

# Crimes (Sentencing Procedure) Act 1999 No 92

[1999-92]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Justice Legislation Amendment \(Non-association and Place Restriction\) Act 2001 No 100](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)
- **See also**
  - [Crimes \(Sentencing Procedure\) Amendment \(Victims' Rights and Plea Bargaining\) Bill 2002](#) [Non-government Bill: Mr C Hartcher, MP]
  - [Crimes Legislation Amendment \(Periodic and Home Detention\) Bill 2002](#)

### Authorisation

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New South Wales

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# Crimes (Sentencing Procedure) Act 1999 No 92



New South Wales

An Act to consolidate and amend the law with respect to the sentencing of offenders; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes (Sentencing Procedure) Act 1999*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Interpretation

(1) In this Act:

**community service order** means an order referred to in section 8 (1).

**community service work** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**convicted inmate** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**correctional centre** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**correctional officer** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**court** means:

(a) the Supreme Court, the Court of Criminal Appeal, the Land and Environment Court, the Industrial Relations Commission, the District Court or a Local Court, or

(b) any other court that, or person who, exercises criminal jurisdiction,

but, subject to the *Children (Criminal Proceedings) Act 1987*, does not include the



Children's Court or any other court that, or person who, exercises the functions of the Children's Court.

**exercise** a function includes perform a duty.

**full-time detention** means imprisonment that is required to be served otherwise than by way of periodic detention or home detention.

**function** includes a power, authority or duty.

**good behaviour bond** means a bond referred to in section 9 (1), 10 (1) or 12 (1).

**home detention** means detention in accordance with Part 4 of the [Crimes \(Administration of Sentences\) Act 1999](#).

**home detention order** means an order referred to in section 7 (1).

**inmate** has the same meaning as it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

**Local Court** means a Local Court established under the [Local Courts Act 1982](#), and includes a justice or justices exercising jurisdiction under the [Justices Act 1902](#).

**non-parole period** means a non-parole period referred to in section 44 (1) (b).

**offender** means a person whom a court has found guilty of an offence.

**periodic detention** has the same meaning as it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

**periodic detention centre** has the same meaning as it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

**periodic detention order** means an order referred to in section 6 (1).

**probation and parole officer** has the same meaning as it has in the [Crimes \(Administration of Sentences\) Act 1999](#).

**sentence** means:

- (a) when used as a noun, the penalty imposed for an offence, and
- (b) when used as a verb, to impose a penalty for an offence.

**sentencing court**, in relation to an offender undergoing a penalty imposed by a court, means the court by which the penalty was imposed.

(2) In this Act:

- (a) a reference to a sentence of imprisonment to which an offender is subject includes

- a reference to a sentence that has been imposed but is yet to commence, and
- (b) a reference to the term of a sentence of imprisonment is, if the term is varied under this or any other Act, a reference to the term as so varied, and
  - (c) a reference to a non-parole period of a sentence of imprisonment is, if the period is varied under this or any other Act, a reference to the period as so varied, and
  - (d) a reference to a court that has sentenced an offender, made an order or given a direction includes a reference to the same court differently constituted and (in the case of a Local Court) includes a reference to any other Local Court.

(3) Notes in the text of this Act do not form part of this Act.

## **Part 2 Penalties that may be imposed**

### **Division 1 General**

#### **4 Penalties generally**

- (1) The penalty to be imposed for an offence is to be the penalty provided by or under this or any other Act or law.
- (2) The penalty to be imposed for a statutory offence for which no penalty is so provided is imprisonment for 5 years.
- (3) Part 3 applies to the imposition of all penalties imposed by a court, whether under this Act or otherwise.

#### **5 Penalties of imprisonment**

- (1) A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.
- (2) A court that sentences an offender to imprisonment for 6 months or less must indicate to the offender, and make a record of, its reasons for doing so, including its reasons for deciding that no penalty other than imprisonment is appropriate.
- (3) Subsection (2) does not limit any other requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) A sentence of imprisonment is not invalidated by a failure to comply with this section.
- (5) Subject to sections 12 and 99, Part 4 applies to all sentences of imprisonment, including any sentence the subject of a periodic detention order or home detention order.

## **Division 2 Alternatives to full-time detention**

### **6 Periodic detention**

- (1) A court that has sentenced an offender to imprisonment for not more than 3 years may make a periodic detention order directing that the sentence be served by way of periodic detention.
- (2) This section is subject to the provisions of Part 5.

### **7 Home detention**

- (1) A court that has sentenced an offender to imprisonment for not more than 18 months may make a home detention order directing that the sentence be served by way of home detention.
- (2) This section is subject to the provisions of Part 6.

## **Division 3 Non-custodial alternatives**

### **8 Community service orders**

- (1) Instead of imposing a sentence of imprisonment on an offender, a court may make a community service order directing the offender to perform community service work for a specified number of hours.
- (2) The number of hours specified in a community service order in relation to an offence must not exceed 500, or the number of hours prescribed by the regulations in respect of the class of offences to which the offence belongs, whichever is the lesser.
- (3) This section does not apply to an offender to whom the *Children (Community Service Orders) Act 1987* applies.
- (4) This section is subject to the provisions of Part 7.

### **9 Good behaviour bonds**

- (1) Instead of imposing a sentence of imprisonment on an offender, a court may make an order directing the offender to enter into a good behaviour bond for a specified term.
- (2) The term of a good behaviour bond must not exceed 5 years.
- (3) This section is subject to the provisions of Part 8.

### **10 Dismissal of charges and conditional discharge of offender**

- (1) Without proceeding to conviction, a court that finds a person guilty of an offence may make either of the following orders:
  - (a) an order directing that the relevant charge be dismissed,

- (b) an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years.
- (2) An order referred to in subsection (1) (b) may be made if the court is satisfied:
  - (a) that it is inexpedient to inflict any punishment (other than nominal punishment) on the person, or
  - (b) that it is expedient to release the person on a good behaviour bond.
- (3) In deciding whether to make an order referred to in subsection (1), the court is to have regard to the following factors:
  - (a) the person's character, antecedents, age, health and mental condition,
  - (b) the trivial nature of the offence,
  - (c) the extenuating circumstances in which the offence was committed,
  - (d) any other matter that the court thinks proper to consider.
- (4) An order under this section has the same effect as a conviction:
  - (a) for the purposes of any law with respect to the revesting or restoring of stolen property, and
  - (b) for the purpose of enabling a court to give directions for compensation under Part 4 of the *Victims Compensation Act 1996*, and
  - (c) for the purpose of enabling a court to give orders with respect to the restitution or delivery of property or the payment of money in connection with the restitution or delivery of property.
- (5) A person with respect to whom an order under this section is made has the same right to appeal on the ground that the person is not guilty of the offence as the person would have had if the person had been convicted of the offence.

## **11 Deferral of sentencing for rehabilitation and other purposes**

- (1) A court that finds a person guilty of an offence (whether or not it proceeds to conviction) may make an order adjourning proceedings against the offender to a specified date, and granting bail to the offender in accordance with the *Bail Act 1978*:
  - (a) for the purpose of assessing the offender's capacity and prospects for rehabilitation, or
  - (b) for the purpose of allowing the offender to demonstrate that rehabilitation has taken place, or
  - (c) for any other purpose the court considers appropriate in the circumstances.

- (2) The maximum period for which proceedings may be adjourned under this section is 12 months from the date of the finding of guilt.
- (3) 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.

## **12 Suspended sentences**

- (1) A court that imposes a sentence of imprisonment on an offender (being a sentence for a term of not more than 2 years) may make an order:
  - (a) suspending execution of the sentence for such period (not exceeding the term of the sentence) as the court may specify in the order, and
  - (b) directing that the offender be released from custody on condition that the offender enters into a good behaviour bond for a term not exceeding the term of the sentence.
- (2) An order under this section may not be made in relation to a sentence of imprisonment if the offender is subject to some other sentence of imprisonment that is not the subject of such an order.
- (3) Subject to section 99 (1), Part 4 does not apply to a sentence of imprisonment the subject of an order under this section except to the extent to which it deals with setting the term of the sentence.
- (4) An order under this section may be made after a court has decided not to make a home detention order in relation to the sentence of imprisonment. In that case, any non-parole period set for the sentence ceases to have effect when the order under this section is made.

## **13 Community service orders and good behaviour bonds to be alternative penalties only**

A court may not, in relation to the same offence, make both a community service order and an order that provides for the offender to enter into a good behaviour bond.

## **Division 4 Fines**

### **14 Fines as an additional penalty to good behaviour bond**

- (1) A court may impose a fine on an offender in respect of whom it has made an order that provides for the offender to enter into a good behaviour bond if the offence to which the bond relates is an offence for which the penalty that may be imposed (otherwise than under this section) includes a fine.
- (2) A fine imposed as referred to in subsection (1) must not exceed the maximum fine that may be imposed apart from this section.

- (3) Despite subsection (1), a court may not impose a fine on an offender if it has made an order that provides for the offender to enter into a good behaviour bond referred to in section 10 (1) (b).

**15 Fines as an additional or alternative penalty to imprisonment for offences dealt with on indictment**

- (1) This section applies to all offences dealt with on indictment, other than offences for which the penalty that may be imposed (otherwise than under this section) includes a fine.
- (2) A court may impose a fine not exceeding 1,000 penalty units on an offender whom it convicts on indictment of an offence to which this section applies.
- (3) The fine may be imposed in addition to or instead of any other penalty that may be imposed for the offence.

**16 Fines for bodies corporate for offences punishable by imprisonment only**

If the penalty that may be imposed (otherwise than under this section) for an offence committed by a body corporate is a sentence of imprisonment only, a court may instead impose a fine not exceeding:

- (a) 2,000 penalty units, in the case of the Supreme Court, the Court of Criminal Appeal, the Land and Environment Court, the Industrial Relations Commission or the District Court, or
- (b) 100 penalty units, in any other case.

**17 Penalty units**

Unless the contrary intention appears, a reference in any Act or statutory rule to a number of penalty units (whether fractional or whole) is taken to be a reference to an amount of money equal to the amount obtained by multiplying \$110 by that number of penalty units.

**Division 5 Miscellaneous**

**18 Interpretation of provisions imposing penalties**

- (1) The penalty:
  - (a) specified at the end of a section of an Act (whether or not the section is divided into subsections), or
  - (b) specified at the end of a subsection of a section of an Act, but not at the end of the section, or
  - (c) specified at the end of a section of an Act or subsection of a section of an Act and

expressed in such a way as to indicate that it applies to part only of the section or subsection,

indicates that a contravention of the section, subsection or part, respectively, is an offence against the Act, punishable on conviction by a penalty not exceeding the penalty so specified.

- (2) For the purposes of subsection (1), a penalty specified at the end of the last subsection of a section is taken not to be specified at the end of the section if a penalty is specified at the end of any previous subsection.
- (3) If:
  - (a) a section of an Act, or a subsection of a section of an Act, provides that a person is guilty of an offence under specified circumstances, and
  - (b) a penalty is specified at the end of the section or subsection and expressed in such a way as to indicate that it applies to the section or subsection,a person who is guilty of such an offence is liable, on conviction, to a penalty not exceeding the penalty so specified.
- (4) This section applies to a statutory rule in the same way as it applies to an Act, subject to any necessary modification.
- (5) This section applies to a provision of an Act or statutory rule except in so far as the contrary intention appears in the Act or statutory rule concerned.

## **19 Effect of alterations in penalties**

- (1) If an Act or statutory rule increases the penalty for an offence, the increased penalty applies only to offences committed after the commencement of the provision of the Act or statutory rule increasing the penalty.
- (2) If an Act or statutory rule reduces the penalty for an offence, the reduced penalty extends to offences committed before the commencement of the provision of the Act or statutory rule reducing the penalty, but the reduction does not affect any penalty imposed before that commencement.
- (3) In this section, a reference to a penalty includes a reference to a penalty that is expressed to be a maximum or minimum penalty.

## **20 No double jeopardy**

If an act or omission constitutes:

- (a) an offence under a law of New South Wales, and
- (b) an offence under a law of the Commonwealth or of some other State or Territory,

and a penalty has been imposed on the offender in respect of the offence referred to in paragraph (b), the offender is not liable to any penalty in respect of the offence referred to in paragraph (a).

## **Part 3 Sentencing procedures generally**

### **Division 1 General**

#### **21 General power to reduce penalties**

- (1) If by any provision of an Act an offender is made liable to imprisonment for life, a court may nevertheless impose a sentence of imprisonment for a specified term.
- (2) If by any provision of an Act or statutory rule an offender is made liable to imprisonment for a specified term, a court may nevertheless impose a sentence of imprisonment for a lesser term.
- (3) If by any provision of an Act or statutory rule an offender is made liable to a fine of a specified amount, a court may nevertheless impose a fine of a lesser amount.
- (4) The power conferred on a court by this section is not limited by any other provision of this Part.
- (5) This section does not limit any discretion that the court has, apart from this section, in relation to the imposition of penalties.

#### **21A General sentencing principles**

- (1) In determining the sentence to be imposed on an offender, a court must impose a sentence of a severity that is appropriate in all the circumstances of the case.
- (2) For that purpose, the court must take into account such of the following matters as are relevant and known to the court:
  - (a) the nature and circumstances of the case,
  - (b) if the offence forms part of a course of conduct consisting of a series of criminal acts—that course of conduct,
  - (c) the personal circumstances of any victim of the offence, including:
    - (i) the age of the victim (particularly if the victim is very old or very young), and
    - (ii) any physical or mental disability of the victim, and
    - (iii) any vulnerability of the victim arising because of the nature of the victim's occupation,
  - (d) any injury, loss or damage resulting from the offence,



- (e) the degree to which the offender has shown contrition for the offence:
    - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence, or
    - (ii) in any other manner,
  - (f) the need to deter the offender or other persons from committing an offence of the same or a similar character,
  - (g) the need to protect the community from the offender,
  - (h) the need to ensure that the offender is adequately punished for the offence,
  - (i) the character, antecedents, cultural background, age, means and physical or mental condition of the offender,
  - (j) the prospect of rehabilitation of the offender.
- (3) In addition, in determining whether a sentence under Division 2 or 3 of Part 2 is appropriate, the court must have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the offender under that sentence.
- (4) The matters to be taken into account by a court under this section are in addition to any other matters that are required or permitted to be taken into account by the court under this Act or any other law.
- (5) This section does not apply to the determination of a sentence if proceedings (other than committal proceedings) for the offence were commenced in a court before the commencement of this section.

## **22 Guilty plea to be taken into account**

- (1) In passing sentence for an offence on an offender who has pleaded guilty to the offence, a court must take into account:
- (a) the fact that the offender has pleaded guilty, and
  - (b) when the offender pleaded guilty or indicated an intention to plead guilty, and may accordingly impose a lesser penalty than it would otherwise have imposed.
- (2) When passing sentence on such an offender, a court that does not impose a lesser penalty under this section must indicate to the offender, and make a record of, its reasons for not doing so.
- (3) Subsection (2) does not limit any other requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) The failure of a court to comply with this section does not invalidate any sentence

imposed by the court.

## **22A Power to reduce penalties for pre-trial disclosure**

- (1) A court may impose a lesser penalty than it would otherwise impose on an offender who was tried on indictment, having regard to the degree to which the defence has made pre-trial disclosures for the purposes of the trial.
- (2) A lesser penalty that is imposed under this section in relation to an offence must not be unreasonably disproportionate to the nature and circumstances of the offence.

## **23 Power to reduce penalties for assistance provided to law enforcement authorities**

- (1) A court may impose a lesser penalty than it would otherwise impose on an offender, having regard to the degree to which the offender has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of, or in proceedings relating to, the offence concerned or any other offence.
- (2) In deciding whether to impose a lesser penalty for an offence and the nature and extent of the penalty it imposes, the court must consider the following matters:
  - (a) the effect of the offence on the victim or victims of the offence and the family or families of the victim or victims,
  - (b) the significance and usefulness of the offender's assistance to the authority or authorities concerned, taking into consideration any evaluation by the authority or authorities of the assistance rendered or undertaken to be rendered,
  - (c) the truthfulness, completeness and reliability of any information or evidence provided by the offender,
  - (d) the nature and extent of the offender's assistance or promised assistance,
  - (e) the timeliness of the assistance or undertaking to assist,
  - (f) any benefits that the offender has gained or may gain by reason of the assistance or undertaking to assist,
  - (g) whether the offender will suffer harsher custodial conditions as a consequence of the assistance or undertaking to assist,
  - (h) any injury suffered by the offender or the offender's family, or any danger or risk of injury to the offender or the offender's family, resulting from the assistance or undertaking to assist,
  - (i) whether the assistance or promised assistance concerns the offence for which the offender is being sentenced or an unrelated offence,
  - (j) the likelihood that the offender will commit further offences after release.

- (3) A lesser penalty that is imposed under this section in relation to an offence must not be unreasonably disproportionate to the nature and circumstances of the offence.

#### **24 Court to take other matters into account**

In sentencing an offender, the court must take into account:

- (a) any time for which the offender has been held in custody in relation to the offence, and
- (b) in the case of an offender who is being sentenced as a result of failing to comply with the offender's obligations under a community service order or good behaviour bond:
- (i) the fact that the person has been the subject of such an order or bond, and
- (ii) anything done by the offender in compliance with the offender's obligations under the order or bond.

#### **25 Local Court not to impose certain penalties if offender is absent**

- (1) A Local Court must not make any of the following orders with respect to an absent offender:
- (a) an order imposing a sentence of imprisonment,
- (b) a periodic detention order,
- (c) a home detention order,
- (d) a community service order,
- (e) an order that provides for the offender to enter into a good behaviour bond.
- (2) At any time after it finds an absent offender guilty of an offence or convicts an absent offender for an offence, a Local Court:
- (a) may issue a warrant for the offender's arrest, or
- (b) may authorise an authorised justice to issue a warrant for the offender's arrest, for the purpose of having the offender brought before the Local Court for conviction and sentencing, or for sentencing, as the case requires.
- (3) This section does not limit the power that any court other than a Local Court may have, apart from this section, to deal with an offender whom it has found guilty or convicted in his or her absence.

- (4) In this section:

***absent offender*** means an offender who is being dealt with in his or her absence.

**authorised justice** means a justice employed within the Attorney General's Department.

## Division 2 Victim impact statements

### 26 Definitions

In this Division:

**family victim**, in relation to an offence as a direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence.

**member of the primary victim's immediate family** means:

- (a) the victim's spouse, or
- (b) the victim's de facto spouse or same-sex partner, being a person who has cohabited with the victim for at least 2 years, or
- (c) a parent, guardian or step-parent of the victim, or
- (d) a child or step-child of the victim or some other child for whom the victim is the guardian, or
- (e) a brother, sister, step-brother or step-sister of the victim.

**personal harm** means actual physical bodily harm, mental illness or nervous shock.

**primary victim**, in relation to an offence, means:

- (a) a person against whom the offence was committed, or
- (b) a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned,

being a person who has suffered personal harm as a direct result of the offence.

**victim** means a primary victim or a family victim.

**victim impact statement** means a statement containing particulars of:

- (a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence, or
- (b) in the case of a family victim, the impact of the primary victim's death on the members of the primary victim's immediate family.

## **27 Application of Division**

- (1) This Division applies only in relation to an offence that is being dealt with by the Supreme Court, the Industrial Relations Commission, the District Court or a Local Court, and only as provided by this section.
- (2) In relation to an offence that is being dealt with by the Supreme Court or the District Court, this Division applies only if the offence is being dealt with on indictment and is:
  - (a) an offence that results in the death of, or actual physical bodily harm to, any person, or
  - (b) an offence that involves an act of actual or threatened violence or an act of sexual assault, or
  - (c) an offence for which a higher maximum penalty may be imposed if the offence results in the death of, or actual physical bodily harm to, any person than may be imposed if the offence does not have that result.
- (2A) In relation to an offence being dealt with by the Industrial Relations Commission, this Division applies only if:
  - (a) the offence is an offence against Division 1 of Part 2 of the *Occupational Health and Safety Act 2000*, and
  - (b) the offence results in the death of, or actual physical bodily harm to, any person.
- (3) In relation to an offence that is being dealt with by a Local Court, this Division applies only if the offence is:
  - (a) an offence that results in the death of any person, or
  - (b) an offence for which a higher maximum penalty may be imposed if the offence results in the death of any person than may be imposed if the offence does not have that result.
- (4) Nothing in this Division limits any other law by or under which a court may receive and consider a victim impact statement in relation to any offence to which this Division does not apply.

## **28 When victim impact statements may be received and considered**

- (1) If it considers it appropriate to do so, the Supreme Court, Industrial Relations Commission or District Court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender.
- (2) A victim impact statement may also be received and considered by the Supreme Court when it determines an application under Schedule 1 for the determination of a term and a non-parole period for an existing life sentence referred to in that Schedule.

- (3) If the primary victim has died as a direct result of the offence, the Supreme Court, Industrial Relations Commission or District Court must receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.
- (4) Despite subsections (1), (2) and (3), the Supreme Court, Industrial Relations Commission or District Court:
  - (a) must not consider a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor, and
  - (b) must not consider a victim impact statement given by a family victim in connection with the determination of the punishment for the offence unless it considers that it is appropriate to do so.
- (5) The Supreme Court, Industrial Relations Commission or District Court may make a victim impact statement available to the prosecutor, to the offender or to any other person on such conditions (which must include conditions preventing the offender from retaining copies of the statement) as it considers appropriate.
- (6) In relation to a victim impact statement given by a family victim, this section applies to a Local Court in the same way as it applies to the Supreme Court, Industrial Relations Commission and the District Court.

## **29 Victim impact statements discretionary**

- (1) The giving of a victim impact statement is not mandatory.
- (2) A victim impact statement may not be received or considered by a court if the victim or any of the victims to whom the statement relates objects to the statement being given to the court.
- (3) The absence of a victim impact statement does not give rise to an inference that an offence had little or no impact on a victim.

## **30 Formal requirements for victim impact statements**

- (1) A victim impact statement must be in writing and must comply with such other requirements as are prescribed by the regulations.
- (2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim, a member of the primary victim's immediate family or other representative of the victim may, subject to the regulations, act on behalf of the victim for that purpose.
- (3) A court may receive and consider a victim impact statement only if it is given in accordance with and complies with the requirements prescribed by or under this Division.

## Division 3 Taking further offences into account

### 31 Definitions

In this Division:

**further offence** means an offence referred to in a list of additional charges.

**impose a penalty** includes:

- (a) impose a sentence of imprisonment or a fine, or
- (b) make a periodic detention order, home detention order or community service order, or
- (c) make an order that provides for an offender to enter into a good behaviour bond, or
- (d) make an order under section 10, 11 or 12.

**list of additional charges** means a document filed in a court by the prosecutor, as referred to in section 32 (1).

**principal offence** means an offence the subject of proceedings referred to in section 32 (1).

### 32 Prosecutor may file list of additional charges

- (1) In any proceedings for an offence (the **principal offence**), the prosecutor may file in the court a document that specifies other offences with which the offender has been charged, but not convicted, being offences that the offender has indicated are offences that the offender wants the court to take into account when dealing with the offender for the principal offence.
- (2) A list of additional charges may be filed at any time:
  - (a) after the court finds the offender guilty of the principal offence, and
  - (b) before the court deals with the offender for the principal offence.
- (3) A copy of the list of additional charges, as filed in the court, is to be given to the offender.
- (4) A list of additional charges:
  - (a) must be in the form prescribed by the regulations, and
  - (b) must be signed by the offender, and
  - (c) must be signed by or on behalf of the Director of Public Prosecutions.
- (5) A list of additional charges is taken to be signed on behalf of the Director of Public

Prosecutions if it is signed by a person:

- (a) who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised, or
- (b) who is prescribed by the regulations or who belongs to a class of persons so prescribed.

### **33 Outstanding charges may be taken into account**

- (1) When dealing with the offender for the principal offence, the court is to ask the offender whether the offender wants the court to take any further offences into account in dealing with the offender for the principal offence.
- (2) The court may take a further offence into account in dealing with the offender for the principal offence:
  - (a) if the offender:
    - (i) admits guilt to the further offence, and
    - (ii) indicates that the offender wants the court to take the further offence into account in dealing with the offender for the principal offence, and
  - (b) if, in all of the circumstances, the court considers it appropriate to do so.
- (3) If the court takes a further offence into account, the penalty imposed on the offender for the principal offence must not exceed the maximum penalty that the court could have imposed for the principal offence had the further offence not been taken into account.
- (4) A court may not take a further offence into account:
  - (a) if the offence is of a kind for which the court has no jurisdiction to impose a penalty, or
  - (b) if the offence is an indictable offence that is punishable with imprisonment for life.
- (5) For the purposes of subsection (4) (a), a court is taken to have jurisdiction to impose a penalty for an offence even if that jurisdiction may only be exercised with the consent of the offender.
- (6) Despite subsection (4) (a), the Supreme Court, the Court of Criminal Appeal and the District Court may take a summary offence into account.

### **34 Ancillary orders relating to offences taken into account**

- (1) If a court takes a further offence into account under this Division, the court may make such ancillary orders as it could have made had it convicted the offender of the offence when it took the offence into account, but may not impose a separate penalty



for the offence.

- (2) An offender with respect to whom an ancillary order is made has the same rights of appeal as he or she would have had if the order had been made on the conviction of the offender for the further offence.
- (3) An ancillary order for an offence taken into account lapses, by operation of this subsection, if the offender's conviction for the principal offence is quashed or set aside.
- (4) In this section, **ancillary order** means an order or direction with respect to restitution, compensation, costs, forfeiture, disqualification or loss or suspension of a licence or privilege.

### **35 Consequences of taking offences into account**

- (1) If a further offence is taken into account under this Division:
  - (a) the court is to certify, on the list of additional charges, that the further offence has been taken into account, and
  - (b) no proceedings may be taken or continued in respect of the further offence unless the conviction for the principal offence is quashed or set aside.
- (2) This section does not prevent a court that has taken a further offence into account when dealing with an offender for a principal offence from taking the further offence into account if it subsequently imposes a penalty when sentencing or re-sentencing the offender for the principal offence.
- (3) An admission of guilt made for the purposes of this Division is not admissible in evidence in any proceedings relating to:
  - (a) the further offence in respect of which the admission was made, or
  - (b) any other offence specified in the list of additional charges.
- (4) An offence taken into account under this Division is not, merely because of its being taken into account, to be regarded for any purpose as an offence of which an offender has been convicted.
- (5) In or in relation to any criminal proceedings, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a further offence has been taken into account under this Division in imposing a penalty for a principal offence of which an offender has been found guilty if, in or in relation to those proceedings:
  - (a) reference may lawfully be made to, or evidence may lawfully be given of, the fact that the offender was found guilty or convicted of the principal offence, and
  - (b) had the offender been found guilty or convicted of the further offence so taken

into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the offender had been found guilty or convicted of that further offence.

- (6) The fact that a further offence has been taken into account under this Division may be proved in the same manner as the conviction for the principal offence.

## **Division 4 Sentencing guidelines**

### **36 Definitions**

In this Division:

**Court** means the Court of Criminal Appeal.

**guideline judgment** means a judgment that is expressed to contain guidelines to be taken into account by courts sentencing offenders, being:

- (a) guidelines that apply generally, or
- (b) guidelines that apply to particular courts or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of offenders (but not to particular offenders).

**guideline proceedings** means:

- (a) proceedings under section 37 on an application for a guideline judgment referred to in that section, and
- (b) that part of proceedings that relates to the giving of a guideline judgment under section 37A.

### **37 Guideline judgments on application of Attorney General**

- (1) The Court may give a guideline judgment on the application of the Attorney General.
- (2) An application for a guideline judgment may include submissions with respect to the framing of the proposed guidelines.
- (3) An application is not to be made in any proceedings before the Court with respect to a particular offender.
- (4) The powers and jurisdiction of the Court to give a guideline judgment in proceedings under this section in relation to an indictable or summary offence are the same as the powers and jurisdiction that the Court has, under section 37A, to give a guideline judgment in a pending proceeding in relation to an indictable offence.
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the Court that it considers appropriate.

(6) (Repealed)

**37A Guideline judgments on own motion**

- (1) The Court may give a guideline judgment on its own motion in any proceedings considered appropriate by the Court, and whether or not it is necessary for the purpose of determining the proceedings.
- (2) The Court is to give the Senior Public Defender, Director of Public Prosecutions and Attorney General an opportunity to appear as referred to in sections 38, 39 and 39A before giving a guideline judgment.

**37B Review, variation and revocation of guideline judgments**

A guideline judgment given in proceedings under section 37 or 37A may be reviewed, varied or revoked in a subsequent guideline judgment of the Court, whether or not given under the same section.

**38 Senior Public Defender may intervene**

- (1) The Senior Public Defender, or a nominee of the Senior Public Defender who is a legal practitioner, may appear in guideline proceedings.
- (2) Without limiting subsection (1), the Senior Public Defender or his or her nominee may do any one or more of the following:
  - (a) oppose or support the giving of the guideline judgment by the Court,
  - (b) make submissions with respect to the framing of the guidelines,
  - (c) inform the Court of any relevant pending appeal with respect to sentence,
  - (d) assist the Court with respect to any relevant matter.
- (3) Nothing in the *Public Defenders Act 1995* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Senior Public Defender, or on any nominee of the Senior Public Defender who is a Public Defender, under this section.
- (4) Without limiting subsection (3), in exercising any function conferred on the Senior Public Defender under this section, the Senior Public Defender is not, despite section 4 (3) of the *Public Defenders Act 1995*, responsible to the Attorney General.
- (5) The Legal Aid Commission may make recommendations to the Senior Public Defender as to the exercise of any function conferred or imposed on the Senior Public Defender, or on any nominee of the Senior Public Defender, under this section.

### **39 Director of Public Prosecutions may intervene**

- (1) The Director of Public Prosecutions may appear in person or be represented by a legal practitioner in guideline proceedings.
- (2) Without limiting subsection (1), the Director of Public Prosecutions or his or her representative may do any one or more of the following:
  - (a) oppose or support the giving of the guideline judgment by the Court,
  - (b) make submissions with respect to the framing of the guidelines,
  - (c) inform the Court of any relevant pending appeal with respect to sentence,
  - (d) assist the Court with respect to any relevant matter.
- (3) Nothing in the *Director of Public Prosecutions Act 1986*, the *Crown Prosecutors Act 1986* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Director of Public Prosecutions, or on any representative of the Director who is a Crown Prosecutor, under this section.
- (4) Without limiting subsection (3), in exercising any function conferred on the Director of Public Prosecutions under this section, the Director is not, despite section 4 (3) of the *Director of Public Prosecutions Act 1986*, responsible to the Attorney General.

### **39A Attorney General may intervene**

- (1) The Attorney General, or a nominee of the Attorney General who is a legal practitioner, may appear in that part of proceedings that relates to the giving of a guideline judgment under section 37A.
- (2) Without limiting subsection (1), the Attorney General or his or her nominee may do any one or more of the following:
  - (a) oppose or support the giving of the guideline judgment by the Court,
  - (b) make submissions with respect to the framing of the guidelines,
  - (c) inform the Court of any relevant pending appeal with respect to sentence,
  - (d) assist the Court with respect to any relevant matter.
- (3) Nothing in any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Attorney General, or on any nominee of the Attorney General, under this section.

### **40 Discretion of Court preserved**

Nothing in this Division:

- (a) limits any power or jurisdiction of the Court to give a guideline judgment that the Court has apart from this Division, or
- (b) requires the Court to give any guideline judgment under this Division if it considers it inappropriate to do so.

#### **41 Rules of court**

Rules of court may be made under the *Supreme Court Act 1970* with respect to applications, and proceedings to determine applications, under this Division.

#### **42 Use of evidence in giving guideline judgments**

- (1) Nothing in section 12 of the *Criminal Appeal Act 1912* limits the evidence or other matters that the Court may take into consideration in giving a guideline judgment and the Court may inform itself as it sees fit.
- (2) The Court must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Court in giving a guideline judgment in the appeal but was not given at the trial.

#### **42A Relationship of guidelines and other sentencing matters**

A guideline that is expressed to be contained in a guideline judgment:

- (a) is in addition to any other matter that is required to be taken into account under Division 1 of Part 3, and
- (b) does not limit or derogate from any such requirement.

### **Division 5 Correction and adjustment of sentences**

#### **43 Court may reopen proceedings to correct sentencing errors**

- (1) This section applies to criminal proceedings (including proceedings on appeal) in which a court has:
  - (a) imposed a penalty that is contrary to law, or
  - (b) failed to impose a penalty that is required to be imposed by law,and so applies whether or not a person has been convicted of an offence in those proceedings.
- (2) The court may reopen the proceedings (either on its own initiative or on the application of a party to the proceedings) and, after giving the parties an opportunity to be heard:
  - (a) may impose a penalty that is in accordance with the law, and

- (b) if necessary, may amend any relevant conviction or order.
- (3) For the purposes of this section, the court:
  - (a) may call on the person to whom the proceedings relate to appear before it and, if the person does not appear, may issue a warrant for the person's arrest, or
  - (b) if of the opinion that the person will not appear if called on to do so, may, without calling on the person to appear before it, issue a warrant for the person's arrest.
- (4) Subject to subsection (5), nothing in this section affects any right of appeal.
- (5) For the purposes of an appeal under any Act against a penalty imposed in the exercise of a power conferred by this section, the time within which such an appeal must be made commences on the date on which the penalty is so imposed.
- (6) In this section:
  - impose a penalty*** includes:
    - (a) impose a sentence of imprisonment or a fine, or
    - (b) make a periodic detention order, home detention order or community service order, or
    - (c) make an order that provides for an offender to enter into a good behaviour bond, or
    - (d) make an order under section 10, 11 or 12, or
    - (e) make an order or direction with respect to restitution, compensation, costs, forfeiture, disqualification or loss or suspension of a licence or privilege.

## **Part 4 Sentencing procedures for imprisonment**

### **Division 1 Setting terms of imprisonment**

#### **44 Court to set term of sentence and non-parole period**

- (1) When sentencing an offender to imprisonment for an offence, a court is required:
  - (a) firstly, to set the term of the sentence, and
  - (b) secondly, to set a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).
- (2) The non-parole period must not be less than three-quarters of the term of the sentence, unless the court decides there are special circumstances for it being less, in which case the court must make a record of its reasons for that decision.

- (3) Subsection (2) does not limit any other requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) The failure of a court to comply with the requirements of subsection (2) with respect to a sentence does not invalidate the sentence.
- (5) Schedule 1 has effect in relation to the determination of a term and a non-parole period for an existing life sentence referred to in that Schedule.

#### **45 Court may decline to set non-parole period**

- (1) When sentencing an offender to imprisonment for an offence, a court may decline to set a non-parole period for the offence if it appears to the court that it is appropriate to do so:
  - (a) because of the nature of the offence to which the sentence relates or the antecedent character of the offender, or
  - (b) because of any other penalty previously imposed on the offender, or
  - (c) for any other reason that the court considers sufficient.
- (2) If a court declines to set a non-parole period for a sentence of imprisonment, it must make a record of its reasons for doing so.
- (3) Subsection (2) does not limit any other requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) The failure of a court to comply with the requirements of subsection (2) with respect to a sentence does not invalidate the sentence.

#### **46 Court not to set non-parole period for sentence of 6 months or less**

A court may not set a non-parole period for a sentence of imprisonment if the term of the sentence is 6 months or less.

#### **47 Commencement of sentence**

- (1) A sentence of imprisonment commences:
  - (a) subject to section 70 and to any direction under subsection (2), on the day on which the sentence is imposed, or
  - (b) if the execution of the sentence is stayed under section 80, on the day on which the court decides whether or not to make a home detention order in relation to the sentence.
- (2) A court may direct that a sentence of imprisonment:
  - (a) is taken to have commenced on a day occurring before the day on which the

sentence is imposed, or

(b) commences on a day occurring after the day on which the sentence is imposed, but only if the sentence is to be served consecutively (or partly concurrently and partly consecutively) with some other sentence of imprisonment.

(3) In deciding whether or not to make a direction under subsection (2) (a) with respect to a sentence of imprisonment, and in deciding the day on which the sentence is taken to have commenced, the court must take into account any time for which the offender has been held in custody in relation to the offence to which the sentence relates.

(4) The day specified in a direction under subsection (2) (b) must not be later than the day following the earliest day on which it appears (on the basis of the information currently available to the court) that the offender:

(a) will become entitled to be released from custody, or

(b) will become eligible to be released on parole,

having regard to any other sentence of imprisonment to which the offender is subject.

(5) A direction under subsection (2) (b) may not be made in relation to a sentence of imprisonment imposed on an offender who is serving some other sentence of imprisonment by way of full-time detention if:

(a) a non-parole period has been set for that other sentence, and

(b) the non-parole period for that other sentence has expired, and

(c) the offender is still in custody under that other sentence.

(6) A sentence of imprisonment starts at the beginning of the day on which it commences or is taken to have commenced and ends at the end of the day on which it expires.

#### **48 Information about release date**

(1) When sentencing an offender to imprisonment for an offence, a court must specify:

(a) the day on which the sentence commences or is taken to have commenced, and

(b) the earliest day on which it appears (on the basis of the information currently available to the court) that the offender will become entitled to be released from custody, or eligible to be released on parole, having regard to:

(i) that and any other sentence of imprisonment to which the offender is subject, and

(ii) the non-parole periods (if any) for that and any other sentence of imprisonment to which the offender is subject.



**Note—**

Example No 1: A court sentences an offender to 7 days' imprisonment. The sentence is imposed on a Monday. The court has not set a non-parole period. The offender is not subject to any other sentence of imprisonment. In this example, the court should specify that the sentence commences on the Monday on which it is imposed and that the earliest day on which the offender will become entitled to be released from custody is the following Sunday.

Example No 2: A court sentences an offender to 12 months' imprisonment. The sentence is imposed on 5 May 2000. The court has set a non-parole period of 9 months. The offender is not subject to any other sentence of imprisonment. Because the offender has been remanded in custody for sentencing since 27 April 2000, the court has backdated the commencement of the sentence to that date. In this example, the court should specify that the sentence is taken to have commenced on 27 April 2000 and that the earliest date on which the offender will become entitled to be released on parole is 26 January 2001.

Example No 3: A court sentences an offender to 2 years' imprisonment. The sentence is imposed on 3 June 2000. The court has set a non-parole period of 18 months. The offender is subject to one other sentence of imprisonment in respect of which the offender will become eligible to be released on parole on 21 September 2000. The court has directed that the new sentence is to run consecutively with the other sentence. In this example, the court should specify that the sentence commences on 22 September 2000 and that the earliest date on which the offender will become eligible to be released on parole is 21 March 2002.

- (2) The purpose of this section is to require a court to give information about the likely effect of a sentence.
- (3) The failure of a court to comply with the requirements of this section with respect to a sentence does not invalidate the sentence.

#### **49 Restriction on term of sentence**

The term of a sentence of imprisonment:

- (a) must not be more than the maximum term of imprisonment that may be imposed for the offence, and
- (b) must not be less than the shortest term of imprisonment (if any) that must be imposed for the offence.

#### **50 Making of parole orders by court**

- (1) When a court imposes a sentence of imprisonment for a term of 3 years or less, being a sentence that has a non-parole period, the court must make an order directing the release of the offender on parole at the end of the non-parole period.
- (2) A parole order may be made under this section even though at the time it is made it appears that the offender may not be eligible for release at the end of the non-parole period because of some other sentence to which the offender is subject.
- (3) The failure of a court to comply with the requirements of this section with respect to a sentence does not invalidate the sentence.

## **51 Court may impose conditions on parole order**

- (1) A court may impose such conditions as it considers appropriate on any parole order made by it.
- (1A) The conditions of a parole order may include conditions requiring that the offender to whom the order relates be subject to supervision prescribed by the regulations under the *Crimes (Administration of Sentences) Act 1999* during the period specified by or under the order or those regulations.
- (1B) Despite subsection (1A):
  - (a) the conditions of a parole order with respect to a sentence of imprisonment to be served by way of periodic detention may not include conditions requiring that the offender be subject to supervision, and
  - (b) if an offender subsequently serves a sentence by way of periodic detention, any condition of the parole order that requires the offender to be subject to supervision ceases to have effect.
- (2) The conditions imposed by the court must not be inconsistent with the standard conditions imposed by the regulations under the *Crimes (Administration of Sentences) Act 1999*.

## **52 Court's powers on appeal**

- (1) If an appeal is made against a conviction or sentence, the court determining the appeal:
  - (a) may vary or rescind any non-parole period set by the sentencing court, or
  - (b) may set a non-parole period for a sentence of imprisonment for which a non-parole period has not been set by the sentencing court.
- (2) Any non-parole period that is varied or set under this section must comply with the requirements of this Division.
- (3) This section does not limit any other power of a court in determining an appeal.

## **53 Multiple sentences of imprisonment**

- (1) When a court imposes more than one sentence of imprisonment on an offender, the court must comply with the requirements of this Division in relation to each sentence.
- (2) The term, and any non-parole period, set under this Division in relation to a sentence of imprisonment is not revoked or varied by a later sentence of imprisonment that the same or some other court subsequently imposes in relation to another offence.

#### **54 Exclusions from Division**

This Division does not apply to the sentencing of an offender:

- (a) to imprisonment for life or for any other indeterminate period, or
- (b) to imprisonment under the *Fines Act 1996* or the *Habitual Criminals Act 1957*, or
- (c) to detention under the *Mental Health (Criminal Procedure) Act 1990*.

### **Division 2 Concurrent and consecutive sentences**

#### **55 Sentences for offences generally**

- (1) In the absence of a direction under this section, a sentence of imprisonment imposed on an offender:
  - (a) who, when being sentenced, is subject to another sentence of imprisonment that is yet to expire, or
  - (b) in respect of whom another sentence of imprisonment has been imposed in the same proceedings,is to be served concurrently with the other sentence of imprisonment and any further sentence of imprisonment that is yet to commence.
- (2) The court imposing the sentence of imprisonment may instead direct that the sentence is to be served consecutively (or partly concurrently and partly consecutively) with the other sentence of imprisonment or, if there is a further sentence of imprisonment that is yet to commence, with the further sentence of imprisonment.
- (3) A direction under this section has effect according to its terms.
- (4) In this section, a reference to a sentence of imprisonment is taken to be a reference to:
  - (a) the non-parole period of the sentence, in the case of a sentence for which a non-parole period has been set, or
  - (b) the term of the sentence, in the case of a sentence for which a non-parole period has not been set.
- (5) This section does not apply to:
  - (a) a sentence of imprisonment imposed on an offender in relation to an offence involving an assault, or any other offence against the person, committed by the offender while a convicted inmate of a correctional centre, or
  - (b) a sentence of imprisonment imposed on an offender in relation to an offence

involving an escape from lawful custody committed by the offender while an inmate of a correctional centre (whether or not the escape was from a correctional centre).

#### **56 Sentences for offences involving assault by convicted inmates**

- (1) This section applies to a sentence of imprisonment imposed on an offender in relation to an offence involving an assault, or any other offence against the person, committed by the offender while a convicted inmate of a correctional centre.
- (2) In the absence of a direction under this section, a sentence of imprisonment imposed on an offender:
  - (a) who, when being sentenced, is subject to another sentence of imprisonment that is yet to expire, or
  - (b) in respect of whom another sentence of imprisonment has been imposed in the same proceedings,is to be served consecutively with the other sentence of imprisonment or, if there is a further sentence of imprisonment yet to commence, with that further sentence.
- (3) The court imposing the sentence of imprisonment may instead direct that the sentence is to be served concurrently (or partly concurrently and partly consecutively) with the other sentence of imprisonment and any further sentence of imprisonment that is yet to commence.
- (4) A direction under this section has effect according to its terms.
- (5) In this section, a reference to a sentence of imprisonment is taken to be a reference to:
  - (a) the non-parole period of the sentence, in the case of a sentence for which a non-parole period has been set, or
  - (b) the term of the sentence, in the case of a sentence for which a non-parole period has not been set.

#### **57 Sentences for offences involving escape by inmates**

- (1) This section applies to a sentence of imprisonment imposed on an offender in relation to an offence involving an escape from lawful custody committed by the offender while an inmate of a correctional centre (whether or not the escape was from a correctional centre).
- (2) A sentence of imprisonment imposed on an offender:
  - (a) who, when being sentenced, is subject to another sentence of imprisonment that is yet to expire, or

(b) in respect of whom another sentence of imprisonment has been imposed in the same proceedings,

is to be served consecutively with the other sentence of imprisonment or, if there is a further sentence of imprisonment yet to commence, with that further sentence.

(3) In this section, a reference to a sentence of imprisonment is taken to be a reference to:

(a) the non-parole period of the sentence, in the case of a sentence for which a non-parole period has been set, or

(b) the term of the sentence, in the case of a sentence for which a non-parole period has not been set.

### **58 Limitation on consecutive sentences imposed by Local Courts**

(1) A Local Court may not impose a sentence of imprisonment (the **new sentence**) to be served consecutively (or partly concurrently and partly consecutively) with another sentence of imprisonment (the **old sentence**):

(a) if the old sentence is being served consecutively (or partly concurrently and partly consecutively) with another sentence of imprisonment, or

(b) if the date on which the new sentence would end is more than 3 years after the date on which the old sentence began.

(2) Any period for which an existing sentence has been extended under this or any other Act is to be disregarded for the purposes of this section.

(3) This section does not apply if:

(a) the new sentence relates to an offence involving an assault on a correctional officer committed by the offender while a convicted inmate of a correctional centre, and

(b) the old sentence was imposed by a court other than a Local Court.

### **59 Court may vary commencement of consecutive sentence on quashing or variation of earlier sentence**

(1) A court that quashes or varies a sentence of imprisonment imposed on a person (on appeal or otherwise) may vary the date of commencement of any consecutive sentence that has been imposed on that person by that or any other court.

(2) If a person is subject to two or more consecutive sentences, this section applies to each such sentence.

(3) A court may vary a consecutive sentence under this section on its own initiative or on

the application of a party to the proceedings on the quashing or variation of the other sentence.

- (4) An appeal does not lie merely because the date of commencement of a consecutive sentence is varied under this section.
- (5) The term of a sentence, or the non-parole period of a sentence, cannot be varied under this section.

## **60 Application of Division to interstate sentences of imprisonment**

This Division applies to unexpired sentences passed outside New South Wales, and being served or to be served within New South Wales, in the same way as it applies to unexpired sentences passed within New South Wales.

## **Division 3 Miscellaneous**

### **61 Mandatory life sentences for certain offences**

- (1) A court is to impose a sentence of imprisonment for life on a person who is convicted of murder if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence.
- (2) A court is to impose a sentence of imprisonment for life on a person who is convicted of a serious heroin or cocaine trafficking offence if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence and the court is also satisfied that:
  - (a) the offence involved:
    - (i) a high degree of planning and organisation, and
    - (ii) the use of other people acting at the direction of the person convicted of the offence in the commission of the offence, and
  - (b) the person was solely or principally responsible for planning, organising and financing the offence, and
  - (c) the heroin or cocaine was of a high degree of purity, and
  - (d) the person committed the offence solely for financial reward.
- (3) Nothing in subsection (1) affects section 21 (1).
- (4) Division 1 of Part 3 of this Act and section 33A (2) of the *Drug Misuse and Trafficking Act 1985* do not apply if the court is satisfied that the circumstances referred to in

subsection (2) exist.

- (5) Nothing in subsection (2) limits or derogates from the discretion of a court to impose a sentence of imprisonment for life on a person who is convicted of a serious heroin or cocaine trafficking offence.
- (6) This section does not apply to a person who was less than 18 years of age at the date of commission of the offence.
- (7) In this section:

**heroin** has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

**serious heroin or cocaine trafficking offence** means an offence under section 25 (2) or (2A) of the *Drug Misuse and Trafficking Act 1985* involving heroin or cocaine, and being an offence to which section 33 (subsection (2) excepted) of that Act applies.

## 62 Warrant of commitment

- (1) As soon as practicable after sentencing an offender to imprisonment, a court must issue a warrant for the committal of the offender to a correctional centre.
- (2) The warrant must be in or to the effect of the form prescribed by the regulations and signed by a justice.
- (3) A warrant under this section is sufficient authority:
  - (a) for any police officer to convey the offender to the correctional centre or police station identified in the warrant, and
  - (b) for the governor of the correctional centre, or the person in charge of the police station, to keep the offender in his or her custody for the term of the sentence.
- (4) This section does not apply:
  - (a) while action is being taken under Part 5 or 6 in relation to the making of a periodic detention order or home detention order, or
  - (b) to a sentence of imprisonment the subject of a periodic detention order or home detention order.

## 63 Offenders to be photographed and fingerprinted

- (1) As soon as practicable after a court sentences an offender to imprisonment, the offender's identifying particulars may be taken:
  - (a) by a police officer or correctional officer, or
  - (b) by any other person specified by an order of the court.

- (2) The court may revoke any related periodic detention order or home detention order if the offender fails to submit to the taking of identifying particulars.
- (3) Nothing in this section prevents a court from making any other order with respect to the taking of an offender's identifying particulars.
- (4) In this section:

**correctional officer** means:

- (a) a correctional officer, within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
- (b) a person employed on a temporary basis within the Department of Corrective Services to perform court security or escort duties, or
- (c) a person holding an authority under section 240 of the *Crimes (Administration of Sentences) Act 1999* to perform escort duties.

**identifying particulars**, in relation to an offender, means particulars necessary to identify the offender, including photographs and fingerprints.

## Part 5 Sentencing procedures for periodic detention orders

### Division 1 Preliminary

#### 64 Application

This Part applies in circumstances in which a court is considering, or has made, a periodic detention order.

#### 65 Definitions

In this Part:

**assessment report** means a report prepared under section 69.

**offender's obligations** under a periodic detention order means the obligations that the offender has under section 81 of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

### Division 2 Restrictions on power to make periodic detention orders

#### 66 Suitability of offender for periodic detention

- (1) A periodic detention order may not be made with respect to an offender's sentence of imprisonment unless the court is satisfied:
  - (a) that the offender is of or above the age of 18 years, and



- (b) that the offender is a suitable person to serve the sentence by way of periodic detention, and
  - (c) that it is appropriate in all of the circumstances that the sentence be served by way of periodic detention, and
  - (d) that there is accommodation available at a periodic detention centre for the offender to serve the sentence by way of periodic detention, and
  - (e) that transport arrangements are available for travel by the offender, to and from the periodic detention centre, for the purpose of serving the sentence by way of periodic detention, being arrangements that will not impose undue inconvenience, strain or hardship on the offender, and
  - (f) that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the periodic detention order.
- (2) In deciding whether or not to make a periodic detention order, the court is to have regard to:
- (a) the contents of an assessment report on the offender, and
  - (b) such evidence from a probation and parole officer as the court considers necessary for the purpose of deciding whether to make such an order.
- (3) A court may, for any reason it considers sufficient, decline to make a periodic detention order despite the contents of an assessment report.

### **67 Concurrent and consecutive sentences**

- (1) A periodic detention order may not be made in respect of a sentence of imprisonment (a **new sentence**) to be served concurrently or consecutively (or partly concurrently and partly consecutively) with any other sentence of imprisonment the subject of a periodic detention order (an **existing sentence**) if the date on which the new sentence will end is more than 3 years after the date on which it was imposed.
- (2) Any period for which an existing sentence has been extended under this or any other Act is to be disregarded for the purposes of this section.
- (3) This section does not limit the operation of section 58.

## **Division 3 Assessment reports**

### **68 Referral of offender for assessment**

Before a court imposes a sentence of imprisonment on an offender, the court may refer the offender for assessment as to the suitability of the offender for periodic detention.

### **69 Assessment of suitability**

- (1) When an offender is referred for assessment, the Probation and Parole Service is to investigate and report to the court on the matters referred to in section 66 (1).
- (2) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

## **Division 4 Miscellaneous**

### **70 Commencement of sentence**

- (1) Having made a periodic detention order in relation to a sentence of imprisonment, a court is to fix the date of commencement of the sentence so that the date of commencement occurs no earlier than 7 days, and no later than 21 days, after the date on which the order was made.
- (2) Subsection (1) does not apply to a sentence of imprisonment that is to be served consecutively (or partly concurrently and partly consecutively) with some other sentence of imprisonment the subject of a periodic detention order.
- (3) A periodic detention order is not invalidated merely because it specifies a date of commencement of the sentence of imprisonment that does not comply with the requirements of this section.

### **71 Explanation of periodic detention order to offender**

- (1) Having made a periodic detention order in relation to an offender's sentence of imprisonment, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the periodic detention order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A periodic detention order is not invalidated by a failure to comply with this section.

### **72 Preparation and service of written notice of periodic detention order**

- (1) As soon as practicable after making a periodic detention order, a court must cause written notice of the order to be given to the offender and to the Commissioner of Corrective Services.
- (2) The notice must include the following information:
  - (a) the periodic detention centre to which the offender must report, and
  - (b) the date on which, and the time at which, the offender is first to report to the

periodic detention centre, and

(c) the day of the week on which, and the time at which, the offender is subsequently to report to the periodic detention centre during the term of the offender's sentence of imprisonment.

(3) A periodic detention order is not invalidated by a failure to comply with this section.

### **73 Warrant of commitment**

- (1) As soon as practicable after making a periodic detention order, a court must issue a warrant for the committal of the offender to a periodic detention centre.
- (2) The warrant must be in or to the effect of the form prescribed by the regulations and signed by a justice.

## **Part 6 Sentencing procedures for home detention orders**

### **Division 1 Preliminary**

#### **74 Application**

This Part applies in circumstances in which a court is considering, or has made, a home detention order.

#### **75 Definitions**

In this Part:

**assessment report** means a report prepared under section 81.

**domestic violence offence** has the same meaning as it has in the [Crimes Act 1900](#).

**offender's obligations** under a home detention order means the obligations that the offender has under section 104 of the [Crimes \(Administration of Sentences\) Act 1999](#) as a consequence of the making of the order.

### **Division 2 Restrictions on power to make home detention orders**

#### **76 Home detention not available for certain offences**

A home detention order may not be made in respect of a sentence of imprisonment for any of the following offences:

- (a) murder, attempted murder or manslaughter,
- (b) sexual assault of adults or children or sexual offences involving children,
- (c) armed robbery,

- (d) any offence involving the use of a firearm,
- (e) assault occasioning actual bodily harm (or any more serious assault, such as malicious wounding or assault with intent to do grievous bodily harm),
- (f) an offence under section 562AB of the *Crimes Act 1900* of stalking or intimidating a person with the intention of causing the person to fear personal injury,
- (g) a domestic violence offence against any person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made,
- (h) an offence under section 23 (2), 24 (2), 25 (2), 26, 27 or 28 of the *Drug Misuse and Trafficking Act 1985* involving a commercial quantity of a prohibited plant or prohibited drug within the meaning of that Act,
- (i) any offence prescribed by the regulations for the purposes of this paragraph.

**77 Home detention not available for offenders with certain history**

- (1) A home detention order may not be made for an offender:
  - (a) who has at any time been convicted of any of the following offences:
    - (i) murder, attempted murder or manslaughter,
    - (ii) sexual assault of adults or children or sexual offences involving children, or
  - (b) who has at any time been convicted of an offence under section 562AB of the *Crimes Act 1900* of stalking or intimidating a person with the intention of causing the person to fear personal injury, or
  - (c) who has at any time within the last 5 years been convicted of a domestic violence offence against any person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made, or
  - (d) who has at any time been convicted of any offence prescribed by the regulations for the purposes of this paragraph, or
  - (e) who is (or has at any time within the last 5 years been) subject to an apprehended violence order (within the meaning of Part 15A of the *Crimes Act 1900*) made for the protection of a person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made.
- (2) Offences prescribed by regulations made for the purposes of subsection (1) (d) may include offences under a law of the Commonwealth or of another State or a Territory.

## **78 Suitability of offender for home detention**

- (1) A home detention order may not be made with respect to an offender's sentence of imprisonment unless the court is satisfied:
  - (a) that the offender is a suitable person to serve the sentence by way of home detention, and
  - (b) that it is appropriate in all of the circumstances that the sentence be served by way of home detention, and
  - (c) that the persons with whom it is likely the offender would reside, or continue or resume a relationship, during the period of the offender's home detention have consented in writing, in the form prescribed by the regulations, to the making of the order, and
  - (d) that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the home detention order.
- (2) In deciding whether or not to make a home detention order, the court is to have regard to:
  - (a) the contents of an assessment report on the offender, and
  - (b) such evidence from a probation and parole officer as the court considers necessary for the purpose of deciding whether to make such an order.
- (3) A court may, for any reason it considers sufficient, decline to make a home detention order despite the contents of an assessment report.
- (4) A court may make a home detention order only if an assessment report states that, in the opinion of the person making the assessment, the offender is a suitable person to serve a term of imprisonment by way of home detention.
- (5) For the purposes of subsection (1) (c):
  - (a) the consent of children below a prescribed age, and
  - (b) the consent of persons suffering a prescribed disability,may be given on their behalf by such other persons as the regulations may determine or may, if the regulations so provide and subject to any prescribed conditions, be dispensed with.
- (6) A home detention order must not be made if the court considers it likely that the offender will commit any sexual offence or any offence involving violence while the order is in force, even though the offender may have no history of committing offences of that nature.

## **79 Concurrent and consecutive sentences**

A home detention order may not be made in respect of a sentence of imprisonment (a **new sentence**) to be served concurrently or consecutively (or partly concurrently and partly consecutively) with any other sentence of imprisonment the subject of a home detention order if the date on which the new sentence will end is more than 18 months after the date on which it was imposed.

## **Division 3 Assessment reports**

### **80 Referral of offender for assessment**

- (1) After a court imposes a sentence of imprisonment on an offender, the court may refer the offender for assessment as to the suitability of the offender for home detention.
- (2) When a court refers an offender for assessment in relation to a sentence of imprisonment:
  - (a) the referral stays the execution of the sentence and the operation of section 48 in relation to the sentence, and
  - (b) the offender is to be remanded in custody, or granted bail in accordance with the [Bail Act 1978](#),  
until the court decides whether or not to make a home detention order.
- (3) On deciding whether or not to make a home detention order:
  - (a) any stay of execution of sentence under this section comes to an end, and
  - (b) the requirements of section 48 come into operation.

### **81 Assessment of suitability**

- (1) When an offender is referred for assessment, the Probation and Parole Service is to investigate and report to the court on the matters referred to in section 78 (1).
- (2) An offender's assessment report:
  - (a) must take into account, and specifically address, the following matters:
    - (i) any criminal record of the offender, and the likelihood that the offender will re-offend,
    - (ii) any dependency of the offender on illegal drugs,
    - (iii) the likelihood that the offender will commit a domestic violence offence,
    - (iv) whether any circumstances of the offender's residence, employment, study or other activities would inhibit effective monitoring of a home detention order,

- (v) whether the persons with whom it is likely the offender would reside, or continue or resume a relationship, understand the requirements of the order and are prepared to live in conformity with them, so far as may be necessary,
  - (vi) whether the making of the order would place at risk of harm any person who would be living with or in the vicinity of the offender,
  - (vii) any matter prescribed by the regulations, and
- (b) may indicate the nature of any conditions that it would be appropriate for the court to impose on a home detention order if such an order is made.
- (3) If it appears to the officer preparing the assessment report that the offender is homeless:
- (a) all reasonable efforts must be made by the Probation and Parole Service, in consultation with the offender, to find suitable accommodation, and
  - (b) the report is not to be finalised until those efforts have been made.
- (4) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

## **Division 4 Miscellaneous**

### **82 Court may impose conditions on home detention order**

- (1) A court may impose such conditions as it considers appropriate on any home detention order made by it, other than conditions requiring the person to whom the order relates to make any payment, whether in the nature of a fine, compensation or otherwise.
- (2) The conditions imposed by the court:
- (a) may include conditions relating to the offender's employment while the home detention order is in force, and
  - (b) may require the offender to perform community service work while not otherwise employed.
- (3) The conditions imposed by the court must not be inconsistent with the standard conditions imposed by the regulations under the [Crimes \(Administration of Sentences\) Act 1999](#).

### **83 Explanation of home detention order to offender**

- (1) Having made a home detention order in relation to an offender's sentence of imprisonment, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):

- (a) the offender's obligations under the home detention order, and
- (b) the consequences that may follow if the offender fails to comply with those obligations.

(2) A home detention order is not invalidated by a failure to comply with this section.

## **Part 7 Sentencing procedures for community service orders**

### **Division 1 Preliminary**

#### **84 Application**

This Part applies in circumstances in which a court is considering, or has made, a community service order.

#### **85 Definitions**

In this Part:

**assessment report** means a report prepared under section 89.

**assigned officer** has the same meaning as it has in Part 5 of the *Crimes (Administration of Sentences) Act 1999*.

**development program** means a personal development, educational or other program.

**offender's obligations** under a community service order means the obligations that the offender has under section 109 of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

**period** of a community service order means the period within which the community service work to be performed under the order must be completed.

### **Division 2 Restrictions on power to make community service orders**

#### **86 Suitability of offender for community service work**

- (1) A community service order may not be made with respect to an offender unless the court is satisfied:
  - (a) that the offender is a suitable person for community service work, and
  - (b) that it is appropriate in all of the circumstances that the offender be required to perform community service work, and
  - (c) that arrangements exist in the area in which the offender resides or intends to reside for the offender to perform community service work, and
  - (d) that community service work can be provided in accordance with those



arrangements, and

(e) that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the community service order.

- (2) In deciding whether or not to make a community service order, the court must have regard to:
- (a) the contents of an assessment report on the offender, and
  - (b) such evidence from a probation and parole officer as the court considers necessary for the purpose of deciding whether to make such an order.
- (3) A court may, for any reason it considers sufficient, decline to make a community service order despite the contents of an assessment report.
- (4) A court may make a community service order only if an assessment report states that, in the opinion of the person making the assessment, the offender is a suitable person for community service work.

#### **87 Concurrent and consecutive sentences**

- (1) A community service order (the **new order**) may not be made if the sum of:
- (a) the number of hours of community service work to be performed under the new order, and
  - (b) the number of hours of community service work remaining to be performed under any other community service order (an **existing order**),
- exceeds 500.
- (2) In calculating the sum referred to in subsection (1), the hours of community service work to be performed under the new order are to be disregarded to the extent to which they run concurrently with those to be performed under any existing order.
- (3) The hours of community service work to be performed under the new order are taken to run concurrently with those to be performed under any existing order unless the new order specifies that they are to run consecutively with those to be performed under the existing order.
- (4) Any amount by which the number of hours of community service work to be performed by the offender has been increased under this or any other Act is to be disregarded for the purposes of this section.

## **Division 3 Assessment reports**

### **88 Referral of offender for assessment**

Before a court sentences an offender, the court may refer the offender for assessment as to the suitability of the offender for community service work.

### **89 Assessment of suitability**

- (1) When an offender is referred for assessment, the Probation and Parole Service is to investigate and report to the court on the matters referred to in section 86 (1).
- (2) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

## **Division 4 Miscellaneous**

### **90 Court may impose conditions on community service order**

- (1) A court may impose such conditions as it considers appropriate on any community service order made by it, other than conditions requiring the person to whom the order relates to make any payment, whether in the nature of a fine, compensation or otherwise.
- (2) The conditions imposed by the court:
  - (a) may require an offender to participate in development programs, and
  - (b) may require the offender to undergo testing or assessment for alcohol or drug use in accordance with the directions of the offender's assigned officer.
- (3) A community service order requiring an offender to participate in development programs:
  - (a) must not require the offender to participate more than 3 times in any one week, and
  - (b) must not require the offender to participate for a total period of more than 15 hours in any one week, and
  - (c) must not specify a total period of less than 20 hours for participation.
- (4) The conditions imposed by the court must not be inconsistent with the standard conditions imposed by the regulations under the *Crimes (Administration of Sentences) Act 1999*.

### **91 Removal of graffiti**

A community service order may recommend that the community service work to be

performed by the offender should include:

- (a) the removal or obliteration of graffiti from buildings, vehicles, vessels and places, and
- (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal or obliteration of graffiti from them.

## **92 Explanation of community service order to offender**

- (1) Having made a community service order in relation to an offender, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the community service order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A community service order is not invalidated by a failure to comply with this section.

## **93 Preparation and service of written notice of community service order**

- (1) As soon as practicable after making a community service order, a court must cause written notice of the order to be given to the offender and to the Commissioner of Corrective Services.
- (2) The notice must include the following information:
  - (a) the place at which, or person to whom, the offender must present himself or herself, in person, for the purpose of enabling the administration of the order to be commenced,
  - (b) the period within which the offender must so present himself or herself.
- (3) A community service order is not invalidated by a failure to comply with this section.

## **Part 8 Sentencing procedures for good behaviour bonds**

### **94 Application**

This Part applies in circumstances in which a court is considering, or has made, an order that provides for an offender to enter into a good behaviour bond.

### **95 Good behaviour bonds**

A good behaviour bond:

- (a) must contain a condition to the effect that the offender to whom the bond relates (the **person under bond**) will appear before the court if called on to do so at any time during the term of the bond, and

- (b) must contain a condition to the effect that, during the term of the bond, the person under bond will be of good behaviour, and
- (c) may contain such other conditions as are specified in the order by which the bond is imposed, other than conditions requiring the person under bond:
  - (i) to perform community service work, or
  - (ii) to make any payment, whether in the nature of a fine, compensation or otherwise.

#### **96 Explanation of good behaviour bond to person under bond**

- (1) A court that makes a direction that provides for an offender to enter into a good behaviour bond must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the good behaviour bond, as referred to in section 95, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A good behaviour bond is not invalidated by a failure to comply with this section.

#### **97 Procedure following failure to enter into good behaviour bond**

If:

- (a) a court makes an order that provides for an offender to enter into a good behaviour bond, and
- (b) the offender fails to enter into such a bond in accordance with the order,

the court may sentence the offender, or convict and sentence the offender, as if the order had not been made.

#### **98 Proceedings for breach of good behaviour bond**

- (1) If it suspects that an offender may have failed to comply with any of the conditions of a good behaviour bond:
  - (a) the court with which the offender has entered into the bond, or
  - (b) any other court of like jurisdiction,may call on the offender to appear before it.
- (1A) If the offender fails to appear, the court may:
  - (a) issue a warrant for the offender's arrest, or

- (b) authorise an authorised justice to issue a warrant for the offender’s arrest.
- (1B) If, however, at the time the court proposes to call on an offender to appear before it, the court is satisfied that the location of the offender is unknown, the court may immediately:
- (a) issue a warrant for the offender’s arrest, or
  - (b) authorise an authorised justice to issue a warrant for the offender’s arrest.
- (2) If it is satisfied that an offender appearing before it has failed to comply with any of the conditions of a good behaviour bond, a court:
- (a) may decide to take no action with respect to the failure to comply, or
  - (b) may vary the conditions of the bond or impose further conditions on the bond, or
  - (c) may revoke the bond.
- (3) In the case of a good behaviour bond referred to in section 12, a court must revoke the bond unless it is satisfied:
- (a) that the offender’s failure to comply with the conditions of the bond was trivial in nature, or
  - (b) that there are good reasons for excusing the offender’s failure to comply with the conditions of the bond.
- (4) In this section, **authorised justice** means a justice employed within the Attorney General’s Department.

## **99 Consequences of revocation of good behaviour bond**

- (1) If a court revokes a good behaviour bond:
- (a) in the case of a bond referred to in section 9, it may re-sentence the offender for the offence to which the bond relates, or
  - (b) in the case of a bond referred to in section 10, it may convict and sentence the offender for the offence to which the bond relates, or
  - (c) in the case of a bond referred to in section 12:
    - (i) the order under section 12 (1) (a) ceases to have effect in relation to the sentence of imprisonment suspended by the order, and
    - (ii) Part 4 applies to the sentence, except to the extent to which it has already applied in relation to setting the term of the sentence, and
    - (iii) subject to the requirements of Part 4 having been complied with, the sentence

takes effect.

- (2) Subject to Parts 5 and 6, a court may, on revoking a good behaviour bond referred to in section 12, make an order directing that the sentence of imprisonment to which the bond relates (disregarding any part that has already been served) is to be served by way of periodic detention or home detention.
- (3) An order made under subsection (2) is taken to be a periodic detention order made under section 6 or a home detention order made under section 7, as the case requires.
- (4) This Act applies to the sentencing or re-sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.
- (5) An offender who under this section is sentenced by a court for an offence has the same rights of appeal as the offender would have had if the offender had been sentenced by that court on being convicted of the offence.

#### **100 Action may be taken after good behaviour bond has expired**

Action may be taken under this Part in relation to a good behaviour bond even if the term of the bond has expired, but in respect only of matters arising during the term of the bond.

### **Part 9 Miscellaneous**

#### **101 Abolition of power of court concerning recognizances and sureties**

- (1) The power that a court had before the commencement of this section:
  - (a) to require a person to enter into a recognizance to be of good behaviour or to keep the peace, or
  - (b) to take surety from a person for the performance of an obligation imposed (whether on that or any other person) by such a recognizance,is abolished.
- (2) This section applies to any such power that a court had under section 30 of the *Imperial Acts Application Act 1969*, at common law or otherwise.

#### **102 Prerogative of mercy preserved**

Nothing in this Act limits or affects the prerogative of mercy.

#### **103 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## 104 Savings, transitional and other provisions

Schedule 2 has effect.

## 105 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Existing life sentences

(Section 44)

### 1 Definitions

In this Schedule:

**existing life sentence** means a sentence of imprisonment for life imposed before, on or after 12 January 1990 (the date on which the [Crimes \(Life Sentences\) Amendment Act 1989](#) commenced), but does not include a sentence for the term of a person's natural life under section 19A or 61JA of the [Crimes Act 1900](#) or section 33A of the [Drug Misuse and Trafficking Act 1985](#).

**non-release recommendation**, in relation to an offender serving an existing life sentence, means a recommendation or observation, or an expression of opinion, by the sentencing court that (or to the effect that) the offender should never be released from imprisonment.

**Review Council** means the Serious Offenders Review Council constituted by section 195 of the [Crimes \(Administration of Sentences\) Act 1999](#).

**sentencing court**, in relation to an offender who has been resentenced as a result of a re-trial or other appeal proceedings, includes both the court by which a penalty was originally imposed for the offence and the court (whether the same court or a different court) by which a penalty was finally imposed for the offence.

### 2 Applications for determination of non-parole periods

- (1) Subject to any direction under clause 6, an offender serving an existing life sentence may apply to the Supreme Court for the determination of a term and a non-parole period for the sentence.

- (2) An offender is not eligible to make such an application unless the offender has served:
  - (a) at least 8 years of the sentence concerned, except where paragraph (b) applies, or
  - (b) at least 30 years of the sentence concerned, if the offender is the subject of a non-release recommendation.
- (3) An offender who is the subject of a non-release recommendation is not eligible for a determination referred to in subclause (1) unless the Supreme Court, when considering the offender's application, is satisfied that special reasons exist that justify the making of such a determination.

### **3 Matters for consideration by Supreme Court**

- (1) In considering an application in relation to an existing life sentence, the Supreme Court is to have regard to:
  - (a) all of the circumstances surrounding the offence for which the sentence was imposed, and
  - (b) all offences, wherever and whenever committed, of which the offender has been convicted,so far as this information is reasonably available to the Supreme Court.
- (2) The reference in subclause (1) (b) to an offence of which an offender has been convicted:
  - (a) includes:
    - (i) any offence in respect of which a court has found the offender guilty but has not proceeded to conviction, and
    - (ii) any offence taken into account when the offender was sentenced, but
  - (b) does not include:
    - (i) an offence for which a conviction or finding of guilt has been quashed or set aside within the meaning of Part 4 of the *Criminal Records Act 1991*, or
    - (ii) an offence of a class or description prescribed by the regulations.

### **4 Determination of application**

- (1) The Supreme Court may dispose of an application in relation to an existing life sentence:
  - (a) by setting a specified term for the sentence together with a non-parole period for the sentence, or



- (b) by declining to set a specified term for the sentence but setting a non-parole period for the sentence, or
  - (c) by declining to set a specified term for the sentence and declining to set a non-parole period for the sentence.
- (2) The Supreme Court may set a specified term and a non-parole period for an existing life sentence even though the Court was not the sentencing court.
- (3) In the case of an offender who is the subject of a non-release recommendation, the Supreme Court may dispose of an application in relation to an existing life sentence:
- (a) by setting a non-parole period for the sentence, or
  - (b) by declining to set a non-parole period for the sentence,
- but does not have jurisdiction to set a specified term for the sentence.

#### **5 Effect of determination to set a non-parole period**

- (1) A non-parole period arising from a determination referred to in clause 4 (1) is taken to have commenced on the date on which the sentence commenced or, if the offender was remanded in custody for the offence, the date on which the first such remand commenced.
- (2) If the Supreme Court sets a specified term for an existing life sentence, the existing life sentence is taken to have been replaced by a sentence of imprisonment for the term so specified.
- (3) The term of the sentence, and any non-parole period, are to be taken to have been set under section 44, but are not required to comply with the other provisions of Division 1 of Part 4.

#### **6 Supreme Court may prohibit further applications**

- (1) If the Supreme Court declines to set a specified term for an existing life sentence or to set a non-parole period for the sentence, the Court may (when making that decision) direct that the offender who made the application:
- (a) may never re-apply to the Court, or
  - (b) may not re-apply to the Court for a specified period of time.
- (2) If the Court gives a direction under this clause that an offender may never re-apply to the Court, the offender is to serve the existing life sentence for the term of the person's natural life.
- (3) If the Court does not give a direction under this clause, the offender may not re-apply to the Court within the period of 3 years from the date of the Court's decision not to

give the direction.

- (4) A direction under this clause that an offender may never re-apply to the Court or may not re-apply to the Court for a period exceeding 3 years may be given only if:
- (a) the offender was sentenced for the crime of murder, and
  - (b) it is a most serious case of murder and it is in the public interest that such a direction be made.

## **7 Matters relating to exercise of Supreme Court's functions**

- (1) In considering an application referred to in clause 2 (1), the Supreme Court is to have regard to:
- (a) any reports on the offender made by the Review Council, and any other relevant reports prepared after the offender was sentenced, that are available to the Supreme Court, and
  - (b) the need to preserve the safety of the community, and
  - (c) the age of the offender (at the time the offender committed the offence and also at the time the Supreme Court deals with the application), and
  - (d) in the case of an offender sentenced before 12 January 1990 (the date on which section 463 of the *Crimes Act 1900* was repealed by section 5 of the *Prisons (Serious Offenders Review Board) Amendment Act 1989*), the fact that the sentencing court:
    - (i) would have been aware that an offender sentenced to imprisonment for life was eligible to be released on licence under section 463 of the *Crimes Act 1900*, and
    - (ii) would have been aware of the practice relating to the issue of such licences, and
  - (e) any other relevant matter.
- (2) The regulations may make provision for or with respect to reports referred to in subclause (1), including provisions relating to the matters to be dealt with in reports and the making of reports available to the Supreme Court.
- (3) In considering an application referred to in clause 2 (1), the Supreme Court:
- (a) must have regard to and give substantial weight to any relevant recommendations, observations and comments made by the sentencing court when imposing the sentence concerned, and
  - (b) must give consideration to adopting or giving effect to the substance of any such

recommendations, observations and comments and the intention of the sentencing court when making them, and

(c) to the extent that it declines to adopt or give effect to any such recommendations, observations and comments, must make a record of its reasons for doing so.

(4) Subclause (3) (c) does not limit any other requirement that the Supreme Court has, apart from that paragraph, to record the reasons for its decisions.

## **8 Appeal from Supreme Court's decision**

(1) An appeal lies to the Court of Criminal Appeal in relation to:

(a) a determination by the Supreme Court under clause 4 (1) or (3), or

(b) a direction by the Supreme Court under clause 6 (1).

(2) The *Criminal Appeal Act 1912* applies to such an appeal in the same way as it applies to an appeal against a sentence.

## **Schedule 2 Savings, transitional and other provisions**

(Section 104)

### **Part 1 Preliminary**

#### **1 Savings and transitional regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Crimes (Sentencing Procedure) Act 1999*

*Crimes Legislation Amendment (Sentencing) Act 1999*

*Crimes Legislation Amendment (Existing Life Sentences) Act 2001*

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

*Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Act 2002*

(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that

publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

## **Part 2 Provisions consequent on enactment of Crimes (Sentencing Procedure) Act 1999**

### **Division 1 Periodic Detention of Prisoners Act 1981**

#### **2 Definitions**

In this Division:

**1981 Act** means the *Periodic Detention of Prisoners Act 1981*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 5 of this Act commences.

#### **3 Periodic detention orders**

Any order for periodic detention that, immediately before the appointed day, was in force under the 1981 Act:

- (a) is taken to be a periodic detention order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

#### **4 Undertakings**

Any undertaking entered into under section 5 (1B) of the 1981 Act is taken to be an undertaking entered into under section 66 of this Act.

#### **5 Ancillary orders**

Any order that, immediately before the appointed day, was in force under section 5 (6) of the 1981 Act is taken to be an order of the same kind made under this Act, and may be amended or revoked accordingly.

#### **6 Suitability reports**

A suitability report prepared under section 5 (7) of the 1981 Act is taken to be an assessment report prepared under section 69 of this Act.

#### **7 Warrants**

Any warrant that, immediately before the appointed day, was in force under section 6 of the 1981 Act is taken to be a warrant in force under this Act, and may be enforced

accordingly.

## 8 Notices

Any notice served on a person before the appointed day under section 7 of the 1981 Act is taken to have been served on the person under section 72 of this Act.

## Division 2 Home Detention Act 1996

### 9 Definitions

In this Division:

**1996 Act** means the *Home Detention Act 1996*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 6 of this Act commences.

### 10 Home detention orders

Any home detention order that, immediately before the appointed day, was in force under the 1996 Act:

- (a) is taken to be a home detention order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

### 11 Assessment reports

Any assessment report prepared under section 10 of the 1996 Act is taken to be an assessment report prepared under section 81 of this Act.

### 12 Undertakings

Any undertaking entered into under section 12 of the 1996 Act is taken to be an undertaking entered into under section 78 of this Act.

## Division 3 Community Service Orders Act 1979

### 13 Definitions

In this Division:

**1979 Act** means the *Community Service Orders Act 1979*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 7 of this Act commences.

#### **14 Community service orders**

Any community service order that, immediately before the appointed day, was in force under the 1979 Act:

- (a) is taken to be a community service order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

#### **15 Suitability reports**

Any report prepared under section 6 of the 1979 Act is taken to be an assessment report prepared under section 89 of this Act.

#### **16 Notices**

Any copy of a community service order served on a person before the appointed day under section 12 of the 1979 Act is taken to be notice of the order served in accordance with section 93 of this Act.

### **Division 4 Sentencing Act 1989**

#### **17 Definitions**

In this Division:

**1989 Act** means the *Sentencing Act 1989*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 4 of this Act commences.

#### **18 Parole orders**

Any parole order that, immediately before the appointed day, was in force under the 1989 Act:

- (a) is taken to be a parole order within the meaning of this Act, and
- (b) is taken to be subject to the same conditions as those to which it was subject immediately before that day.

#### **19 Sentences of imprisonment**

- (1) The term of a sentence ascertained under the 1989 Act is taken to be the term of the sentence determined under this Act.
- (2) Any minimum term determined under the 1989 Act is taken to be a non-parole period determined under this Act.
- (3) Any additional term determined under the 1989 Act is taken to be that part of a

sentence of imprisonment whose term has been determined under this Act as occurs after the expiry of the non-parole period for the sentence.

- (4) Any fixed term determined for a sentence under the 1989 Act is taken to be the term of the sentence determined under this Act.

## **20 Information about minimum term**

Any information given by a court for the purposes of section 8 of the 1989 Act is taken to have been given for the purposes of section 48 of this Act.

## **21 Applications for determination of minimum terms for existing life sentences**

- (1) Any application under section 13A of the 1989 Act that had been made, but not determined, before the appointed day is to be determined in accordance with Schedule 1 to this Act.
- (2) Subclause (1) does not apply to an application referred to in clause 8 (1) of Schedule 2A to the 1989 Act, as in force immediately before the appointed day.
- (3) Any determination in force immediately before the appointed day under section 13A (4) of the 1989 Act is taken to be a determination under clause 4 of Schedule 1 to this Act.
- (4) Any direction in force immediately before the appointed day under section 13A (8) of the 1989 Act is taken to be a direction under clause 6 of Schedule 1 to this Act.

## **22 Existing licences and existing sentences**

- (1) Schedule 2 to the 1989 Act, and the 1989 Regulation, continue to have effect in relation to:
  - (a) an existing licence, and
  - (b) an existing sentence, and
  - (c) a person the subject of an existing licence or existing sentence,as if this Act and the *Crimes Legislation Amendment (Sentencing) Act 1999* had not been enacted.

- (2) In this clause:

**1989 Regulation** means the *Sentencing (Savings and Transitional Provisions) Regulation 1989*.

**existing licence** has the same meaning as it has in the 1989 Act.

**existing sentence** means a sentence of imprisonment to which a person was subject immediately before the repeal of the *Probation and Parole Act 1983*.

## Division 5 Criminal Procedure Act 1986

### 23 Definitions

In this Division:

**1986 Act** means the *Criminal Procedure Act 1986*, as in force immediately before the appointed day.

**appointed day** means the day on which Part 3 of this Act commences.

### 24 Victim impact statements

A victim impact statement prepared before the appointed day in accordance with the requirements of Part 6A of the 1986 Act is taken have been prepared in accordance with the requirements of Division 2 of Part 3 of this Act.

### 25 Lists of additional charges

A document prepared before the appointed day in accordance with the requirements of section 21 of the 1986 Act is taken have been prepared in accordance with the requirements of section 32 of this Act.

### 26 Ancillary orders

The power of a court to make ancillary orders under section 34 of this Act in relation to a further offence that has been taken into account by the court under Division 3 of Part 3 of this Act extends to an offence that has been taken into account by the court under Part 6 of the 1986 Act.

### 27 Guideline judgments

Division 4 of Part 3 applies to guideline judgments given under Part 8 of the 1986 Act in the same way as it applies to guideline judgments given under that Division.

## Division 6 Crimes Act 1900

### 28 Definition

In this Division:

**1900 Act** means the *Crimes Act 1900*, as in force immediately before the appointed day.

**appointed day** means:

- (a) in relation to clause 29 (1), the day on which Schedule 3 [6] to the *Crimes Legislation Amendment (Sentencing) Act 1999* commences, or
- (b) in relation to clause 29 (2), the day on which Schedule 3 [7] to the *Crimes Legislation Amendment (Sentencing) Act 1999* commences.



## 29 Recognizances

- (1) Any recognizance that, immediately before the commencement of Schedule 3 [6] to the *Crimes Legislation Amendment (Sentencing) Act 1999*, was in force under section 547 of the 1900 Act continues to have effect, and may be enforced in accordance with that section, as if that section had not been repealed.
- (2) Any recognizance that, immediately before the commencement of Schedule 3 [7] to the *Crimes Legislation Amendment (Sentencing) Act 1999*, was in force under section 556A or 558 of the 1900 Act continues to have effect, and may be enforced in accordance with Part 15 of that Act, as if that Part had not been repealed.

## Division 7 Justices Act 1902

### 30 Definition

In this Division:

**1902 Act** means the *Justices Act 1902*, as in force immediately before the appointed day.

**appointed day** means the day on which Schedule 4.35 [17] to the *Crimes Legislation Amendment (Sentencing) Act 1999* commences.

### 31 Arrest warrants for absent offenders

Any warrant that, immediately before the commencement of Schedule 4.35 [17] to the *Crimes Legislation Amendment (Sentencing) Act 1999*, was in force under section 80AA of the 1902 Act is taken to be a warrant under section 25 of this Act, and may be enforced accordingly.

## Division 8 General

### 32 Definitions

In this Division:

**appointed day** means the day appointed under section 2 for the commencement of the provision of this Act in relation to which that expression is used.

**old legislation** means:

- (a) any Act or instrument repealed by Schedule 1 to the *Crimes Legislation Amendment (Sentencing) Act 1999*, as in force immediately before its repeal, and
- (b) any Act or instrument amended by Schedule 2, 3, 4 or 5 to the *Crimes Legislation Amendment (Sentencing) Act 1999*, as in force immediately before its amendment.

### 33 Power to fine for certain offences

Section 15 of this Act does not apply to an offence committed before 17 March 1991 (the

date on which section 440AA of the *Crimes Act 1900* commenced) so as to enable a fine to be imposed on an offender in addition to any other penalty imposed on the offender for the same offence.

#### **34 Taking of photographs and fingerprints**

Section 63 of this Act extends to offenders sentenced before the appointed day.

#### **35 Delegations**

Any delegation that, immediately before the appointed day, was in force under a provision of the old legislation for which there is a corresponding provision in this Act is taken to be a delegation in force under the corresponding provision of this Act.

#### **36 Construction of certain references**

Subject to the regulations, in any Act or instrument:

- (a) a reference to a provision of the old legislation for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and
- (b) a reference to any act, matter or thing referred to in a provision of the old legislation for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.

#### **37 General saving**

Subject to the regulations:

- (a) anything begun before the appointed day under a provision of the old legislation for which there is a corresponding provision in this Act may be continued and completed under the old legislation as if the *Crimes Legislation Amendment (Sentencing) Act 1999* had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the old legislation for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

### **Part 3 Provisions consequent on enactment of *Crimes Legislation Amendment (Existing Life Sentences) Act 2001***

#### **38 Definition**

In this Part, **the 2001 amending Act** means the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001*.

### **39 Application of amendments**

The amendments made to this Act by the 2001 amending Act do not affect:

- (a) any proceedings before the Supreme Court on an application under clause 2 of Schedule 1 to this Act that had been made, but not disposed of, before the commencement of those amendments, or
- (b) any determination made by the Supreme Court under clause 4 of Schedule 1 to this Act before the commencement of those amendments.

## **Part 4 Provisions consequent on enactment of [Criminal Procedure Amendment \(Pre-trial Disclosure\) Act 2001](#)**

### **40 Application of section 22A (Power to reduce penalties for pre-trial disclosure)**

Section 22A extends to proceedings for an offence that were instituted (but not finally determined) before the commencement of that section.

## **Part 5 Provisions consequent on enactment of [Criminal Legislation Amendment Act 2001](#)**

### **41 Validation of guideline judgments**

Any guideline judgment given by the Court of Criminal Appeal before the commencement of section 37A that would have been validly given had section 37A commenced before it was given has, and is taken always to have had, the same force and effect as it would have had if section 37A had commenced before it was given.

### **42 Application of amendments**

Section 37B extends to any guideline judgment given before the commencement of that section (whether under Division 4 of Part 3 or apart from that Division).

### **43 Parole orders**

Section 51 (1B) (b) applies to a parole order regardless of whether the order was made before, on or after the commencement of that provision.