c) 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 as a condition of an intensive correction order, 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.

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

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

(2) If the Minister increases the hours of community service to be performed under a condition of an intensive correction order, the order 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) If the Minister for Correctional Services is satisfied that a person has failed to comply with a condition of an intensive correction order requiring performance of community service, the Minister may, by notice in writing served personally or by post, suspend the operation of the order until proceedings for breach of the intensive correction order have been determined.

90—Apprehension and detention of person subject to intensive correction order without warrant

(1) If the CE suspects on reasonable grounds that a person subject to an intensive correction order has breached a condition of the order, the person may be apprehended, without warrant, by a police officer or community corrections officer and detained in custody for the purposes of proceedings relating to the suspected breach under section 83 before the court that imposed the order.

(2) Section 83(9) to (11) (inclusive) apply to a person apprehended under this section as if the person were arrested pursuant to a warrant issued under section 83.

91—Offence to contravene or fail to comply with condition of intensive correction order

A person subject to an intensive correction order who contravenes or fails to comply with a condition of the order is guilty of an offence.

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

Subdivision 3—General

92—Court may direct person to surrender firearm etc

(1) This section applies to the following persons:

(a) a person subject to a home detention order under Subdivision 1;

(b) a person subject to an intensive correction order under Subdivision 2.

(2) A court may, when imposing a sentence on a person to whom this section applies, direct the person to immediately surrender at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the person.

(3) No criminal liability attaches to a person to the extent that the person 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.

Division 8—Effect of imprisonment for contempt

93—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—Other community based sentences

Division 1—Purpose, interpretation and application

94—Purpose of Part

The purpose of this Part is to provide a court with an option to impose a non-custodial community based sentence on a defendant.

95—Interpretation and application of Part

(1) In this Part, a reference to a ***bond under this Act*** is a reference to a bond under section 96 or 97, as the case requires.

(2) The powers vested in a court by this Part—

(a) are exercisable despite the fact that an Act prescribes a minimum penalty; but

(b) are not exercisable in relation to—

(i) murder or treason; or

(ia) an offence involving a terrorist act; or

(ii) any other offence in respect of which an Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

(3) In subsection (2)—

Act includes a statutory instrument;

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code* of the Commonwealth.

(4) For the purposes of this Part, a reference to an ***offence of murder*** includes—

(a) an offence of conspiracy to murder; and

(b) an offence of aiding, abetting, counselling or procuring the commission of murder.

Division 2—Bonds, community service and supervision in community

96—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 conditions of the bond referred to in subsection (2); and

(c) to comply with any other conditions of the bond as the court thinks appropriate and specifies in the bond.

(2) Subject to this Act, a bond under this section is subject to the following conditions:

(a) a condition prohibiting the defendant from possessing a firearm or ammunition 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.

(3) 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

(ba) as an adult for a serious sexual 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.

(4) Despite subsection (3)(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 12 months, 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.

(5) Despite subsection (3)(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.

(6) Despite subsection (3)(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 (3)(d), on condition that the defendant enter into a bond of a kind described in subsection (1); or

(b) make an order under subsection (4) 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 (3)(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 12 months.

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

(9) In this section—

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

(a) an offence under section 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;

(ga) an offence against section 20AA(1), (2) or (4);

(h) an offence under section 39;

(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;

foster parent, of a child, includes—

(a) an approved carer of the child; and

(b) a person in whose care the child is placed under section 77 of the *Children and Young People (Safety) Act 2017*;

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);

(vi) an offence under section 33F, 33G or 33H;

serious sexual offence means—

(a) —

(i) any of the following offences under the *Criminal Law Consolidation Act 1935* where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(A) an offence under section 48 (rape);

(B) an offence under section 48A (compelled sexual manipulation);

(C) an offence under section 50 (persistent sexual abuse of a child);

(D) an offence under section 51 (sexual exploitation of person with a cognitive impairment);

(E) an offence under section 59 (abduction);

(F) an offence under section 60 (procuring sexual intercourse);

(G) an offence under section 66 (sexual servitude and related offences);

(H) an offence under section 67 (deceptive recruiting for commercial sexual services);

(I) an offence under section 68 (use of children in commercial sexual services);

(J) an offence under section 72 (incest);

(K) an offence against a corresponding previous enactment substantially similar to an offence referred to in any of the preceding subsubparagraphs;

(L) an attempt to commit or an assault with intent to commit any of the offences referred to in any of the preceding subsubparagraphs; or

(ii) any of the following offences under the *Criminal Law Consolidation Act 1935* where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(A) an offence under section 49 (unlawful sexual intercourse), other than an offence that occurred in prescribed circumstances;

(B) an offence under section 56 (indecent assault), other than an offence that occurred in prescribed circumstances;

(C) an offence under section 58 (gross indecency), other than an offence that occurred in prescribed circumstances;

(D) an offence under section 63 (production or dissemination of child exploitation material), other than an offence that occurred in prescribed circumstances;

(E) an offence under section 63B (procuring child to commit an indecent act etc), other than an offence that occurred in prescribed circumstances; or

(iii) an offence against a corresponding previous enactment substantially similar to an offence referred to in either of the preceding subparagraphs; or

(iv) an attempt to commit or an assault with intent to commit any of the offences referred to in any of the preceding subparagraphs; or

(b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a);

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 the victim's official duty; or

(ii) in retribution for something the offender knows or believes to have been done by the victim in the course of the victim's official duty.

(10) For the purposes of this section, an offence occurred in ***prescribed circumstances*** if—

(a) the defendant was, at the time of the offence, 20 years of age or less; and

(b) the circumstances of the offending, including the victim's age and the age difference between the defendant and the victim, are such that it is appropriate that the sentence be suspended; and

(c) the defendant was not, at the time of the offence, a person in a position of authority in relation to the victim.

(10a) If—

(a) the defendant commits an offence under section 63B(3) of the *Criminal Law Consolidation Act 1935*; and

(b) by reason of that offence, the defendant is taken to have committed a serious sexual offence for the purposes of this section; and

(c) the victim of the offence is a fictitious person represented to the defendant as a real person,

the court may, in considering the circumstances of the offending for the purposes of subsection (10)(b) in relation to the victim's age and the age difference between the defendant and the victim, take into consideration the age that the defendant believed the victim to be at the time of the offence.

(11) For the purposes of subsection (10), a person is in ***a position of authority*** in relation to a victim (the ***child***) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is employed or providing services in a licensed children's residential facility (within the meaning of the *Children and Young People (Safety) Act 2017*), or a residential care facility or other facility established under section 36 of the *Family and Community Services Act 1972*, or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(i) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

(12) A description of an offence appearing in brackets in this section is for convenience of reference only.

97—Discharge of other defendants on entering into good behaviour bond

(1) If 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 any other penalty, 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) included in the bond; and

(c) if the terms of the bond so require, to appear before the court for sentence, or conviction and sentence, if the defendant fails during the term of the bond to comply with a condition of the bond.

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

(3) If a defendant is discharged on a bond 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 the defendant 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.

98—Conditions of bonds under this Act

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

(a) a condition requiring the defendant to be under the supervision of a community corrections officer for a specified period;

(b) a condition requiring the defendant to reside with a specified person or in a specified place or area;

(c) a condition requiring the defendant not to reside with a specified person or in a specified place or area;

(d) a condition requiring the defendant to perform a specified number of hours of community service;

(e) a condition requiring the defendant to undertake an intervention program;

(f) a condition requiring the defendant to undergo medical or psychiatric treatment in accordance with the terms of the bond;

(g) a condition requiring the defendant to abstain from drugs of a specified class (including alcohol);

(h) a condition requiring the person to submit to such tests (including testing without notice) relating to drug use as a community corrections officer may reasonably require;

(i) 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;

(j) 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 program approved by the Attorney-General for the offence of which the defendant has been found guilty;

(k) a condition requiring the defendant to comply with—

(i) regulations (if any) made for the purposes of this section; or

(ii) the lawful directions of the CE;

(l) any other condition that the court thinks appropriate and specifies in the bond.

(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.

(3) 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.

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

(a) the Attorney-General may approve such a program unconditionally or subject to such conditions as the Attorney-General thinks fit and specifies in the instrument of approval;

(b) the Attorney-General may, by written notice to the program provider, revoke an approval or vary the conditions of an approval;

(c) any fees for undertaking an approved education program are to be borne by the defendant, subject to any relief from payment given by the program provider in accordance with conditions imposed by the Attorney-General under this subsection.

(5) 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.

(6) 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 the defendant undertake the assessment as ordered.

(7) 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 community corrections officer as to whether a particular person has complied with conditions regulating the person's participation in an intervention program,

is admissible as evidence of the matter so certified.

99—Term of bond

Subject to this Act, a bond under this Act is effective for the term that is specified in the bond.

100—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 1 or more guarantors of such an obligation.

(2) A court—

(a) may require a defendant to find 1 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.

101—Court may direct person to surrender firearm etc

(1) A probative court may, in relation to a bond that is subject to the condition imposed by section 96(2)(a), direct the probationer to immediately surrender 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 the person 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.

(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.

102—Court to provide CE with copy of court order

If a defendant enters into a bond under this Act, the conditions of a bond are varied, the term of a bond is extended, or a bond is discharged, the court must notify the CE of the terms of the bond, variation or extension, or of the discharge, as the case may require.

103—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 a condition of a bond under this Act.

(2) 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.

(3) A probative court cannot extend the period within which community service is to be performed by more than 6 months.

(4) A probative court may only vary or revoke the conditions imposed by section 96(2) 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.

(5) Subject to subsection (6), 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.

(6) 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.

(7) Subsection (6) applies to a victim in respect of whom a victim impact statement was provided to the sentencing court when the probationer was sentenced.

(8) If 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.

104—Court to be notified if suitable community service placement not available

(1) If the CE, on being notified that a court has made an order for community service or 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, whether because of the defendant's physical or mental disability, the location of the defendant, or for some other reason, the CE 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.

105—Provisions relating to community service

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

(a) the court must specify the number of hours of community service to be performed by the person to whom the sentence relates, being not less than 15 or more than 300;

(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;

(c) the court must specify a period, not exceeding 18 months, within which the community service is to be performed;

(d) the person is required to report to a specified place not later than 2 working days after the date of the order unless, within that period, the person receives a notice from the CE to the contrary;

(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;

(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;

(g) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;

(h) the person may not be required to perform community service at a time that would interfere with the person's remunerated employment or with a course of training or instruction relating to, or likely to assist the person to obtain, remunerated employment, or that would cause unreasonable disruption of the person's commitments in caring for the person's dependants;

(i) the person may not be required to perform community service at a time that would cause the person to offend against a rule of a religion that the person practises;

(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;

(k) the person will not be remunerated for the performance of community service under the order;

(l) the person must obey the lawful directions of the community corrections officer to whom the person is assigned.

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

106—Provisions relating to supervision in the community

(1) A court may, in addition to sentencing a defendant to community service—

(a) order that the defendant be under the supervision of a community corrections officer for the duration of the sentence; and

(b) make such other orders as the court thinks necessary for securing compliance with this Part.

(2) The following provisions apply if 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:

(a) the court must, in the case of a probationer, specify the period during which the probationer is to be under supervision;

(b) the person is required to report to a specified place not later than 2 working days after the date of the order or bond unless, within that period, the defendant receives a notice from the CE to the contrary;

(c) the person must obey the lawful directions of the community corrections officer to whom the person is assigned;

(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 CE.

107—CE must assign community corrections officer

(1) The CE must, on receiving a copy of an order or a bond requiring supervision or the performance of community service (and may, after then, from time to time) assign the person to whom the bond or order relates to a community corrections officer.

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

108—Community corrections officer to give reasonable directions

(1) A community corrections officer responsible for supervising a person in the community—

(a) must give reasonable directions to the person requiring the person to report to the officer on a regular basis; and

(b) may give reasonable directions to the person—

(i) requiring the person to notify the officer of any change in the person's place of residence or employment; or

(ii) requiring the person to reside, or not to reside, in any particular place or area or with any particular person; or

(iii) 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

(c) 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.

110—Variation of community service order

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

(a) the person will not complete the community service in the time provided for in the order or the bond; and

(b) 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.

(2) The court that ordered a person to perform community service, or a court of coordinate 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 an ancillary order.

(3) 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.

(4) If the Minister extends the period within which a person must complete the performance of community service under an order or a bond, the order or bond will be taken to have been amended accordingly.

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

111—Power of Minister to cancel unperformed hours of community service

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

(a) although some hours of community service remain unperformed, the person has substantially complied with the requirement; and

(b) there is no apparent intention on the person's part to deliberately evade the person's obligations under the bond or order; and

(c) 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 powers under subsection (1) to waive performance of more than 10 hours under the 1 bond or order.

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

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

(1) If 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) If the Minister increases the hours of community service to be performed under an order or a 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) If the Minister for Correctional Services is satisfied that a person has failed to comply with an order or a 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 the community service order or bond have been determined.

Division 3—Enforcement of bonds, community service orders and other orders of a non-pecuniary nature

Subdivision 1—Bonds

113—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—

(a) may—

(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) may issue a summons to a 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) If 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.

(5) 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 the probationer 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.

(6) 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.

(7) In this section—

court of an inferior jurisdiction means—

(a) if the probative court is the Supreme Court—the District Court or the Magistrates Court;

(b) if the probative court is the District Court—the Magistrates Court;

court of a superior jurisdiction means—

(a) if the probative court is the Magistrates Court—the Supreme Court or the District Court;

(b) if the probative court is the District Court—the Supreme Court.

114—Orders that court may make on breach of bond

(1) If 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 the probationer to pay the whole or a part of that sum; or

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

(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 on which the failure should be excused, refrain from taking any action in respect of the failure; or

(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 that—

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

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

(3) If 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 on which the failure should be excused, the court may refrain from revoking the suspension and—

(a) in the case of a bond requiring performance of community service—may—

(i) extend the term of the bond by such period (not exceeding 12 months) as the court thinks fit; or

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

(iii) 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

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

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

(b) in the case of any other bond—may—

(i) extend the term of the bond by such period (not exceeding 12 months) as the court thinks fit; or

(ii) impose a condition on the bond requiring the probationer to perform a specified number of hours of community service; or

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

(c) if the bond has expired in any case—may require the probationer to enter into a further bond, the term of which must not exceed 12 months.

(4) Section 105 applies in relation to a bond in respect of which a condition requiring the performance of community service is imposed under subsection (3)(b)(ii).

(5) If a court revokes the suspension of a sentence of imprisonment, the court may make any of the following orders:

(a) if it considers that there are special circumstances justifying it in so doing—an order reducing the term of the suspended sentence;

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

(c) in the case of a probationer whose sentence of imprisonment was partially suspended under section 96(5) and even if the term of the sentence now to be served in custody is less than 12 months—an order fixing or extending a non-parole period taking into account the time spent in custody by the probationer before being released on the bond;

(e) an order directing that—

(i) in the case of a sentence partially suspended under section 96(4) or (5)—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 another sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.

(6) If 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.

Subdivision 2—Community service orders and other orders of a non-pecuniary nature

115—Community service orders may be enforced by imprisonment

(1) Subject to this section, an order requiring 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 1 day for each 7.5 hours of community service remaining to be performed under the order; or

(b) 6 months,

whichever is the lesser.

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

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

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

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

(5) If the court is satisfied that the person has failed to comply with the order requiring performance of community service—

(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 6 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 6 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 the person's 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 1 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.

116—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 6 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.

117—Registrar may exercise jurisdiction under this Division

(1) Subject to rules of court or the regulations, the powers of a court under sections 115 and 116 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 under 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.

118—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 5—Financial penalties

119—Maximum fine if no other maximum provided

If a fine is imposed in respect of an offence for which an Act or statutory instrument does not prescribe a fine, the fine may not exceed—

(a) if the Supreme Court imposes the fine—$75 000; and

(b) if the District Court imposes the fine—$35 000; and

(c) if the Magistrates Court imposes the fine—$10 000.

120—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 any information available to the court as to other pecuniary sums that have been paid, or are payable, by the defendant.

121—Preference must be given to compensation for victims

If 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.

122—Court not to fix time for payment of pecuniary sums

(1) If 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.

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

Part 6—Restitution and compensation

Division 1—Restitution and compensation generally

123—Restitution of property

(1) If 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 a person who appears to be entitled to possession of the property.

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

124—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.

(3) If—

(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.

(4) 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.

(5) If 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.

(6) 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 *Return to Work Act 2014*.

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

(8) 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 under any other Act or law.

125—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 of a kind that may be issued under Part 4 Division 6 of the *Criminal Procedure Act 1921*.

(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.

Division 2—Enforcement of restitution orders

126—Non-compliance with order for restitution of property

(1) If—

(a) an order is made under section 123 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—

authorised officer means the sheriff or a person authorised in writing by the sheriff for the purposes of this section;

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

Part 7—Miscellaneous

127—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.

128—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) prescribe, or provide for the calculation of, costs, fees or charges for the purposes of this Act;

(c) exempt any person or class of persons from the obligation to pay any costs, fees or charges so prescribed;

(d) 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—Repeal and transitional provisions

Part 1—Repeal of *Criminal Law (Sentencing) Act 1988*

1—Repeal of Act

The *Criminal Law (Sentencing) Act 1988* is repealed.

Part 2—Transitional provisions

2—Transitional provisions

(1) Subject to this clause, this Act applies to the sentencing of a defendant after the commencement of this Act, regardless of whether the offence for which the defendant is being sentenced was committed before or after that commencement.

(2) However—

(a) the old sentence reduction provisions of the repealed Act will continue to apply in relation to the sentencing of a defendant for an offence where the proceedings for that offence are commenced before the commencement of the amendments to the repealed Act to be effected by the *Summary Procedure (Indictable Offences) Amendment Act 2017*; while

(b) the new sentence reduction provisions of this Act will apply in relation to the sentencing of a defendant for an offence where the proceedings for that offence are commenced after the commencement of the amendments to the repealed Act to be effected by the *Summary Procedure (Indictable Offences) Amendment Act 2017*, regardless of when the offence was committed

(3) In this clause—

new sentence reduction provisions means Part 2 Division 2 Subdivision 4 of this Act;

old sentence reduction provisions means sections 10A, 10B and 10C and Part 2 Division 6 of the repealed Act;

repealed Act means the *Criminal Law (Sentencing) Act 1988* repealed by clause 1.

Part 3—Transitional provisions relating to *Sentencing (Release on Licence) Amendment Act 2018*

3—Transitional provisions

(1) Section 58 of this Act as in force immediately after the commencement of Part 2 of the *Sentencing (Release on Licence) Amendment Act 2018* applies to the following applications:

(a) an application under that section for the discharge of an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application is made after that commencement;

(b) an application under that section for the discharge of an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application was made but not finalised before that commencement;

(c) an application under section 23A of the repealed Act for the discharge of an order for detention under section 23 of the repealed Act where the application was made but not finalised before that commencement.

(2) Section 59 of this Act as in force immediately after the commencement of Part 2 of the *Sentencing (Release on Licence) Amendment Act 2018* applies to the following applications:

(a) an application under that section for the release on licence from an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application is made after that commencement;

(b) an application under that section for the release on licence from an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application was made but not finalised before that commencement;

(c) an application under section 24 of the repealed Act for the release on licence from an order for detention under section 23 of the repealed Act where the application was made but not finalised before that commencement.

(3) In this clause—

repealed Act means the *Criminal Law (Sentencing) Act 1988*.

Schedule 2—Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act

1—Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act

(1) This clause applies to a person subject to an order for detention under section 23 of the repealed Act or section 57 of this Act who, before the commencement of this clause, has been authorised by the Supreme Court under section 24 of the repealed Act or section 59 of this Act (as the case may be) to be released on licence.

(2) After the commencement of this clause, the Supreme Court may, on application by the DPP—

(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 DPP may apply to a magistrate for a warrant for the apprehension and detention of the person pending determination of the proceedings.

(4) A magistrate 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 release on licence of a person to whom this clause applies must not be confirmed unless the person satisfies the Supreme Court that—

(a) the person is both capable of controlling and willing to control the person's sexual instincts; or

(b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.

(6) 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, the person's sexual instincts.

(7) The paramount consideration of the Supreme Court when determining an application under this clause must be to protect the safety of the community (whether as individuals or in general).

(8) 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 (6)) provided to the Court;

(b) any relevant evidence or representations that the person may desire to put to the Court;

(c) a report provided 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 on licence;

(e) any other report required by the Court under section 61 of this Act;

(f) any other matter that the Court thinks relevant.

(9) The Supreme Court, when determining an application under this clause, must not have regard to the length of time that the person has spent in custody or may spend in custody if the person's release on licence is cancelled or not confirmed.

(10) A copy of any report provided to the Supreme Court under subclause (8) must be given to each party to the proceedings or to counsel for those parties.

(11) 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;

repealed Act means the *Criminal Law (Sentencing) Act 1988*.

Legislative history

Notes

- 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
2017	26	*Sentencing Act 2017*	18.7.2017	30.4.2018 (*Gazette 6.2.2018 p610*)
2017	67	*Statutes Amendment (Youths Sentenced as Adults) Act 2017*	12.12.2017	Pt 4 (s 6) & Sch 1 (cl 1)—30.4.2018 immediately after s 6 of 26/2017: s 2(2)
2018	2	*Sentencing (Release on Licence) Amendment Act 2018*	25.6.2018	25.6.2018
2018	32	*Statutes Amendment (Drug Offences) Act 2018*	22.11.2018	Pt 3 (ss 26 & 27)—1.4.2019 (*Gazette 7.2.2019 p415*)
2018	36	*Sentencing (Miscellaneous) Amendment Act 2018*	6.12.2018	28.2.2019 (*Gazette 28.2.2019 p703*)
2019	11	*Sentencing (Suspended and Community Based Custodial Sentences) Amendment Act 2019*	23.5.2019	Pt 2 (ss 4 to 17) & Sch 1 (cl 3)—23.5.2019 (*Gazette 23.5.2019 p1351*)
2019	17	*Criminal Law Consolidation (Assaults on Prescribed Emergency Workers) Amendment Act 2019*	1.8.2019	Sch 1 (cll 2 & 3)—3.10.2019 (*Gazette 3.10.2019 p3398*)
2019	21	*Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2019*	19.9.2019	Pt 11 (s 18)—19.9.2019: s 2(1)
2019	45	*Supreme Court (Court of Appeal) Amendment Act 2019*	19.12.2019	Sch 1 (cl 78)—1.1.2021 (*Gazette 10.12.2020 p5638*)
2020	33	*Sentencing (Serious Repeat Offenders) Amendment Act 2020*	1.10.2020	14.11.2020 (*Gazette 12.11.2020 p5040*)
2020	35	*Statutes Amendment (Sentencing) Act 2020*	22.10.2020	Pt 3 (ss 7 to 10)—2.11.2020 (*Gazette 29.10.2020 p4927*)
2020	43	*Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020*	10.12.2020	Pt 5 (s 12) & Sch 1 (cl 3)—29.3.2021 (*Gazette 27.1.2021 p163*)
2021	37	*Statutes Amendment (Intervention Orders and Penalties) Act 2021*	30.9.2021	Pt 3 (s 5)—4.4.2022 (*Gazette 27.1.2022 p115*)

2021	46	*Sentencing (Hate Crimes) Amendment Act 2021*	25.11.2021	25.11.2021
2021	57	*Statutes Amendment (Child Sexual Abuse) Act 2021*	9.12.2021	Pt 5 (ss 19 to 21)—1.6.2022 (*Gazette 17.2.2022 p490*)
2022	9	*Statutes Amendment (Child Sex Offences) Act 2022*	14.7.2022	Pt 4 (ss 19 to 21)—1.10.2022 (*Gazette 23.9.2022 p6135*)
2023	17	*Criminal Law Consolidation (Child Sexual Abuse) Amendment Act 2023*	8.6.2023	Sch 1 (cl 2)—22.6.2023: s 2
2023	21	*Statutes Amendment (Sexual Offences) Act 2023*	21.6.2023	Pt 5 (ss 11 & 12)—1.1.2024 (*Gazette 14.9.2023 p3237*)
2024	29	*Statutes Amendment (Identity Theft) Act 2024*	19.9.2024	Pt 4 (s 9)—1.4.2025 (*Gazette 13.2.2025 p138*)
2024	37	*Sentencing (Serious Child Sex Offenders) Amendment Act 2024*	19.9.2024	Pt 2 (ss 3 to 8)—28.4.2025 (*Gazette 12.3.2025 p289*)
2024	59	*Statutes Amendment (Victims of Crime) Act 2024*	5.12.2024	Pt 2 (ss 3 & 4)—1.4.2025 (*Gazette 27.3.2025 p530*)
2025	1	*Criminal Law Consolidation (Stalking and Harassment) Amendment Act 2025*	13.2.2025	Sch 1 (cl 4)—8.6.2025 (*Gazette 15.5.2025 p1171*)
2025	3	*Statutes Amendment (Criminal Proceedings) Act 2025*	13.2.2025	Pt 4 (s 5)—1.7.2025 (*Gazette 12.6.2025 p1408*)
2025	8	*Animal Welfare Act 2025*	27.2.2025	Sch 1 (cl 7)—uncommenced
2025	9	*Statutes Amendment (Attorney-General's Portfolio and Other Justice Measures) Act 2025*	12.3.2025	Pt 9 (s 18)—12.3.2025: s 2(1)
2025	25	*Children and Young People (Safety and Support) Act 2025*	12.6.2025	Sch 2 (cll 37 & 38)—uncommenced
2025	**52**	***Statutes Amendment (Recidivist Young Offenders) Act 2025***	**20.11.2025**	**Pt 3 (ss 4 to 7)—16.2.2026 (*Gazette 12.2.2026 p243*)**

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*25.6.2018*
s 4		
s 4(1)	amended by 17/2019 Sch 1 cl 2	3.10.2019
s 5		
s 5(1)		
intervention program manager	substituted by 36/2018 s 4	28.2.2019
serious child sex offender	inserted by 37/2024 s 3(1)	28.4.2025
triggering child sex offence	inserted by 37/2024 s 3(2)	28.4.2025
s 5(5)	inserted by 37/2024 s 3(3)	28.4.2025

Pt 2		
Pt 2 Div 1		
s 11		
s 11(1)	amended by 46/2021 s 3	25.11.2021
Pt 2 Div 2		
Pt 2 Div 2 Subdiv 1		
s 15A	inserted by 59/2024 s 3	1.4.2025
s 16		
heading	amended by 59/2024 s 4(1)	1.4.2025
s 16(1)	amended by 59/2024 s 4(2), (3)	1.4.2025
s 16(1a)—(1c)	inserted by 59/2024 s 4(4)	1.4.2025
s 16(3)	amended by 59/2024 s 4(5)	1.4.2025
s 21		
s 21(2)	amended by 3/2025 s 5(1), (2)	1.7.2025
Pt 2 Div 2 Subdiv 2		
s 26		
s 26(1a)	inserted by 37/2024 s 4(1)	28.4.2025
s 26(2)	amended by 37/2024 s 4(2)	28.4.2025
s 26(2a)	inserted by 57/2021 s 19	1.6.2022
s 26A	inserted by 8/2025 Sch 1 cl 7	uncommenced—not incorporated
Pt 2 Div 2 Subdiv 3	*deleted by 11/2019 s 4*	*23.5.2019*
Pt 2 Div 2 Subdiv 4		
s 38	*deleted by 35/2020 s 7*	*2.11.2020*
s 39		
s 39(3a)	inserted by 35/2020 s 8(1)	2.11.2020
s 39(4)	amended by 35/2020 s 8(2)	2.11.2020
s 40		
s 40(3)	amended by 36/2018 s 5(1), (2)	28.2.2019
	substituted by 35/2020 s 9(1)	2.11.2020
s 40(4a)	inserted by 35/2020 s 9(2)	2.11.2020
s 40(5)	amended by 35/2020 s 9(3)	2.11.2020
s 40(8)		
serious harm	inserted by 35/2020 s 9(4)	2.11.2020
serious indictable offence	inserted by 35/2020 s 9(4)	2.11.2020
serious offence of violence	inserted by 35/2020 s 9(4)	2.11.2020
serious sexual offence	inserted by 35/2020 s 9(4)	2.11.2020
	amended by 21/2023 s 11	1.1.2024
Pt 3		
Pt 3 Div 2		
s 46		

s 46(1)	amended by 67/2017 s 6	30.4.2018
s 48		
s 48(1)	*deleted by 43/2020 s 12(1)*	*29.3.2021*
s 48(2)	amended by 43/2020 s 12(2)	29.3.2021
s 48(3)	amended by 43/2020 s 12(3), (4)	29.3.2021
s 48(3a)	inserted by 43/2020 s 12(5)	29.3.2021
s 48(5)	inserted by 43/2020 s 12(6)	29.3.2021
Pt 3 Div 2A	inserted by 37/2024 s 5	28.4.2025
Pt 3 Div 4		
s 52 before substitution by 33/2020		
s 52(1)		
serious offence	*amended by 11/2019 s 5*	*23.5.2019*
s 52	substituted by 33/2020 s 4	14.11.2020
conviction	**inserted by 52/2025 s 4**	**16.2.2026**
serious offence	amended by 37/2021 s 5	4.4.2022
serious sexual offence	amended by 9/2022 s 19(1), (2)	1.10.2022
s 53	substituted by 33/2020 s 4	14.11.2020
s 53(1)	**amended by 52/2025 s 5(1), (2)**	**16.2.2026**
s 53(2)	**substituted by 52/2025 s 5(3)**	**16.2.2026**
s 55		
heading	**amended by 52/2025 s 6(1)**	**16.2.2025**
s 55(1)	substituted by 33/2020 s 5	14.11.2020
	amended by 52/2025 s 6(2)	**16.2.2026**
s 55(2)	**substituted by 52/2025 s 6(3)**	**16.2.2026**
s 55(3)	**amended by 52/2025 s 6(4)**	**16.2.2026**
s 55(5)	**inserted by 52/2025 s 6(5)**	**16.2.2026**
s 55(4)	inserted by 37/2024 s 6	28.4.2025
Pt 3 Div 5		
s 57		
s 57(2a)	inserted by 37/2024 s 7	28.4.2025
s 58		
s 58(1a)	inserted by 2/2018 s 3(1)	25.6.2018
s 58(4a)	inserted by 2/2018 s 3(2)	25.6.2018
s 58(6)	inserted by 2/2018 s 3(3)	25.6.2018
s 59		
s 59(1a)	inserted by 2/2018 s 4(1)	25.6.2018
s 59(4a)	inserted by 2/2018 s 4(2)	25.6.2018
s 59(10)	amended by 2/2018 s 4(3)	25.6.2018
s 59(11)	amended by 9/2025 s 18	12.3.2025
s 59(19)	*deleted by 2/2018 s 4(4)*	*25.6.2018*
s 59A	inserted by 37/2024 s 8	28.4.2025

s 61		
s 61(1)	amended by 2/2018 s 5	25.6.2018
s 62	amended by 2/2018 s 6	25.6.2018
s 63	amended by 2/2018 s 7	25.6.2018
s 64	amended by 2/2018 s 8	25.6.2018
s 65		
s 65(1)	(c) deleted by 2/2018 s 9(1)	25.6.2018
	amended by 45/2019 Sch 1 cl 78	1.1.2021
s 65(3)	amended by 45/2019 Sch 1 cl 78	1.1.2021
s 65(4)	amended by 45/2019 Sch 1 cl 78	1.1.2021
s 65(5)	(a)(iii) deleted by 2/2018 s 9(2)	25.6.2018
Pt 3 Div 6		
heading	amended by 57/2021 s 20	1.6.2022
s 68	substituted by 57/2021 s 21	1.6.2022
Pt 3 Div 7		
Pt 3 Div 7 Subdiv 1		
s 70		
s 70(2)		
terrorist act	amended by 11/2019 s 6	23.5.2019
s 71		
s 71(2)	amended by 11/2019 s 7(1)—(3)	23.5.2019
s 71(4)	substituted by 11/2019 s 7(4)	23.5.2019
s 71(5)		
designated offence	amended by 11/2019 s 7(5)	23.5.2019
foster parent	inserted by 11/2019 s 7(6)	23.5.2019
	amended by 25/2025 Sch 2 cl 37(1)	uncommenced—not incorporated
prescribed serious sexual offence	inserted by 11/2019 s 7(7)	23.5.2019
serious and organised crime offence	amended by 36/2018 s 6(1), (2)	28.2.2019
	amended by 32/2018 s 26	1.4.2019
s 71(6)	inserted by 11/2019 s 7(8)	23.5.2019
s 71(6a)	inserted by 9/2022 s 20	1.10.2022
s 71(7)	inserted by 11/2019 s 7(8)	23.5.2019
	amended by 25/2025 Sch 2 cl 37(2)	uncommenced—not incorporated
s 71(8)	inserted by 11/2019 s 7(8)	23.5.2019
s 73		
s 73(4)	amended by 11/2019 s 8(1)	23.5.2019
	(b) deleted by 11/2019 s 8(2)	23.5.2019
s 73(4a) and (4b)	inserted by 11/2019 s 8(3)	23.5.2019
Pt 3 Div 7 Subdiv 2		

s 79		
s 79(1)	amended by 36/2018 s 7	28.2.2019
s 80		
s 80(1)	amended by 11/2019 s 9(1)	23.5.2019
s 80(2)		
terrorist act	inserted by 11/2019 s 9(2)	23.5.2019
s 81		
s 81(3)	amended by 11/2019 s 10(1), (2)	23.5.2019
s 81(5)	inserted by 11/2019 s 10(3)	23.5.2019
designated offence	amended by 1/2025 Sch 1 cl 4	8.6.2025
serious sexual offence	amended by 17/2023 Sch 1 cl 2	22.6.2023
s 81(6)	inserted by 11/2019 s 10(3)	23.5.2019
s 82		
s 82(1)	amended by 11/2019 s 11(1)	23.5.2019
s 82(2)	*(d) deleted by 11/2019 s 11(2)*	*23.5.2019*
s 83		
s 83(3)	substituted by 11/2019 s 12(1)	23.5.2019
s 83(3a)	inserted by 11/2019 s 12(1)	23.5.2019
s 83(4)	amended by 11/2019 s 12(2)—(4)	23.5.2019
Pt 4		
s 95		
s 95(2)	amended by 11/2019 s 13(1)	23.5.2019
s 95(3)		
terrorist act	inserted by 11/2019 s 13(2)	23.5.2019
s 95(4)	inserted by 11/2019 s 13(3)	23.5.2019
s 96		
s 96(3)	amended by 11/2019 s 14(1)	23.5.2019
s 96(7)	*deleted by 11/2019 s 14(2)*	*23.5.2019*
s 96(9)		
designated offence	amended by 11/2019 s 14(3)	23.5.2019
	(i) deleted by 11/2019 s 14(4)	23.5.2019
	amended by 17/2019 Sch 1 cl 3	3.10.2019
foster parent	inserted by 11/2019 s 14(5)	23.5.2019
	amended by 25/2025 Sch 2 cl 38(1)	uncommenced—not incorporated
serious and organised crime offence	amended by 32/2018 s 27	1.4.2019
serious sexual offence	inserted by 11/2019 s 14(6)	23.5.2019
s 96(10)	inserted by 11/2019 s 14(7)	23.5.2019
s 96(10a)	inserted by 9/2022 s 21	1.10.2022
s 96(11)	inserted by 11/2019 s 14(7)	23.5.2019

	amended by 25/2025 Sch 2 cl 38(2)	uncommenced—not incorporated
s 96(12)	inserted by 11/2019 s 14(7)	23.5.2019
s 98		
s 98(7)	amended by 36/2018 s 8	28.2.2019
s 103		
s 103(2)	amended by 36/2018 s 9	28.2.2019
s 106		
s 106(2)	amended by 11/2019 s 15	23.5.2019
s 109	*deleted by 11/2019 s 16*	*23.5.2019*
s 114		
s 114(5)	*(d) deleted by 11/2019 s 17*	*23.5.2019*
Pt 6		
s 124		
s 124(6)	(c) deleted by 21/2019 s 18	19.9.2019
s 125		
s 125(1)	amended by 29/2024 s 9(1)	1.4.2025
s 125(2)	*deleted by 29/2024 s 9(2)*	*1.4.2025*
Sch 1		
Pt 3	inserted by 2/2018 s 10	25.6.2018
Sch 2	inserted by 2/2018 s 11	25.6.2018

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Youths Sentenced as Adults) Act 2017, Sch 1

1—Transitional provision

An amendment effected by this Act applies to a youth who is being sentenced as an adult after the commencement of the amendment, whether the offence in respect of which the youth is being sentenced occurred before or after that commencement.

Sentencing (Suspended and Community Based Custodial Sentences) Amendment Act 2019, Sch 1 Pt 2

3—Savings and transitional provisions

(1) An amendment effected by a provision of this Act applies to the sentencing of a defendant after the commencement of the provision, regardless of whether—

(a) the offence for which the defendant is being sentenced was committed before or after that commencement; or

(b) the defendant is being sentenced at first instance or on an appeal against sentence.

(2) An amendment effected by a provision of this Act relating to proceedings for a breach of a condition of a home detention order or intensive correction order applies to such proceedings—

(a) commenced but not determined before the commencement of the provision; or

(b) commenced after the commencement of the provision,

regardless of whether the breach to which the proceedings relate was committed before or after that commencement.

(3) An amendment effected by a provision of this Act does not apply to or in relation to a home detention condition included in a bond under section 96(7) of the *Sentencing Act 2017* (as in force immediately before the commencement of section 14(2) of this Act).

Statutes Amendment (Sentencing) Act 2020, Pt 3

10—Transitional provision

(1) The *Sentencing Act 2017* as amended by this Part applies in relation to the sentencing of a person for an offence to which the person pleads guilty on or after the commencement of this Part (regardless of whether the offence was committed before or after that commencement).

(2) To avoid doubt, nothing in this Part affects any sentence imposed before the commencement of this Part.

Sentencing (Serious Repeat Offenders) Amendment Act 2020, Sch 1—Transitional provisions etc

1—Application of amendments

(1) The *Sentencing Act 2017* as amended by this Act applies in relation to a sentence imposed after the commencement of this Act regardless of whether—

(a) the offence for which the defendant is being sentenced was committed before or after that commencement; or

(b) the defendant is being sentenced at first instance or on an appeal.

(2) To avoid doubt, nothing in this Act affects any sentence imposed before the commencement of this Act.

Statutes Amendment (Abolition of Defence of Provocation and Related Matters) Act 2020, Sch 1—Transitional provisions

3—Transitional provision—amendments to *Sentencing Act 2017*

Section 48 of the *Sentencing Act 2017* (as amended by this Act) applies in relation to a non-parole period in respect of an offence where—

(a) proceedings for the offence were commenced but not determined before the commencement of this clause; and

(b) proceedings for an offence commenced after the commencement of this clause (whether the offence was committed before or after that commencement).

Sentencing (Hate Crimes) Amendment Act 2021, Sch 1

1—Transitional provision—*Sentencing Act 2017*

Section 11(1)(ca) of the *Sentencing Act 2017* (as enacted by this Act) will be taken not to apply in relation to sentencing for an offence that occurred before the commencement of this clause.

Statutes Amendment (Sexual Offences) Act 2023, Pt 5

12—Transitional provision

(1) The *Sentencing Act 2017* as amended by this Part applies in relation to the sentencing of a person for an offence to which the person pleads guilty on or after the commencement of this Part (regardless of whether the offence was committed before or after that commencement).

(2) To avoid doubt, nothing in this Part affects any sentence imposed before the commencement of this Part.

Statutes Amendment (Recidivist Young Offenders) Act 2025, Pt 3

7—Transitional provision

(1) The *Sentencing Act 2017* as amended by this Part applies in relation to the sentencing of a youth who is convicted (within the meaning of section 52 of that Act as amended by this Part) of an offence after the commencement of this Part regardless of whether the offence was committed before or after that commencement.

(2) To avoid doubt, nothing in this Act affects any sentence imposed before the commencement of this Part.

Historical versions

30.4.2018
25.6.2018
28.2.2019
1.4.2019
23.5.2019
19.9.2019
3.10.2019
2.11.2020
14.11.2020
1.1.2021
29.3.2021
25.11.2021
4.4.2022
1.6.2022
1.10.2022
22.6.2023
1.1.2024
12.3.2025

1.4.2025

28.4.2025

8.6.2025

1.7.2025