

# 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**  
[Mandatory Disease Testing Act 2021 No 13](#) (not commenced)
- **See also**  
[Crimes \(Domestic and Personal Violence\) Amendment \(Coercive and Controlling Behaviour\) Bill 2020](#)  
[Non-government Bill— Ms Abigail Boyd, MLC]

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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—

**aggregate sentence of imprisonment**—see section 53A.

**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*.

**Commissioner** means the Commissioner of Corrective Services, Department of Justice.

**community correction order** means an order referred to in section 8.

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

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

**community service work condition**—see sections 73A and 89.

**compulsory drug treatment detention** means detention in accordance with Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

**conditional release order** means an order referred to in section 9.

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

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

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

**Corrective Services NSW** 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 the 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*.

**domestic violence offence** has the same meaning as it has in the *Crimes (Domestic and Personal Violence) Act 2007*.

**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 detention in a correctional centre.

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

**graffiti offence** means an offence under the *Graffiti Control Act 2008*.

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

**home detention condition**—see section 73A.

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

**intensive correction** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

**intensive correction order** means an order referred to in section 7.

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

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

**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.

**Parole Authority** means the State Parole Authority constituted by section 183 of the *Crimes (Administration of Sentences) Act 1999*.

**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).

**proceed to** a conviction includes record a conviction.

**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.

**supervision condition**—see sections 73, 89 and 99.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(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
- (e) a reference to a condition that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory, and
- (f) a reference to an obligation that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory.

(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.

#### **4A Domestic violence offenders—requirement for full-time detention or supervision**

- (1) If a court finds a person guilty of a domestic violence offence, the court must impose on the person either—
  - (a) a sentence of full-time detention, or
  - (b) a supervised order.
- (2) However, the court is not required to impose either of those sentencing options if the court is satisfied that a different sentencing option is more appropriate in the circumstances and gives reasons for reaching that view.
- (3) For the purposes of this section, a **supervised order** is an order (being an intensive correction order, community correction order or conditional release order) that is subject to a supervision condition.

#### **4B Domestic violence offenders—protection and safety of victims**

- (1) An intensive correction order must not be made in respect of—
  - (a) a sentence of imprisonment for a domestic violence offence, or
  - (b) an aggregate sentence of imprisonment for 2 or more offences, any 1 or more of which is a domestic violence offence,unless the sentencing court is satisfied that the victim of the domestic violence offence, and any person with whom the offender is likely to reside, will be adequately protected (whether by conditions of the intensive correction order or for some other reason).
- (2) If the sentencing court finds a person guilty of a domestic violence offence, the court must not impose a home detention condition if the court reasonably believes that the offender will reside with the victim of the domestic violence offence.

- (3) Before making a community correction order or conditional release order in respect of a person whom the sentencing court finds guilty of a domestic violence offence, the court must consider the safety of the victim of the offence.

## **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) Part 4 applies to all sentences of imprisonment, including any sentence the subject of an intensive correction 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 (Repealed)**

### **7 Intensive correction orders**

- (1) A court that has sentenced an offender to imprisonment in respect of 1 or more offences may make an intensive correction order directing that the sentence or sentences be served by way of intensive correction in the community.
- (2) If the court makes an intensive correction order directing that a sentence of imprisonment be served by way of intensive correction in the community, the court is not to set a non-parole period for the sentence.



(3) This section does not apply to an offender who is under the age of 18 years.

(4) This section is subject to the provisions of Part 5.

**Note—**

Among other matters, Part 5 provides that a single offence cannot be the subject of an intensive correction order if the imprisonment imposed exceeds 2 years, and that multiple offences cannot be the subject of an intensive correction order or orders if the imprisonment imposed exceeds 3 years.

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

### **8 Community correction orders**

- (1) Instead of imposing a sentence of imprisonment on an offender, a court that has convicted a person of an offence may make a community correction order in relation to the offender.
- (2) A community service work condition must not be imposed on a community correction order made in relation to an offender to whom the *Children (Community Service Orders) Act 1987* applies.
- (3) This section is subject to the provisions of Part 7.

### **9 Conditional release orders**

- (1) Instead of imposing a sentence of imprisonment or a fine (or both) on an offender, a court that finds a person guilty of an offence may make a conditional release order discharging the offender, if—
  - (a) the court proceeds to conviction, or
  - (b) the court does not proceed to conviction but makes an order under section 10 (1) (b).
- (2) In deciding whether to make a conditional release order with a conviction, the sentencing court is to have regard to the following factors—
  - (a) the person's character, antecedents, age, health and mental condition,
  - (b) whether the offence is of a trivial nature,
  - (c) the extenuating circumstances in which the offence was committed,
  - (d) any other matter that the court thinks proper to consider.

**Note—**

These factors are considered under section 10 in respect of an order under section 10 (1) (b) in connection with a conditional release order without a conviction.

- (3) To avoid doubt and without limitation—
  - (a) a fine and a conditional release order cannot be imposed in relation to the offender in respect of the same offence, and
  - (b) a conditional release order with a conviction may be made as an alternative to imposing a fine.
- (4) 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 under a conditional release order (in which case the court proceeds to make a conditional release order under section 9),
  - (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.
- (1A) A reference in any legislation (including this Act) to an order under this section includes, in the case of an order under subsection (1) (b), a reference to a conditional release order made under section 9 pursuant to that paragraph.
- (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 discharge the person under a conditional release order.
- (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.

**Note—**

Certain other Acts and regulations contain provisions to the effect that an order under this section made in respect of an offence is to be treated as a conviction for certain purposes of the legislation concerned. Accordingly, those provisions apply to an order under subsection (1) (b) in respect of the offence and a conditional release order made pursuant to that paragraph.

(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 (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 (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—

(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.

(1A) Proceedings must not be adjourned under this section unless bail for the offence is or has been granted or dispensed with under the [Bail Act 2013](#).

(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.

(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, 13 (Repealed)**

## **Division 4 Fines**

### **14 (Repealed)**

### **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 or to an aggregate sentence of imprisonment in respect of 2 or more offences any one of which is an offence to which this section applies.
- (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 except at the times or in such circumstances (if any) as are specified,
  - (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.

- (3A) An order under subsection (2) (b) is to be one of the following—
- (a) a limited place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district except at the times or in such circumstances (if any) as are specified,
  - (b) an unlimited place restriction order, being an order prohibiting the offender from frequenting or visiting a specified place or district at any time or in any circumstance.
- (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 4B Assessment reports**

### **17B Definition of and provisions relating to “assessment report”**

- (1) In this Division—
- assessment report** means a report made by a community corrections officer or a juvenile justice officer under this Part.
- (2) The purpose of an assessment report is to assist a sentencing court to determine the appropriate sentence options and conditions to impose on the offender during sentencing proceedings.
- (3) An assessment report is made by a community corrections officer or a juvenile justice officer.
- (4) The regulations may make provision for or with respect to matters to be addressed in, and the preparation and furnishing of, an assessment report.

### **17C Request for assessment report**

- (1) Except as provided by section 17D—
- (a) the sentencing court may request, but is not obliged to request, an assessment report on an offender, and

- (b) such a request may be made at the following times only—
  - (i) after finding an offender guilty of an offence and before a sentence is imposed,
  - (ii) during sentencing proceedings after a sentence of imprisonment has been imposed on the offender,
  - (iii) during proceedings to impose, vary or revoke an additional or further condition on a community correction order or conditional release order that has been made in respect of the offender,
  - (iv) during proceedings to correct a sentencing error in accordance with section 43,
  - (v) during proceedings to re-sentence an offender after a court has revoked the offender's community correction order or conditional release order,
  - (vi) during proceedings to determine an appeal against a sentence,
  - (vii) any other times prescribed by the regulations.

- (2) If a court refers an offender for assessment in relation to a sentence and a sentence of imprisonment has been imposed in respect of the offence concerned—
  - (a) the referral stays the execution of the sentence and the operation of section 48, and
  - (b) the offender is to be remanded in custody, or granted bail in accordance with the [Bail Act 2013](#),until the court decides whether or not to make an intensive correction order.

#### **17D Requirement for assessment report**

- (1) The sentencing court must not make an intensive correction order in respect of an offender unless it has obtained a relevant assessment report in relation to the offender.
  - (1A) However, the sentencing court is not required to obtain an assessment report (except if required under subsection (2) or (4)) if it is satisfied that there is sufficient information before it to justify the making of an intensive correction order without obtaining an assessment report.
- (2) The sentencing court must not impose a home detention condition on an intensive correction order unless it has obtained an assessment report relating to the imposition of such a condition in relation to the offender.
- (3) The sentencing court must not request an assessment report relating to the imposition of a home detention condition on an intensive correction order unless it has

imposed a sentence of imprisonment on the offender for a specified term.

- (4) The sentencing court must not impose a community service work condition on an intensive correction order or community correction order unless it has obtained an assessment report relating to the imposition of such a condition in relation to the offender.
- (5) The assessment reports referred to in this section may be in the 1 report or in more than 1 report.

**Note—**

See also sections 73A (3) and 89 (4) regarding the imposition of home detention conditions and community service work conditions.

## **Division 4C Provisions relating to certain orders**

### **17E Definitions**

In this Division—

**relevant orders** means the following orders (or any combination of 1 or more of them)—

- (a) intensive correction orders,
- (b) community correction orders,
- (c) conditional release orders.

### **17F Multiple orders**

- (1) Only 1 relevant order can be in force at the same time in respect of the same offence in relation to the same offender.
- (2) Subject to subsection (1), 2 or more relevant orders can be in force at the same time in respect of 2 or more offences in relation to the same offender.
- (3) For the purposes of subsection (1), an intensive correction order prevails over a community correction order, and a community correction order prevails over a conditional release order.
- (4) For the purposes of subsection (2) and subject to sections 17G and 17H, if there is an inconsistency as to how any conditions of the relevant orders operate together, then to the extent of the inconsistency—
  - (a) a condition of an intensive correction order prevails over a condition of a community correction order, and
  - (b) a condition of a community correction order prevails over a condition of a conditional release order, and



(c) despite paragraphs (a) and (b), a standard condition prevails over a condition that is not a standard condition.

### **17G Community service work conditions under multiple orders**

- (1) A relevant 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 relevant order (an **existing order**),
- exceeds 750 hours (if any one of the orders is an intensive correction order) or 500 hours (if all the orders are community correction orders).

**Note—**

Community service work conditions can be imposed on intensive correction orders and community correction orders, but cannot be imposed on conditional release orders.

- (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.

### **17H Curfew conditions under multiple orders**

- (1) This section applies where 2 or more curfew conditions apply under 2 or more relevant orders in respect of the same period of 24 hours (the **period of 24 hours**).

**Note—**

Curfew conditions can be imposed on intensive correction orders and community correction orders, but cannot be imposed on conditional release orders.

- (2) If all the relevant orders are intensive correction orders, this section does not affect the curfew conditions.
- (3) If all the relevant orders are community correction orders, the following provisions apply—
- (a) The offender cannot be required to observe a curfew in respect of more than 12 hours in the period of 24 hours. Any excess is to be disregarded.
  - (b) The offender is required in the period of 24 hours to observe only the curfew imposed by the 1 curfew condition that specifies more hours than the other or others.
- (4) If at least 1 of the relevant orders is an intensive correction order and at least 1 is a

community correction order, the following provisions apply—

- (a) This section does not affect any curfew condition imposed on an intensive correction order.
  - (b) The offender cannot be required, as a result of the curfew conditions imposed on the relevant orders, to observe a curfew in respect of more than the greater of—
    - (i) the hours required by curfew conditions imposed on the intensive correction order or intensive correction orders in the period of 24 hours, or
    - (ii) 12 hours in the period of 24 hours.Any excess is to be disregarded.
  - (c) In determining the number of hours under 2 or more curfew conditions imposed on 2 or more community correction orders, regard is to be had only to the 1 curfew condition that specifies more hours than the other or others.
- (5) The regulations under the *Crimes (Administration of Sentences) Act 1999* may make provision for or with respect to the manner of determining numbers of hours for the purposes of this section and any excess to be disregarded under this section.

#### **17I Explanation of relevant order to offender**

- (1) Having made a relevant order in relation to an offender, the sentencing court must ensure that 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 relevant order is not invalidated by a failure to comply with this section.

#### **17J Notice of relevant order to be given**

- (1) As soon as practicable after a relevant order is made, the registrar or another officer of the sentencing court must cause notice of the order to be given to the offender and to Corrective Services NSW.
- (2) The notice must include such information about the relevant order as may be prescribed by the regulations.
- (3) Notice of an order does not need to be given to Corrective Services NSW unless the order is subject to a supervision condition or a community service work condition.
- (4) A relevant order is not invalidated by a failure to comply with this section.

## **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, council law enforcement 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, because of the geographical isolation of the victim or because of the victim's occupation (such as a person working at a hospital (other than a health worker), 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,
- (p) without limiting paragraph (ea), the offence was a prescribed traffic offence and was committed while a child under 16 years of age was a passenger in the offender's vehicle.

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 or Division 1A),
- (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),
- (n) an offer to plead guilty to a different offence where the offer is not accepted, the offender did not plead guilty to the offence and the offender is subsequently found guilty of that offence or a reasonably equivalent offence (this circumstance, among others, is provided for by section 25E (1)).

(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.

**(5A) Special rules for child sexual offences** In determining the appropriate sentence for a child sexual offence, the good character or lack of previous convictions of an offender is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence.

**(5AA) Special rule for self-induced intoxication** In determining the appropriate sentence for an offence, the self-induced intoxication of the offender at the time the offence was committed is not to be taken into account as a mitigating factor.

**(5B)** Subsections (5A) and (5AA) have effect despite any Act or rule of law to the contrary.

**(5C)** For the purpose of subsection (2) (p), an offence under any of the following provisions is taken to have been committed while a child under 16 years of age was a passenger in the offender's vehicle if the offence was part of a series of events that involved the driving of the vehicle while the child was a passenger in the vehicle—

- (a) section 13 (2), 15 (4), 18B (2), 18D (2), 22 (2), 24D (1) or 29 (2) of the former

*Road Transport (Safety and Traffic Management) Act 1999,*

(b) clause 16 (1) (a), (b) or (c), 17 (1) or 18 (1) of Schedule 3 to the *Road Transport Act 2013*.

(6) In this section—

**child sexual offence** means—

- (a) an offence against section 61I, 61J, 61JA, 61K, 61KC, 61KD, 61KE, 61KF or 66F of the *Crimes Act 1900* where the person against whom the offence was committed was then under the age of 16 years, or
- (b) an offence against section 66A, 66B, 66C, 66D, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66EA, 66EB, 66EC, 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900*, or
- (c) an offence against section 80D or 80E of the *Crimes Act 1900* where the person against whom the offence was committed was then under the age of 16 years, or
- (d) an offence against section 91J, 91K or 91L of the *Crimes Act 1900* where the person who was being observed or filmed as referred to in those sections was then under the age of 16 years, or
- (d1) an offence against a provision of the *Crimes Act 1900* set out in Column 1 of Schedule 1A to that Act where the person against whom the offence was committed was then under the age of 16 years, or
- (e) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in any of the above paragraphs, or
- (f) an offence under a previous enactment that is substantially similar to an offence referred to in any of the above paragraphs.

**prescribed traffic offence** means an offence under any of the following provisions—

- (a) sections 9, 11B (1) and (3), 12 (1), 13 (2), 15 (4), 18B (2), 18D (2), 22 (2), 24D (1) and 29 (2) of the former *Road Transport (Safety and Traffic Management) Act 1999*,
- (a1) sections 110, 111 (1) and (3) and 112 (1) of the *Road Transport Act 2013* and clauses 16 (1) (a), (b) or (c), 17 (1) and 18 (1) of Schedule 3 to that Act,
- (b) sections 51B (1) and 52A (1) (a) and (3) (a) of the *Crimes Act 1900*,
- (c) section 52A (2) and (4) of the *Crimes Act 1900* in the circumstances of aggravation referred to in section 52A (7) (a), (c) or (d) of that Act.

**self-induced intoxication** has the same meaning it has in Part 11A of the *Crimes Act 1900*.



**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 for offences not dealt with on indictment**

- (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
  - (c) the circumstances in which the offender indicated an intention to plead guilty, and may accordingly impose a lesser penalty than it would otherwise have imposed.
- (1A) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.
- (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.
- (5) This section applies only to a sentence for an offence that is dealt with summarily or to a sentence for an offence dealt with on indictment to which Division 1A does not apply.

### **Note—**

Discounts for the utilitarian value of a guilty plea to other offences are provided for by Division 1A.

## **22A Power to reduce penalties for facilitating the administration of justice**

- (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 administration of justice has been facilitated by the defence (whether by disclosures made pre-trial or during the trial or otherwise).
- (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) (Repealed)
  - (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) (Repealed)
- (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.
- (4) A court that imposes a lesser penalty under this section on an offender because the offender has assisted, or undertaken to assist, law enforcement authorities must—
- (a) indicate to the offender, and make a record of the fact, that the lesser penalty is being imposed for either or both of those reasons, and
  - (b) state the penalty that it would otherwise have imposed, and
  - (c) where the lesser penalty is being imposed for both reasons—state the amount by which the penalty has been reduced for each reason.

- (5) Subsection (4) does not limit any requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (6) The failure of a court to comply with the requirements of subsection (4) with respect to any sentence does not invalidate the sentence.

#### **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 correction order, conditional release order or intervention program order—
  - (i) the fact that the person has been the subject of such an order, and
  - (ii) anything done by the offender in compliance with the offender's obligations under the order, 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, anything done by the offender in compliance with the offender's obligations under the intervention program order, 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.

#### **24A Mandatory requirements for supervision and other prohibitions to be disregarded in sentencing**

- (1) In sentencing an offender, the court must not take into account, as a mitigating factor in sentencing, the fact that the offender—
  - (a) has or may become a registrable person under the *Child Protection (Offenders Registration) Act 2000* as a consequence of the offence, or
  - (b) has or may become the subject of an order under the *Child Protection (Offenders Prohibition Orders) Act 2004*, or
  - (c) as a consequence of being convicted of the offence, has become a disqualified

person within the meaning of the *Child Protection (Working with Children) Act 2012*, or

- (d) has or may become the subject of an order under the *Crimes (High Risk Offenders) Act 2006*, or
- (e) has or may become the subject of an order under the *Terrorism (High Risk Offenders) Act 2017*.

(2) This section has effect despite any Act or rule of law to the contrary.

#### **24B Confiscation of assets and forfeiture of proceeds of crime to be disregarded in sentencing**

- (1) In sentencing an offender, the court must not take into account, as a mitigating factor in sentencing, the consequences for the offender of any order of a court imposed because of the offence under confiscation or forfeiture legislation.
- (2) In this section—

**confiscation or forfeiture legislation** means the following—

- (a) the *Confiscation of Proceeds of Crime Act 1989*,
- (b) the *Criminal Assets Recovery Act 1990*,
- (c) the *Proceeds of Crime Act 2002* of the Commonwealth,
- (d) any other law prescribed by the regulations for the purposes of this definition.

#### **24C Loss of parliamentary pension to be disregarded in sentencing**

In sentencing an offender who is a member or former member of Parliament, the court must not take into account, as a mitigating factor in sentencing, the loss of the offender's entitlement to a pension under the *Parliamentary Contributory Superannuation Act 1971* because of the conviction for the offence.

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

- (1) The 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) an intensive correction order,
  - (c) (Repealed)
  - (d) a community correction order,
  - (e) a conditional release order,

- (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, the 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.
- (2A) In deciding whether to issue, or authorise an authorised officer to issue, a warrant for the arrest of an absent offender who has lodged a written plea in accordance with section 182 of the *Criminal Procedure Act 1986* for the offence concerned, the Local Court must consider whether it is more appropriate to adjourn proceedings.
- (3) This section does not limit the power that any court other than the 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, including a person who does not attend court because the person has lodged a written plea in accordance with section 182 of the *Criminal Procedure Act 1986* in respect of the offence concerned.

#### **25AA Sentencing for child sexual offences**

- (1) A court must sentence an offender for a child sexual offence in accordance with the sentencing patterns and practices at the time of sentencing, not at the time of the offence.
- (2) However, the standard non-parole period for a child sexual offence is the standard non-parole period (if any) that applied at the time of the offence, not at the time of sentencing.
- (3) When sentencing an offender for a child sexual offence, a court must have regard to the trauma of sexual abuse on children as understood at the time of sentencing (which may include recent psychological research or the common experience of courts).
- (4) This section does not affect section 19.
- (5) In this section—

**child sexual offence** means the following offences regardless of when the offence occurred but only if the person against whom the offence was committed was then under the age of 16 years—

- (a) an offence under a provision of Division 10, 10A, 10B, 15 or 15A of Part 3 of the *Crimes Act 1900*,
- (b) an offence under a provision of that Act set out in Column 1 of Schedule 1A to that Act,
- (c) an offence of attempting to commit any offence referred to in paragraph (a) or (b),
- (d) an offence under a previous enactment that is substantially similar to an offence referred to in paragraphs (a)-(c).

## **Division 1A Sentencing discounts for guilty pleas to indictable offences**

### **25A Application of Division**

- (1) This Division applies to a sentence for an offence that is dealt with on indictment, other than—
  - (a) an offence under a law of the Commonwealth, unless the regulations otherwise provide in the case of a particular offence or class of offences, or
  - (b) an offence committed by a person who was under the age of 18 years when the offence was committed and under the age of 21 years when charged before the court with the offence.
- (2) A court must not apply any other discount for the utilitarian value of a guilty plea to an offence to which this Division applies other than the discount provided for by this Division.

### **25B Definitions**

In this Division—

**negotiations document** means—

- (a) if an offender was represented by an Australian legal practitioner in proceedings—
  - (i) a case conference certificate (including any later plea offer) filed in committal proceedings for the offence concerned under the *Criminal Procedure Act 1986*, or
  - (ii) any other document that records an offer made by the offender to plead guilty to an offence specified in the document, served on the prosecutor in proceedings for the offence—

- (A) following committal for trial or sentence, or
  - (B) after an indictment containing a new count offence is filed, or
- (b) if an offender was not represented in proceedings, any document served on the prosecutor in the proceedings that records an offer made by the offender to plead guilty to an offence specified in the document.

**new count offence** means—

- (a) an offence the subject of an ex officio indictment, or
- (b) an offence for which the count is inserted in an indictment by amending the indictment (the **original indictment**).

**sentence** means a term of imprisonment, fine or the term of an intensive correction order, a community correction order or a conditional release order.

### **25C Timing of pleas and notice requirements**

- (1) In this Division—

**first day of the trial of an offender** means the first day fixed for the trial of the offender or, if that day is vacated, the next day fixed for the trial that is not vacated.

- (2) For the purposes of this Division, an offender **complies with the pre-trial notice requirements** if the offender serves a notice on the prosecutor at least 14 days before the first day of the trial of the offender accepting an offer by the prosecutor to plead guilty to the offence or offering to plead guilty to the offence.

### **25D Sentencing discounts for guilty plea for offences dealt with on indictment**

- (1) **Mandatory nature of sentencing discount** In determining the sentence for an offence, the court is to apply a sentencing discount for the utilitarian value of a guilty plea in accordance with this section if the offender pleaded guilty to the offence at any time before being sentenced.
- (2) **Amounts of sentencing discounts** The discount for a guilty plea by an offender (other than an offender referred to in subsection (3) or (5) or section 25E) is as follows—
- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the plea was accepted by the Magistrate in committal proceedings for the offence,
  - (b) a reduction of 10% in any sentence that would otherwise have been imposed, if the offender was committed for trial and the offender—
    - (i) pleaded guilty at least 14 days before the first day of the trial of the offender, or
    - (ii) complied with the pre-trial notice requirements and pleaded guilty at the first

available opportunity able to be obtained by the offender,

(c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a) or (b) does not apply.

(3) **Discount variations—new count offences** The discount for a guilty plea by an offender in respect of a new count offence is as follows—

(a) a reduction of 25% in any sentence that would otherwise have been imposed, if an offer to plead guilty was made by the offender and recorded in a negotiations document as soon as practicable after the ex officio indictment was filed or the indictment was amended to include the new count,

(a1) a reduction of 25% in any sentence that would otherwise have been imposed, if—

(i) the offender was discharged under section 68(2)(a) of the *Criminal Procedure Act 1986*, and

(ii) an offer to plead guilty was made by the offender and recorded in a negotiations document as soon as practicable after the ex officio indictment was filed or the indictment was amended to include the new count,

(b) a reduction of 10% in any sentence that would otherwise have been imposed, if paragraph (a) or (a1) does not apply and the offender—

(i) pleaded guilty at least 14 days before the first day of the trial of the offender, or

(ii) complied with the pre-trial notice requirements and pleaded guilty to the offence at the first available opportunity able to be obtained by the offender,

(c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a), (a1) or (b) does not apply.

(4) However, the discount in subsection (3) (a) does not apply if—

(a) the facts or evidence that establish the elements of the new count offence are substantially the same as those contained in the brief of evidence or other material served on the offender by the prosecutor in committal proceedings relating to the original indictment and the penalty for the new count offence is the same as, or less than, the offence set out in the original indictment, or

(b) the offender refused an offer to plead guilty to the new count offence that was made by the prosecutor in the committal proceedings relating to the original indictment and the offer was recorded in a negotiations document.

(5) **Discount variations—person found fit to be tried after committal for trial** The discount for



a guilty plea by an offender who is found fit to be tried after the offender is committed for trial, and whose matter was not remitted to a Magistrate for continued committal proceedings, is as follows—

- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the offender pleaded guilty as soon as practicable after the offender was found fit to be tried,
- (b) a reduction of 10% in any sentence that would otherwise have been imposed, if paragraph (a) does not apply and the offender—
  - (i) pleaded guilty at least 14 days before the first day of the trial of the offender, or
  - (ii) complied with the pre-trial notice requirements and pleaded guilty at the first available opportunity able to be obtained by the offender,
- (c) a reduction of 5% in any sentence that would otherwise have been imposed, if paragraph (a) or (b) does not apply.

- (6) **Opportunities for legal help to be taken into account** For the purpose of determining under subsection (3) or (5) whether the offender pleaded guilty as soon as practicable after an ex officio indictment was filed or the original indictment was amended or after a finding of fitness to be tried, the court is to take into account whether the offender had a reasonable opportunity to obtain legal advice and give instructions to his or her legal representative (if any).

**25E Sentencing discounts to apply in certain cases where guilty plea offer made for different offences and refused when made**

- (1) **Discount where offer not accepted** In determining the sentence for an offence, the court is to apply a sentencing discount in accordance with this section if—
- (a) the offender made an offer recorded in a negotiations document to plead guilty to an offence, and
  - (b) that offence (the ***different offence***) was not the offence the subject of the proceedings when the offer was made, and
  - (c) the offer was not accepted by the prosecutor, and
  - (d) the offer was not subsequently withdrawn, and
  - (e) the offender was found guilty of the different offence or an offence that is reasonably equivalent to the different offence.

For the purposes of this subsection, an ***offence is reasonably equivalent to a different offence*** if—

- (a) the facts of the offence are capable of constituting the different offence, and
  - (b) the maximum penalty for the offence is the same or less than the different offence.
- (2) **Discount where offer later accepted** In determining the sentence for an offence, the court is to apply a sentencing discount for the utilitarian value of a guilty plea in accordance with this section if—
- (a) the offender made an offer recorded in a negotiations document to plead guilty to an offence, and
  - (b) that offence (the ***different offence***) was not the offence the subject of the proceedings when the offer was made, and
  - (c) the offer was refused but accepted by the prosecutor after the offender was committed for trial, and
  - (d) the offender pleaded guilty to the different offence at the first available opportunity able to be obtained by the offender.
- (3) **Discount variation—offer to plead guilty to different offence** The discount to be applied by the court is as follows—
- (a) a reduction of 25% in any sentence that would otherwise have been imposed, if the offer was made before the offender was committed for trial,
  - (b) a reduction of 10% in any sentence that would otherwise have been imposed, if the offer was made after the offender was committed for trial and at least 14 days before the first day of the trial of the offender,
  - (c) a reduction of 5% in any sentence that would otherwise have been imposed, if the offer was made less than 14 days before or on or after the first day of the trial of the offender.

## **25F Other provisions applying to sentencing discount**

- (1) **Application** This section applies to a sentencing discount under this Division.
- (2) **Exception to application of discount—level of culpability** The court may determine not to apply the sentencing discount, or to apply a reduced sentencing discount, if the court determines, on its own motion or on the application of the prosecution, that the discount should not be applied or should be reduced because 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 be met only by imposition of a penalty with no allowance for, or a reduction of, that discount.
- (3) If a case conference certificate was filed in committal proceedings for the offence, a

prosecutor is not entitled to apply to the court for a determination that the discount should not be applied or should be reduced unless the certificate records that the prosecutor notified the offender's legal representative, at or before the conference, of the intention to make the application.

- (4) **Exception to application of discount—disputed facts** The court may determine not to apply the sentencing discount, or to apply a reduced sentencing discount, if the court determines that the discount should not be applied or should be reduced because the utilitarian value of the plea of guilty has been eroded by a dispute as to facts that was not determined in favour of the offender.
- (5) **Offender to establish grounds for discount** The burden of establishing that grounds exist for the sentencing discount lies on the offender and must be proved on the balance of probabilities.
- (6) **Application to Drug Court proceedings** The sentencing discount applicable to a person who is sentenced for an offence under the *Drug Court Act 1998* applies to a person who indicates an intention to plead guilty to an offence before being referred to the Drug Court, and who subsequently pleads guilty to the offence before the Drug Court, as if the person had pleaded guilty to the offence before being committed for sentence in committal proceedings for the offence.
- (7) **Discount information to be given to offender by court** The court must indicate the following to the offender when passing sentence for an offence and must record the matters indicated—
  - (a) if the sentencing discount is applied, how the sentence imposed was calculated,
  - (b) if the court determines in accordance with this section not to apply or to reduce the discount, the reasons for the determination.
- (8) **Sentence not invalidated by failure to comply** The failure by a court to comply with this Division does not invalidate any sentence imposed by the court.
- (9) **No discount where life sentence** A sentencing court must not allow any discount under this Division for a guilty plea if the court determines a sentence of life imprisonment.

## Division 2 Victim impact statements

### Subdivision 1 Preliminary

#### 26 Definitions

In this Division—

**closed-circuit television arrangements** means the arrangements for giving evidence provided for by section 294B or Division 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*.

**family victim** means any of the following persons, whether or not the person suffered personal harm as a result of the offence—

- (a) in relation to an offence as a direct result of which a primary victim has died—a person who was, at the time the offence was committed, a member of the primary victim’s immediate family,
- (b) in relation to an offence committed against a primary victim who was pregnant at the time the offence was committed and as a result of which the foetus was lost, regardless of the gestational age of the foetus—a person who was, at the time the offence was committed, a member of the primary victim’s immediate family, whether or not the primary victim died.

**member of the primary victim’s immediate family** means any of the following—

- (a) the victim’s spouse,
- (b) the victim’s de facto partner,

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

- (c) a person to whom the victim is engaged to be married,
- (d) a parent, step-parent or guardian of the victim,
- (e) a grandparent or step-grandparent of the victim,
- (f) a child or step-child of the victim or some other child for whom the victim is the guardian,
- (g) a grandchild or step-grandchild of the victim,
- (h) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim,
- (i) an aunt, uncle, niece or nephew of the victim,
- (j) in the case of a victim who is an Aboriginal person or a Torres Strait Islander—a person who is or has been part of the close family or kin of the victim according to the Indigenous kinship system of the victim’s culture,
- (k) any person who the prosecutor is satisfied is a member of the victim’s extended family or culturally recognised family to whom the victim is or was close,
- (l) any person who the prosecutor is satisfied is a person with whom the victim had a close relationship analogous to a family relationship, or whom the victim considered to be family.

**personal harm** means actual physical bodily harm or psychological or psychiatric harm.

**prescribed sexual offence** has the same meaning as it has in the [Criminal Procedure Act 1986](#).

**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 sexual offence, 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** has the meaning given by section 28 (1) and (2).

## 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, the Local Court or the Children’s 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 in the Supreme Court or on indictment or summarily in the District Court 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
  - (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, or
  - (d) a prescribed sexual offence, or
  - (e) an offence against section 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the [Crimes Act 1900](#).
- (3) 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 5 of Part 2 of the [Work Health and Safety Act 2011](#) or Subdivision 3 of Division 3 of Part 3 of the [Rail Safety National Law \(NSW\)](#), and
  - (b) the offence results in the death of, or actual physical bodily harm to, any person.
- (4) In relation to an offence that is being dealt with by the 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
- (d) a prescribed sexual offence that is referred to in Table 1 of Schedule 1 to the *Criminal Procedure Act 1986*, or
- (e) an offence against section 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the *Crimes Act 1900*.

(4A) In relation to an offence that is being dealt with by the Children’s Court, this Division applies only if—

- (a) the offence is an offence against section 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the *Crimes Act 1900*, or
- (b) the offence is not an offence referred to in Table 2 of Schedule 1 to the *Criminal Procedure Act 1986* and the offence is—
  - (i) an offence that results in the death of, or actual physical bodily harm to, any person, or
  - (ii) an offence that involves an act of actual or threatened violence, or
  - (iii) 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, or
  - (iv) a prescribed sexual offence.

(5) 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.

(6) This Division extends to any offence referred to in subsection (1)-(4A) that is dealt with under section 33.

## **Subdivision 2 Preparation of statements**

## 28 Contents of victim impact statements

- (1) A primary victim in relation to an offence may prepare a statement (a **victim impact statement**) that contains particulars of the following suffered by the primary victim, or by the members of the primary victim's immediate family, as a direct result of the offence—
  - (a) any personal harm,
  - (b) any emotional suffering or distress,
  - (c) any harm to relationships with other persons,
  - (d) any economic loss or harm that arises from any matter referred to in paragraphs (a)–(c).
- (2) A family victim in relation to an offence may prepare a statement (a **victim impact statement**) that contains—
  - (a) in relation to an offence as a direct result of which a primary victim has died—particulars of the impact of the primary victim's death on the family victim and other members of the primary victim's immediate family, and
  - (b) in relation to an offence committed against a primary victim who was pregnant at the time the offence was committed and as a result of which the foetus was lost, regardless of the gestational age of the foetus—particulars of the impact of the loss of the foetus on—
    - (i) the family victim, and
    - (ii) other members of the primary victim's immediate family.

## 29 Formal requirements for victim impact statements

- (1) A victim impact statement must—
  - (a) be in writing, and
  - (b) comply with any other requirements prescribed by the regulations.
- (2) Photographs, drawings or other images may, subject to the regulations, be included in a victim impact statement.
- (3) A victim impact statement may relate to more than one victim.
- (4) The preparation of a victim impact statement is not mandatory.

## 30 Victim may be assisted

- (1) A representative of a primary victim may (subject to the regulations) do any of the

following on behalf of the victim, but only if the primary victim is incapable of doing so because of age, impairment or otherwise—

- (a) provide information for the preparation of a victim impact statement,
  - (b) object to the tendering of a victim impact statement.
- (2) A representative of a victim may (subject to the regulations) do any of the following on behalf of the victim—
- (a) prepare a victim impact statement,
  - (b) read a victim impact statement.
- (3) Anything done by a representative in accordance with this section is taken to have been done by the victim.
- (4) The regulations may specify the persons or classes of person who may be a representative of a victim for the purposes of this section.
- (5) A representative of a victim who provides information for the preparation of a victim impact statement or prepares a victim impact statement for the victim is not precluded from providing information or preparing a victim impact statement on the representative's own behalf in relation to the same offence if otherwise eligible.

### **Subdivision 3 Consideration of statements by court**

#### **30A Tendering of victim impact statements**

- (1) After it is prepared, a victim impact statement is to be provided to the prosecutor in the relevant proceedings.
- (2) A victim impact statement may be tendered to the court only by the prosecutor.

#### **30B Receipt of victim impact statement by court**

- (1) A court must accept a victim impact statement tendered by a prosecutor if the statement complies with the requirements of this Division and the regulations.
- (2) A court to which a victim impact statement is tendered must acknowledge receipt of the statement.

#### **30C Victim may object to tendering of victim impact statement**

- (1) A victim to whom a victim impact statement relates may object to the statement being tendered to a court.
- (2) A victim impact statement may not be received or considered by a court if any victim to whom the statement relates objects to the statement being tendered to the court.



### **30D Reading out of statement**

- (1) A victim to whom a victim impact statement relates may read out the whole or part of a victim impact statement if the statement has been tendered to the court in accordance with this Division.
- (2) The statement may be read out at any time that the court determines after the court has convicted, but before it sentences, the offender.

### **30E How court uses victim impact statements**

- (1) A court to which a victim impact statement has been tendered in relation to an offence—
  - (a) must consider the statement at any time after it convicts, but before it sentences, an offender for the offence, and
  - (b) may make any comment on the statement that the court considers appropriate.
- (2) A victim impact statement may also be 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) A victim impact statement of a family victim may also be taken into account by a court in connection with the determination of the punishment for the offence on the basis that the harmful impact of a primary victim's death on family victims is an aspect of harm done to the community, but only if—
  - (a) the prosecutor applies for this to occur, and
  - (b) the court considers it to be appropriate.
- (4) Subsection (3) does not affect the application of the law of evidence in proceedings relating to sentencing.
- (5) The absence of a victim impact statement does not give rise to any inference that an offence had little or no impact on a victim.
- (6) The absence of a victim impact statement given by a family victim does not give rise to any inference that an offence had little or no impact on the members of the primary victim's immediate family.

### **30F Restrictions on consideration of victim impact statements not made in accordance with Division**

- (1) A court must not consider or take into account a victim impact statement unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.
- (2) A court must not consider or take into account any material that is not specifically

authorised by this Division to be included in a victim impact statement.

### **30G Access to victim impact statements prior to sentencing hearing**

- (1) The prosecution may provide a copy of a victim impact statement to the offender's Australian legal practitioner (in the case of a represented offender).
- (2) An Australian legal practitioner may copy, disseminate or transmit images of a victim impact statement only to the extent that it is reasonably necessary to do so for the purposes of providing the victim impact statement to another Australian legal practitioner for legitimate purposes related to the proceedings.
- (3) The Australian legal practitioner must destroy any copies or images at the conclusion of the sentencing proceedings.
- (4) The court may provide supervised access to a victim impact statement to an offender who is not represented by an Australian legal practitioner, if resources to facilitate the access are reasonably available.
- (5) An offender must not retain, copy, disseminate or transmit images of the victim impact statement.

## **Subdivision 4 Special provisions relating to the reading of statements**

### **30H Victims are entitled to have a support person present**

- (1) The victim to whom a victim impact statement relates is entitled to have a person chosen by the victim to be present near the victim, and within the victim's sight, when the statement is read out.
- (2) The person chosen by the victim may include a parent, guardian, relative, friend or support person of the victim or a person assisting the victim in a professional capacity.
- (3) The right to have a person present applies whether the victim impact statement is read in proceedings that are being heard in open court, in closed court or in accordance with any closed-circuit television arrangements.
- (4) A victim may have more than one person present.

### **30I Victims who are entitled to give evidence in closed court may also read their victim impact statements in closed court**

- (1) If the proceedings are for a prescribed sexual offence, the part of the proceedings in which the victim impact statement is read out is to be held in closed court unless—
  - (a) the court directs (subject to section 30K), at the request of a party to the proceedings, that the proceedings are to be held in open court, and
  - (b) the court is satisfied that—

- (i) special reasons in the interests of justice require the part of the proceedings to be held in open court, or
  - (ii) the victim to whom the statement relates consents to the statement being read out in open court.
- (2) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.

**30J Victims who are entitled to give evidence by CCTV may also read their victim impact statements by CCTV**

If the proceedings for the offence concerned are proceedings in which the victim to whom the victim impact statement relates is entitled to give evidence by means of closed-circuit television arrangements, the victim is also entitled to read out the victim's victim impact statement in accordance with those closed-circuit television arrangements.

**30K Other victims may read their victim impact statements in closed court or by CCTV with leave of court**

- (1) Any victim may request that the court give leave to the victim to read out the victim's victim impact statement in closed court or by means of closed-circuit television arrangements.
- (2) In determining whether to grant leave to the victim to read out the victim's victim impact statement in closed court, the court is to consider—
  - (a) whether it is reasonably practicable to exclude the public, and
  - (b) whether special reasons in the interests of justice require the statement to be read in open court, and
  - (c) any other matter that the court considers relevant.
- (3) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the statement to be read in open court.
- (4) In determining whether to grant leave to the victim to read out the victim's victim impact statement by means of closed-circuit television arrangements, the court is to consider—
  - (a) whether the facilities necessary to do so are available or could reasonably be made available, and
  - (b) any other matter that the court considers relevant.

(5) This section does not apply to a victim to whom section 30I or 30J relates.

### **Subdivision 5 Special provisions regarding forensic patients**

#### **30L Victim impact statements where verdict of act proven but not criminally responsible**

- (1) A court may accept a victim impact statement after—
  - (a) a special verdict of act proven but not criminally responsible (whether or not following a special hearing) under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, or
  - (b) a verdict following a special hearing under that Act, that, on the limited evidence available, an accused person committed an offence.
- (2) A court must acknowledge receipt of the victim impact statement.
- (3) A court may consider a victim impact statement when it considers what conditions are to be imposed on the release of the accused person.
- (4) A court is not to consider a victim impact statement when determining the limiting term to be imposed on an accused person.
- (5) A court must not consider a victim impact statement under this section unless it has been prepared by the victim to whom it relates and tendered by the prosecutor.
- (6) Section 30E does not apply to a victim impact statement received by a court under this section.
- (7) For the purposes of the definitions of **family victim** and **primary victim** in this Division, an offence is taken to have been committed by an accused person referred to in subsection (1).

#### **30M Submissions by designated carers and principal care providers**

- (1) A court may seek a submission by the designated carer or principal care provider of an accused person after—
  - (a) a special verdict of act proven but not criminally responsible (whether or not following a special hearing) under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, or
  - (b) a verdict following a special hearing under that Act, that, on the limited evidence available, the accused person committed an offence.
- (2) The regulations may make provision for or with respect to submissions under this section.
- (3) In this section, **designated carer** and **principal care provider** have the same

meanings as in the [Mental Health Act 2007](#).

### **30N Victim impact statements in mental health and cognitive impairment forensic proceedings**

- (1) A victim may request that a court not disclose the whole or part of a victim impact statement received by the court under section 30L to the accused person or that the statement not be read out to the court.
- (2) The court is to agree to a request of a victim not to disclose the whole or part of a victim impact statement to the accused person or that a statement not be read out to the court unless the court considers that it is not in the interests of justice to agree to the request.

**Note—**

Among other things that may be considered by the court is the question of procedural fairness to the accused person.

- (3) This section does not prevent the court from disclosing the whole or part of a victim impact statement to an Australian legal practitioner representing the accused person, on the condition that the statement is not to be disclosed to any other person, if the court is satisfied that it is in the interests of justice to do so.
- (4) The court is required to give a copy of the victim impact statement to the Mental Health Review Tribunal constituted by the [Mental Health Act 2007](#), in accordance with the regulations, as soon as practicable after the court makes a decision that results in the accused person becoming a forensic patient within the meaning of that Act.
- (5) The regulations may make provision for or with respect to the requirements and procedures for victim impact statements in proceedings under the [Mental Health and Cognitive Impairment Forensic Provisions Act 2020](#).

## **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 an intensive correction order or community correction 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 or 11.

***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 or by a person, or a person belonging to a class of persons, prescribed by the regulations.
- (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 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.
- (6) A failure to comply with the requirements of this section does not invalidate any sentence imposed by the court for the principal offence.

### **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.

### **35A Consultation with victim and police in relation to charge negotiations**

- (1) In this section—

***charge negotiations*** means negotiations between the prosecution and an offender with respect to a plea of guilty in relation to an offence other than the principal offence concerned.



**prosecution guidelines** means prosecution guidelines in relation to charge negotiations issued by the Director of Public Prosecutions.

**requisite consultation** means consultation with the victim and the police officer in charge of investigating an offence that complies with the applicable prosecution guidelines.

**victim** has the same meaning as it has in section 26.

- (2) A court must not take into account offences other than the principal offence, or any statement of agreed facts, that was the subject of charge negotiations unless the prosecutor has filed a certificate with the court verifying that—
  - (a) the requisite consultation has taken place or, if consultation has not taken place, the reasons why it has not occurred, and
  - (b) any statement of agreed facts arising from the negotiations tendered to the court constitutes a fair and accurate account of the objective criminality of the offender having regard to the relevant and provable facts or has otherwise been settled in accordance with the applicable prosecution guidelines.
- (3) The certificate must be signed by or on behalf of the Director of Public Prosecutions or by a person, or a person belonging to a class of persons, prescribed by the regulations.
- (4) A certificate is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person 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.
- (5) The court may require the prosecution to explain the reason for a failure to file a certificate when it is required by this section to do so.

## 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 an intensive correction order, community correction order or conditional release order, or

- (c) (Repealed)
- (c1) make a non-association order or place restriction order, or
- (d) make an order under section 10 or 11, or
- (e) make an order or direction with respect to restitution, compensation, costs, forfeiture, destruction, disqualification or loss, suspension or variation 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) Unless imposing an aggregate sentence of imprisonment, 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).
- (2A) Without affecting the requirement to set a non-parole period for a sentence, a court imposing an aggregate sentence of imprisonment in respect of 2 or more offences on an offender may set one non-parole period for all the offences to which the sentence relates after setting the term of the sentence.
- (2B) The term of the sentence that will remain to be served after the non-parole period set for the aggregate sentence of imprisonment is served must not exceed one-third of the non-parole period, 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).
- (2C) The court need not indicate the non-parole period that would have been imposed for each offence had separate sentences been imposed instead of an aggregate sentence unless it is required to do so by section 54B.
- (3) The failure of a court to comply with subsection (2), (2B) or (2C) 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 or, in the case of an aggregate sentence of imprisonment, for offences, a court may decline to set a non-parole period for the offence or offences 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, or of each of the offences to which an aggregate 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.
- (1A) A court may decline to set a non-parole period for a sentence of imprisonment, or an aggregate sentence of imprisonment, for an offence or offences set out in the Table to Division 1A of this Part only if the term of the sentence is at least as long as the term of the non-parole period that the court would have set for the sentence if a non-parole period had been set in accordance with that Division.
- (1B) Subsection (1A) does not apply in relation to the sentencing of an offender in respect of an offence—
  - (a) which is being dealt with summarily, or
  - (b) if the offender was under the age of 18 years at the time the offence was committed.
- (2) If a court declines to set a non-parole period for a sentence of imprisonment or an aggregate 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**

- (1) 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.
- (2) For the avoidance of doubt, subsection (1) does not apply to a court imposing an aggregate sentence of imprisonment in respect of 2 or more offences for a term exceeding 6 months. This subsection has effect even if the sentence that would have been imposed for any of those offences would have been 6 months or less (as referred

to in section 53A (2) (b)).

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

- (1) A sentence of imprisonment commences, subject to section 71 and to any direction under subsection (2), on the day on which the sentence is imposed.
- (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 or, in the case of an aggregate sentence of imprisonment, any of the offences 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 (or an aggregate 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 (or an aggregate 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, or to an aggregate



sentence of imprisonment for 2 or more offences, 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**

- (1) The term of a sentence of imprisonment (other than an aggregate 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.

(2) The term of an aggregate sentence of imprisonment—

- (a) must not be more than the sum of the maximum periods of imprisonment that could have been imposed if separate sentences of imprisonment had been imposed in respect of each offence to which the sentence relates, and
- (b) must not be less than the shortest term of imprisonment (if any) that must be imposed for any separate offence or, if the sentence relates to more than one such offence, must not be less than the shortest term of imprisonment that must be imposed for any of the offences.

### **50-51B (Repealed)**

### **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 a sentence of imprisonment on an offender in relation to more than one offence, the court must (unless imposing an aggregate sentence of imprisonment in accordance with section 53A) comply with the requirements of this Division by imposing a separate sentence in relation to each offence.
- (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.

### **53A Aggregate sentences of imprisonment**

- (1) A court may, in sentencing an offender for more than one offence, impose an aggregate sentence of imprisonment with respect to all or any 2 or more of those offences instead of imposing a separate sentence of imprisonment for each.
- (2) A court that imposes an aggregate sentence of imprisonment under this section on an offender must indicate to the offender, and make a written record of, the following—

- (a) the fact that an aggregate sentence is being imposed,
  - (b) the sentence that would have been imposed for each offence (after taking into account such matters as are relevant under Part 3 or any other provision of this Act) had separate sentences been imposed instead of an aggregate sentence.
- (3) Subsection (2) does not limit any requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) The term, and any non-parole period, set under this Division in relation to an aggregate 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.
- (5) An aggregate sentence of imprisonment is not invalidated by a failure to comply with this section.

### **53B Limitation on aggregate sentences imposed by Local Court**

For the avoidance of doubt, the Local Court may impose an aggregate sentence of imprisonment that does not exceed 5 years.

### **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 *Habitual Criminals Act 1957*, or
- (c) to detention under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

## **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 Table to this Division that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness.

### **54B Consideration of standard non-parole period in sentencing**

- (1) This section applies when a court imposes a sentence of imprisonment for an offence, or an aggregate sentence of imprisonment with respect to one or more offences, set

out in the Table to this Division.

- (2) The standard non-parole period for an offence is a matter to be taken into account by a court in determining the appropriate sentence for an offender, without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender.
- (3) The court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period and must identify in the record of its reasons each factor that it took into account.
- (4) When determining an aggregate sentence of imprisonment for one or more offences, the court is to indicate and make a written record of, for those offences to which a standard non-parole period applies, the non-parole period that it would have set for each such offence to which the aggregate sentence relates had it set a separate sentence of imprisonment for that offence.
- (5) If the court indicates under subsection (4) that it would have set a non-parole period for an offence that is longer or shorter than the standard non-parole period for the offence, the court must make a record of the reasons why it would have done so and must identify in the record of its reasons each factor that it took into account.
- (6) A requirement under this section for a court to make a record of reasons for setting a non-parole period that is longer or shorter than a standard non-parole period does not require the court to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from that of an offence to which the standard non-parole period is referable.
- (7) 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 and Cognitive Impairment Forensic Provisions Act 2020*.

- (2) This Division does not apply if the offence for which the offender is sentenced is dealt with summarily.
- (3) This Division does not apply to the sentencing of an offender in respect of an offence if the offender was under the age of 18 years at the time the offence was committed.

**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, council law enforcement 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
4AA	Section 33A (1) of the <i>Crimes Act 1900</i> (discharging a firearm with intent to cause grievous bodily harm)	9 years
4AB	Section 33A (2) of the <i>Crimes Act 1900</i> (discharging a firearm with intent to resist arrest or detention)	9 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

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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 61KD (1) of the <i>Crimes Act 1900</i> (aggravated sexual touching)	5 years
9B	Section 66DA of the <i>Crimes Act 1900</i> (sexual touching—child under 10)	8 years
10	Section 66A of the <i>Crimes Act 1900</i> (sexual intercourse—child under 10)	15 years
10A	Section 66B of the <i>Crimes Act 1900</i> (attempt, or assault with intent, to have sexual intercourse with a child under 10 years)	10 years
10B	Section 66C (1) of the <i>Crimes Act 1900</i> (sexual intercourse with a child 10–14 years)	7 years
10C	Section 66C (2) of the <i>Crimes Act 1900</i> (aggravated sexual intercourse with a child 10–14 years)	9 years
10D	Section 66C (4) of the <i>Crimes Act 1900</i> (aggravated sexual intercourse with a child 14–16 years)	5 years
10E	Section 66EB (2) of the <i>Crimes Act 1900</i> (procure a child under 14 years for unlawful sexual activity)	6 years
10F	Section 66EB (2) of the <i>Crimes Act 1900</i> (procure a child 14–16 years for unlawful sexual activity)	5 years
10G	Section 66EB (2A) of the <i>Crimes Act 1900</i> (meet a child under 14 years following grooming)	6 years
10H	Section 66EB (2A) of the <i>Crimes Act 1900</i> (meet a child 14–16 years following grooming)	5 years
10I	Section 66EB (3) of the <i>Crimes Act 1900</i> (groom a child under 14 years for unlawful sexual activity)	5 years
10J	Section 66EB (3) of the <i>Crimes Act 1900</i> (groom a child 14–16 years for unlawful sexual activity)	4 years
10K	Section 91D (1) of the <i>Crimes Act 1900</i> (induce a child under 14 years to participate in child prostitution)	6 years
10L	Section 91E (1) of the <i>Crimes Act 1900</i> (obtain benefit from child prostitution, child under 14 years)	6 years
10M	Section 91G (1) of the <i>Crimes Act 1900</i> (use a child under 14 years for child abuse material purposes)	6 years
10N	Section 93GA (1) of the <i>Crimes Act 1900</i> (fire a firearm at a dwelling-house or other building with reckless disregard for the safety of any person)	5 years

100	Section 93GA (1A) of the <i>Crimes Act 1900</i> (fire a firearm, during a public disorder, at a dwelling-house or other building with reckless disregard for the safety of any person)	6 years
10P	Section 93GA (1B) of the <i>Crimes Act 1900</i> (fire a firearm, in the course of an organised criminal activity, at a dwelling-house or other building with reckless disregard for the safety of any person)	6 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)	9 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	10 years
17	(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  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	15 years
	(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	

18	Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying 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
19	Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying 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 not less than the large commercial quantity of that prohibited drug	15 years
20	Section 7 of the <i>Firearms Act 1996</i> (unauthorised possession or use of firearms)	4 years
21	Section 51 (1A) or (2A) of the <i>Firearms Act 1996</i> (unauthorised sale of prohibited firearm or pistol)	10 years
22	Section 51B of the <i>Firearms Act 1996</i> (unauthorised sale of firearms on an ongoing basis)	10 years
23	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)	10 years
24	Section 7 of the <i>Weapons Prohibition Act 1998</i> (unauthorised possession or use of prohibited weapon)—where the offence is prosecuted on indictment	5 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).

(1A) A sentence of imprisonment to which this section applies must be imposed after any

other sentence of imprisonment that is imposed in the same proceedings.

- (2) A sentence of imprisonment to which this section applies 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 Court**

- (1) The 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 the Local Court or the Children’s Court, or
    - (ii) the existing sentence (or, if more than one, each of them) was imposed by the

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.

- (3A) In addition, this section does not apply if the new sentence relates to an offence against the regulations under the *Crimes (Administration of Sentences) Act 1999* involving—
- (a) introducing or supplying (or attempting to introduce or supply) a drug, alcohol or other substance prohibited by those regulations into a place of detention, or
  - (b) introducing or supplying (or attempting to introduce or supply) syringes into a place of detention, or
  - (c) possessing an offensive weapon or instrument within the meaning of the *Crimes Act 1900*, or
  - (d) possessing a mobile phone, a mobile phone SIM card or mobile phone charger (or any part of these).

- (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 2A Provisional sentencing for child offenders

### 60A Definitions

In this Division—

**case plan** means a plan of management for an offender.

**final sentence** means a sentence imposed as a final sentence under this Division.

**ordinary sentence** means a sentence imposed otherwise than under the powers conferred by this Division.

**person responsible for the detention of the offender** means—

- (a) in the case of an offender detained or proposed to be detained in a detention centre—the Secretary of the Department of Justice, or
- (b) in the case of an offender detained or proposed to be detained in a mental health facility (within the meaning of the [Mental Health Act 2007](#))—the Secretary of the Ministry of Health, or
- (c) in the case of an offender detained or proposed to be detained in a correctional centre—the Commissioner of Corrective Services or, if no person holds that position, the Secretary of the Department of Justice.

**progress review**—see section 60E.

**provisional sentence** means a sentence imposed as a provisional sentence under this Division.

### 60B Power to impose provisional sentence

- (1) A court that imposes a sentence on an offender for the offence of murder may impose a sentence for that offence as a provisional sentence if—
  - (a) the offender was less than 16 years of age when the offence was committed, and
  - (b) the offender is less than 18 years of age when the provisional sentence is imposed, and
  - (c) the sentence proposed to be imposed for the offence is or includes a term of imprisonment, and

(d) the court is of the opinion that it is not appropriate to impose an ordinary sentence on the offender because the information presently available does not permit a satisfactory assessment of whether the offender has or is likely to develop a serious personality or psychiatric disorder, or a serious cognitive impairment, such that the court cannot satisfactorily assess either or both of the following matters—

- (i) whether the offender is likely to re-offend,
- (ii) the offender's prospects of rehabilitation.

(2) A court may impose a sentence as a provisional sentence of its own motion or on application of a party to the proceedings.

(3) A reference in this Division to a sentence for the offence of murder includes a reference to an aggregate sentence for the offence of murder and for one or more other offences.

#### **60C Case plan to be provided**

(1) A court that is considering imposing a provisional sentence on an offender may request a person responsible for the detention of the offender to provide information on the case plan or proposed case plan for the offender.

(2) The court may have regard to the case plan, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate to impose a provisional sentence.

#### **60D Effect of provisional sentence**

(1) A provisional sentence is subject to review and redetermination under this Division.

(2) The other Divisions of this Part apply in respect of a provisional sentence in the same way as they apply in respect of an ordinary sentence.

(3) A provisional sentence is not a sentence for an indeterminate period, for the purposes of Division 1, merely because it is subject to review and redetermination under this Division.

#### **60E Progress reviews**

(1) A court that imposes a provisional sentence on an offender is to review the offender's case from time to time for the purpose of deciding whether it is appropriate to impose a final sentence.

(2) Such a review is a ***progress review***.

(3) The court may conduct a progress review on application of a party to the proceedings in which the provisional sentence was imposed or of its own motion.

- (4) A progress review may be conducted as often as the court considers appropriate but must be conducted at least once every 2 years after the provisional sentence is imposed.
- (5) The court that conducts the progress review is, if practicable, to be constituted in the same way as the court that imposed the provisional sentence.
- (6) A progress review is to be conducted in the presence of the offender.

**60F Progress reports to be provided by person responsible for detention of an offender**

- (1) When a progress review is conducted by a court, the person responsible for the detention of the offender who is the subject of the progress review is to provide a report to the court about the offender's progress.
- (2) The report is to include the following—
  - (a) an assessment of the care and treatment of the offender while in custody,
  - (b) an assessment of the offender's psychiatric, cognitive and psychological development since the provisional sentence was imposed,
  - (c) such other matters as the court requires to be addressed in the report.
- (3) A court that conducts a progress review may also request any other person who, or body that, has responsibilities with respect to the care and treatment of the offender to provide information about the offender.
- (4) A court that conducts a progress review may have regard to the information obtained under this section, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate at that time to impose a final sentence on the offender.

**60G Final sentence**

- (1) A court may, after conducting a progress review—
  - (a) impose a final sentence on the offender, or
  - (b) decline to impose a final sentence on the offender.
- (2) A court imposes a final sentence by—
  - (a) setting aside the provisional sentence and substituting instead another sentence as the final sentence for the offender, or
  - (b) confirming the provisional sentence as the final sentence for the offender.
- (3) If the court sets aside the provisional sentence—

- (a) the term of imprisonment imposed under the final sentence is not to exceed the term of imprisonment imposed under the provisional sentence, and
  - (b) the non-parole period (if any) set for the final sentence is not to exceed the non-parole period set for the provisional sentence, and
  - (c) the final sentence imposed is taken to have commenced on the day on which the provisional sentence commenced.
- (4) Subject to this Division, this Part applies to a final sentence in the same way as it applies to an ordinary sentence.
- (5) A final sentence is not subject to review and redetermination under this Division.
- (6) A decision to decline to impose a final sentence on an offender is not a sentence and, accordingly, is not subject to appeal under the *Criminal Appeal Act 1912*.
- (7) A court that conducts a further progress review after having declined to impose a final sentence on an offender is to conduct that review as a fresh hearing in relation to the question of whether it is appropriate to impose a final sentence on the offender.

#### **60H Time limit for imposition of final sentence**

- (1) A final sentence must be imposed on an offender who is the subject of a provisional sentence before the expiry of the initial custodial period.
- (2) The ***expiry of the initial custodial period*** is—
- (a) the date that is 5 years after the date the provisional sentence is imposed, or
  - (b) the date that is one year before the date the non-parole period (if any) for the provisional sentence ends,
- whichever happens first.
- (3) A final sentence is not invalid merely because it is imposed after the expiry of the initial custodial period.

#### **60I Appeals**

- (1) On appeal against a provisional sentence, a court hearing the appeal that has power to vary the provisional sentence and substitute a new sentence (however expressed) may—
- (a) substitute a new provisional sentence, or
  - (b) substitute a final sentence.
- (2) If a provisional sentence is varied and a new provisional sentence is imposed by a court on appeal—



- (a) the functions of the court under this Division with respect to progress reviews and the imposition of a final sentence on the offender are to be exercised by the court that first imposed a provisional sentence on the offender, and not the appeal court, and
  - (b) a reference in this Division to the date on which the sentence is imposed is a reference to the date on which a provisional sentence for the relevant offence was first imposed (and not the date a new provisional sentence was imposed by the appeal court), and
  - (c) a reference in this Division to a term of imprisonment imposed, or non-parole period set, under a provisional sentence is a reference to a term of imprisonment imposed, or non-parole period set, under the new provisional sentence as imposed by the appeal court.
- (3) To avoid doubt, a court that imposes a provisional sentence that is varied on appeal can set aside the provisional sentence (as varied on appeal) under section 60G and substitute another sentence as the final sentence for the offender in accordance with this Division.

**Note—**

Appeals against provisional sentences can be made to the Court of Criminal Appeal under the [Criminal Appeal Act 1912](#). If the Court of Criminal Appeal varies the provisional sentence, the original sentencing court (and not the Court of Criminal Appeal) must conduct progress reviews and impose a final sentence. The final sentence can also be appealed under the [Criminal Appeal Act 1912](#).

## **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 in relation to the making of an intensive correction order, or

(b) to a sentence of imprisonment that is the subject of an intensive correction 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 intensive correction 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 Justice 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 intensive correction orders**

### **Division 1 Preliminary**

#### **64 Application**

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

#### **65 Definition**

In this Part—

**assessment report**, in relation to an offender, means an assessment report within the meaning of Division 4B of Part 2 made in respect of the offender.

### **Division 2 Restrictions on power to make intensive correction orders**

## 66 Community safety and other considerations

- (1) Community safety must be the paramount consideration when the sentencing court is deciding whether to make an intensive correction order in relation to an offender.
- (2) When considering community safety, the sentencing court is to assess whether making the order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending.
- (3) When deciding whether to make an intensive correction order, the sentencing court must also consider the provisions of section 3A (Purposes of sentencing) and any relevant common law sentencing principles, and may consider any other matters that the court thinks relevant.

## 67 Intensive correction order not available for certain offences

- (1) An intensive correction order must not be made in respect of a sentence of imprisonment for any of the following offences—
  - (a) murder or manslaughter,
  - (b) a prescribed sexual offence,
  - (c) a terrorism offence within the meaning of the *Crimes Act 1914* of the Commonwealth or an offence under section 310J of the *Crimes Act 1900*,
  - (d) an offence relating to a contravention of a serious crime prevention order under section 8 of the *Crimes (Serious Crime Prevention Orders) Act 2016*,
  - (e) an offence relating to a contravention of a public safety order under section 87ZA of the *Law Enforcement (Powers and Responsibilities) Act 2002*,
  - (f) an offence involving the discharge of a firearm,
  - (g) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraphs (a)–(f),
  - (h) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraphs (a)–(g).

- (2) For the purposes of this section—

**Commonwealth Criminal Code** means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

**firearm** means a firearm as defined in the *Firearms Act 1996*.

**prescribed sexual offence** means—

- (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, being—

- (i) an offence the victim of which is a person under the age of 16 years, or
  - (ii) an offence the victim of which is a person of any age and the elements of which include sexual intercourse (as defined by section 61H of that Act), or
  - (b) an offence under section 91D, 91E, 91F, 91G or 91H of the *Crimes Act 1900*, or
  - (c) an offence under section 91J, 91K or 91L of the *Crimes Act 1900*, being an offence the victim of which is a person under the age of 16 years, or
  - (d) an offence against section 50BA, 50BB, 50BC, 50BD, 50DA or 50DB of the *Crimes Act 1914* of the Commonwealth, being an offence the victim of which was a person under the age of 16 years, or
  - (e) an offence against section 71.8, 71.12, 271.4, 271.7, 272.8 (1) or (2), 272.9 (1) or (2), 272.10 (1), 272.11 (1), 272.12 (1) or (2), 272.13 (1) or (2), 272.14 (1), 272.15 (1), 272.18 (1), 272.19 (1), 272.20 (1) or (2), 273.5, 273.6, 273.7, 471.16 (1) or (2), 471.17 (1), 471.19 (1) or (2), 471.20 (1), 471.22 (1), 471.24, 471.25, 471.26, 474.19 (1), 474.20 (1), 474.22 (1), 474.23 (1), 474.24A (1), 474.25A (1) or (2), 474.25B (1), 474.26, 474.27 (1), (2) or (3), 474.27A of the Commonwealth Criminal Code, being an offence the victim of which was a person under the age of 16 years, or
  - (f) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or child abuse material, or
  - (g) an offence that, at the time it was committed, was a prescribed sexual offence within the meaning of this definition.
- (3) To avoid doubt, subsection (1) extends to a sentence of imprisonment for 2 or more offences any 1 of which includes an offence referred to in that subsection.

#### **68 Intensive correction orders not available where imprisonment exceeds limits**

- (1) An intensive correction order must not be made in respect of a single offence if the duration of the term of imprisonment imposed for the offence exceeds 2 years.
- (2) An intensive correction order may be made in respect of an aggregate sentence of imprisonment. However, the order must not be made if the duration of the term of the aggregate sentence exceeds 3 years.
- (3) Two or more intensive correction orders may be made in respect of each of 2 or more offences. However, the orders must not be made if—
  - (a) the duration of the term of any individual term of imprisonment exceeds 2 years, and
  - (b) the duration of the term of imprisonment imposed for all the offences exceeds 3

years.

### **69 Assessment of suitability of offender for intensive correction order**

- (1) In deciding whether or not to make an intensive correction order, the sentencing court is to have regard to—
  - (a) the contents of any assessment report obtained in relation to the offender, and
  - (b) evidence from a community corrections officer and any other information before the court that the court considers necessary for the purpose of deciding whether to make such an order.
- (2) Subject to section 73A (3), the sentencing court is not bound by the assessment report.
- (3) The sentencing court may not make an intensive correction order in respect of an offender who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the regulations to be an approved jurisdiction.

## **Division 3 Term and commencement**

### **70 Term of intensive correction order**

Unless sooner revoked, the term of an intensive correction order is the same as the term or terms of imprisonment in respect of which the order is made.

**Note—**

Section 68 contains provisions regarding the term or terms of imprisonment in respect of which intensive correction orders may be made.

### **71 Commencement of intensive correction order**

- (1) An intensive correction order commences on the date on which it is made.
- (2) Subsection (1) does not apply to an intensive correction order made in relation 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 an intensive correction order.

## **Division 4 Conditions**

### **72 Conditions generally**

An intensive correction order is subject to the following conditions—

- (a) standard conditions imposed by the sentencing court under section 73,
- (b) any additional conditions imposed by the sentencing court under section 73A,

- (c) any further conditions imposed by the sentencing court under section 73B,
- (d) any conditions imposed by the Parole Authority under section 81A or 164 of the *Crimes (Administration of Sentences) Act 1999*.

**Note 1—**

Provisions relating to a breach of obligations under an intensive correction order are contained in sections 163 and 164 of the *Crimes (Administration of Sentences) Act 1999*.

**Note 2—**

After an offender is sentenced by the sentencing court, conditions of an intensive correction order are imposed, varied or revoked by the Parole Authority rather than the court.

**73 Standard conditions**

- (1) The sentencing court must at the time of sentence impose on an intensive correction order the standard conditions of an intensive correction order.
- (2) The standard conditions of an intensive correction order are the following—
  - (a) a condition that the offender must not commit any offence,
  - (b) a condition that the offender must submit to supervision by a community corrections officer.

**Note—**

Regulations may be made under the *Crimes (Administration of Sentences) Act 1999* to prescribe the offender's obligations under a standard condition of an intensive correction order.

**73A Additional conditions**

- (1) In addition to the standard conditions, the sentencing court must at the time of sentence impose on an intensive correction order at least 1 of the additional conditions referred to in subsection (2).
- (1A) Despite subsection (1), the sentencing court is not required to impose an additional condition if the court is satisfied there are exceptional circumstances.
- (1B) The sentencing court must make a record of its reasons for not imposing an additional condition. The failure of the sentencing court to do so does not invalidate the sentence.
- (2) The additional conditions of an intensive correction order that are available to be imposed are the following conditions (as directed by the sentencing court)—
  - (a) a home detention condition,
  - (b) an electronic monitoring condition,

- (c) a curfew condition imposing a specified curfew,
  - (d) a community service work condition requiring the performance of community service work for a specified number of hours (not exceeding 750 hours or the number of hours prescribed by the regulations in respect of the class of offences to which the relevant offence belongs, whichever is the lesser),
  - (e) a rehabilitation or treatment condition requiring the offender to participate in a rehabilitation program or to receive treatment,
  - (f) an abstention condition requiring abstention from alcohol or drugs or both,
  - (g) a non-association condition prohibiting association with particular persons,
  - (h) a place restriction condition prohibiting the frequenting of or visits to a particular place or area.
- (3) The sentencing court must not impose a home detention condition or community service work condition on an intensive correction order unless an assessment report states that the offender is suitable to be the subject of such a condition.

**Note—**

The provisions of section 17D (2), (3) and (4) refer specifically to assessment reports regarding home detention conditions and community service work conditions.

- (4) The sentencing court may limit the period during which an additional condition imposed by it on an intensive correction order is in force.

**Note—**

Regulations may be made under the *Crimes (Administration of Sentences) Act 1999* to prescribe the offender's obligations under an additional condition of an intensive correction order.

- (5) The period during which a community service work condition requiring the performance of a specified number of hours of community service work is in force must not be less than the period prescribed by the regulations in respect of the specified number of hours of community service work.

### **73B Further conditions**

- (1) The sentencing court may at the time of sentence impose further conditions on an intensive correction order.
- (2) This section does not permit the sentencing court to impose any further conditions so as to be inconsistent with—
- (a) any of the standard conditions of an intensive correction order, or
  - (b) any of the additional conditions (whether or not imposed on the intensive correction order) referred to in section 73A (2).



- (3) The sentencing court may limit the period during which a further condition imposed by it on an intensive correction order is in force.

## **Part 6**

### **74-83 (Repealed)**

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

### **Division 1 Preliminary**

#### **84 Application**

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

### **Division 2 Term and commencement**

#### **85 Term of community correction order**

- (1) The term of a community correction order is the period specified in the order.
- (2) The maximum term of a community correction order is 3 years.

#### **86 Commencement of community correction order**

A community correction order commences on the date on which it is made.

### **Division 3 Conditions**

#### **87 Conditions generally**

A community correction order is subject to the following conditions—

- (a) standard conditions imposed by the sentencing court under section 88,
- (b) any additional conditions imposed by the sentencing court under section 89,
- (c) any further conditions imposed by the sentencing court under section 90.

#### **88 Standard conditions**

- (1) The sentencing court must at the time of sentence impose on a community correction order the standard conditions of a community correction order.
- (2) The standard conditions of a community correction order are the following—
  - (a) a condition that the offender must not commit any offence,
  - (b) a condition that the offender must appear before the court if called on to do so at any time during the term of the community correction order.

**Note—**

Regulations may be made under the *Crimes (Administration of Sentences) Act 1999* to prescribe the offender's obligations under a standard condition of a community correction order.

**89 Additional conditions**

- (1) The sentencing court may at the time of sentence, or subsequently on the application of a community corrections officer or juvenile justice officer or the offender—
  - (a) impose on a community correction order any of the additional conditions of a community correction order, or
  - (b) vary or revoke any such additional conditions imposed by it on a community correction order.
- (2) The additional conditions of a community correction order that are available to be imposed are the following conditions (as directed by the sentencing court)—
  - (a) a curfew condition imposing a specified curfew (not exceeding 12 hours in any period of 24 hours),
  - (b) a community service work condition requiring the performance of community service work for a specified number of hours (not exceeding 500 hours or the number of hours prescribed by the regulations in respect of the class of offences to which the relevant offence belongs, whichever is the lesser),
  - (c) a rehabilitation or treatment condition requiring the offender to participate in a rehabilitation program or to receive treatment,
  - (d) an abstention condition requiring abstention from alcohol or drugs or both,
  - (e) a non-association condition prohibiting association with particular persons,
  - (f) a place restriction condition prohibiting the frequenting of or visits to a particular place or area,
  - (g) a supervision condition requiring the offender to submit to supervision—
    - (i) by a community corrections officer, except as provided by subparagraph (ii), or
    - (ii) if the offender was under the age of 18 years when the condition was imposed, by a juvenile justice officer until the offender has reached that age.
- (2A) The functions of a community corrections officer under a supervision condition may be exercised by a juvenile justice officer and the functions of a juvenile justice officer under a supervision condition may be exercised by a community corrections officer, in accordance with any arrangements between Corrective Services NSW and Juvenile Justice NSW.

- (3) An additional condition of any of the following kinds must not be imposed on a community correction order—
- (a) a home detention condition,
  - (b) an electronic monitoring condition,
  - (c) a curfew condition imposing a curfew exceeding 12 hours in any period of 24 hours.
- (4) The sentencing court must not impose a community service work condition on a community correction order unless an assessment report states that the offender is suitable to be the subject of such a condition.

**Note—**

The provisions of section 17D (4) refer specifically to assessment reports regarding community service work conditions.

- (4A) The sentencing court may not impose a supervision condition on a community correction order in respect of an offender who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the regulations to be an approved jurisdiction.
- (4B) The sentencing court may not impose a community service work condition on a community correction order in respect of an offender who resides, or intends to reside, in another State or Territory, unless—
- (a) the court is satisfied that the offender is able and willing to travel to New South Wales to complete the community service work, or
  - (b) the State or Territory is declared by the regulations to be an approved jurisdiction.
- (4C) The period during which a community service work condition requiring the performance of a specified number of hours of community service work is in force must not be less than the period prescribed by the regulations in respect of the specified number of hours of community service work.
- (5) The sentencing court may limit the period during which an additional condition on a community correction order is in force.

**Note—**

Regulations may be made under the [Crimes \(Administration of Sentences\) Act 1999](#) to prescribe the offender's obligations under an additional condition of a community correction order.

## 90 Further conditions

- (1) The sentencing court may at the time of sentence, or subsequently on the application of a community corrections officer or juvenile justice officer or the offender—
- (a) impose further conditions on a community correction order, or

(b) vary or revoke any such further conditions imposed by it on a community correction order.

(2) This section does not permit the sentencing court to impose any further conditions, or vary any such further conditions, if the conditions as imposed or varied—

(a) would be inconsistent with—

(i) any of the standard conditions of a community correction order, or

(ii) any of the additional conditions (whether or not actually imposed on the community correction order) referred to in section 89 (2), or

(b) would not be permitted under section 89 (3).

(3) The sentencing court may limit the period during which a further condition on a community correction order is in force.

#### **91 Power of court in dealing with applications**

(1) The sentencing court may refuse to consider an application by the offender under section 89 or 90 if the court is satisfied that the application is without merit.

(2) The sentencing court may, with the consent of the community corrections officer or juvenile justice officer and the offender, deal with the application with or without parties being present and in open court or in the absence of the public.

(3) To avoid doubt, a court may deal with an application even though the court is constituted differently from the court as constituted at the time of the sentence.

#### **92, 93 (Repealed)**

### **Part 8 Sentencing procedures for conditional release orders**

#### **Division 1 Preliminary**

##### **94 Application**

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

#### **Division 2 Term and commencement**

##### **95 Term of conditional release order**

(1) The term of a conditional release order is the period specified in the order.

(2) The maximum term of a conditional release order is 2 years.

## **96 Commencement of conditional release order**

A conditional release order commences on the date on which it is made.

## **Division 3 Conditions**

### **97 Conditions generally**

A conditional release order is subject to the following conditions—

- (a) standard conditions imposed by the sentencing court under section 98,
- (b) any additional conditions imposed by the sentencing court under section 99,
- (c) any further conditions imposed by the sentencing court under section 99A.

#### **Note—**

Provisions relating to a breach of obligations under a conditional release order are contained in section 108C of the [Crimes \(Administration of Sentences\) Act 1999](#).

### **98 Standard conditions**

- (1) The sentencing court must at the time of sentence impose on a conditional release order the standard conditions of a conditional release order.
- (2) The standard conditions of a conditional release order are the following—
  - (a) a condition that the offender must not commit any offence,
  - (b) a condition that the offender must appear before the court if called on to do so at any time during the term of the conditional release order.

#### **Note—**

Regulations may be made under the [Crimes \(Administration of Sentences\) Act 1999](#) to prescribe the offender's obligations under a standard condition of a conditional release order.

### **99 Additional conditions**

- (1) The sentencing court may at the time of sentence, or subsequently on the application of a community corrections officer or juvenile justice officer or the offender—
  - (a) impose on a conditional release order any of the additional conditions of a conditional release order, or
  - (b) vary or revoke any such additional conditions imposed by it on a conditional release order.
- (2) The additional conditions of a conditional release order that are available to be imposed are the following (as directed by the sentencing court)—

- (a) a rehabilitation or treatment condition requiring the offender to participate in a rehabilitation program or to receive treatment,
  - (b) an abstention condition requiring abstention from alcohol or drugs or both,
  - (c) a non-association condition prohibiting association with particular persons,
  - (d) a place restriction condition prohibiting the frequenting of or visits to a particular place or area,
  - (e) a supervision condition requiring the offender to submit to supervision—
    - (i) by a community corrections officer, except as provided by subparagraph (ii), or
    - (ii) if the offender was under the age of 18 years when the condition was imposed, by a juvenile justice officer until the offender has reached that age.
- (2A) The functions of a community corrections officer under a supervision condition may be exercised by a juvenile justice officer and the functions of a juvenile justice officer under a supervision condition may be exercised by a community corrections officer, in accordance with any arrangements between Corrective Services NSW and Juvenile Justice NSW.
- (3) An additional condition of any of the following kinds must not be imposed on a conditional release order—
- (a) a home detention condition,
  - (b) an electronic monitoring condition,
  - (c) a curfew condition,
  - (d) a community service work condition.
- (3A) The sentencing court may not impose a supervision condition on a conditional release order in respect of an offender who resides, or intends to reside, in another State or Territory, unless the State or Territory is declared by the regulations to be an approved jurisdiction.
- (4) The sentencing court may limit the period during which an additional condition on a conditional release order is in force.

**Note—**

Regulations may be made under the *Crimes (Administration of Sentences) Act 1999* to prescribe the offender's obligations under an additional condition of a conditional release order.

**99A Further conditions**

- (1) The sentencing court may at the time of sentence, or subsequently on the application of a community corrections officer or juvenile justice officer or the offender—

- (a) impose further conditions on a conditional release order, or
  - (b) vary or revoke any such further conditions imposed by it on a conditional release order.
- (2) This section does not permit the sentencing court to impose any further conditions, or vary any such further conditions, if the condition as imposed or varied—
- (a) would be inconsistent with—
    - (i) any of the standard conditions of a conditional release order, or
    - (ii) any of the additional conditions (whether or not actually imposed on the conditional release order) referred to in section 99 (2), or
  - (b) would not be permitted under section 99 (3).
- (3) The sentencing court may limit the period during which a further condition on a conditional release order is in force.

#### **100 Power of court in dealing with applications**

- (1) The sentencing court may refuse to consider an application by the offender under section 99 or 99A if the court is satisfied that the application is without merit.
- (2) The sentencing court may, with the consent of the community corrections officer or juvenile justice officer and the offender, deal with the application with or without parties being present and in open court or in the absence of the public.
- (3) To avoid doubt, a court may deal with an application even though the court is constituted differently from the court as constituted at the time of the sentence.

### **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.
- (1A) Despite subsection (1), a member of the offender's close family may be specified in a non-association order if, and only if, the court considers that exceptional circumstances exist because there is reasonable cause to believe, having regard to the ongoing nature and pattern of criminal activity in which the member and the offender have both participated, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17A applies if the offender associates with that member.
- (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, or
- (e) any place at which the offender regularly receives a health service or a welfare service, or
- (f) any place at which the offender is provided with legal services by an Australian legal practitioner or by an organisation employing or otherwise using at least one Australian legal practitioner to provide such services,

as at the time the order is made.

(2A) Despite subsection (2), a place or district referred to in that subsection may be specified in a place restriction order if, and only if, the court considers that exceptional circumstances exist because there is reasonable cause to believe, having regard to the ongoing nature and pattern of participation of the offender in criminal activity occurring at that place or district, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17A applies if the offender frequents or visits that place or district.

(2B) The court must make a record of its reasons for making an order under subsection (1A) or (2A).

(2C) The failure of a court to comply with subsection (2B) does not invalidate the order.

(3) In this section, an offender's **close family** includes—

- (a) the offender's spouse or de facto 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, and
- (f) in the case of an offender who is an Aboriginal person or a Torres Strait Islander—persons who are or have been part of the extended family or kin of the offender according to the indigenous kinship system of the offender's culture.



(4) In this section—

**health service** means any medical, hospital, ambulance, paramedical, dental, community health or environmental health service or any other service (including any service of a class or description prescribed by the regulations) relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in, or injury to, persons and whether provided as a public or private service.

**welfare service** means services (whether provided as public or private services) relating to the provision of housing, employment benefits, rental assistance or other financial assistance, family support and other community welfare services necessary for the promotion, protection, development and maintenance of the well-being of persons.

#### **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 person employed in the Department of 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 the Local Court for variation or revocation of the order, regardless of whether the order was made by the 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 NSW Police Force,
  - (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 16 members appointed by the Minister, of whom—
  - (a) one is to be a retired judicial officer (not being a retired Magistrate), and
    - (a1) one is to be a retired Magistrate, and
    - (b) one is to have expertise or experience in law enforcement, and
  - (c) four 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 Department of Justice, and
  - (i) one is to have academic or research expertise or experience of relevance to the functions of the Sentencing Council.
- (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 Department of Justice (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 Public Service agency 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—

(a) issue a warrant for the offender's arrest, or

(b) authorise an authorised officer to issue a warrant for the offender's arrest.

(2A) 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.

(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 100R (2) or (2A).
- (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.

## 107 Review of Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014

(1) In this section—

**family member victim impact statement amendments** means the amendments made by the *Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014*.

(2) The Minister is to review the operation of the family member victim impact statement amendments to determine the effect of those amendments.

(3) The review required by this section is to be undertaken as soon as possible after the period of 3 years from the commencement of the family member victim impact statement amendments.

(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 3 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, 61JA or 66A (2) 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) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to 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 a majority of its members for the time being.

## **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*

*Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008*

*Crimes Amendment (Sexual Offences) Act 2008*

*Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* (but only to the extent that it amends this Act or an Act amended by Schedule 5 to that Act)

*Crimes (Sentencing Procedure) Amendment Act 2010* (but only to the extent that it amends this Act)

*Courts and Other Legislation Amendment Act 2011* (but only to the extent that it amends this Act)

*Crimes (Sentencing Procedure) Amendment (Children in Vehicles) Act 2011*

*Criminal Case Conferencing Trial Repeal Act 2012*

*Graffiti Legislation Amendment Act 2012* (but only to the extent that it amends this Act)

any Act that amends this Act

- (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.

## Part 18 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008

### 58 Application of amendments

- (1) An amendment made to this Act by the *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2008* applies in respect of any victim impact statement that is first received by a court after the commencement of the amendment.
- (2) This Act, as in force immediately before any such amendment, continues to apply in respect of any victim impact statement received by a court before the commencement of the amendment.

## Part 19 Provisions consequent on enactment of Crimes Amendment (Sexual Offences) Act 2008

### 59 Existing offences and proceedings

- (1) An amendment made to Part 3 of this Act by the *Crimes Amendment (Sexual Offences) Act 2008* applies 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 and the plea has not been withdrawn, before the commencement of the amendment.
- (2) In this clause—

**convict** includes make a finding of guilt.

## 60 Standard non-parole periods

- (1) An amendment made to section 54D by the *Crimes Amendment (Sexual Offences) Act 2008* does not affect any sentence imposed before the commencement of that amendment.
- (2) The Table to Division 1A of Part 4, as in force immediately before its amendment by the *Crimes Amendment (Sexual Offences) Act 2008*, continues to apply in respect of an offence against section 66A of the *Crimes Act 1900* committed before the commencement of the amendment.

## Part 20 Provisions consequent on enactment of Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010

### 61 Savings for periodic detention orders

- (1) The repeal of section 6 (Periodic detention) does not affect the continuity of operation of a periodic detention order made before the repeal of that section. Such an order continues in force despite the repeal of that section, subject to this Act and the *Crimes (Administration of Sentences) Act 1999*.
- (2) This Act and each amended Act (and the regulations under this Act and each amended Act) continue to apply to and in respect of the following as if the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* had not been enacted—
  - (a) a periodic detention order made before the repeal of section 6,
  - (b) a person subject to such an order,
  - (c) the revocation of such an order and the reinstatement of such an order.
- (3) In this clause, **amended Act** means an Act amended by Schedule 5 to the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*.

## Part 21 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment Act 2010

### 62 Application of amendments

- (1) In this Part—

**amending Act** means the *Crimes (Sentencing Procedure) Amendment Act 2010*.
- (2) An amendment made by the amending Act applies 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 and the plea has not been withdrawn, before the commencement of the amendment concerned.

## **Part 21A Provisions consequent on enactment of [Courts and Other Legislation Amendment Act 2011](#)**

### **62A Effect of amendments**

Without limiting section 53 of the [Interpretation Act 1987](#), the amendment of section 100I by the [Courts and Other Legislation Amendment Act 2011](#) does not affect the appointment of any existing member of the Sentencing Council (including the appointment of the existing Chairperson of the Council).

## **Part 21B Provisions consequent on repeal of [Criminal Case Conferencing Trial Act 2008](#)**

### **62B Definitions**

In this Part—

**repeal date** means the date of assent to the [Criminal Case Conferencing Trial Repeal Act 2012](#).

**repealed Act** means the [Criminal Case Conferencing Trial Act 2008](#), as in force immediately before its repeal.

### **62C Effect of repeal of Act**

Except as provided by this Part, the repealed Act ceases to apply on and from the repeal date to and in respect of any proceedings for an offence to which the repealed Act applied immediately before the repeal date (regardless of what steps have been taken with respect to any compulsory conference under the repealed Act in the proceedings).

### **62D Continued operation of sentencing discount arrangements**

- (1) Part 4 (Sentences—guilty pleas) of the repealed Act continues to apply (as if it had not been repealed) to and in respect of the sentencing of an offender on or after the repeal date in proceedings for an offence to which the repealed Act applied immediately before the repeal date, but not to the sentencing of an offender who pleads guilty, on or after the repeal date, at any time after being committed for trial.
- (2) The repeal of the repealed Act does not affect a sentence imposed before the repeal date.

### **62E Continued operation of certain protections and offences**

The following provisions of the repealed Act continue to apply (as if the Act had not been

repealed)—

- (a) section 6 (4) of the repealed Act, to and in respect of the admissibility of evidence of anything said or admission made (as referred to in that provision) before the repeal date, in any proceedings before a court, tribunal or body commenced before, or on or after, that date,
- (b) section 9 (3) (as qualified by section 9 (7)) of the repealed Act, to and in respect of a pre-conference disclosure certificate filed with the Local Court before the repeal date, in relation to any Local Court proceedings with respect to the matters set out in it commenced before, or on or after, the repeal date,
- (c) section 12 (5) of the repealed Act, to and in respect of a compulsory conference certificate filed before the repeal date,
- (d) section 13 of the repealed Act, to and in respect of—
  - (i) the production and admissibility of a compulsory conference certificate filed before the repeal date (or a copy of such a certificate), in any proceedings before a court, tribunal or body commenced before, or on or after, that date, and
  - (ii) a disclosure of a compulsory conference certificate filed before the repeal date or a copy of such a certificate (or any of its contents) that occurs on or after the repeal date,

**Note—**

Section 13 (5) of the repealed Act creates an offence of disclosing the contents of a filed compulsory conference certificate (or copy) in contravention of section 13 (1) of the repealed Act.

- (e) section 14 of the repealed Act, to and in respect of a disclosure of information referred to in that section that occurs before, or on or after, the repeal date.

**62F General**

- (1) The provisions of this Part are subject to any regulations made under clause 1.
- (2) Except to the extent otherwise provided by this Part, nothing in this Part affects the application of section 30 of the *Interpretation Act 1987*.

**Part 22 Provision consequent on enactment of [Graffiti Legislation Amendment Act 2012](#)**

**63 Conditions of community service orders**

The amendments made by the *Graffiti Legislation Amendment Act 2012* apply to community service orders made in relation to offences committed after the commencement of the amendments.

## **Part 23 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013**

### **64 Provisional sentencing**

Division 2A of Part 4, as inserted by the *Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013*, applies in respect of any sentence imposed after the commencement of that Division (including for an offence committed before that commencement).

## **Part 24 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013**

### **65 Operation of amendments**

An amendment made by the *Crimes (Sentencing Procedure) Amendment (Standard Non-parole Periods) Act 2013* extends to an offence committed before the commencement of the amendment but does not affect any sentence imposed before the commencement of the amendment.

## **Part 25 Provision consequent on enactment of Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014**

### **66 Existing offences and proceedings**

The amendments made to this Act by the *Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014* 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.

## **Part 26 Provision consequent on Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014**

### **67 Application of amendments**

The amendments made to section 28 of this Act by the *Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014* 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.

## **Part 27 Provision consequent on enactment of Crimes Legislation Amendment (Child Sex Offences) Act 2015**

### **68 Standard non-parole periods**

The amendments made to this Act by the *Crimes Legislation Amendment (Child Sex Offences) Act 2015* do not apply to offences committed before the commencement of the amendments.

## **Part 28 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015**

### **69 Standard non-parole periods**

An amendment made to this Act by the *Crimes (Sentencing Procedure) Amendment (Firearms Offences) Act 2015* applies only in respect of an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

## **Part 29 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017**

### **Division 1 Preliminary**

#### **70 Definitions**

In this Part—

**amending Act** means the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017*.

**breach** of an order or bond includes a failure to comply with the obligations of the order or bond.

**commencement day** means the day on which the amending Act commences.

**Parole Authority** means the State Parole Authority constituted under the *Crimes (Administration of Sentences) Act 1999*.

**sentencing legislation** means the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* as respectively in force at any relevant time.

## Division 2 Existing bonds and orders

### 71 Existing home detention orders under section 6

- (1) This clause applies to a home detention order (***the home detention order***) made under section 6 before its repeal by the amending Act and in force immediately before the commencement day. A reference in this clause to the home detention order includes a reference to the sentence of imprisonment that is being served by way of home detention, including any period during which the offender is required to be subject to a parole order.
- (2) The home detention order is taken to be an intensive correction order (***the intensive correction order***) made under section 7 as substituted by the amending Act.
- (3) The sentence of imprisonment served by way of the home detention order is taken to be a sentence of imprisonment served by way of the intensive correction order.
- (4) The intensive correction order is on the commencement day subject only to—
  - (a) the standard conditions of an intensive correction order, and
  - (b) a home detention condition, and
  - (c) any conditions imposed under section 103 (1) (b) or (c) or section 103 (2) (a) of the *Crimes (Administration of Sentences) Act 1999* and in force immediately before the commencement day in respect of the home detention order, and
  - (d) any other conditions prescribed by or determined under the regulations.
- (5) Subject to this Act and the *Crimes (Administration of Sentences) Act 1999*, the intensive correction order operates for the same term as the home detention order.
- (6) A parole order made in relation to the home detention order ceases to have effect on and from the commencement day.
- (7) If a home detention order includes a period in which the offender is required to be subject to a parole order, the period during which the offender would have been subject to the parole order is to be served subject to the standard conditions of the intensive correction order only.
- (8) Without limitation, the regulations may make provision for or with respect to conditions that apply to intensive correction orders referred to in this clause.

**Note—**

Clause 125 of Schedule 5 to the *Crimes (Administration of Sentences) Act 1999* provides for the manner in which the Parole Authority is to exercise its functions under section 81A of that Act (Conditions—Parole Authority) in relation to the conditions of an intensive correction order referred to in this clause.

## 72 Existing intensive correction orders under section 7

- (1) This clause applies to an intensive correction order (***the intensive correction order***) made under section 7 before its substitution by the amending Act and in force immediately before the commencement day.
- (2) The intensive correction order is taken to have been made under section 7 as substituted by the amending Act.
- (3) The intensive correction order is on the commencement day subject only to—
  - (a) the standard conditions of an intensive correction order, and
  - (b) any conditions imposed under section 81 (3) of the *Crimes (Administration of Sentences) Act 1999* and in force immediately before the commencement day in respect of the intensive correction order, and
  - (c) a condition that requires the offender to undertake a minimum of 32 hours of community service work a month, as directed by a community corrections officer, and
  - (d) any other conditions prescribed by or determined under the regulations.
- (3A) An offender who is subject to a condition imposed under subclause (3) (c) is subject to the same obligations that are prescribed for the purposes of section 82 of the *Crimes (Administration of Sentences) Act 1999* for an offender who is subject to a community service work condition of an intensive correction order.
- (4) Sections 163 and 164 of the *Crimes (Administration of Sentences) Act 1999* as in force on or after the commencement day apply to the intensive correction order in respect of action that may be taken for a breach of the order.
- (5) The conditions imposed on the intensive correction order by the court under section 81 of the *Crimes (Administration of Sentences) Act 1999* as in force before the commencement day cease to apply to the order. This subclause does not limit subclause (3) or (4).
- (6) The offender is compliant with the community service work condition referred to in subclause (3) (c) which provides for a minimum of 32 hours of community service work a month—
  - (a) to the extent the offender worked the scheduled hours at a work site, if the work was performed in accordance with directions of a community corrections officer or supervisor, including—
    - (i) tea and meal breaks to which the offender is entitled, and
    - (ii) time spent travelling to and from the work site, that a community corrections



officer considers appropriate, and

(b) to the extent (if any) the offender did not work the scheduled hours, if the offender (within 7 days of the failure to work)—

(i) provided a medical certificate to a community corrections officer that states the nature of the illness or injury and indicates that its nature or extent justifies the offender's failure to perform the work, or

(ii) provided another reason to a community corrections officer for the failure to work and the officer is satisfied that the reason is valid, and

(c) to the extent (if any) the offender did not work the scheduled hours, if—

(i) work was cancelled or finished early for reasons such as, but not limited to, bad weather, lack of available supervision, an emergency situation or lack of equipment, and

(ii) a community corrections officer is satisfied that the reasons are valid.

(7) A community corrections officer may vary or waive the obligation to provide a medical certificate under subclause (6) (b).

**Note—**

Clause 125 of Schedule 5 to the *Crimes (Administration of Sentences) Act 1999* provides for the manner in which the Parole Authority is to exercise its functions under section 81A of that Act (Conditions—Parole Authority) in relation to the conditions of an intensive correction order referred to in this clause.

**73 Existing community service orders under section 8**

(1) This clause applies to a community service order (***the community service order***) made under section 8 before its substitution by the amending Act and in force immediately before the commencement day.

(2) The community service order is taken to be a community correction order (***the community correction order***) made under section 8 as substituted by the amending Act.

(3) The community correction order is on the commencement day subject only to—

(a) the standard condition referred to in section 88 (2) (b) as inserted by the amending Act (that the offender must appear before the court if called on to do so at any time during the term of the community correction order), and

(b) a community service work condition, and

(c) any other conditions prescribed by or determined under the regulations.

(4) Subject to this Act and the *Crimes (Administration of Sentences) Act 1999*—

- (a) the community correction order is taken to specify the same number of hours required for the performance of community service work as were specified in the community service order (so that the number of hours remaining to be completed under the community service order is the number of hours to be completed under the community correction order), and
  - (b) the community correction order expires—
    - (i) 12 months from the date on which the order was made, if the required number of hours under the order is less than 300, or if the order is extended for any further period before the commencement day, at the end of that further period, or
    - (ii) 18 months from the date on which the order was made, if the required number of hours under the order is 300 or more, or if the order is extended for any further period before the commencement day, at the end of that further period,
- (4A) If the community service order has a condition that requires the offender to participate in a development program under section 90 as in force before the commencement day, the community correction order is subject to a condition that the offender must comply with an additional condition referred to in section 89 (2) (c) (a rehabilitation or treatment condition) until the obligations relating to the development program have been fulfilled.
- (5) Without limitation, the regulations may make provision for or with respect to community service work required by or under community correction orders referred to in this clause.

#### **74 Existing good behaviour bonds under section 9**

- (1) This clause applies to a good behaviour bond entered into under section 9 of this Act (**the section 9 bond**) before its substitution by the amending Act and in force immediately before the commencement day.
- (2) The section 9 bond is taken to be a community correction order (**the community correction order**) made under section 8 as substituted by the amending Act.
- (3) The community correction order is on conversion subject only to—
  - (a) the standard conditions of a community correction order, and
  - (b) any conditions referred to in section 95 (c) that were imposed on the section 9 bond before the commencement day and in force immediately before that day, and
  - (c) any other conditions prescribed by or determined under the regulations.

- (4) The community correction order expires on the date set by the sentencing court before the commencement day in relation to the section 9 bond.
- (5) If a condition relating to supervision was imposed on the section 9 bond by a court before the commencement day and was in force immediately before that day, the offender is subject to such obligations in respect of the condition as may be prescribed by regulations made under the *Crimes (Administration of Sentences) Act 1999*.
- (6) Any warrant issued under section 98 in respect of the section 9 bond before the commencement day continues to have effect. The warrant authorises a police officer to arrest and bring the offender before a court to be dealt with for an alleged breach of the section 9 bond.
- (7) An offender who is brought before a court on a warrant referred to in subclause (6) is to be dealt with under sections 107C and 107D of the *Crimes (Administration of Sentences) Act 1999*.
- (8) Section 89 (2A) as inserted by the amending Act applies to a good behaviour bond to which this clause applies.

#### **75 Existing good behaviour bonds under section 10 (1) (b)**

- (1) This clause applies to a good behaviour bond entered into under section 10 (1) (b) (**the section 10 bond**) before its substitution by the amending Act and in force immediately before the commencement day.
- (2) The section 10 bond is taken to be a conditional release order (**the conditional release order**) made under section 9 as substituted by the amending Act, without proceeding to conviction, pursuant to section 10 (1) (b) as in force on and after the commencement day.
- (3) The conditional release order is on the commencement day subject only to—
  - (a) the standard conditions of a conditional release order, and
  - (b) any conditions referred to in section 95 (c) that were imposed on the section 10 bond before the commencement day and in force immediately before that day, and
  - (c) any other conditions prescribed by or determined under the regulations.
- (4) The conditional release order expires on the date set by the sentencing court before the commencement day in relation to the section 10 bond.
- (5) If a supervision condition was imposed on the section 10 bond by a court before the commencement day and was in force immediately before that day, the offender is subject to such obligations in respect of the condition as may be prescribed by regulations made under the *Crimes (Administration of Sentences) Act 1999*.

- (6) Any warrant issued under section 98 in respect of a section 10 bond before the commencement day continues to have effect. The warrant authorises a police officer to arrest and bring the offender before a court to be dealt with for an alleged breach of the section 10 bond.
- (7) An offender who is brought before a court on a warrant referred to in subclause (6) is to be dealt with under sections 108C and 108D of the *Crimes (Administration of Sentences) Act 1999* (variations, breach and revocations).
- (8) Section 99 (2A) as inserted by the amending Act applies to a good behaviour bond to which this clause applies.

#### **76 Existing suspended sentence orders under section 12**

- (1) This clause applies to an order (***the suspended sentence order***) made under section 12 before its repeal by the amending Act—
  - (a) suspending execution of a sentence of imprisonment, and
  - (b) directing that the offender enter into a good behaviour bond, and in force immediately before the commencement day.
- (2) The repeal of section 12 and any associated provisions does not affect the continuity of operation of the suspended sentence order. The order continues in force despite the repeal of that section, subject to this Act.
- (3) This Act and the regulations continue to apply to and in respect of the following as if the amending Act had not been enacted—
  - (a) the suspended sentence order and good behaviour bond,
  - (b) the person subject to the order and bond,
  - (c) action that may be taken for failure to comply with any of the conditions of the bond.
- (4) If a court (under section 98 as previously in force but continuing to apply under subclause (3)) revokes the good behaviour bond—
  - (a) the suspended sentence order ceases to have effect in relation to the sentence of imprisonment suspended by the order, and
  - (b) the court must either—
    - (i) order that the offender be sentenced or re-sentenced to imprisonment to be served in full-time detention, or
    - (ii) make an intensive correction order under this Act, as amended by the

amending Act, in respect of the offence concerned, and

- (c) this Act (including Part 4), as amended by the amending Act, applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, and
  - (d) section 24 applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, but taking into account—
    - (i) the fact that the offender has been the subject of the good behaviour bond, and
    - (ii) anything done by the offender in compliance with the offender's obligations under the good behaviour bond, and
  - (e) the offender who under this clause is sentenced or re-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.
- (5) However, subclauses (2), (3) and (4) cease to have effect in relation to the suspended sentence order at the end of the period of 3 years commencing with the commencement day (unless the order had already expired or otherwise ceased to be in force).
- (6) If the suspended sentence order was still in force immediately before the end of that period of 3 years, the offender is required to appear before the court and is to be re-sentenced. If the offender fails to appear, the court may issue a warrant for the offender's arrest.
- (7) Without limitation, the regulations may make provision for or with respect to the revocation of the suspended sentence order and for the re-sentencing of the offender.

#### **76A Action for breaches of expired suspended sentence orders**

- (1) This clause applies to an order (***the suspended sentence order***) made under section 12 before its repeal by the amending Act suspending execution of a sentence of imprisonment and directing that the offender enter into a good behaviour bond, if—
  - (a) the bond was breached before the commencement day for the repeal of section 100, and
  - (b) the bond had expired before that day, and
  - (c) action in respect of the breach had not been commenced or completed before that day.
- (2) The breach of the bond may be dealt with or continue to be dealt with on or after that

day under this Act and the regulations as if the amending Act had not been enacted.

- (3) If a court (under section 98 as previously in force but continuing to apply under subclause (2)) revokes the bond—
- (a) the suspended sentence order ceases to have effect in relation to the sentence of imprisonment suspended by the order, and
  - (b) the court must either—
    - (i) order that the offender be sentenced or re-sentenced to imprisonment to be served in full-time detention, or
    - (ii) make an intensive correction order under this Act, as amended by the amending Act, in respect of the offence concerned, and
  - (c) this Act (including Part 4), as amended by the amending Act, applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, and
  - (d) section 24 applies to the sentencing or re-sentencing of the offender under this clause in the same way as it applies to the sentencing of an offender on a conviction, but taking into account—
    - (i) the fact that the offender has been the subject of the good behaviour bond, and
    - (ii) anything done by the offender in compliance with the offender's obligations under the good behaviour bond, and
  - (e) the offender who under this clause is sentenced or re-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.

## **77 References in other legislation**

- (1) Except in so far as the context or subject matter otherwise indicates or requires or the regulations otherwise provide, a reference (however expressed) in another Act, or statutory rule under another Act, to—
- (a) a home detention order, is taken to include a reference to an intensive correction order that is subject to a home detention condition, and
  - (b) a community service order, is taken to include a reference to a community correction order, and
  - (c) a good behaviour bond, is taken to include a reference to a community correction order or a conditional release order or both.

- (2) A reference in any legislation to an **assigned officer** (within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#)) is taken to include a reference to a community corrections officer.

### **78 Variations of conditions of converted orders**

- (1) Subject to subclause (2), nothing in clauses 71-75 prevents the imposition, variation or revocation (in accordance with this Act) of conditions referred to in those clauses after the commencement day.
- (2) However, in the case of an application made to a court (under section 89, 90, 99 or 99A) for the imposition, variation or revocation of a condition on—
- (a) the community correction order referred to in clause 73 (2) or 74 (2), or
- (b) the conditional release order referred to in clause 75 (2),

the court must, as far as practicable, not make an order that would result in the conditions of the community correction order or conditional release order being more onerous than conditions that were available, in comparable circumstances immediately before the commencement day, for the relevant community service order, section 9 bond or section 10 bond.

## **Division 3 Periodic detention orders**

### **79 Application of this Division**

This Division applies to a periodic detention order (**the periodic detention order**)—

- (a) made before the repeal of section 6 (Periodic detention) by the [Crimes \(Sentencing Legislation\) Amendment \(Intensive Correction Orders\) Act 2010](#), and
- (b) continued in force by that Act after that repeal.

### **80 Existing periodic detention orders**

- (1) This clause applies to the periodic detention order to which this Division applies and that was in force immediately before the commencement day.
- (2) The periodic detention order ceases to apply to the offender named in the order on and from the commencement day.
- (3) The Commissioner must notify the court that sentenced the offender, or a court prescribed by the regulations (**the court**), of that fact within 14 days commencing with the commencement day, and provide the court with such information about the offender and the periodic detention order as may be prescribed by the regulations.
- (4) On being notified under subclause (3), the court may call on the offender to appear before it on a date to be fixed by the court to be re-sentenced.

- (5) If the offender fails to appear, the court may issue a warrant for the offender's arrest.
- (6) When re-sentencing the offender, the court must, without limitation, take into account—
  - (a) the gravity of the offence for which the periodic detention order was made, and
  - (b) the offender's record of performance during periodic detention and compliance with applicable requirements of periodic detention, and
  - (c) the offender's current circumstances.
- (7) The following information, if available, about the offender is, at the request of the court, to be provided by the Commissioner—
  - (a) a copy of the relevant assessment report, offender declaration and periodic detention order,
  - (b) details of the offender's compliance with the requirements of the periodic detention order,
  - (c) the number of detention periods completed and outstanding,
  - (d) relevant circumstances of any breach of the periodic detention order,
  - (e) details of any relevant action taken by the Parole Authority,
  - (f) any other information available from its records that Corrective Services NSW considers relevant.

#### **80A Offenders in custody following warrant**

- (1) This clause applies to an offender subject to a periodic detention order to which this Division applies and who was in custody immediately before the commencement day.
- (2) The Commissioner must notify the court that the offender is in custody within 14 days of the commencement day.
- (3) On being notified under subclause (2), the court may direct the Commissioner to cause the offender to be brought before the court on a date fixed by the court to be re-sentenced.
- (4) Proceedings under this clause are taken to be proceedings for the administration of sentence for the purposes of clause 1 of Schedule 1 to the *Bail Act 2013*.
- (5) The court is to deal with the offender as if the offender were an offender arrested under clause 80.



### **81 Existing warrants for revoked periodic detention orders**

- (1) This clause applies where—
  - (a) a warrant (**the warrant**) had been issued under section 181 of the *Crimes (Administration of Sentences) Act 1999* or section 26 of the *Periodic Detention of Prisoners Act 1981* in respect of a periodic detention order to which this Division applies, and
  - (b) the warrant was in force immediately before the commencement day but the periodic detention order had been revoked before that day.
- (2) The warrant continues in force after the commencement day.

### **82 Provisions regarding warrants referred to in clauses 80 and 81**

- (1) This clause applies to—
  - (a) warrants issued under clause 80, and
  - (b) warrants referred to in clause 81.
- (2) A police officer who arrests or has custody of the offender named in a warrant to which this clause applies may convey the offender to the correctional centre named in the warrant and deliver the offender into the custody of the governor of that correctional centre.
- (3) The Commissioner must notify the court that sentenced the offender, or a court of equivalent jurisdiction, within 14 days that the offender has been received into the custody of the governor of that correctional centre.
- (4) On receiving notice from the Commissioner under subclause (3), the court must direct the Commissioner to cause the offender to be brought before the court to be re-sentenced on a date to be fixed by the court.
- (4A) Proceedings under this clause are taken to be proceedings for the administration of sentence for the purposes of clause 1 of Schedule 1 to the *Bail Act 2013*.
- (4B) The following information, if available, about the offender is, at the request of the court, to be provided by the Commissioner—
  - (a) a copy of the relevant assessment report, offender declaration and periodic detention order,
  - (b) details of the offender's compliance with the requirements of the periodic detention order,
  - (c) the number of detention periods completed and outstanding,

- (d) relevant circumstances of any breach of the periodic detention order,
  - (e) details of any relevant action taken by the Parole Authority,
  - (f) any other information available from its records that Corrective Services NSW considers relevant.
- (5) Without limitation, the regulations may make provision for or with respect to—
- (a) the return to custody of offenders subject to warrants to which this clause applies, and
  - (b) the re-sentencing of offenders under this clause, and
  - (c) the issue and execution of warrants for those purposes.

## **Division 4 Other provisions**

### **82A Existing assessment reports**

- (1) If an assessment report was prepared on an offender for the purposes of section 78 of the Act, as in force before the repeal of that section by the amending Act, the report is taken to be an assessment report for the purposes of section 17D (2) and a further report is not required.
- (2) If an assessment report was prepared on an offender for the purposes of section 86 of the Act, as in force before the repeal of that section by the amending Act, the report is taken to be an assessment report for the purposes of section 17D (4) and a further report is not required.

### **83 Court to take community service order or good behaviour bond into account when sentencing**

In sentencing an offender, the court must, under section 24, also take into account—

- (a) in the case of an offender who is being sentenced as a result of failing to comply with the offender's obligations under a community service order or good behaviour bond to which a clause of Division 2 applies—
  - (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
- (b) 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 a good behaviour bond to which a clause of Division 2 applies, anything done by the offender in compliance with the offender's obligations under the good behaviour bond.

#### **84 Correction and adjustment of sentences**

- (1) A reference in section 43 to imposing a sentence extends to the making of a home detention order, a community service order, an order under section 12 or an order that provides for an offender to enter into a good behaviour bond.
- (2) Section 43 extends to authorising the court to sentence the offender, or convict and sentence the offender, in accordance with this Act as amended by the amending Act, as if the order had not been made.

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

If a person—

- (a) was the subject of an order under section 9 (as in force before the date of the substitution of that section by the amending Act) directing the person to enter into a good behaviour bond, and—
  - (i) the order was in force immediately before that date, and
  - (ii) the person had not entered into such a bond in accordance with the order before that date, or
- (b) was the subject of an order under section 10 (1) (b) (in force immediately before the date of the substitution of that paragraph by the amending Act) discharging the person on condition that the person enter into a good behaviour bond, and—
  - (i) the order was in force immediately before that date, and
  - (ii) the person had not entered into such a bond in accordance with the order before that date,

the court may sentence the offender, or convict and sentence the offender, in accordance with this Act as amended by the amending Act, as if the order had not been made.

#### **86 Appeals in respect of converted order and bonds**

- (1) This clause applies to an order or bond (***an original order or bond***) referred to in clause 71 (1), 72 (1), 73 (1), 74 (1) or 75 (1).

**Note—**

Clauses 71–75 deal respectively with existing home detention orders, intensive correction orders, community service orders, section 9 bonds and section 10 bonds, which were made or entered into before the commencement day.

- (2) An appeal in respect of an original order or bond that was pending immediately before the commencement day is not affected by the amending Act. However—
  - (a) if the court hearing the appeal sentences or re-sentences the offender, it must do so in accordance with this Act as in force on and after the commencement day, or

(b) to the extent the court confirms the original order or bond, this clause does not affect the operation of whichever of clauses 71–75 is relevant to the order.

(3) An appeal may be made in respect of an original order or bond on or after the commencement day as if the amending Act had not been enacted. However—

(a) if the court hearing the appeal sentences or re-sentences the offender, it must do so in accordance with this Act as in force on and after the commencement day, or

(b) to the extent the court confirms the original order or bond, this clause does not affect the operation of whichever of clauses 71–75 is relevant to the order.

**Note—**

This subclause does not confer a right of appeal where a right of appeal did not exist before the commencement day.

**86A Applications to Supreme Court as to certain existing orders**

(1) This clause applies in relation to a home detention order or intensive correction order referred to in section 176 of the *Crimes (Administration of Sentences) Act 1999* and made under section 6 or 7 of this Act or section 165A of that Act before the commencement day.

(2) An application to the Supreme Court under that section in respect of an order to which this clause applies, and any proceedings in respect of the application, that were pending before the Court immediately before the commencement day are not affected by the amending Act.

(3) An application may be made on or after the commencement day to the Supreme Court under that section in respect of an order to which this clause applies.

(4) Any direction given by the Supreme Court under that section pursuant to an application referred to in this clause is given in respect of the intensive correction order or home detention order concerned as if the amending Act had not been enacted.

**86B Other transitional matters in respect of home detention orders**

(1) **Application to home detention orders** This clause applies in respect of a home detention order made under section 6 before its repeal by the amending Act.

(2) **Previous breaches** Subclause (3) applies if a breach of a home detention order occurred or is suspected to have occurred before the repeal of section 6 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.

(3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the intensive correction order to which

the home detention order was converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under an intensive correction order made by a court on or after that day.

- (4) **Previous assessment for home detention** If the Parole Authority referred an offender for assessment under section 165A (4) of the *Crimes (Administration of Sentences) Act 1999*, before the commencement day, in relation to the making of an order for home detention following the revocation of an intensive correction order and the Parole Authority had not completed its functions under that section before that day in relation to the matter—
- (a) the assessment may be carried out on or after that day if it has not already been carried out, and
  - (b) the assessment (whether received by the Parole Authority before that day or on or after that day) is taken to be an assessment as to the suitability of the offender for an intensive correction order with a home detention condition on or after that day, and
  - (c) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order.

**Note—**

See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

- (5) **Pending inquiries into home detention breaches** If an inquiry by the Parole Authority under section 166 of the *Crimes (Administration of Sentences) Act 1999* (relating to a suspected breach of an offender's obligations under a home detention order) was pending immediately before the commencement day—
- (a) the inquiry may be conducted or continue to be conducted by the Parole Authority on or after that day, and
  - (b) any findings of the Parole Authority may be considered in connection with the exercise of the Authority's functions (including its functions under section 164 of that Act).
- (6) **Effect of existing revocation order** A revocation order made by the Parole Authority under section 167 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day—
- (a) continues to have effect for the purposes of that Act, as amended by the amending Act, according to the terms of the order, and
  - (b) is taken to be a revocation order to which section 164A of that Act applies.

- (7) **Existing reinstatement applications** If an application for the reinstatement of a home detention order under section 168A (1) of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day—
- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day, and
  - (b) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order with a home detention condition and a supervision condition.

**Note—**

See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

- (8) If an application for the reinstatement of an intensive correction order under section 168A (1A) of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day—
- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day, and
  - (b) the Parole Authority may, if satisfied that it is appropriate to do so, make an intensive correction order with a supervision condition and at least 1 of the additional conditions referred to in section 73A of this Act.

**Note—**

See also subclause (12) as to the power of the Parole Authority to make intensive correction orders under this clause.

- (9) Despite subclause (8) (b), the Parole Authority may make an intensive correction order under that paragraph without imposing any of the additional conditions referred to in section 73A of this Act if it considers that it is not necessary to do so because of exceptional circumstances.
- (10) If an offender was, under section 168A (2) of the *Crimes (Administration of Sentences) Act 1999*, referred for assessment in relation to the reinstatement of a home detention order or intensive correction order and the assessment was received by the Parole Authority before the commencement day but the Parole Authority had not completed its consideration of the assessment or the assessment is received by the Parole Authority on or after that day—
- (a) the Parole Authority may consider or continue to consider the assessment on or after that day, and
  - (b) the Parole Authority may use the assessment when considering whether to make an intensive correction order under subclause (7) or (8) (as the case requires).

- (11) **Existing warrants made after revocation of home detention orders** If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* before the commencement day in respect of a revoked home detention order, and that commits an offender to a correctional centre to serve the remainder of a sentence by way of full-time detention, was in force immediately before that day, the warrant—
- (a) continues in force on and after that day until it is executed, and
  - (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of an intensive correction order revoked under that Act as amended by the amending Act, and
  - (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.
- (12) **New intensive correction orders** For the purposes of an intensive correction order authorised to be made by the Parole Authority under subclause (4), (7) or (8)—
- (a) Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, as in force on or after the relevant commencement day, applies to and in respect of the Parole Authority and the offender in relation to the making of the intensive correction order in the same way as it applies to and in respect of a court and an offender in relation to the making of an intensive correction order by a court, and
  - (b) the intensive correction order is taken to have been made by a court.

### **86C Other transitional matters in respect of intensive correction orders**

- (1) **Application to intensive correction orders** This clause applies in respect of an intensive correction order made under section 7 before its substitution by the amending Act.
- (2) **Previous breaches** Subclause (3) applies if a breach of an intensive correction order occurred or is suspected to have occurred before the substitution of section 7 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.
- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the intensive correction order to which the order was converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under an intensive correction order made on or after that day.
- (4) **Applications relating to conditions** If an application for the imposition of conditions on, or the variation of conditions of, an intensive correction order under section 81 (3) of the *Crimes (Administration of Sentences) Act 1999* was pending before the sentencing court immediately before the commencement day—

- (a) the application is transferred to the Parole Authority to be dealt with by it instead of the court, and
  - (b) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day as if the application had been made under section 81A of that Act, and
  - (c) in considering the application, the Parole Authority may have regard to matters raised before the court before that day and may concur with any decisions made by the court in that connection or may deal with all or any matters afresh.
- (5) **Pending inquiries into breaches of intensive correction orders** If an inquiry by the Parole Authority under section 162 of the *Crimes (Administration of Sentences) Act 1999* (relating to a suspected breach of an offender's obligations under an intensive correction order) was pending immediately before the commencement day—
- (a) the inquiry may be conducted or continue to be conducted by the Parole Authority on or after that day, and
  - (b) any findings of the Parole Authority may be considered in connection with the exercise of the Authority's functions (including its functions under section 164 of that Act).
- (6) **Effect of existing revocation order for intensive correction order** A revocation order made by the Parole Authority under section 163 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day—
- (a) continues to have effect for the purposes of that Act, as amended by the amending Act, according to the terms of the order, and
  - (b) is taken to be a revocation order to which section 164A of that Act applies.
- (7) **Existing reinstatement applications** If an application for the reinstatement of an intensive correction order under section 165 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day—
- (a) the application may be dealt with or continue to be dealt with by the Parole Authority on or after that day under that section as amended by the amending Act, and
  - (b) that section as so amended applies to and in respect of the application (including the provisions relating to the assessment as to suitability and the making of an intensive correction order).
- (8) **Existing warrants made after revocation of intensive correction orders** If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* before the commencement day in respect of a revoked intensive correction order, and that commits an offender to a correctional centre to serve the remainder of



a sentence by way of full-time detention, was in force immediately before that day, the warrant—

- (a) continues in force on and after that day until it is executed, and
- (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of an intensive correction order revoked under that Act as amended by the amending Act, and
- (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.

#### **86D Other transitional matters in respect of community service orders**

- (1) **Application to community service orders** This clause applies in respect of a community service order made under section 8 before its substitution by the amending Act.
- (2) **Previous breaches** Subclause (3) applies if a breach of a community service order occurred or is suspected to have occurred before the substitution of section 8 by the amending Act and action under the sentencing legislation as in force before the commencement day had not been commenced or completed in respect of the breach.
- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the community correction order to which the order is converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under a community correction order made on or after that day.
- (4) **Pending extension applications** If an application for the extension of the relevant maximum period for a community service order under section 114 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day—
  - (a) the application may be dealt with or continue to be dealt with by the court on or after that day, and
  - (b) the application is taken to be an application duly made under section 89 of this Act in respect of the relevant community service work condition of the community correction order (to which the community service order was converted by the operation of this Schedule), and
  - (c) the court may make any order under section 89 that it may make in respect of an application made under that section.
- (5) **Existing revocation applications** If an application for the revocation of a community service order under section 115 of the *Crimes (Administration of Sentences) Act 1999* was pending immediately before the commencement day—

- (a) the application may be dealt with or continue to be dealt with by the court on or after that day, and
  - (b) in the case of an application made under section 115 (2) (a), the application is taken to be an application made, for the purposes of section 107C of that Act as amended by the amending Act, to revoke the community correction order to which the community service order is converted by the operation of this Schedule, and
  - (c) in the case of an application made under section 115 (2) (b), the court may continue to deal with the application under section 115 as in force immediately before the commencement day.
- (6) **Existing warrants issued in extension proceedings** If a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day, in connection with an application for the extension of the period for which an offender's community service order is to remain in force, was in force immediately before that day, the warrant—
- (a) continues in force on and after that day until it is executed, and
  - (b) authorises the offender to be brought before the relevant court.
- (7) **Existing warrants issued in revocation proceedings** If a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* before the commencement day, in connection with an application under section 115 of that Act for the revocation of an offender's community service order, was in force immediately before that day, the warrant—
- (a) continues in force on and after that day until it is executed, and
  - (b) authorises the offender to be brought before the relevant court.
- (8) **Action for breaches of expired community service orders** Subclause (9) applies if—
- (a) a community service order was breached before the repeal of section 115 of the *Crimes (Administration of Sentences) Act 1999* by the amending Act, and
  - (b) the order had expired not later than 1 month before that day, and
  - (c) action in respect of the breach had not been commenced or completed before that day.
- (9) The breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D of the *Crimes (Administration of Sentences) Act 1999* and, for that purpose, those provisions apply despite the expiry of the order but only apply in respect of matters arising during the term of the order.

## **86E Other transitional matters in respect of good behaviour bonds**

- (1) **Application** This clause applies in respect of a good behaviour bond entered into under section 9 (a **section 9 bond**) or section 10 (1) (b) (a **section 10 bond**) before their substitution by the amending Act.
- (2) **Previous breaches** Subclause (3) applies if a breach of a good behaviour bond occurred or is suspected to have occurred before the commencement day and action under the sentencing legislation as in force before that day had not been commenced or completed in respect of the breach.
- (3) Action in respect of the breach may, on or after that day, be commenced or continued under the sentencing legislation in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule in the same way as action may be taken in respect of a breach of an offender's obligations under such an order made on or after that day.
- (4) **Intervention program conditions** Subclause (5) applies if before the commencement day a court referred, under section 95B, an offender for assessment as to the suitability of the offender to participate in an intervention program and the report was received before, or is received on or after, that day.
- (5) The court may, if it decides to make a community correction order or conditional release order in respect of the offender on or after that day, impose a further condition requiring the offender to participate in an intervention program and to comply with any intervention plan arising out of the program.
- (6) **Existing breach proceedings** If any proceedings were pending before a court immediately before the repeal of section 98 of the *Crimes (Sentencing Procedure) Act 1999* in respect of a breach of a section 9 bond or section 10 bond—
  - (a) the proceedings are to continue to be dealt with by the court, and
  - (b) the breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule, and
  - (c) in considering the breach, the court may have regard to matters raised before the court before that day and may concur with any decisions made by the court in that connection or may deal with all or any matters afresh.
- (7) **Refusal to participate in intervention program** If an offender who was subject to a section 9 bond or section 10 bond decided under section 99A not to participate or to continue to participate in an intervention program or an intervention plan arising out of the program and action had not been taken or completed under that section before

the commencement day—

- (a) the matter may be dealt with or continue to be dealt with on or after that day by taking action under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule, and
- (b) for that purpose, the decision is taken to be a breach of the order.

**(8) Action for breaches of expired bonds** Subclause (9) applies if—

- (a) a section 9 bond or section 10 bond was breached before the commencement day for the repeal of section 100, and
- (b) the bond had expired before that day, and
- (c) action in respect of the breach had not been commenced or completed before that day.

(9) The breach may be dealt with or continue to be dealt with on or after that day under sections 107C and 107D or sections 108C and 108D (as the case requires) of the *Crimes (Administration of Sentences) Act 1999* in relation to the community correction order or conditional release order to which the bond is converted by the operation of this Schedule and, for that purpose—

- (a) the breach is taken to be a breach of the order, and
- (b) those provisions apply despite the expiry of the bond but only apply in respect of matters arising during the term of the bond.

#### **86F Transitional provisions in respect of certain warrants**

- (1) If a warrant that was issued under section 181 (1) of the *Crimes (Administration of Sentences) Act 1999* in respect of a revoked parole order, and that commits an offender to a correctional centre to serve the remainder of a sentence by way of full-time detention, was in force immediately before the commencement day, the warrant—
  - (a) continues in force on and after that day until it is executed, and
  - (b) is taken to be issued under section 181 (1) of that Act as amended by the amending Act in respect of a parole order revoked under that Act as so amended, and
  - (c) commits the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.
- (2) If a warrant that was issued under section 181 (1A) of the *Crimes (Administration of*

*Sentences) Act 1999*, and that commits an offender to a correctional centre pending the Parole Authority's decision as to whether or not to make a home detention order, was in force immediately before the commencement day, the warrant—

- (a) continues in force on and after that day until it is executed, and
- (b) commits the offender to a correctional centre pending the Parole Authority's decision as to whether or not to make an intensive correction order.

## 87 Regulations

- (1) The regulations made under clause 1 in relation to the amending Act or under another clause of this Part have effect despite anything to the contrary in this Part.
- (2) To avoid doubt, the regulations made under clause 1 may be made in relation to amendments made by Schedules 1-4 to the amending Act. Nothing in this subclause affects any power under another Act that is amended by Schedule 3 or 4 to the amending Act to make regulations of a savings or transitional nature.
- (3) The regulations made under clause 1 may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.
- (4) This clause does not affect the meaning or construction of any other Part of this Schedule.

## Part 30 Provisions consequent on enactment of *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*

### 88 Definitions

In this Part—

**amending Act** means the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*.

**existing proceedings** means proceedings for an offence commenced before the amendment of the former sentencing provisions by the amending Act.

**former sentencing provisions** means Part 3 of this Act, as in force before its amendment by the amending Act.

### 89 Existing proceedings

The former sentencing provisions continue to apply to existing proceedings as if those provisions had not been amended by the amending Act.

### 90 Previous offences

This Act, as amended by the amending Act, extends to proceedings for an offence

committed before the amendment of the former sentencing provisions by the amending Act, if proceedings for the offence commenced on or after that amendment.

## **Part 31 Provision consequent on enactment of [Criminal Legislation Amendment \(Child Sexual Abuse\) Act 2018](#)**

### **91 Standard non-parole periods**

The Table to Division 1A of Part 4 of this Act, as in force immediately before its amendment by the [Criminal Legislation Amendment \(Child Sexual Abuse\) Act 2018](#), continues to apply in respect of an offence against section 61M (1) or (2) of the [Crimes Act 1900](#) committed before that amendment.

## **Part 32 Provision consequent on enactment of [Crimes Legislation Amendment \(Victims\) Act 2018](#)**

### **92 Application of amendments**

Each of the following provisions as substituted by the [Crimes Legislation Amendment \(Victims\) Act 2018](#) applies only to proceedings that are commenced after the relevant substitution—

- (a) Division 2 of Part 3 of this Act,
- (b) Division 2 of Part 2 of the [Crimes \(Sentencing Procedure\) Regulation 2017](#).

## **Part 33 Provision consequent on enactment of [Justice Legislation Amendment Act 2019](#)**

### **93 Standard non-parole periods**

The Table to Division 1A of Part 4 of this Act, as in force immediately before its amendment by the [Justice Legislation Amendment Act 2019](#), continues to apply in respect of an offence against section 203E of the [Crimes Act 1900](#) committed before that amendment.

## **Part 34 Provision consequent on enactment of [Crimes Legislation Amendment \(Loss of Foetus\) Act 2021](#)**

### **94 Application of amendments**

- (1) Section 28(2) and the new definition of family victim apply only to proceedings that are commenced on or after the commencement of the amendment Act, Schedule 2.
- (2) In this clause—

**amendment Act** means the [Crimes Legislation Amendment \(Loss of Foetus\) Act 2021](#).

***new definition*** means the definition inserted in section 26 by the amendment Act.