

# Crimes (Sentencing Procedure) Act 1999 No 92

[1999-92]



New South Wales

## Status Information

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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**

*Miscellaneous Acts (Local Court) Amendment Act 2007 No 94* (not commenced)

*Mental Health Legislation Amendment (Forensic Provisions) Act 2008 No 79* (not commenced)

*Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008 No 81* (not commenced — to commence on 1.1.2009)

*Rail Safety Act 2008 No 97* (not commenced — to commence on 1.1.2009)

*Crimes Amendment (Sexual Offences) Act 2008 No 105* (not commenced — to commence on 1.1.2009)

### Authorisation

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# Crimes (Sentencing Procedure) Act 1999 No 92



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:

**associate with** means:

- (a) to be in company with, or
- (b) to communicate with by any means (including post, facsimile, telephone and email).

**authorised officer** has the same meaning as it has in the *Criminal Procedure Act 1986*.

**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*.

**compulsory drug treatment detention** means detention in accordance with Part 4A of 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*.

*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.

**detention centre** has the same meaning as it has in the *Children (Detention Centres) Act 1987*.

**Drug Court** means the Drug Court of New South Wales constituted under the *Drug Court Act 1998*.

**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*.

**intervention plan** has the same meaning as in the *Criminal Procedure Act 1986*.

**intervention program** has the same meaning as in the *Criminal Procedure Act 1986*.

**intervention program order** means an order referred to in section 10 (1) (c).

**juvenile justice officer** means a juvenile justice officer employed in the Department of Juvenile Justice.

**Local Court** means a Local Court established under the *Local Courts Act 1982*.

**non-association order** means an order referred to in section 17A (2) (a).

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

**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).

**person subject to control** has the same meaning as it has in the [Children \(Detention Centres\) Act 1987](#).

**place restriction order** means an order referred to in section 17A (2) (b).

**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 Council** means the New South Wales Sentencing Council constituted under Part 8B.

**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.

### **3A Purposes of sentencing**

The purposes for which a court may impose a sentence on an offender are as follows:

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,
- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

## **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.

### **Division 2 Custodial sentences**

#### **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:
  - (a) its reasons for deciding that no penalty other than imprisonment is appropriate, and
  - (b) its reasons for deciding not to make an order allowing the offender to participate in an intervention program or other program for treatment or rehabilitation (if the

offender has not previously participated in such a program in respect of the offence for which the court is sentencing the offender).

- (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.

#### **5A Compulsory drug treatment detention**

The Drug Court may make an order under Part 2A of the *Drug Court Act 1998* directing that an offender, who is an eligible convicted offender within the meaning of that Act, serve a sentence of imprisonment by way of compulsory drug treatment 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 any one 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,

(c) an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.

(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.

(2A) An order referred to in subsection (1) (c) may be made if the court is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person.

(2B) Subsection (1) (c) is subject to Part 8C.

(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.

#### **10A Conviction with no other penalty**

- (1) A court that convicts an offender may dispose of the proceedings without imposing any other penalty.
- (2) Any such action is taken, for the purposes of the *Crimes (Local Courts Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912*, to be a sentence passed by the court on the conviction of the offender.

**Note—**

The *Crimes (Local Courts Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912* provide for appeals against sentence, including (in some circumstances) by the prosecutor.

#### **11 Deferral of sentencing for rehabilitation, participation in an intervention program or 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
  - (b1) for the purpose of assessing the offender's capacity and prospects for participation in an intervention program, or
  - (b2) for the purpose of allowing the offender to participate in an intervention program, 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.

(2A) An order referred to in subsection (1) (b2) may be made if the court is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person.

**Note—**

Section 36A of the *Bail Act 1978* enables a court to grant bail to a person on either or both of the following conditions:

(a) that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation,

(b) that the person enter into an agreement to:

(i) participate in an intervention program and to comply with any intervention plan arising out of the program, or

(ii) participate in any other program for treatment or rehabilitation.

(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.

(4) Subsection (1) (b1) and (b2) do not limit the kinds of purposes for which an order may be made under subsection (1), so that an order may be made under that subsection for the purpose of allowing an offender to participate in a program for treatment or rehabilitation that is not an intervention program, or to be assessed for participation in such a program.

## **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 whole 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.

(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.

**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 4A Non-association and place restriction orders**

### **17A Non-association and place restriction orders**

- (1) This section applies to any offence that is punishable by imprisonment for 6 months or more, whether or not the offence is also punishable by fine.
- (2) When sentencing an offender for an offence to which this section applies, a court may make either or both of the following orders in respect of the offender:
  - (a) a non-association order, being an order prohibiting the offender from associating with a specified person for a specified term, or
  - (b) a place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district for a specified term,if it is satisfied that it is reasonably necessary to do so to ensure that the offender does not commit any further offences to which this section applies.
- (3) An order under subsection (2) (a) is to be one of the following:
  - (a) a limited non-association order, being an order prohibiting the offender from being in company with a specified person,
  - (b) an unlimited non-association order, being an order prohibiting the offender:
    - (i) from being in company with a specified person, and
    - (ii) from communicating with that person by any means.
- (4) An order under this section is to be made in addition to, and not instead of, any other penalty for the offence, but may not be made if the only other penalty for the offence is an order under section 10 or 11.
- (5) The term of an order under this section is not limited by any term of imprisonment imposed for the offence, but must not exceed 12 months.
- (6) This section does not limit the kinds of prohibition or restriction that may be imposed on an offender by means of any other order or direction under this or any other Act, so that such an order or direction may include prohibitions of the kind referred to in subsections (2) and (3).

(7) This section is subject to the provisions of Part 8A.

## **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 Aggravating, mitigating and other factors in sentencing**

- (1) **General** In determining the appropriate sentence for an offence, the court is to take into account the following matters:
  - (a) the aggravating factors referred to in subsection (2) that are relevant and known to the court,

(b) the mitigating factors referred to in subsection (3) that are relevant and known to the court,

(c) any other objective or subjective factor that affects the relative seriousness of the offence.

The matters referred to in this subsection are in addition to any other matters that are required or permitted to be taken into account by the court under any Act or rule of law.

(2) **Aggravating factors** The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

(a) the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work,

(b) the offence involved the actual or threatened use of violence,

(c) the offence involved the actual or threatened use of a weapon,

(ca) the offence involved the actual or threatened use of explosives or a chemical or biological agent,

(cb) the offence involved the offender causing the victim to take, inhale or be affected by a narcotic drug, alcohol or any other intoxicating substance,

(d) the offender has a record of previous convictions (particularly if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences),

(e) the offence was committed in company,

(ea) the offence was committed in the presence of a child under 18 years of age,

(eb) the offence was committed in the home of the victim or any other person,

(f) the offence involved gratuitous cruelty,

(g) the injury, emotional harm, loss or damage caused by the offence was substantial,

(h) the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability),

(i) the offence was committed without regard for public safety,

- (ia) the actions of the offender were a risk to national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth),
- (ib) the offence involved a grave risk of death to another person or persons,
- (j) the offence was committed while the offender was on conditional liberty in relation to an offence or alleged offence,
- (k) the offender abused a position of trust or authority in relation to the victim,
- (l) the victim was vulnerable, for example, because the victim was very young or very old or had a disability, or because of the victim's occupation (such as a taxi driver, bus driver or other public transport worker, bank teller or service station attendant),
- (m) the offence involved multiple victims or a series of criminal acts,
- (n) the offence was part of a planned or organised criminal activity,
- (o) the offence was committed for financial gain.

The court is not to have additional regard to any such aggravating factor in sentencing if it is an element of the offence.

(3) **Mitigating factors** The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

- (a) the injury, emotional harm, loss or damage caused by the offence was not substantial,
- (b) the offence was not part of a planned or organised criminal activity,
- (c) the offender was provoked by the victim,
- (d) the offender was acting under duress,
- (e) the offender does not have any record (or any significant record) of previous convictions,
- (f) the offender was a person of good character,
- (g) the offender is unlikely to re-offend,
- (h) the offender has good prospects of rehabilitation, whether by reason of the offender's age or otherwise,
- (i) the remorse shown by the offender for the offence, but only if:
  - (i) the offender has provided evidence that he or she has accepted responsibility

for his or her actions, and

- (ii) the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for such injury, loss or damage (or both),
  - (j) the offender was not fully aware of the consequences of his or her actions because of the offender's age or any disability,
  - (k) a plea of guilty by the offender (as provided by section 22),
  - (l) the degree of pre-trial disclosure by the defence (as provided by section 22A),
  - (m) assistance by the offender to law enforcement authorities (as provided by section 23).
- (4) The court is not to have regard to any such aggravating or mitigating factor in sentencing if it would be contrary to any Act or rule of law to do so.
- (5) The fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.
- (6) In this section:

***serious personal violence offence*** means a personal violence offence (within the meaning of the [Crimes \(Domestic and Personal Violence\) Act 2007](#)) that is punishable by imprisonment for life or for a term of 5 years or more.

## **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, good behaviour bond or intervention program order:
  - (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, and
- (c) in the case of an offender who is being sentenced as a result of deciding not to participate in, or to continue to participate in, an intervention program or intervention plan under an intervention program order or good behaviour bond, anything done by the offender in compliance with the offender's obligations under the intervention program order or good behaviour bond, and
- (d) in the case of an offender who is being sentenced following an order under section 11 (1) (b2):
  - (i) anything done by the offender in compliance with the offender's obligations under the order, and
  - (ii) any recommendations arising out of the offender's participation in the intervention program or intervention plan.

#### **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,
  - (f) a non-association order or place restriction order,

(g) an intervention program order.

(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 officer 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.

## 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

(b1) a person to whom the victim is engaged to be married, or

(c) a parent, grandparent, guardian or step-parent of the victim, or

(d) a child, grandchild or step-child of the victim or some other child for whom the victim is the guardian, or

(e) a brother, sister, half-brother, half-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, or

(c) an offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986* and that:

(i) results in actual physical bodily harm to any person, or

(ii) involves an act of actual or threatened violence or an act of sexual assault.

(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, a 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, a 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), a court:

(a) must not consider a victim impact statement unless it has been given 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) A 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) (Repealed)

## **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.

### **30A Reading out victim impact statements in court**

- (1) If a victim impact statement has been duly received by a court, a victim to whom it relates, or a member of the immediate family, or other representative, of the victim, is entitled to read out the whole or any part of the statement to the court.
- (2) The statement may be read out at such time as the court determines after it has convicted, but before it sentences, the offender.

## **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
- (c1) make a non-association order or place restriction order, 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) (Repealed)
  - (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, destruction, 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 an Australian 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 an Australian 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 an Australian 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
- (c1) make a non-association order or place restriction order, 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, destruction, 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 non-parole period**

- (1) When sentencing an offender to imprisonment for an offence, the court is first required 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 balance of the term of the sentence must not exceed one-third of the non-parole period for the sentence, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision).
- (3) The failure of a court to comply with subsection (2) does not invalidate the sentence.
- (4) Schedule 1 has effect in relation to existing life sentences referred to in that Schedule.

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

- (1) When sentencing an offender to imprisonment for an offence (other than an offence set out in the Table to Division 1A of this Part), 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 Conditions on parole orders**

- (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.
- (1AA) If, in making a parole order, the court does not impose any such conditions in relation to the supervision of the offender, the parole order is, unless the court expressly states that the offender is not to be subject to supervision, taken to include conditions requiring that the offender be subject to supervision prescribed by the regulations under the *Crimes (Administration of Sentences) Act 1999* while released on parole.
- (1B) Despite subsections (1A) and (1AA):
  - (a) the conditions of a parole order with respect to a sentence of imprisonment to be served by way of periodic detention are not to 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*.

**51A Conditions of parole as to non-association and place restriction**

- (1) The conditions to which a parole order is subject may include either or both of the following:
- (a) provisions prohibiting or restricting the offender from associating with a specified person,
  - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended:
- (a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a) of the *Crimes (Administration of Sentences) Act 1999*), and
  - (b) while the offender is under the immediate supervision of a public servant employed within the Department of Juvenile Justice pursuant to a condition of leave imposed under section 24 of the *Children (Detention Centres) Act 1987*.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
- (a) if the offender does so in compliance with an order of a court, or
  - (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
- (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.

**51B Certain information not to be published or broadcast**

- (1) A person must not publish or broadcast:
- (a) the fact that a named person (other than the offender) is specified in a condition of a parole order referred to in section 51A (1) (a), or
  - (b) any information calculated to identify any such person.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information to any of the following persons:
- (a) the offender,
  - (b) any person specified in the parole order as a person with whom the offender is prohibited or restricted from associating,
  - (c) any member of the Police Service,
  - (d) any person involved in the administration of the parole order or of any penalty to which the offender is subject while on parole,
  - (e) any person involved in proceedings for an alleged breach of the parole order,
  - (f) any other person specified in the parole order as a person to whom such information may be disclosed,
  - (g) any other person to whom such information is required to be disclosed pursuant to any other Act or law,
- and does not apply to the publication or broadcasting of an official report of the proceedings of the court.

## **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 1A Standard non-parole periods**

### **54A What is the standard non-parole period?**

- (1) For the purposes of this Division, the standard non-parole period for an offence is the non-parole period set out opposite the offence in the Table to this Division.
- (2) For the purposes of sentencing an offender, the standard non-parole period represents the non-parole period for an offence in the middle of the range of objective seriousness for offences in the Table to this Division.

### **54B Sentencing procedure**

- (1) This section applies when a court imposes a sentence of imprisonment for an offence set out in the Table to this Division.
- (2) When determining the sentence for the offence, the court is to set the standard non-parole period as the non-parole period for the offence unless the court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period.
- (3) The reasons for which the court may set a non-parole period that is longer or shorter than the standard non-parole period are only those referred to in section 21A.
- (4) The court must make a record of its reasons for increasing or reducing the standard non-parole period. The court must identify in the record of its reasons each factor that it took into account.
- (5) The failure of a court to comply with this section does not invalidate the sentence.

### **54C Court to give reasons if non-custodial sentence imposed**

- (1) If the court imposes a non-custodial sentence for an offence set out in the Table to this Division, the court must make a record of its reasons for doing so. The court must identify in the record of its reasons each mitigating factor that it took into account.
- (2) The failure of a court to comply with this section does not invalidate the sentence.
- (3) In this section:

***non-custodial sentence*** means a sentence referred to in Division 3 of Part 2 or a fine.

#### 54D Exclusions from Division

- (1) 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 detention under the *Mental Health (Criminal Procedure) Act 1990*.
- (2) This Division does not apply if the offence for which the offender is sentenced is dealt with summarily.

#### Table Standard non-parole periods

Item No	Offence	Standard non-parole period
1A	Murder—where the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work	25 years
1B	Murder—where the victim was a child under 18 years of age	25 years
1	Murder—in other cases	20 years
2	Section 26 of the <i>Crimes Act 1900</i> (conspiracy to murder)	10 years
3	Sections 27, 28, 29 or 30 of the <i>Crimes Act 1900</i> (attempt to murder)	10 years
4	Section 33 of the <i>Crimes Act 1900</i> (wounding etc with intent to do bodily harm or resist arrest)	7 years
4A	Section 35 (1) of the <i>Crimes Act 1900</i> (reckless causing of grievous bodily harm in company)	5 years
4B	Section 35 (2) of the <i>Crimes Act 1900</i> (reckless causing of grievous bodily harm)	4 years
4C	Section 35 (3) of the <i>Crimes Act 1900</i> (reckless wounding in company)	4 years
4D	Section 35 (4) of the <i>Crimes Act 1900</i> (reckless wounding)	3 years
5	Section 60 (2) of the <i>Crimes Act 1900</i> (assault of police officer occasioning bodily harm)	3 years
6	Section 60 (3) of the <i>Crimes Act 1900</i> (wounding or inflicting grievous bodily harm on police officer)	5 years
7	Section 61I of the <i>Crimes Act 1900</i> (sexual assault)	7 years

8	Section 61J of the <i>Crimes Act 1900</i> (aggravated sexual assault)	10 years
9	Section 61JA of the <i>Crimes Act 1900</i> (aggravated sexual assault in company)	15 years
9A	Section 61M (1) of the <i>Crimes Act 1900</i> (aggravated indecent assault)	5 years
9B	Section 61M (2) of the <i>Crimes Act 1900</i> (aggravated indecent assault—child under 10)	8 years
10	Section 66A of the <i>Crimes Act 1900</i> (sexual intercourse—child under 10)	15 years
11	Section 98 of the <i>Crimes Act 1900</i> (robbery with arms etc and wounding)	7 years
12	Section 112 (2) of the <i>Crimes Act 1900</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of aggravation)	5 years
13	Section 112 (3) of the <i>Crimes Act 1900</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of special aggravation)	7 years
14	Section 154C (1) of the <i>Crimes Act 1900</i> (taking motor vehicle or vessel with assault or with occupant on board)	3 years
15	Section 154C (2) of the <i>Crimes Act 1900</i> (taking motor vehicle or vessel with assault or with occupant on board in circumstances of aggravation)	5 years
15A	Section 154G of the <i>Crimes Act 1900</i> (organised car or boat rebirthing activities)	4 years
15B	Section 203E of the <i>Crimes Act 1900</i> (bushfires)	5 years
15C	Section 23 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act	10 years
16	Section 24 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10 years

17	<p>Section 24 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that:</p> <p>(a) does not relate to cannabis leaf, and</p> <p>(b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug</p>	15 years
18	<p>Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying commercial quantity of prohibited drug), being an offence that:</p> <p>(a) does not relate to cannabis leaf, and</p> <p>(b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug</p>	10 years
19	<p>Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying commercial quantity of prohibited drug), being an offence that:</p> <p>(a) does not relate to cannabis leaf, and</p> <p>(b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug</p>	15 years
20	<p>Section 7 of the <i>Firearms Act 1996</i> (unauthorised possession or use of firearms)</p>	3 years
21	<p>Section 51 (1A) or (2A) of the <i>Firearms Act 1996</i> (unauthorised sale of prohibited firearm or pistol)</p>	10 years
22	<p>Section 51B of the <i>Firearms Act 1996</i> (unauthorised sale of firearms on an ongoing basis)</p>	10 years
23	<p>Section 51D (2) of the <i>Firearms Act 1996</i> (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)</p>	10 years
24	<p>Section 7 of the <i>Weapons Prohibition Act 1998</i> (unauthorised possession or use of prohibited weapon)—where the offence is prosecuted on indictment</p>	3 years

## 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
  - (a1) a sentence of imprisonment imposed on an offender in relation to an offence involving an assault, or any other offence against the person, against a juvenile justice officer committed by the offender while a person subject to control, 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 inmate**

- (1) This section applies 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 assault, or any other offence against the person, against a juvenile justice officer committed by the offender while a person subject to control.

(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.

(3A) Such a direction may not be given in relation to:

(a) an offence involving an assault, or other offence against the person, against a correctional officer committed by the offender while a convicted inmate of a correctional centre, or

(b) an offence involving an assault, or other offence against the person, against a juvenile justice officer committed by the offender while a person subject to control,

unless the court is of the opinion that there are special circumstances justifying such a direction.

(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.

(6) In this section, a reference to **another sentence of imprisonment, other sentence of imprisonment or further sentence of imprisonment** is taken to include a reference to a period for which a person is required to be detained in a detention centre under an order referred to in section 33 (1) (g) of the [Children \(Criminal Proceedings\) Act 1987](#).

### **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 new sentence of imprisonment to be served consecutively (or partly concurrently and partly consecutively) with an existing sentence of imprisonment if the date on which the new sentence would end is more than 5 years after the date on which the existing sentence (or, if more than one, the first of them) 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:
    - (i) an offence involving an escape from lawful custody, or
    - (ii) an offence involving an assault or other offence against the person, being an offence committed (while the offender was a convicted inmate) against a correctional officer or (while the offender was a person subject to control) against a juvenile justice officer, and

(b) either:

- (i) the existing sentence (or, if more than one, any of them) was imposed by a court other than a Local Court or the Children's Court, or
- (ii) the existing sentence (or, if more than one, each of them) was imposed by a Local Court or the Children's Court and the date on which the new sentence would end is not more than 5 years and 6 months after the date on which the existing sentence (or, if more than one, the first of them) began.

(4) In this section:

**existing sentence** means an unexpired sentence, and includes any expired sentence or unbroken sequence of expired sentences with which the unexpired sentence is being served consecutively (or partly concurrently and partly consecutively).

**sentence of imprisonment** includes an order referred to in section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987*.

#### **59 Court may vary commencement of sentence on quashing or varying other 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 other sentence that has been imposed on that person by that or any other court.
- (2) If a person is subject to two or more sentences, this section applies to each of them.
- (3) A court may vary a 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 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 signed by an authorised officer.
- (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

#### 65A Periodic detention not available for certain offenders

A periodic detention order may not be made for an offender who has previously served imprisonment for more than 6 months by way of full-time detention in relation to any one sentence of imprisonment, whether in New South Wales or elsewhere.

#### 65B Periodic detention not available for certain sexual offences

- (1) A periodic detention order may not be made in respect of a sentence of imprisonment for a prescribed sexual offence.
- (2) In subsection (1), **prescribed sexual offence** means:
  - (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, being:
    - (i) an offence committed on a person under the age of 16 years, or
    - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61H of that Act), or
  - (b) an offence that includes the commission, or an intention to commit, an offence referred to in paragraph (a), or
  - (c) an offence that, at the time it was committed, was a prescribed sexual offence within the meaning of this definition, or
  - (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

## **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 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.
- (4) If a court:
  - (a) makes a periodic detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is not a suitable person to serve the sentence by way of periodic detention, or
  - (b) declines to make a periodic detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of periodic detention,the court must indicate to the offender, and make a record of, its reasons for doing so.
- (5) A periodic detention order is not invalidated by a failure to comply with subsection (4).

## **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 signed by an authorised officer.

# **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 \(Domestic](#)

*and Personal Violence) Act 2007.*

**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 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 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 13 of the *Crimes (Domestic and Personal Violence) Act 2007* or section 545AB or 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 the *Crimes (Domestic and Personal Violence) Act 2007*), or an apprehended violence order made under Part 15A of the *Crimes Act 1900* before its repeal, being an order 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 to the making of the order, and
  - (d) that the offender has signed an undertaking 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.
- (7) If a court declines to make a home detention order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of home detention, the court must indicate to the offender, and make a record of, its reasons for doing so.

## **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.
  - (1A) Despite subsection (1), an offender who has been referred for assessment under section 68 (for periodic detention) is not to be referred for assessment under this section (for home detention) in relation to the same sentence of imprisonment unless the court has decided not to make a periodic detention order with respect to that sentence.
- (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) (Repealed)
- (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.

- (5) If a court makes a community service order in respect of an offender, the offender must, as soon as practicable (having regard to sections 92 and 93) after the order is made, sign an undertaking to comply with the offender's obligations under the order. If the offender refuses to sign such an undertaking, the offender may be brought before the court and the court may revoke the community service order and impose such other sentence as it considers appropriate.

### **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.

### **95A Intervention program as condition of good behaviour bond**

(1) A good behaviour bond may contain a condition requiring the offender to participate in an intervention program and to comply with any intervention plan arising out of the

program.

- (2) A good behaviour bond may not contain such a condition unless the court is satisfied:
  - (a) that the offender is eligible to participate in the intervention program in accordance with the terms of the program, and
  - (b) that the offender is a suitable person to participate in the intervention program, and
  - (c) that the intervention program is available in the area in which the offender resides or intends to reside, and
  - (d) that participation by the offender would reduce the likelihood of the offender committing further offences by promoting the treatment or rehabilitation of the offender.
- (3) This section does not limit the power of a court under section 95 (c) to impose a condition on a good behaviour bond as to participation in any program for treatment or rehabilitation that is not an intervention program.
- (4) This section does not limit the kinds of conditions that may be imposed on an offender by means of any other order or direction under this or any other Act, so that such an order or direction may include a condition of a kind referred to in subsection (1) or (3).

#### **95B Referral of offender for assessment**

Before a court makes an order providing for an offender to enter into a good behaviour bond that contains a condition referred to in section 95A (1), the court may refer the offender for assessment as to the suitability of the offender to participate in an intervention program.

**Note—**

Regulations may be made for or with respect to the assessment of the suitability of a person to participate in an intervention program under the [Criminal Procedure Act 1986](#).

#### **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, or
  - (c) with the offender's consent, any other court of superior 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 officer 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 officer to issue a warrant for the offender's arrest.

(1C) For the purposes of subsection (1) (c), a court is of superior jurisdiction to the court with which an offender has entered into a good behaviour bond if it is a court to which the offender has (or has had) a right of appeal with respect to the conviction or sentence from which the bond arises.

(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) (Repealed)

### **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, as if the sentence were being imposed by the court following revocation of the good behaviour bond, and section 24 applies in relation to the setting of a non-parole period under that Part.

(iii) (Repealed)

(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 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.

### **99A Right to decide not to participate in intervention program**

- (1) An offender may, at any time after entering into a good behaviour bond that contains a condition referred to in section 95A (1) (including after the commencement of the intervention program concerned), decide not to participate or to continue to participate in the intervention program or any intervention plan arising out of the program.
- (2) Such a decision is to be made in accordance with the terms of the intervention program.
- (3) If the offender makes such a decision, the sentencing court or any court of like jurisdiction may call on the offender to appear before it.
- (4) If the offender fails to appear, the court may take any action referred to in section 98 (1A) or (1B).
- (5) A court may, when an offender appears before it following a decision not to participate or to continue to participate in an intervention program or intervention plan:
  - (a) vary the conditions of the good behaviour bond or impose further conditions on the bond, or
  - (b) revoke the good behaviour bond.
- (6) A court that revokes a good behaviour bond under subsection (5) may re-sentence the offender for the offence for which the good behaviour bond was imposed.
- (7) This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.
- (8) 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 8A Non-association and place restriction orders**

### **100A Non-association and place restriction orders not to restrict certain associations or activities**

- (1) The persons specified in a non-association order as persons with whom the offender must not associate may not include any member of the offender's close family.

- (2) The places or districts specified in a place restriction order as places or districts that the offender must not frequent or visit may not include:
- (a) the offender's place of residence or the place of residence of any member of the offender's close family, or
  - (b) any place of work at which the offender is regularly employed, or
  - (c) any educational institution at which the offender is enrolled, or
  - (d) any place of worship at which the offender regularly attends,
- as at the time the order is made.
- (3) In this section, an offender's **close family** includes:
- (a) the offender's spouse, de facto or same-sex partner, and
  - (b) the offender's parents, step-parents and grandparents, and
  - (c) the offender's children, step-children and grandchildren, and
  - (d) the offender's brothers and sisters, and step-brothers and step-sisters, and
  - (e) the offender's guardians or carers.

**100B Explanation of non-association and place restriction orders to offenders**

- (1) Having made a non-association order or place restriction 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 order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A non-association order or place restriction order is not invalidated by a failure to comply with this section.

**100C Commencement of non-association and place restriction orders**

A non-association order or place restriction order commences:

- (a) on the date on which it is made, or
- (b) if it is stayed as a consequence of appeal proceedings but confirmed on appeal, whether expressly or impliedly, on the date on which it is confirmed.

**100D Suspension of non-association and place restriction orders while offenders in**

### **custody**

- (1) An offender's non-association order or place restriction order is suspended:
  - (a) while the offender is in lawful custody (otherwise than while unescorted as referred to in section 38 (2) (a) of the *Crimes (Administration of Sentences) Act 1999*), and
  - (b) while the offender is under the immediate supervision of a public servant employed within the Department of Juvenile Justice pursuant to a condition of leave imposed under section 24 of the *Children (Detention Centres) Act 1987*.
- (2) The suspension of an offender's non-association order or place restriction order does not operate to postpone the date on which the order comes to an end.

### **100E Contravention of non-association and place restriction orders**

- (1) An offender must not, without reasonable excuse, contravene a non-association order or place restriction order.  
  
Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.
- (2) Without limiting subsection (1), it is a reasonable excuse for associating with a specified person in contravention of a non-association order if:
  - (a) the offender did so in compliance with an order of a court, or
  - (b) having associated with the specified person unintentionally, the offender immediately terminated the association.
- (3) Without limiting subsection (1), it is a reasonable excuse for frequenting or visiting a specified place or district in contravention of a place restriction order if the offender did so in compliance with an order of a court.

### **100F Variation or revocation of non-association and place restriction orders following subsequent conviction**

- (1) This section applies to an offender who is sentenced in respect of an offence (the **new offence**) while subject to a non-association order or place restriction order in respect of some other offence (the **old offence**).
- (2) When sentencing the offender for the new offence, the court may vary or revoke the non-association order or place restriction order for the old offence, regardless of whether the order was made by it or by some other court.

### **100G Variation or revocation of non-association and place restriction orders on application**

- (1) An offender who is subject to a non-association order or place restriction order may



apply to a Local Court for variation or revocation of the order, regardless of whether the order was made by a Local Court or by some other court.

- (2) Such an application must be accompanied by a copy of the relevant order, together with any variations to it that have been made under this Part.
- (3) Such an application may not be made except by leave of the Local Court, which leave may be granted only if it is satisfied that, having regard to changes in the applicant's circumstances since the order was made or last varied, it is in the interests of justice that leave be granted.
- (4) The Local Court may refuse to entertain an application for leave if it is satisfied that the application is frivolous or vexatious.
- (5) If leave to make an application for variation or revocation of a non-association order is granted:
  - (a) the Local Court must cause notice of the application to be served on the Commissioner of Police, and
  - (b) the Commissioner of Police is entitled to appear and be heard in any proceedings on the application.
- (6) The Local Court may, at its discretion, deal with the application with or without the parties being present and in open court or in chambers.
- (7) The Local Court may dispose of the application:
  - (a) by varying or revoking the non-association order or place restriction order in accordance with the application, or
  - (b) by dismissing the application.
- (8) The Local Court's decision on the application is final.

**100H Certain information not to be published or broadcast**

- (1) A person must not publish or broadcast:
  - (a) the fact that a named person (other than the offender) is specified in a non-association order pursuant to section 17A (2) (a), or
  - (b) any information calculated to identify any such person.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information to any of the following persons:
  - (a) the offender,

- (b) any person specified in the non-association order as a person with whom the offender is prohibited or restricted from associating,
- (c) any member of the Police Service,
- (d) any person involved in the administration of the non-association order or of any other penalty to which the offender is subject in relation to the same offence,
- (e) any person involved in proceedings for an alleged breach of the non-association order,
- (f) any other person specified in the non-association order as a person to whom such information may be disclosed,
- (g) any other person to whom such information is required to be disclosed pursuant to any other Act or law,

and does not apply to the publication or broadcasting of an official report of the proceedings of the court.

## **Part 8B New South Wales Sentencing Council**

### **100I Constitution of New South Wales Sentencing Council**

- (1) There is constituted by this Act a New South Wales Sentencing Council.
- (2) The Sentencing Council is to consist of 13 members appointed by the Minister, of whom:
  - (a) one is to be a retired judicial officer, and
  - (b) one is to have expertise or experience in law enforcement, and
  - (c) three are to have expertise or experience in criminal law or sentencing (of whom one is to have expertise or experience in the area of prosecution and one is to have expertise or experience in the area of defence), and
  - (d) one is to be a person who has expertise or experience in Aboriginal justice matters, and
  - (e) four are to be persons representing the general community, of whom two are to have expertise or experience in matters associated with victims of crime, and
  - (f) one is to have expertise or experience in corrective services, and
  - (g) one is to have expertise or experience in juvenile justice, and
  - (h) one is to be a representative of the Attorney General's Department.
- (3) Schedule 1A has effect with respect to the members and procedure of the Sentencing

Council.

### **100J Functions of Sentencing Council**

- (1) The Sentencing Council has the following functions:
  - (a) to advise and consult with the Minister in relation to offences suitable for standard non-parole periods and their proposed length,
  - (b) to advise and consult with the Minister in relation to:
    - (i) matters suitable for guideline judgments under Division 4 of Part 3, and
    - (ii) the submissions to the Court of Criminal Appeal to be made by the Minister in guideline proceedings,
  - (c) to monitor, and to report annually to the Minister on, sentencing trends and practices, including the operation of standard non-parole periods and guideline judgments,
  - (d) at the request of the Minister, to prepare research papers or reports on particular subjects in connection with sentencing,
  - (e) to educate the public about sentencing matters.
- (2) Any advice given to the Minister by the Sentencing Council may be given either at the request of the Minister or without any such request.
- (3) The Sentencing Council has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) In the exercise of its functions, the Sentencing Council may consult with, and may receive and consider information and advice from, the Judicial Commission of New South Wales and the Bureau of Crime Statistics and Research of the Attorney General's Department (or any like agency that may replace either of those agencies).

### **100K Committees of Sentencing Council**

- (1) The Sentencing Council may, with the approval of the Minister, establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Sentencing Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Sentencing Council or (subject to any determination of the Council) by the committee.

### **100L Staff of Sentencing Council**

The Sentencing Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department or a public or local authority.

## **Part 8C Sentencing procedures for intervention program orders**

### **Division 1 Preliminary**

#### **100M Application**

This Part applies in circumstances in which a court is considering, or has made, an intervention program order.

### **Division 2 Restrictions on power to make intervention program orders**

#### **100N Suitability of offender for intervention program**

An intervention program order may not be made with respect to an offender unless the court is satisfied:

- (a) that the offender is eligible to participate in the intervention program in accordance with the terms of the program, and
- (b) that the offender is a suitable person to participate in the intervention program, and
- (c) that the intervention program is available in the area in which the offender resides or intends to reside.

#### **100O 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 to participate in an intervention program.

**Note—**

Regulations may be made for or with respect to the assessment of the suitability of a person to participate in an intervention program under the [Criminal Procedure Act 1986](#).

#### **100P Explanation of intervention program order**

- (1) A court that makes an intervention program order 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 order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) An intervention program order is not invalidated by a failure to comply with this

section.

### **Division 3 Enforcement of intervention program order**

#### **100Q Procedure following failure to enter into agreement**

If:

(a) a court makes an order that provides for an offender to enter into an agreement to participate in an intervention program, and

(b) the offender fails to enter into such an agreement 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.

#### **100R Proceedings for breach of order**

(1) If it suspects that an offender may have failed to comply with an intervention program order:

(a) the court that made the order, or

(b) any other court of like jurisdiction,

may call on the offender to appear before it.

(2) If the offender fails to appear, the court may take any action referred to in section 98 (1A) or (1B).

(3) If it is satisfied that an offender appearing before it has failed to comply with an intervention program order, a court:

(a) may decide to take no action with respect to the failure to comply, or

(b) may revoke the intervention program order.

#### **100S Consequences of revocation of order**

(1) If a court revokes an intervention program order under this Division, the court may convict and sentence the offender for the offence in respect of which the offender entered into the agreement to participate in the intervention program.

(2) This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.

(3) 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.

### **100T Right to decide not to participate in intervention program**

- (1) An offender may, at any time after entering into an agreement under section 10 (1) (c) (including after the commencement of the intervention program concerned) decide not to participate or to continue to participate in the intervention program or any intervention plan arising out the program.
- (2) Such a decision is to be made in accordance with the terms of the intervention program.
- (3) If the offender makes such a decision, the sentencing court or any court of like jurisdiction, may call on the offender to appear before it.
- (4) If the offender fails to appear, the court may take an action referred to in section 98 (1A) or (1B).
- (5) A court may, when an offender appears before it following a decision not to participate or to continue to participate in an intervention program or intervention plan:
  - (a) revoke the intervention program order, and
  - (b) make another order under section 10 (other than an intervention program order), or convict and sentence the offender for the offence in respect of which the intervention program order was imposed.
- (6) This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.
- (7) 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.

## **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.

### **101A Effect of failure to comply with Act**

A failure to comply with a provision of this Act may be considered by an appeal court in any appeal against sentence even if this Act declares that the failure to comply does not invalidate the sentence.

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

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

### **103 Regulations**

- (1) 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.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the information or other matter to be contained in any notice, order, warrant, undertaking or other document that by or under this Act is required or permitted to be prepared,
  - (b) requiring any such document to be in a form approved by the Minister,
  - (c) the manner of service of any such document.

### **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.

### **106 Review of [Crimes \(Sentencing Procedure\) Amendment \(Standard Minimum Sentencing\) Act 2002](#)**

- (1) In this section:

***standard non-parole provisions*** means the provisions of Division 1A of Part 4, as inserted by the [Crimes \(Sentencing Procedure\) Amendment \(Standard Minimum Sentencing\) Act 2002](#).

- (2) The Minister is to review the operation of the standard non-parole provisions to determine the effect of those provisions.
- (3) The review required by this section is to be undertaken as soon as possible after the period of 2 years from the commencement of the standard non-parole provisions.
- (4) A report on the outcome of the review required by this section is to be tabled in each House of Parliament within 12 months after the end of the period of 2 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, and includes any such recommendation, observation or expression of opinion that (before, on or after the date of assent to the *Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005*) has been quashed, set aside or called into question.

**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 clauses 6 and 6A (2), 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.

## **2A Restriction on number of further applications by offender for determination of non-parole periods**

(1) This clause applies only in relation to an application referred to in clause 2 (1) made by an offender on or after 17 June 2008. It does not apply in relation to any such application made by an offender before that date (including an application that was made but not finally disposed of before that date).

(2) An offender may not make more than one application referred to in clause 2 (1).

(3) If, in disposing under clause 4 of an application referred to in clause 2 (1), 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 offender who made the application is to serve the existing life sentence for the term of his or her natural life.

(4) An application referred to in clause 2 (1) that is made by an offender and duly withdrawn is not to be counted as an application made by the offender for the purposes of subclause (2).

(5) This clause has effect despite any other provision of this Schedule.

## **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) or (3) 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**

- (1A) This clause applies only in relation to an application referred to in clause 2 (1) that was made by an offender but not finally disposed of before 17 June 2008. It does not apply in relation to an application referred to in clause 2 (1) that was made by an offender on or after that date.
- (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.

## **6A Leave required for withdrawal of application and re-application**

- (1) An application referred to in clause 2 (1) may be withdrawn by the offender who made the application, but only with the leave of the Supreme Court.
- (2) If the Supreme Court grants leave to withdraw an application referred to in clause 2 (1):
- (a) the offender who made the application may not make a further application referred to in clause 2 (1) without the leave of the Court, and
  - (b) if the Court so directs, the offender may not make the further application for a specified period of time.
- (3) In considering whether to grant leave to withdraw an application, or to make a further

application, referred to in clause 2 (1), the Supreme Court must have regard to and give substantial weight to the number of times the offender has previously withdrawn any application referred to in clause 2 (1).

- (4) Subclause (3) does not limit the matters to which the Supreme Court may have regard in deciding whether or not to grant leave to withdraw an application, or to make a further application, referred to in clause 2 (1).
- (5) No appeal lies against the decision of the Supreme Court on an application for leave under subclause (1).
- (6) An application referred to in clause 2 (1) that is withdrawn cannot be restored.
- (7) If the Supreme Court declines to grant an application for leave under subclause (2) (a), the offender is to serve the existing life sentence the subject of the application for the term of his or her natural life.

#### **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.
- (5) In considering an application referred to in clause 2 (1) that is made on or after 17 June 2008, or that was made before that date but not finally disposed of before the commencement of the *Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008*, the Supreme Court must have regard to and give substantial weight to the following:
  - (a) the level of culpability of the offender in the commission of the offence for which the sentence was imposed,
  - (b) the heinousness of the offence.

## **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) or 6A (2) (b), or
  - (c) a decision of the Supreme Court on an application for leave under clause 6A (2) (a).
- (2) The *Criminal Appeal Act 1912* applies:
  - (a) to an appeal referred to in subclause (1) (a) or (b), in the same way as it applies to an appeal against a sentence, and
  - (b) to an appeal referred to in subclause (1) (c), in the same way as it applies to an appeal against an interlocutory judgment or order.
- (3) If the Court of Criminal Appeal allows an appeal against the decision of the Supreme Court to refuse an application for leave under clause 6A (2) (a), the Court of Criminal Appeal may exercise the jurisdiction of the Supreme Court to determine the further

application referred to in clause 2 (1).

## **Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council**

(Section 100I)

### **1 Definition**

In this Schedule:

**member** means any member of the Sentencing Council.

### **2 Chairperson and Deputy Chairperson**

- (1) The member appointed under section 100I (2) (a) is to be the Chairperson of the Sentencing Council.
- (2) The Minister may, from time to time, appoint another member of the Sentencing Council as the Deputy Chairperson of the Council.

### **3 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration**

A member (other than a member who is employed in the public sector) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Deputies of members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the Sentencing Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may at any time remove a member from office.

#### **7 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

#### **9 General procedure**

The procedure for the calling of meetings of the Sentencing Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Sentencing Council.

## **10 Quorum**

The quorum for a meeting of the Sentencing Council is 7 members.

## **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or, in the absence of both, a member elected to chair the meeting by the members present) is to preside at a meeting of the Sentencing Council.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Sentencing Council at which a quorum is present is the decision of the Sentencing Council.

## **13 First meeting**

The Minister may call the first meeting of the Sentencing Council in such manner as the Minister thinks fit.

# **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*

*Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*  
(to the extent only to which it amends this Act)

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

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

*Crimes Legislation Amendment (Periodic and Home Detention) Act 2002*

*Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act*



2002

*Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002*

*Crimes Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

*Crimes Legislation Amendment (Parole) Act 2003*, to the extent that it amends this Act

*Crimes Legislation Amendment Act 2003*

*Crimes Legislation Further Amendment Act 2003* (but only to the extent that it amends this Act)

*Courts Legislation Amendment Act 2004* (but only to the extent that it amends this Act)

*Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004*

*Crimes (Sentencing Procedure) Amendment Act 2006*

*Crimes and Courts Legislation Amendment Act 2006*, to the extent that it amends this Act

*Crimes (Sentencing Procedure) Amendment Act 2007*

*Crimes (Sentencing Procedure) Amendment (Life Sentences) Act 2008*

- (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) In particular, any such application that had been made before 8 May 1997 under section 13A of the 1989 Act but had not been determined as at the date of assent to the *Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005*, being an application made by an offender who is the subject of a non-release recommendation:
  - (a) is not to be determined until the offender has served at least 30 years of the existing life sentence to which the application relates, and
  - (b) is to be disposed of in accordance with clause 4 (3) of Schedule 1 to this Act, and not otherwise.
- (3) Any determination in force immediately before the appointed day under section 13A (4) of the 1989 Act, or made after the appointed day under that subsection, 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, or given after the appointed day under that subsection, 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 (Repealed)**

**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.

**Part 6 Provisions consequent on enactment of [Justice Legislation Amendment \(Non-association and Place Restriction\) Act 2001](#)**

**44 Application of section 17A**

Section 17A, as inserted by the [Justice Legislation Amendment \(Non-association and Place Restriction\) Act 2001](#), does not apply to any offence committed before the commencement of that section.

**Part 7 Provisions consequent on enactment of [Crimes \(Sentencing Procedure\) Amendment \(Standard Minimum Sentencing\) Act 2002](#)**

**45 Offences to which amending Act applies**

(1) Except as provided by subclause (2), the amendments made to this Act by the [Crimes \(Sentencing Procedure\) Amendment \(Standard Minimum Sentencing\) Act 2002](#) do not apply to offences committed before the commencement of the amendments.

- (2) Sections 3A and 21A of this Act, as inserted by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, apply to the determination of a sentence for an offence whenever committed, unless:
- (a) a court has convicted the person being sentenced of the offence, or
  - (b) a court has accepted a plea of guilty to the offence and the plea has not been withdrawn,
- before the commencement of the section concerned.
- (3) Section 21A of this Act, as in force immediately before its repeal by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*, continues to apply as if it had not been repealed to the determination of a sentence for an offence in respect of which:
- (a) a court has convicted the person being sentenced of the offence, or
  - (b) a court has accepted a plea of guilty to the offence and the plea has not been withdrawn,
- before that repeal.
- (4) In this clause:
- convict** includes make a finding of guilt.

#### **46 Application of existing guideline judgments**

A guideline judgment made before the commencement of any amendment to this Act made by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* continues to have effect, except to the extent to which it is inconsistent with this Act, as so amended.

### **Part 8 Provisions consequent on Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002**

#### **47 Application**

An amendment to this Act made by the *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002* extends to an offence committed before the commencement of the amendment unless proceedings (other than committal proceedings) for the offence were commenced before the commencement of the amendment.

### **Part 9 Provisions consequent on enactment of Crimes Legislation**

## Amendment Act 2002

### 48 Application of amendments to sections 55 and 56

- (1) An amendment to section 55 or 56 made by the *Crimes Legislation Amendment Act 2002* applies only to a new sentence of imprisonment imposed in relation to an offence committed after the commencement of the amendment, and so applies whether or not the old sentence was imposed before the commencement of the amendment.
- (2) In subclause (1), **new sentence of imprisonment** means a sentence of imprisonment imposed on an offender who, when being sentenced, is subject to another sentence of imprisonment that is yet to expire, or in respect of whom another sentence of imprisonment has been imposed in the same proceedings, and **old sentence of imprisonment** means that other sentence of imprisonment (that term having the extended meaning given by section 56 (6), as inserted by the *Crimes Legislation Amendment Act 2002*).

### 49 Application of amendment to section 58

The amendment to section 58 made by the *Crimes Legislation Amendment Act 2002* applies only to a new sentence (within the meaning of that section) imposed in relation to an offence committed after the commencement of the amendment, and so applies whether or not the old sentence (within the meaning of that section, as amended by the *Crimes Legislation Amendment Act 2002*) was imposed before the commencement of the amendment.

## Part 10 Provisions consequent on enactment of Crimes Legislation Amendment (Parole) Act 2003

### 50 Application of section 51 (1AA)

Section 51 (1AA), as inserted by the *Crimes Legislation Amendment (Parole) Act 2003*, does not apply to any parole order made by a court under section 50 before the commencement of that subsection.

## Part 11 Provisions consequent on enactment of Crimes Legislation Amendment Act 2003

### 51 Application of amendments

- (1) Section 65B, as inserted by the *Crimes Legislation Amendment Act 2003*, does not apply to proceedings commenced before the commencement of that section.
- (2) For the purposes of this clause, proceedings on indictment following an accused person's committal for trial for an offence are taken to have commenced when committal proceedings for the offence were first commenced.

- (3) Section 65B, as inserted by the *Crimes Legislation Amendment Act 2003*, extends to offences committed before the commencement of that section and, for that purpose, a **prescribed sexual offence** is taken to include:
- (a) an offence committed before 13 June 2003 under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, as in force from time to time before that date, being:
    - (i) an offence committed on a person under the age of 16 years, or
    - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61H of that Act), homosexual intercourse (as defined by section 78G of that Act) or carnal knowledge (as defined by section 62 (2) of that Act), and
  - (b) an offence committed before 17 March 1991 under section 61B, 61C, 61D, 61E or 61F of the *Crimes Act 1900*, as in force from time to time before that date, being:
    - (i) an offence committed on a person under the age of 16 years, or
    - (ii) an offence, committed on a person of any age, the elements of which include sexual intercourse (as defined by section 61A of that Act), and
  - (c) the offence of rape committed before 14 July 1981 as referred to in section 63 or 65 of the *Crimes Act 1900*, as in force from time to time before that date.

## **Part 12 Provisions consequent on enactment of Crimes Legislation Further Amendment Act 2003**

### **52 Power of Local Court to impose further consecutive sentences**

- (1) Section 58, as in force immediately before its substitution by the *Crimes Legislation Further Amendment Act 2003*, continues to apply to offences for which proceedings had commenced before its substitution.
- (2) Section 58, as substituted by the *Crimes Legislation Further Amendment Act 2003*, extends to offences committed before the commencement of that section, other than offences for which proceedings had commenced before its substitution.

## **Part 13 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004**

### **53 Victim impact statements**

The amendments made to sections 27 and 28 of this Act by the *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004* extend to offences committed before the commencement of those amendments, whether or not proceedings were commenced before that commencement.

## **Part 14 Provision consequent on enactment of [Courts Legislation Amendment Act 2004](#)**

### **54 Prescribed forms**

A form to the effect of a form prescribed for the purpose of section 32, 62, 66, 73 or 78 by a regulation in force immediately before the commencement of Schedule 4 to the [Courts Legislation Amendment Act 2004](#) may be used for the purpose of the relevant section until such time as regulations are made under section 103 (2).

## **Part 15 Provisions consequent on enactment of [Crimes \(Sentencing Procedure\) Amendment Act 2006](#)**

### **55 Existing offences and proceedings**

The amendments made to this Act by the [Crimes \(Sentencing Procedure\) Amendment Act 2006](#) apply to the determination of a sentence for an offence whenever committed, unless:

- (a) the court has convicted the person being sentenced of the offence, or
- (b) a court has accepted a plea of guilty and the plea has not been withdrawn, before the commencement of that Act.

## **Part 16 Provisions consequent on enactment of [Crimes and Courts Legislation Amendment Act 2006](#)**

### **56 Application of amendments**

- (1) The amendments made to sections 12 and 99 by the [Crimes and Courts Legislation Amendment Act 2006](#), and section 10A, as inserted by that Act, extend to proceedings commenced (but not concluded) before the commencement of the amendments.
- (2) The amendments made to section 99 by the [Crimes and Courts Legislation Amendment Act 2006](#) extend to proceedings in respect of the revocation of a good behaviour bond entered into before the commencement of the amendments, subject to subclause (3).
- (3) The amendments to section 99 do not require a non-parole period in respect of a sentence of imprisonment to be set on the revocation of a good behaviour bond entered into before the commencement of the amendments if the non-parole period was set at the time that the sentence was suspended.

## **Part 17 Provisions consequent on enactment of [Crimes \(Sentencing](#)**

## Procedure) Amendment Act 2007

### 57 Existing offences and proceedings

The amendments made to this Act by the *Crimes (Sentencing Procedure) Amendment Act 2007* apply to the determination of a sentence for an offence whenever committed, unless:

- (a) the court has convicted the person being sentenced of the offence, or
- (b) a court has accepted a plea of guilty and the plea has not been withdrawn, before the commencement of the amendments.