Western Australia

# Sentencing Act 1995

Compare between:

[22 Dec 2021, 10-j0-00] and [18 May 2022, 10-k0-00]

Western Australia

# Sentencing Act 1995

**An Act to consolidate and amend the law relating to the sentencing of offenders.**

# Part 1 — Preliminary

## 1. Short title

This Act may be cited as the *Sentencing Act 1995*.

## 2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

## 3. Application of this Act

(1) Subject to this section, this Act applies to all persons convicted of an offence whether or not the offence was committed before this Act comes into operation.

(2) In the case of a person who is a young person as defined in the *Young Offenders Act 1994*, subsection (1) is subject to sections 46 and 46A of the *Young Offenders Act 1994*.

(3) This Act does not apply to or in respect of a person being punished —

(a) by the Supreme Court or any other court for or as for contempt of court; or

(b) under section 63 of the *District Court of Western Australia Act 1969*, section 29 of the *Children's Court of Western Australia Act 1988* or section 16 of the *Magistrates Court Act 2004*; or

(c) for contempt of a House of Parliament.

*[Section 3 amended: No. 59 of 2004 s. 141.]*

## 4A. *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies

The *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2 applies to this Act.

*[Section 4A inserted: No. 20 of 2013 s. 123.]*

## 4. Terms used

(1) In this Act —

***approved electronic monitoring device*** means —

(a) an electronic monitoring device that has been approved by the CEO (corrections); and

(b) any equipment, wires or other items associated with a device under paragraph (a);

***bail*** means bail under the *Bail Act 1982*;

***breach***, in relation to an order made under this Act, means to contravene any requirement or obligation of the order or any direction made by the court imposing the order;

***CEO (corrections)*** means the chief executive officer of the Public Sector agency principally assisting the Minister administering Part 8 of the *Sentence Administration Act 2003* in its administration;

***community based order*** ("CBO") means a community based order made under Part 9;

***community corrections centre*** has the same definition as in the *Sentence Administration Act 2003*;

***community corrections officer*** ("CCO") has the same definition as in the *Sentence Administration Act 2003*;

***community order*** means a CBO or an ISO;

***community work*** includes any form of work, service, or activity approved for the purpose of this definition by the CEO (corrections);

***conditional release order*** ("CRO") means a conditional release order made under Part 7;

***conditional suspended imprisonment*** ("CSI") means conditional suspended imprisonment imposed under Part 12 Division 1;

***designated family relationship*** means a relationship between 2 persons —

(a) who are, or were, married to each other; or

(b) who are, or were, in a de facto relationship with each other; or

(c) who have, or had, an intimate personal relationship with each other;

***disqualification order*** means an order made under Part 15;

***explosive*** means a substance or an article that is controlled as an explosive under the *Dangerous Goods Safety Act 2004*;

***family violence offence*** means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is —

(a) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A); or

(b) an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

***intensive supervision order*** ("ISO") means an intensive supervision order made under Part 10;

***offence*** means an offence under a written law;

***offender*** means a person convicted of an offence;

***parole eligibility order*** has the meaning given in section 89(1);

***prescribed*** means prescribed in the regulations;

***pre-sentence order*** ("PSO") means a pre-sentence order made under Part 3A;

***Prisoners Review Board*** means the Prisoners Review Board established under the *Sentence Administration Act 2003*;

***serial family violence offender*** means a person who is a serial family violence offender under section 124E;

***speciality court*** means a court —

(a) that is prescribed; and

(b) that is sitting at a place prescribed; and

(c) that is dealing with offenders of a class prescribed,

by the regulations and that is constituted by a judicial officer who is approved by the judicial officer who heads the court so prescribed;

***spent conviction order*** has the meaning given by section 45(2);

***statutory penalty***, in relation to an offence, means the penalty specified by a written law for the offence;

***superior court*** means the Supreme Court or the District Court;

***written reasons*** includes reasons that are —

(a) given orally and subsequently transcribed; and

(b) given orally but also recorded electronically in a format that enables them to be subsequently transcribed.

(1A) For the purposes of the definition of ***designated family relationship*** in subsection (1), an ***intimate personal relationship*** exists between 2 persons (including persons of the same sex) if —

(a) the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition; or

(b) the persons date each other, or have a romantic involvement with each other, whether or not a sexual relationship is involved.

(1B) In deciding whether an intimate personal relationship exists under subsection (1A)(b), the following may be taken into account —

(a) the circumstances of the relationship, including, for example, the level of trust and commitment;

(b) the length of time the relationship has existed;

(c) the frequency of contact between the persons;

(d) the level of intimacy between the persons.

(2) In this Act these abbreviations are used:

***CBO*** for community based order;

***CCO*** for community corrections officer;

***CRO*** for conditional release order;

***CSI*** for conditional suspended imprisonment;

***DPP*** for Director of Public Prosecutions of the State;

***ISO*** for intensive supervision order;

***PSO*** for pre-sentence order.

(3) Examples in this Act are provided to assist understanding and do not form part of the Act.

(4) In this Act a reference to the suspension of a term or terms of imprisonment is a reference to a suspension of —

(a) the whole of the term or terms; or

(b) part of the term or terms.

*[Section 4 amended: No. 50 of 2003 s. 4, 14, 23 and 29(3); No. 84 of 2004 s. 65; No. 27 of 2004 s. 6(1) and (2); No. 65 of 2006 s. 45; No. 45 of 2016 s. 61; No. 13 of 2020 s. 4; No. 30 of 2020 s. 14.]*

## 5. Civil liability not affected

This Act (other than section 115) does not affect any civil liability incurred in respect of an act or omission that constitutes an offence.

# Part 2 — General matters

## Division 1 — Sentencing principles

### 6. Principles of sentencing

(1) A sentence imposed on an offender must be commensurate with the seriousness of the offence.

(2) The seriousness of an offence must be determined by taking into account —

(a) the statutory penalty for the offence; and

(b) the circumstances of the commission of the offence, including the vulnerability of any victim of the offence; and

(c) any aggravating factors; and

(d) any mitigating factors.

(3) Subsection (1) does not prevent the reduction of a sentence because of —

(a) any mitigating factors; or

(b) any rule of law as to the totality of sentences.

(4) A court must not impose a sentence of imprisonment on an offender unless it decides that —

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

(b) the protection of the community requires it.

(5) A court sentencing an offender must take into account any relevant guidelines in a guideline judgment given under section 143.

(6) For the purpose of subsection (4), an order under section 58 that a person be imprisoned is not a sentence of imprisonment.

*[Section 6 amended: No. 23 of 2001 s. 12.]*

## 7. Aggravating factors

(1) Aggravating factors are factors which, in the court's opinion, increase the culpability of the offender.

(2) An offence is not aggravated by the fact that —

(a) the offender pleaded not guilty to it; or

(b) the offender has a criminal record; or

(c) a previous sentence has not achieved the purpose for which it was imposed.

(3) If the statutory penalty for an offence is greater if the offence is committed in certain circumstances than if it is committed without the existence of those circumstances, then —

(a) an offender is not liable to the greater statutory penalty unless he or she has been charged and convicted of committing the offence in those circumstances; and

(b) whether or not the offender was so charged, the existence of those circumstances may be taken into account as aggravating factors.

## 8. Mitigating factors

(1) Mitigating factors are factors which, in the court's opinion, decrease the culpability of the offender or decrease the extent to which the offender should be punished.

(2) The possibility that an order might be made in respect of the offender under the *High Risk Serious Offenders Act 2020* is not a mitigating factor.

(3) The fact that criminal property confiscation has occurred or may occur is not a mitigating factor.

(3a) However, except in the case of derived property, facilitation by the offender of criminal property confiscation is a mitigating factor.

(4) If because of a mitigating factor a court reduces the sentence it would otherwise have imposed on an offender, the court must state that fact in open court.

(5) If because an offender undertakes to assist law enforcement authorities a court reduces the sentence it would otherwise have imposed on the offender, the court must state that fact and the extent of the reduction in open court.

(6) In this section —

***criminal property confiscation*** means —

(a) confiscation of derived property or any other property under section 6, 7 or 8 of the *Criminal Property Confiscation Act 2000*; or

(b) confiscation or forfeiture to the State of derived property under any other written law;

***derived property*** means property derived or realised, directly or indirectly, by the offender, or that is subject to the effective control of the offender, as a result of the commission of the offence.

*[Section 8 amended: No. 29 of 1998 s. 15; No. 26 of 2004 s. 7; No. 41 of 2006 s. 71(1) and 79; No. 42 of 2012 s. 3; No. 17 of 2016 s. 54; No. 29 of 2020 s. 121.]*

### 9AA. Plea of guilty, sentence may be reduced in case of

(1) In this section —

***fixed term*** has the meaning given in section 85(1);

***head sentence***, for an offence, means the sentence that a court would have imposed for the offence if —

(a) the offender had been found guilty after a plea of not guilty; and

(b) there were no mitigating factors;

***victim*** has the meaning given in section 13.

(2) If a person pleads guilty to a charge for an offence, the court may reduce the head sentence for the offence in order to

recognise the benefits to the State, and to any victim of or witness to the offence, resulting from the plea.

(3) The earlier in the proceedings the plea is made, the greater the reduction in the sentence may be.

(4) If the head sentence for an offence is or includes a fixed term, the court must not reduce the fixed term under subsection (2) —

(a) by more than 25%; or

(b) by 25%, unless the offender pleaded guilty, or indicated that he or she would plead guilty, at the first reasonable opportunity.

(5) If a court reduces the head sentence for an offence under subsection (2), the court must state that fact and the extent of the reduction in open court.

(6) This section does not prevent the court from reducing the head sentence for an offence because of any mitigating factor other than a plea of guilty.

*[Section 9AA inserted: No. 42 of 2012 s. 4.]*

## Division 2A — Sentencing where declared criminal organisations involved

*[Heading inserted: No. 49 of 2012 s. 181(2).]*

### 9A. Terms used

(1) In this Division —

***COC Act*** means the *Criminal Organisations Control Act 2012*;

***COC Act offence*** means an offence under the COC Act Part 4;

***declared criminal organisation*** has the meaning given in the *Criminal Organisations Control Act 2012* section 3(1);

***relevant indictable offence*** means an indictable offence listed in Schedule 1A Part 1;

***relevant simple offence*** means a simple offence listed in Schedule 1A Part 2.

(2) A term used in this Division and also in the COC Act has the same meaning in this Division as it has in that Act, unless the term is defined in this Act or the context requires otherwise.

*[Section 9A inserted: No. 49 of 2012 s. 181(2).]*

### 9B. Application of this Division

This Division overrides —

(a) Division 1; and

(b) *The Criminal Code* sections 3(5) and 5(8).

*[Section 9B inserted: No. 49 of 2012 s. 181(2).]*

### 9C. Principal objectives of sentencing for offences where declared criminal organisation involved

(1) This section applies to an offender who is convicted of —

(a) a COC Act offence; or

(b) an offence to which section 9D(3) or (4) applies.

(2) The principal objectives of the court in sentencing an offender to which this section applies must be —

(a) to denounce the activities of declared criminal organisations, their members and associates; and

(b) to protect the community from those activities.

*[Section 9C inserted: No. 49 of 2012 s. 181(2).]*

### 9D. Mandatory minimum sentences where declared criminal organisation involved

(1) Subsections (3) and (4) apply if —

(a) an offender is convicted of —

(i) a relevant indictable offence, whether the offence is dealt with on indictment or summarily; or

(ii) a relevant simple offence;

and

(b) the offence was committed by that offender —

(i) at the direction of a declared criminal organisation; or

(ii) in association with one or more persons who, at the time of the commission of the offence, were members of a declared criminal organisation (whether or not those persons were also convicted of the offence), but only if the offender knew, at the time of the commission of the offence, that one or more of those persons were members of a declared criminal organisation; or

(iii) for the benefit of a declared criminal organisation.

(2) For the purposes of subsection (1), if, at the time of the commission of the offence, the offender was a member of a declared criminal organisation —

(a) it is presumed that the offence was committed by the offender in all of the circumstances referred to in subsection (1)(b)(i) to (iii), without the prosecution having to show which of those circumstances actually applies; and

(b) that presumption is rebutted only if the offender shows that the offence was not committed in any of those circumstances.

(3) If this subsection applies, and the offence of which the offender was convicted is a relevant indictable offence dealt with on indictment, the court must impose on the offender —

(a) if the statutory penalty for the offence includes life imprisonment, a term of imprisonment of not less than 15 years; or

(b) if the statutory penalty for the offence is or includes a period of imprisonment (but not life imprisonment), a term of imprisonment of not less than 75% of that statutory penalty, but in no case less than 2 years (even

if the maximum penalty for the offence is otherwise less than 2 years' imprisonment); or

(c) if the statutory penalty for the offence does not otherwise include imprisonment, a term of imprisonment of 2 years.

(4) If this subsection applies, and the offence of which the offender was convicted is a relevant indictable offence dealt with summarily or a relevant simple offence, the court must impose on the offender —

(a) if the statutory penalty for the offence is or includes a period of imprisonment, a term of imprisonment of not less than 2 years (even if the maximum penalty for the offence is otherwise less than 2 years' imprisonment); or

(b) if the statutory penalty for the offence does not otherwise include imprisonment, a term of imprisonment of 2 years.

(5) However, the court must sentence the offender under subsection (3) if the offence is a relevant indictable offence dealt with summarily but the offender is committed for sentence and, under *The Criminal Code* section 5(10), is liable to the penalty with which the offence is punishable on indictment.

(6) This section is subject to section 9E.

*[Section 9D inserted: No. 49 of 2012 s. 181(2).]*

### 9E. Section 9D not applicable to persons aged under 18

Section 9D does not apply to an offender who, at the time of the commission of the offence, was under 18 years of age.

*[Section 9E inserted: No. 49 of 2012 s. 181(2).]*

### 9F. Further provisions relating to mandatory minimum sentences imposed under section 9D

(1) A court must not suspend a term of imprisonment imposed under section 9D(3) or (4).

(2) Section 9D does not prevent the court from —

(a) imposing life imprisonment, if life imprisonment may be imposed for the offence; or

(b) imposing indefinite imprisonment under Part 14; or

(c) fining the offender as well as imposing a term of imprisonment if —

(i) both imprisonment and a fine may be imposed for the offence; or

(ii) section 9D(3)(c) or (4)(b) applies.

*[Section 9F inserted: No. 49 of 2012 s. 181(2).]*

### 9G. Eligibility for parole

(1) If a court sentences an offender to a fixed term of imprisonment under section 9D(3) or (4), the court must not make a parole eligibility order in respect of that term of imprisonment.

(2) Subsection (1) overrides section 89.

(3) Subsection (4) applies if —

(a) an offender is convicted of murder; and

(b) section 9D(3) applies to the offender in respect of that offence; and

(c) the court sentences the offender to life imprisonment for that offence; and

(d) under section 90(1)(a), the court sets a minimum period that the offender must serve before being eligible for release on parole.

(4) If this subsection applies, the court must set a minimum period of at least 20 years.

(5) Subsection (4) overrides section 90(1)(a).

*[Section 9G inserted: No. 49 of 2012 s. 181(2); amended: No. 45 of 2016 s. 62.]*

## Division 2 — Miscellaneous

### 9. Statutory penalty, effect of

(1) Part 5 applies to and in respect of the statutory penalty for an offence.

(2) If the statutory penalty for an offence is a fine of a particular amount or a particular term of imprisonment, then that penalty is the maximum penalty that may be imposed for that offence and, unless the statutory penalty —

(a) is a mandatory penalty; or

(b) includes a minimum penalty,

a lesser penalty of the same kind may be imposed.

(3) If the statutory penalty for an offence specifies a minimum and a maximum penalty, the penalty to be imposed for the offence must be at least that minimum and not more than that maximum.

*[(4) deleted]*

(5) The fact that a court is required to impose a mandatory penalty or a minimum penalty does not prevent it from —

(a) making a spent conviction order under Part 5 if the sentencing option imposed by the court is one of the sentencing options in section 39(2)(a) to (d); or

(b) making an order under Part 15, 16 or 17.

(6) If the statutory penalty for an offence specifies more than one penalty, the use of the word "and" between the penalties means that the penalties may be imposed alternatively or cumulatively.

(7) If the statutory penalty for an offence specifies a daily penalty, that penalty may be imposed for each day or part of a day during which the offence continues, in addition to any other penalty that may be imposed for the offence.

(8) In this section a reference to a mandatory penalty is a reference to a penalty that must be imposed, whether the expression "mandatory penalty" or a like expression is used.

(9) In this section a reference to a minimum penalty is a reference to a penalty expressed to be a minimum penalty, whether by use of the expression "minimum penalty" or "not less than" or another like expression.

*[Section 9 amended: No. 50 of 2003 s. 9; No. 8 of 2009 s. 115(2); No. 47 of 2011 s. 26(3).]*

### 10. Change of statutory penalty, effect of

If the statutory penalty for an offence changes between the time when the offender committed it and the time when the offender is sentenced for it, the lesser statutory penalty applies for the purposes of sentencing the offender.

### 11. Person not to be sentenced twice on same evidence

(1) If the evidence necessary to establish the commission by a person of an offence under the law of this State is also the evidence necessary to establish the commission by that person of another such offence, the person may be charged and convicted of each offence but is not to be sentenced for more than one of the offences.

(2) If the evidence necessary to establish the commission by a person of an offence under the law of this State is also the evidence necessary to establish the commission by that person of an offence under the law of the Commonwealth, a Territory or another State, and the person has been sentenced for the offence under the law of that other place, the person is not to be sentenced for the offence under the law of this State.

(3) Despite subsections (1) and (2), if an act or omission of an offender causes the death of another, the offender may be sentenced for the offence of which he or she is guilty by reason of causing the death despite the fact that he or she has already

been sentenced for some other offence constituted by that act or omission.

(4) Nothing in this section affects the operation of section 17 of *The Criminal Code*.

## 12. Common law bonds abolished

The jurisdiction at common law to require an offender to enter into a bond, a recognisance, or a surety, to be of good behaviour or to keep the peace, or to appear for sentence when called upon, is abolished.

# Part 3 — Matters preliminary to sentencing

## Division 1 — Preliminary

### 13. Term used: victim

In this Part —

***victim***, in relation to an offence, means —

(a) a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender;

(b) where the offence results in a death, any member of the immediate family of the deceased.

## Division 2 — General

### 14. [2M] Offender to be present for sentencing

(1) A court is not to sentence an offender unless the offender is personally present in court or appears before the court by video link under section 14A.

(2) Despite subsection (1), a court may, in an offender's absence —

(a) under Part 6 impose no sentence; or

(b) under Part 8 impose a fine; or

(c) under Part 8A impose a suspended fine,

and, in connection with such a sentence, may also make an order under Part 15, 16, or 17, or under another written law if that law does not require the offender to be present when such an order is made.

(3) Despite subsection (1), a court may sentence an offender in his or her absence if the offender is in custody and the proceedings, because of the offender's conduct, have been directed to proceed in the offender's absence.

(4) Despite subsection (2) or any other law that does not require an offender to be present when a sentence is imposed, a court may require an offender to appear personally to be sentenced.

(5) For the purposes of subsections (1) and (4), a court may compel an offender to appear personally to be sentenced by —

(a) issuing a summons and, if it is not obeyed, a warrant for the offender's arrest; or

(b) issuing a warrant for the offender's arrest.

(6) A summons issued under subsection (5) is to be served by pre-paid post unless the court directs it be served personally.

*[Section 14 amended: No. 48 of 1998 s. 13; No. 45 of 2016 s. 48.]*

*[Section 14: modified by the COVID-19 Response and Economic Recovery Omnibus Act 2020 (34 of 2020) Part. 4 Division 4 Subdivision 1: See endnote 2M.]*

### 14A. Video link, use of for sentencing

(1) A court sentencing an offender may, on its own initiative or on an application by the prosecutor or the offender, direct that the offender appear before it by video link from a place in this State.

(2) The court shall not make a direction under subsection (1) unless it is satisfied that —

(a) the video link is available or can reasonably be made available; and

(b) the direction is in the interests of justice.

(3) The place where an offender attends for sentencing by video link is taken to be part of the court for the purposes of the sentencing.

(4) In this section —

***video link*** means facilities (including closed circuit television) that enable, at the same time, a court at one place to see and hear a person at another place and vice versa.

*[Section 14A inserted: No. 48 of 1998 s. 14.]*

*[Section 14A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

*[**14B.** [2M] Modified by the COVID-19 Response and Economic Recovery Omnibus Act 2020 (34 of 2020) Part. 4 Division 4 Subdivision 1: See endnote 2M.]*

### 15. Court may inform itself as it thinks fit

To decide on the proper sentence to be imposed, or on imposing an order in addition to sentence, a court sentencing an offender may inform itself in any way it thinks fit.

### 16. Adjourning sentencing

(1) A court may adjourn the sentencing of an offender —

(a) to obtain information about the offence, the offender or a victim; or

(b) to allow a pre-sentence report to be prepared for the court under Division 3; or

(c) to enable a victim impact statement to be given to the court under Division 4; or

(d) to allow a mediation report to be prepared for the court under Division 5; or

(e) to allow a list of pending charges to be prepared under Division 6; or

(f) for the making or determination of an application under a written law for the confiscation or forfeiture to the State (otherwise than under the *Criminal Property Confiscation Act 2000*) of property legitimately owned by the offender and used in, or in connection with, the commission of the offence; or

(g) for any other reason the court thinks is proper.

(2) The sentencing of an offender must not be adjourned for more than 6 months after the offender is convicted.

(3) Subsection (2) does not prevent a court sentencing an offender more than 6 months after the offender is convicted.

*[Section 16 amended: No. 26 of 2004 s. 8; No. 41 of 2006 s. 71(2).]*

### 17. Court's powers on adjourning

(1) A court's power to adjourn the sentencing of an offender may be exercised from time to time.

(2) If a court adjourns the sentencing of an offender, it must —

(a) fix, or indicate by reference to a fact or event, the time; and

(b) fix the place,

at which the sentence will be imposed.

(3) If a court adjourns the sentencing of an offender, it may grant the offender bail.

### 18. Committal for sentence

This Act does not affect any right or duty of a court of summary jurisdiction to commit an offender to another court for sentence.

*[Section 18 amended: No. 59 of 2004 s. 141.]*

*[**19.** Deleted: No. 29 of 1998 s. 18.]*

## Division 3 — Information about the offender

### 20. Pre-sentence report, court may order

(1) If a court considers it would be assisted in sentencing an offender by a pre-sentence report about the offender, it may order one.

(2) A court committing an offender to another court for sentence may if it thinks fit order a pre-sentence report for the assistance of that other court.

(2a) A court considering imposing a PSO must order a pre-sentence report about (among any other things) the offender's suitability to be the subject of a PSO.

(3) A court considering imposing an ISO must order a pre-sentence report about (among any other things) the offender's suitability for such a sentence.

*[Section 20 amended: No. 29 of 1998 s. 18; No. 50 of 2003 s. 5.]*

## 21. Pre-sentence report, content of

(1) When ordering a pre-sentence report a court may give instructions as to the issues to be addressed by the report.

(2) In the absence of specific instructions from the court that ordered it, a pre-sentence report is to set out matters about the offender that are, by reason of this Act or sentencing practice, relevant to sentencing the offender or to the making of a reparation order under Part 16.

(2a) If the court gives instructions that it do so, a pre-sentence report is to set out matters that are relevant to the making of an offender reporting order under section 13 of the *Community Protection (Offender Reporting) Act 2004* in respect of the offender.

(3) A pre-sentence report may include reports as to the physical or mental condition of the offender, whether or not the court has asked for them.

*[Section 21 amended: No. 72 of 2004 s. 116(2).]*

### 22. Pre-sentence report, preparation of

(1) The CEO (corrections) is to ensure that pre-sentence reports are made —

(a) by appropriately qualified people; and

(b) as soon as practicable and in any event within 14 days before the sentencing day.

(2) A pre-sentence report may be made by more than one person.

(3) A pre-sentence report may be made in writing or orally.

(4) A written pre-sentence report must not be given to anyone other than the court by or for which it was ordered and the CEO (corrections).

(4a) The CEO (corrections) may use the information in a pre-sentence report to assist with the management of the convicted or sentenced offender to whom the report relates.

(5) A court may make a pre-sentence report available to the prosecutor and to the offender, on such conditions as it thinks fit.

*[Section 22 amended: No. 65 of 2006 s. 46 and 49; No. 45 of 2016 s. 63.]*

### 23. Offender's time in custody etc., information about

(1) When an offender is being sentenced for an offence the prosecutor must inform the court of the period, if any, that the offender has already spent in custody in relation to that offence and for no other reason.

(2) If when an offender is being sentenced, he or she is already serving or sentenced to serve a term or terms of imprisonment, the prosecutor must inform the court of the date when the offender will be eligible to be released and whether the release will be on parole or not.

(3) For the purposes of subsection (2) the date when an offender will be eligible to be released is to be determined without regard

to the fact that an offender may be released under a re-entry release order made under the *Sentence Administration Act 2003*.

(4) The CEO (corrections), on the request of a prosecutor, must give the prosecutor the information necessary for the purposes of subsections (1) and (2).

*[Section 23 amended: No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 49.]*

## Division 4 — Information about victims etc.

### 23A. Terms used

In this Division —

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

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

(a) the primary victim's spouse; or

(b) the primary victim's de facto partner; or

(c) a person to whom the primary victim is engaged to be married; or

(d) a parent, grandparent, guardian, step-parent or step-grandparent of the primary victim; or

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

(f) a brother, sister, half-brother, half-sister, step-brother or step-sister of the primary victim; or

(g) if, at the time of the offence, the primary victim was an Aboriginal person or a Torres Strait Islander requiring care, a person who, in the opinion of the court, is regarded under the customary law or tradition of the

primary victim's community as the equivalent of the primary victim's guardian or carer;

***personal harm*** means bodily harm or psychological or psychiatric harm;

***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 offence if it included any of the following —

(i) actual or threatened violence;

(ii) sexual assault;

(iii) bodily harm;

(iv) death;

***requiring care***, in relation to a person, means a person who —

(a) is under 18 years of age; or

(b) in the absence of positive evidence as to age, appears to be under 18 years of age; or

(c) because of a mental or physical impairment, is unable to give a victim impact statement;

***victim*** means a primary victim or a family victim;

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

(a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or

(b) in the case of a family victim, the impact of the primary victim's personal harm on the members of the primary victim's immediate family.

*[Section 23A inserted: No. 45 of 2016 s. 53.]*

### 24. Victim impact statement, who may give

(1) A victim, or a person who may do so under subsection (2), may give a victim impact statement to a court to assist the court in determining the proper sentence for the offender.

(2) If because of age, disability or any other reason a victim is personally incapable of giving a victim impact statement, another person may give it on the victim's behalf if the court is satisfied that it is appropriate for that other person to do so.

### 25. Victim impact statement, content of

*[(1) deleted]*

(2) A victim impact statement is not to address the way in which or the extent to which the offender ought to be sentenced.

(3) A victim impact statement may be accompanied by a report by any person who has treated the victim in connection with the effects on the victim of the commission of the offence.

*[Section 25 amended: No. 45 of 2016 s. 54.]*

### 26. Court's functions in relation to victim impact statement

(1) A court may make a written victim impact statement available to the prosecutor and to the offender, on such conditions as it thinks fit.

(2) A court may rule as inadmissible the whole or any part of a victim impact statement.

(3) A court must, after imposing a sentence of imprisonment on an offender, make available to the Prisoners Review Board a copy of any victim impact statement given to the court under section 24.

*[Section 26 amended: No. 45 of 2016 s. 55.]*

## Division 5 — Mediation

### 27. Mediation report, court may order and receive

(1) If a court considers it would be assisted in sentencing an offender by a mediation report, it may order one.

(2) A court committing an offender to another court for sentence may if it thinks fit order a mediation report for the assistance of that other court.

(3) Whether or not a mediation report has been ordered, a mediator may give one to the sentencing court.

### 28. Mediation report, content of

(1) A mediation report is a written or oral report by a mediator about any mediation or attempted mediation between the offender and a victim.

(2) In particular, a mediation report is to report —

(a) on the attitude of the offender to the victim and to the effects on the victim of the commission of the offence; and

(b) any agreement between the offender and the victim as to actions to be taken by the offender by way of reparation.

### 29. Mediation report, preparation of

The CEO (corrections) is to ensure that —

(a) appropriate people are appointed to be mediators; and

(b) any mediation between offenders and victims occurs, and a report is made, as soon as practicable after a mediation report is ordered.

*[Section 29 amended: No. 65 of 2006 s. 49.]*

### 30. Mediation report, court's powers as to

(1) A court may make a mediation report available to the prosecutor and to the offender, on such conditions as it thinks fit.

(2) A court may rule as inadmissible the whole or any part of a mediation report.

## Division 6 — Other pending charges

### 31. Term used: pending charge

In this Division —

***pending charge*** means a charge, in a court of summary jurisdiction of an offence (whether indictable or simple) for which no sentence has been imposed.

*[Section 31 amended: No. 59 of 2004 s. 141.]*

### 32. Pending charges, offender may request court to deal with

(1) An offender who is to be sentenced by a superior court for an offence (in this Division referred to as the ***original offence***) may request the court to also deal with any pending charges against him or her.

(2) On such a request being made, a list of pending charges against the offender is to be prepared and served in accordance with rules of court.

(3) The list must not include any indictable offence that the superior court would not have jurisdiction to deal with, even with the consent or at the election of the offender or the prosecutor.

(4) For the purposes of this section a superior court is to be taken to have jurisdiction to deal with simple offences.

### 33. Pending charges, court may deal with

(1) When a list of pending charges has been prepared and served, the superior court must ask the offender —

(a) to plead to any of the pending charges listed which the offender has not previously been convicted of; and

(b) to say if he or she wants the superior court to also pass sentence for each of those pending charges that he or she is convicted of.

(2) If the State consents and the superior court considers that it is just to do so, it may, in addition to sentencing the offender for the original offence, also sentence the offender for each of the pending charges the offender is convicted of and wants dealt with.

(3) A sentence imposed by a superior court on a person for a pending charge is to be taken, for the purposes of an appeal against sentence, as being a sentence imposed following conviction on indictment.

(4) A pending charge that was not dealt with by the superior court may be dealt with by the court before which it was pending.

(5) If an offender pleaded guilty before the superior court to a pending charge but it was not dealt with by that court, the plea is not admissible in any proceedings for that charge.

*[Section 33 amended: No. 41 of 2006 s. 79.]*

# Part 3A — Pre-sentence order

*[Heading inserted: No. 50 of 2003 s. 6.]*

## Division 1 — General

*[Heading inserted: No. 50 of 2003 s. 6.]*

### 33A. When PSO may be made

(1) In this section —

***excluded offence*** means —

(a) an offence the statutory penalty for which is or includes mandatory imprisonment; or

(b) an offence under section 79 of the *Prisons Act 1981*;

***imprisonable offence*** means an offence the statutory penalty for which is or includes imprisonment.

(2) This section applies if a court is sentencing an offender for one or more imprisonable offences, none of which is an excluded offence, at a time when the offender is neither serving nor is liable to serve a term of imprisonment for another offence.

(2a) This section does not apply if a court is sentencing an offender for one or more offences that were committed —

(a) while the offender was subject to —

(i) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995* [1]; or

(ii) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*,

for another offence; or

(b) during the suspension period of a suspended term of imprisonment imposed for another offence.

(3) If this section applies, the court may make a PSO in respect of the offender if it considers —

(a) that the seriousness of the imprisonable offence or offences warrants the imposition of a term of imprisonment under Part 13; and

(b) that a PSO would allow the offender to address his or her criminal behaviour and any factors which contributed to the behaviour; and

(c) that if the offender were to comply with a PSO the court might not impose a term of imprisonment under Part 13 for the offence or offences.

(4) If the court makes a PSO in respect of an offender in respect of an imprisonable offence, the PSO applies in respect of any other offence for which the court is sentencing the offender, whether an imprisonable offence or not.

(5) A court must not make a PSO in respect of an offender unless it has received a pre-sentence report about the offender.

(6) If a pre-sentence report says that the offender is suitable to be the subject of a PSO, but the court decides not to make a PSO in respect of the offender, the court must give written reasons for its decision.

*[Section 33A inserted: No. 50 of 2003 s. 6; amended: No. 41 of 2006 s. 72; No. 20 of 2013 s. 125; No. 45 of 2016 s. 64.]*

### 33B. PSO, nature of

(1) A PSO is an order that —

(a) the offender must appear before the court at the time and place specified in the PSO (the ***sentencing day***) to be sentenced for the offence or offences to which the PSO applies; and

(b) while the PSO is in force the offender must comply with —

(i) the standard obligations in section 33D; and

(ii) such of the primary requirements in section 33E as the court imposes; and

(iii) any direction imposed under an electronic monitoring requirement under section 33HA.

(2) The sentencing day must not be more than 2 years after the date on which the PSO is made.

(3) A PSO —

(a) comes into force on the day it is made; and

(b) ceases to be in force on the sentencing day or when a court cancels it, whichever happens first.

*[Section 33B inserted: No. 50 of 2003 s. 6; amended: No. 30 of 2020 s. 15.]*

### 33C. Making a PSO

(1) If a court makes a PSO in respect of an offender, the court must adjourn the sentencing of the offender to the sentencing day.

(2) When adjourning the sentencing under subsection (1) the court may also order that the offender reappear before the court prior to the sentencing day —

(a) at a time and place fixed by the court; or

(b) if and when summonsed by the court,

so that the court can ascertain whether the offender is complying with the PSO.

(3) An order may be made under subsection (2) on any reappearance of the offender pursuant to a previous order made under subsection (2).

(4) If an offender does not reappear before a court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.

(5) On the reappearance of an offender, section 33N applies.

(6) If a court makes a PSO in respect of an offender, it may grant the offender bail.

*[Section 33C inserted: No. 50 of 2003 s. 6.]*

### 33D. PSO, standard obligations of

The standard obligations of a PSO are that the offender —

(a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by a speciality court or a CCO; and

(b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change, or as otherwise ordered by a speciality court; and

(c) must not leave Western Australia except with, and in accordance with, the permission of a speciality court or the CEO (corrections); and

(d) must comply with section 76 of the *Sentence Administration Act 2003*.

*[Section 33D inserted: No. 50 of 2003 s. 6; amended: No. 65 of 2006 s. 49.]*

*[Section 33D. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

### 33E. PSO, primary requirements of

Every PSO must contain at least one of these primary requirements —

(a) a supervision requirement under section 33F;

(b) a programme requirement under section 33G;

(c) a curfew requirement under section 33H.

*[Section 33E inserted: No. 50 of 2003 s. 6.]*

### 33F. Supervision requirement

(1) The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —

(a) rehabilitating the offender;

(b) ensuring the offender complies with any direction given by the court when imposing the requirement.

(2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

(3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —

(a) the effect of which could be achieved by imposing a programme requirement; or

(b) that requires the offender to pay compensation or make restitution to any person or to perform any community or other work.

(4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 8 weeks.

(5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.

(6) A supervision requirement ceases to be in force when the PSO ceases to be in force.

*[Section 33F inserted: No. 50 of 2003 s. 6.]*

### 33G. Programme requirement

(1) The purpose of a programme requirement is —

(a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and

(b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.

(2) The programme requirement is a requirement that the offender must obey the orders of a speciality court or a CCO as to —

(a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

(b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;

(c) attending educational, vocational, or personal development programmes or courses;

(d) residing at a specified place for the purposes of any matter in paragraph (a), (b) or (c);

(e) more than one of the above.

(3) A speciality court or a CCO must not order an offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.

(4) A person is not to administer treatment of any sort mentioned in subsection (2) to an offender without the informed consent of the offender.

(5) The requirements of a programme requirement imposed as part of a PSO are additional to the requirements of any other programme requirement applicable to the offender under another PSO or a community order or a sentence of CSI.

(6) A programme requirement ceases to be in force when a speciality court or a CCO gives the offender notice to that effect, or the PSO ceases to be in force, whichever happens first.

(7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 33G inserted: No. 50 of 2003 s. 6; amended: No. 27 of 2004 s. 6(4); No. 47 of 2011 s. 26(3).]*

### 33H. Curfew requirement

(1) The purposes of the curfew requirement are —

(a) to allow for the movements of an offender to be restricted during periods when there is a high risk of the offender offending; and

(b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.

(2) The curfew requirement is a requirement that the offender —

(a) must remain at a specified place (the ***specified place***), for specified periods, subject to subsection (8); and

(b) must submit to surveillance or monitoring as ordered by a speciality court or a CCO.

(3) The term of a curfew requirement must be set by the court when it imposes the requirement; but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under a PSO or an ISO or a sentence of CSI, for a continuous period that exceeds 6 months.

(4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another PSO or an ISO or a sentence of CSI unless the court orders otherwise.

(5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under PSOs or ISOs or sentences of CSI must not exceed 6 months.

(6) The court may give directions as to the periods when the offender ought to be subject to a curfew.

(7) The offender is not to be required by the curfew requirement to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.

(8) The offender may only leave the specified place during a specified period —

(a) to obtain urgent medical or dental treatment for the offender; or

(b) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or

(c) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere; or

(d) for a purpose approved of by a CCO; or

(e) on the order of a CCO.

(9) The curfew requirement ceases to be in force when its term ends, or when the PSO ceases to be in force, whichever happens first.

(10) Without limiting the means by which the offender may be kept under surveillance or monitored, a speciality court or a CCO may, for the purposes of subsection (2)(b), order an offender to do 1 or both of the following —

(a) wear an approved electronic monitoring device;

(b) permit the installation of an approved electronic monitoring device at the place where the offender resides.

(11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.

(12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —

(a) when the offender may leave; and

(b) the period of the authorised absence; and

(c) when the offender must return; and

(d) the method of travel to be used by the offender during the absence; and

(e) the manner in which the offender must report his or her whereabouts.

(13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —

(a) enter or telephone the specified place; or

(b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or

(c) question any person at any place referred to in paragraph (a) or (b).

(14) A person must not —

(a) hinder a person exercising powers under subsection (13); or

(b) fail to answer a question put pursuant to subsection (13)(c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: $2 000 and imprisonment for 12 months.

(15) In this section —

***specified*** means specified by a speciality court or the CEO (corrections) from time to time.

*[Section 33H inserted: No. 50 of 2003 s. 6; amended: No. 27 of 2004 s. 6(4); No. 65 of 2006 s. 49; No. 13 of 2020 s. 5.]*

### 33HA. Electronic monitoring requirement

(1) This section applies if an offence in respect of which a PSO may apply is a family violence offence and the offender is a serial family violence offender.

(2) Where this section applies, a court must not make a PSO unless the court has considered whether to require electronic monitoring in respect of the offender under this section (an ***electronic monitoring requirement***).

(3) The purpose of electronic monitoring of an offender subject to a PSO is to enable the location of the offender to be monitored.

(4) If a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under this section.

(5) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —

(a) direct the offender to wear an approved electronic monitoring device;

(b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.

(6) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

(7) An electronic monitoring requirement ceases to be in force when its term ends, or when the PSO ceases to be in force, whichever happens first.

*[Section 33HA inserted: No. 30 of 2020 s. 16.]*

### 33I. Performance reports about offenders on PSOs

(1) A CCO must give a court a performance report about an offender who is subject to a PSO —

(a) if required to do so by the court and in the form and at a forum directed by the speciality court; and

(b) in any event on or before the sentencing day.

(2) A CCO may give a court a performance report at any time if the CCO considers it appropriate to do so.

(3) A performance report must report —

(a) on the offender's behaviour while subject to the PSO; and

(b) if the report is required for a hearing prior to the sentencing day, on whether the offender is suitable to continue to be the subject of a PSO.

(4) A performance report may be made —

(a) by more than one person; and

(b) in writing or orally.

(5) A written performance report must not be given to anyone other than the court and the CEO (corrections).

(6) A court may make a performance report available to the prosecutor, the offender or to any other person, on such conditions as it thinks fit.

*[Section 33I inserted: No. 50 of 2003 s. 6; amended: No. 65 of 2006 s. 49.]*

### 33J. Sentencing day, offender to be sentenced on etc.

(1) When an offender appears before the court —

(a) on the sentencing day specified in the PSO; or

(b) as a result of a warrant issued under subsection (2),

the court is to sentence the offender.

(2) If an offender does not appear on the sentencing day specified in the PSO, the court may issue a warrant to have the offender arrested and brought before it.

*[Section 33J inserted: No. 50 of 2003 s. 6.]*

### 33K. Sentencing offender after PSO

(1) A court sentencing an offender who has been subject to a PSO, whether on the sentencing day or on a day prior to that day —

(a) must take into account the offender's behaviour while subject to the PSO; and

(b) may use any sentencing option available under Part 5 to the court in respect of the offence concerned.

(2) For the purposes of subsection (1), the court may adjourn the sentencing in order to obtain a performance report made under section 33I or any other information relevant to the offender's behaviour while subject to the PSO.

(3) The court referred to in subsection (1) need not be constituted by the same judicial officer as constituted the court when the PSO was made.

(4) Nothing in this Part prevents a court from sentencing an offender who was subject to a PSO more than 2 years after the PSO was made.

*[Section 33K inserted: No. 50 of 2003 s. 6.]*

## Division 2 — Amending and enforcing PSOs

*[Heading inserted: No. 50 of 2003 s. 6.]*

### 33L. Term used: requirement

(1) In this Division —

***requirement***, in relation to a PSO, means —

(a) the standard obligations and primary requirements of the PSO; and

(b) any direction imposed under an electronic monitoring requirement under section 33HA; and

(c) any direction of the court imposed under the PSO.

(2) Section 125(3), with any necessary changes, applies in respect of references in this Division to the court that made a PSO in the same way as it applies in Part 18 to the court that imposed an order.

*[Section 33L inserted: No. 50 of 2003 s. 6; amended: No. 30 of 2020 s. 17.]*

### 33M. Application to amend or cancel PSO

(1) An application to amend or cancel a PSO may be made only by the offender or a CCO.

(2) The application must be made —

(a) if the Children's Court made the PSO, to that court; or

(b) if the Magistrates Court made the PSO, to the Magistrates Court; or

(c) if a superior court made the PSO, to that court.

(3) The application must be made in accordance with the regulations.

(4) On an application made under this section, section 33N applies.

*[Section 33M inserted: No. 50 of 2003 s. 6; amended: No. 59 of 2004 s. 141.]*

### 33N. Court may confirm, amend or cancel PSO

(1) If on a reappearance ordered under section 33C(2) or compelled under section 33C(2) or (4) or on an application made under section 33M, a court is satisfied that the circumstances of the offender —

(a) were wrongly or inaccurately presented to the court when it made the PSO; or

(b) have so altered since the court made the PSO that —

(i) the offender will not be able to comply with the requirements of the PSO; or

(ii) it is no longer appropriate for the offender to be subject to the PSO,

and that it is just to do so, or if the offender requests, the court may make an order under subsection (2) but otherwise it must confirm the PSO.

(2) If a court may make an order under this subsection, it may either —

(a) amend the PSO —

(i) by amending or cancelling the primary requirements of the PSO or any direction given by the court that made the PSO; or

(ii) by adding a primary requirement or giving a direction that could have been given by the court that made the PSO; or

(iia) by adding, amending or cancelling an electronic monitoring requirement under section 33HA; or

(iii) subject to section 33B(2), by changing the sentencing day; or

(iv) by a combination of those;

or

(b) cancel the PSO and sentence the offender.

(3) A court that under subsection (2)(a) may amend a PSO that applies to an offender who is subject to one or more curfew requirements under PSOs or ISOs of 6 months may, despite sections 33H(3) and (5), 75(3) and (5) and 84C(3) and (5), amend any curfew requirement in the PSO by extending its term by not more than one month at a time or add a curfew requirement the term of which is not more than one month.

(4) If the court decides to cancel the last remaining requirement of a PSO, the court must cancel the PSO and sentence the offender.

(5) On a reappearance ordered under section 33C(2) or compelled under section 33C(2) or (4) or on an application made under section 33M in respect of a PSO, the court need not be constituted by the same judicial officer as constituted the court when the PSO was made.

*[Section 33N inserted: No. 50 of 2003 s. 6; amended: No. 27 of 2004 s. 6(4); No. 65 of 2006 s. 47; No. 30 of 2020 s. 18.]*

### 33O. Re-offending while subject to PSO, consequences of

(1) This section applies if —

(a) a court convicts a person of an offence the statutory penalty for which is or includes imprisonment; and

(b) the offence was committed while the person was subject to a PSO made in relation to another offence.

(2) The court —

(a) if it is the Children's Court, may deal with the person under subsection (5) unless the PSO was made by a superior court in which case it must commit the person to that court and that court may deal with the person under subsection (5);

(b) if it is the Magistrates Court, may deal with the person under subsection (5) unless the PSO was made —

(i) by the Children's Court for an indictable offence; or

(ii) by a superior court,

in which case the court must commit the person to the court that made the PSO and that court may deal with the person under subsection (5);

(c) if it is the District Court, may deal with the person under subsection (5) unless the PSO was made by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that made the PSO and that court may deal with the person under subsection (5);

(d) if it is the Supreme Court, may deal with the person under subsection (5).

(3) A court that under subsection (2) commits a person to another court must certify that the person has been convicted of an offence committed while subject to a PSO.

(4) Subsection (2) does not affect the powers of the court that convicts a person of the offence committed while the person was subject to a PSO to deal with the person for that offence.

(5) A court that may deal with an offender under this subsection may —

(a) if the PSO is in force —

(i) confirm the PSO; or

(ii) amend the PSO in any of the ways described in section 33N(2)(a); or

(iii) cancel the PSO and sentence the offender;

(b) if the PSO is not in force and the offender has been sentenced for the offence or offences to which the PSO applied, recall the order imposing the sentence and impose a sentence that takes account of —

(i) the fact that the offender committed an offence while subject to the PSO; and

(ii) the extent to which the offender has complied with any orders made under the sentence imposed for the offence or offences to which the PSO applied.

*[Section 33O inserted: No. 50 of 2003 s. 6; amended: No. 59 of 2004 s. 141; No. 41 of 2006 s. 73.]*

### 33P. Breach etc. of PSO, powers of CEO (corrections) and court

(1) If —

(a) an offender is subject to a PSO; and

(b) the CEO (corrections), has reasonable grounds to believe that the offender has been, is, or is likely to be, in breach of any requirement of the PSO,

the CEO (corrections) may issue a warrant to have the offender arrested and brought before —

(c) the court that made the PSO, if the Children's Court or a superior court made the PSO;

(d) the Magistrates Court, if the PSO was made by that court.

(2) The warrant must be in the prescribed form.

(3) If the court before which the offender is brought is satisfied that the offender has been, is, or is likely to be, in breach of any requirement of the PSO, the court may —

(a) amend the PSO in any of the ways described in section 33N(2)(a); or

(b) cancel the PSO and sentence the offender,

but otherwise must confirm the PSO.

(4) Proceedings under this section may be dealt with simultaneously with any proceedings under section 55 of the *Bail Act 1982*.

*[Section 33P inserted: No. 50 of 2003 s. 6; amended: No. 59 of 2004 s. 141; No. 65 of 2006 s. 49.]*

### 33Q. Facilitation of proof

(1) This section applies only in relation to proceedings under this Part.

(2) A copy of a PSO certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.

(3) A copy of an order amending a PSO certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.

(4) A certificate of a court under section 33O(3) is, in the absence of evidence to the contrary, evidence of its contents.

(5) In proceedings before a court under section 33P, evidence of an alleged breach of a requirement of a PSO may be given by tendering a certificate signed by the CEO (corrections) stating the particulars of the alleged breach.

(6) Section 134(6) applies to a certificate referred to in subsection (5).

*[Section 33Q inserted: No. 50 of 2003 s. 6; amended: No. 65 of 2006 s. 49.]*

# Part 4 — The sentencing process

## 34. [2M] Explanation of sentence

(1) A court sentencing an offender must, if the offender is personally present in court or appearing before the court by video link under section 14A, explain to the offender, in language likely to be understood —

(a) the effect of; and

(b) the obligations of the offender and the consequences of not complying with them that result from,

the sentence and any order in addition to the sentence.

(2) If a court sentencing an offender imposes a fixed term (as defined in section 85), the court is to state in open court the minimum period that the offender, as a result of the sentence and the operation of this Act, will serve in custody in respect of the term or, if more than one term is imposed, in respect of the aggregate of the terms.

(3) In complying with subsection (2) a court need not take account of any other sentence of imprisonment imposed previously on the offender which the offender is serving or has yet to serve.

*[Section 34 amended: No. 48 of 1998 s. 15; No. 50 of 2003 s. 24.]*

*[Section 34: modified by the COVID-19 Response and Economic Recovery Omnibus Act 2020 (34 of 2020) Part. 4 Division 4 Subdivision 1: See endnote 2M.]*

## 35. Reasons for imprisonment to be given in some cases

(1) A court sentencing an offender to a term of imprisonment, or an aggregate of terms of imprisonment, of 12 months or less (the ***term imposed***) must give written reasons why no other available sentencing option was appropriate.

*[(2) deleted]*

(3) Subsection (1) does not apply if —

(a) the term imposed is mandatory under a written law; or

(b) the aggregate of the term imposed and any other term of imprisonment that the offender is serving or has yet to serve is more than 12 months; or

(c) the term is imposed under section 79 of the *Prisons Act 1981*.

*[Section 35 amended: No. 20 of 2013 s. 126; No. 45 of 2016 s. 65.]*

### 36. Warrant of commitment to be issued if imprisonment imposed

If a court imprisons an offender and does not suspend the term, it must issue a warrant of commitment accordingly.

### 37. Correction of sentence

(1) If a court sentences an offender in a manner that is not in accordance with this Act or the written law under which the offence is committed, the court may recall the order imposing the sentence and impose a sentence that is.

(2) The powers in subsection (1) may be exercised by a court on its own initiative or on an application by the offender or the prosecutor made in accordance with the regulations, but in any event the court must give all parties the opportunity to be heard.

(3) If a court's order imposing a sentence contains a clerical mistake or an error arising from an accidental slip or omission, the court may correct it at any time on its own initiative without recalling the order, but the court must ensure that all parties and relevant authorities are notified of the correction.

(3a) A sentence imposed or corrected under this section has effect from the time at which the recalled or incorrect sentence had effect, unless the court orders otherwise.

(4) This section does not affect any right of appeal against a sentence.

(5) In this section —

***sentence*** includes an order in addition to sentence.

*[Section 37 amended: No. 5 of 2008 s. 107.]*

### 37A. Offender reneging on promise to assist authorities may be re-sentenced

(1) If —

(a) a court reduces the sentence it would otherwise have imposed on an offender for an offence (the ***full sentence***) because the offender undertakes to assist law enforcement authorities; and

(b) the offender subsequently fails wholly or partly to fulfil the undertaking,

the court may recall the order imposing the sentence (the ***reduced sentence***) and impose a sentence based on the full sentence but taking into account the extent to which the reduced sentence has taken effect and the extent to which the offender has complied with any orders made under it.

(2) The powers in subsection (1) may be exercised by a court only on an application by the prosecutor made in accordance with the regulations, but the court must give all parties the opportunity to be heard.

(3) The powers in subsection (1) may be exercised by a court even if the reduced sentence has been varied on appeal, and in that case any sentence imposed must be based on the varied sentence and the court must take into account the extent to which the varied sentence has taken effect and the extent to which the offender has complied with any orders made under it.

(4) A sentence imposed under this section may be appealed.

(5) In this section —

***sentence*** includes an order in addition to sentence.

*[Section 37A inserted: No. 29 of 1998 s. 16.]*

### 38. Imprisonment by JPs, magistrate to review

(1) If a justice or justices in the Magistrates Court —

(a) sentence an offender to suspended imprisonment or CSI; or

*[(b) deleted]*

(c) sentence an offender to a term of imprisonment,

a magistrate must review the sentence within 2 working days after it is imposed.

(2) The review is to be based on an examination of the court papers relevant to the offence (or copies or faxes of them) in the absence of the parties and is not to involve a hearing.

(3) Having reviewed the original sentence, the magistrate may —

(a) confirm the original sentence; or

(b) cancel the original sentence and order the offender to appear before a magistrate to be sentenced again.

(4) If the original sentence is cancelled the offender must be bailed or remanded in custody to appear to be sentenced again.

(5) A magistrate sentencing an offender again may sentence the offender in any manner the magistrate could if he or she had just convicted the offender of the offence for which the original sentence was imposed.

(6) In deciding how to deal with an offender when sentencing the offender again, the magistrate must take into account any time spent in custody by the offender under the original sentence.

(7) A failure to review the original sentence under this section does not affect its validity.

(8) The original sentence, if cancelled, may not be appealed against.

(9) This section does not affect any right of appeal against an original sentence that is confirmed on review or that is not reviewed under this section.

(10) This section does not affect any right of appeal against a sentence imposed under this section by a magistrate.

*[Section 38 amended: No. 29 of 1998 s. 18; No. 59 of 2004 s. 141; No. 27 of 2004 s. 6(4).]*

# Part 5 — Sentencing options

## 39. Natural person, sentences for

(1) This section applies to an offender who is a natural person.

(2) Subject to sections 41 to 45, a court sentencing an offender may —

(a) with or without making a spent conviction order, under Part 6 impose no sentence and order the release of the offender; or

(b) with or without making a spent conviction order, under Part 7 impose a CRO and order the release of the offender; or

(c) with or without making a spent conviction order, under Part 8 impose a fine and order the release of the offender (unless an order under section 58 is made); or

(ca) with or without making a spent conviction order, under Part 8A impose a suspended fine; or

(d) with or without making a spent conviction order, under Part 9 impose a CBO and order the release of the offender; or

(e) under Part 10 impose an ISO and order the release of the offender; or

(f) under Part 11 impose suspended imprisonment and order the release of the offender; or

(g) under Part 12 impose CSI and order the release of the offender; or

(h) under Part 13 impose a term of imprisonment.

(3) A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.

(4) A court must not use more than one of the sentencing options in subsection (2) when sentencing an offender for an offence except where section 41 or 42 applies.

(5) A court that under subsection (2)(a) imposes no sentence is nevertheless taken to have sentenced the offender.

(6) A court sentencing an offender may also make a disqualification order under Part 15, and any such order is to be taken as being part of the sentence.

(7) A court sentencing an offender may also make a reparation order under Part 16, but any such order is not to be taken as being part of the sentence.

(8) A court sentencing an offender may also make an order or declaration under Part 17, but any such order or declaration is not to be taken as being part of the sentence.

*[Section 39 amended: No. 29 of 1998 s. 18; No. 27 of 2004 s. 6(3); No. 45 of 2016 s. 49; No. 30 of 2020 s. 19.]*

### 40. Body corporate, sentences for

(1) This section applies to an offender that is a body corporate.

(2) Subject to sections 41 to 44, a court sentencing an offender may —

(a) under Part 6 impose no sentence; or

(b) under Part 8 impose a fine; or

(c) under Part 8A impose a suspended fine.

(3) A court must not use the sentencing option in subsection (2)(b) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use the option in subsection (2)(a).

(4) A court that under subsection (2)(a) imposes no sentence is nevertheless taken to have sentenced the offender.

(5) Except where a statutory penalty is expressly provided for a body corporate, a body corporate that is convicted of an offence

the statutory penalty for which is or includes a fine is liable to a fine of 5 times the maximum fine that could be imposed on a natural person convicted of the same offence.

(5a) Except where a statutory penalty is expressly provided for a body corporate, a body corporate that is convicted of an offence the statutory penalty for which is or includes a minimum fine is liable to a fine of at least 5 times that minimum fine.

(6) A court sentencing an offender may also make a disqualification order under section 106, and any such order is to be taken as being part of the sentence.

(7) A court sentencing an offender may also make a reparation order under Part 16, but any such order is not to be taken as being part of the sentence.

*[Section 40 amended: No. 2 of 2008 s. 70; No. 45 of 2016 s. 50.]*

### 41. If statutory penalty is imprisonment only: sentencing options

(1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that imprisonment but not a fine may be imposed.

(2) If the offender is a natural person, the court may —

(a) use any one of the sentencing options in section 39(2); or

(b) use any one of the sentencing options in section 39(2) (other than a sentencing option in section 39(2)(a) or (c)) and in addition fine the offender.

(2a) If the statutory penalty for the offence is such that imprisonment must be imposed, then despite subsection (2) the court must impose a term of imprisonment in accordance with the statutory penalty, unless the written law creating the offence provides otherwise.

(3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.

(4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).

(5) If the court is a superior court and decides to fine an offender, it may impose a fine of any amount.

(6) If the court is a court of summary jurisdiction and decides to fine an offender, the maximum fine it may impose is to be worked out as follows:

(a) if the offender is a natural person:

$$\text{Maximum fine (\$)} = \frac{\text{Statutory penalty}}{\text{(in months)}} \times 1000$$

(b) if the offender is a body corporate:

$$\text{Maximum fine (\$)} = \frac{\text{Statutory penalty}}{\text{(in months)}} \times 5000$$

*[Section 41 amended: No. 50 of 2003 s. 10; No. 59 of 2004 s. 141; No. 47 of 2011 s. 26(3).]*

## 42. If statutory penalty is imprisonment and fine: sentencing options

(1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that both imprisonment and a fine may be imposed.

(2) If the offender is a natural person, the court may —

(a) use any one of the sentencing options in section 39(2); or

(b) use any one of the sentencing options in section 39(2) (other than a sentencing option in section 39(2)(a) or (c)) and in addition fine the offender.

(2a) If the statutory penalty for the offence is such that both a minimum fine and imprisonment may be imposed, then despite

subsection (2) the court must impose one or both of the following —

(a) a fine that is at least the minimum fine and not more than any maximum fine for the offence;

(b) a sentencing option in section 39(2) that is listed after section 39(2)(c),

unless the written law creating the offence provides otherwise.

(3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.

(4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).

*[Section 42 amended: No. 50 of 2003 s. 11; No. 47 of 2011 s. 26(3).]*

### 43. If statutory penalty is imprisonment or fine: sentencing options

(1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that either imprisonment or a fine may be imposed.

(2) If the offender is a natural person the court may use any one of the sentencing options in section 39(2).

(2a) If the statutory penalty for the offence is such that either a minimum fine or imprisonment may be imposed, then despite subsection (2) the court must impose one of the following but not both —

(a) a fine that is at least the minimum fine and not more than any maximum fine for the offence;

(b) a sentencing option in section 39(2) that is listed after section 39(2)(c),

unless the written law creating the offence provides otherwise.

(3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.

(4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).

*[Section 43 amended: No. 50 of 2003 s. 12.]*

### 44. If statutory penalty is fine only: sentencing options

(1) If the statutory penalty for an offence is such that a fine but not imprisonment may be imposed, a court sentencing an offender for the offence may —

(a) if the offender is a natural person —

(i) use any one of the sentencing options in section 39(2)(a), (b), (c) and (ca); or

(ii) in the case of an offence prescribed for the purposes of this section, use any one of the sentencing options in section 39(2)(a), (b), (c), (ca) and (d);

(b) if the offender is a body corporate, use any one of the options in section 40(2).

(2) If the statutory penalty for an offence is such that a minimum fine must be imposed, then despite subsection (1) the court must impose a fine that is at least the minimum fine and not more than any maximum fine for the offence, unless the written law creating the offence provides otherwise.

*[Section 44 amended: No. 50 of 2003 s. 13 and 33(2); No. 45 of 2016 s. 51.]*

### 45. Spent conviction order, making and effect of

(1) Under section 39(2), a court sentencing an offender is not to make a spent conviction order unless —

(a) it considers that the offender is unlikely to commit such an offence again; and

(b) having regard to —

(i) the fact that the offence is trivial; or

(ii) the previous good character of the offender,

it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

(1A) In addition to subsection (1), under section 39(2), a court sentencing an offender is not to make a spent conviction order in respect of an offender who is subject to a PSO unless —

(a) the offence to which the PSO applies is a simple offence; and

(b) the court is satisfied that the offender has complied with any programme requirements imposed as part of the PSO.

(2) A spent conviction order in respect of a conviction is an order that the conviction is a spent conviction for the purposes of the *Spent Convictions Act 1988*.

(3) The *Spent Convictions Act 1988*, other than Part 2, applies to and in respect of a conviction in respect of which a spent conviction order has been made.

(4) A spent conviction order is to be taken as part of the sentence imposed.

(5) A spent conviction order in respect of a conviction does not affect —

(a) the right or the duty of a court to —

(i) disqualify, under a road law as defined in the *Road Traffic (Administration) Act 2008* section 4, the offender from holding or obtaining a driver's licence as defined in that section;

(ii) make any order under this Act or any other written law on convicting the offender;

(b) the operation of any provision of a road law as defined in the *Road Traffic (Administration) Act 2008* section 4, or Part 15, relating to the cancellation of, or disqualification from holding or obtaining, a driver's licence as defined in that section;

(c) the duty of the offender to comply with the sentence imposed and with any order of the court in addition to the sentence;

(d) the revesting or restitution of any property as a result of the conviction;

(e) any cancellation or disqualification that occurs by operation of any written law;

(f) any right of appeal against the conviction or the sentence imposed.

(6) A spent conviction order in respect of a conviction does not prevent —

(a) proceedings to enforce, or for a variation or contravention of, the sentence;

(b) subsequent proceedings against the offender for the same offence.

*[Section 45 amended: No. 8 of 2012 s. 175; No. 45 of 2016 s. 66.]*

# Part 6 — Release of offender without sentence

## 46. Release without sentence

A court sentencing an offender may impose no sentence if it considers that —

(a) the circumstances of the offence are trivial or technical; and

(b) having regard to —

(i) the offender's character, antecedents, age, health and mental condition; and

(ii) any other matter that the court thinks is proper to consider,

it is not just to impose any other sentencing option.

*[Section 46 amended: No. 17 of 2014 s. 37(2).]*

# Part 7 — Conditional release order

## 47. When CRO may be imposed

A court may sentence an offender under this Part only if the court considers —

(a) there are reasonable grounds for expecting that the offender will not re-offend during the term of the CRO; and

(b) that the offender does not need supervising by a CCO during the term of the CRO.

## 48. CRO, nature of

(1) A CRO is an order —

(a) that if while the order is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the order relates; and

(b) that the offender must comply with any requirement imposed by the court under section 49.

(2) A CRO ceases to be in force when its term ends or a court cancels it, whichever happens first.

(3) The term of a CRO must be set by the court but must not be more than 24 months.

(4) The term of a CRO begins on the day the order is imposed.

## 49. CRO, requirements of

(1) A court making a CRO may impose any requirements on the offender it decides are necessary to secure the good behaviour of the offender.

(2) A requirement imposed by a court must not be such as requires or would require the offender to be supervised, directed or instructed by a CCO.

(3) A court must not impose any requirement that requires the offender to pay compensation or make restitution to any person; but that does not prevent a court from making a reparation order under Part 16.

### 50. Court may direct offender to re-appear

(1) A court that imposes a CRO may order that the offender re-appear before the court —

(a) at a time and place fixed by the court; or

(b) if and when summonsed by the court,

so that the court can ascertain whether the offender has complied with the CRO.

(2) If an offender does not re-appear before a court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.

(3) If on the re-appearance of an offender the court is satisfied that the offender has not complied with the CRO, the court may make an order under section 133.

### 51. Ensuring compliance with CRO

(1) To ensure —

(a) that an offender does not commit an offence during the term of a CRO; and

(b) if necessary, that the offender complies with any requirement imposed by the court,

a court may order that the offender not be released until the offender or a surety for the offender or both have —

(c) given a written undertaking to pay the State an amount of money (set by the court); or

(d) deposited an amount of money (set by the court) with the court to be forfeited to the State,

if while the CRO is in force the offender commits an offence or fails to comply with a requirement of the CRO imposed by the court.

(2) If an offender refuses to give a written undertaking as required by the court, the court may impose a fine for the offence instead of a CRO, despite section 39(3).

(3) A surety for an offender must be approved, and for that purpose sections 36 to 41 of the *Bail Act 1982*, with any necessary changes, apply.

(4) If under subsection (1) a court makes an order requiring there to be a surety for an offender, and within 7 days after the order is made a person has not been approved as a surety, the offender is to be taken before the court.

(5) On the reappearance of an offender under subsection (4) the court may amend or cancel the order requiring a surety, or amend the CRO, or cancel the CRO and impose a fine for the offence despite section 39(3).

(6) If money is deposited with a court by a person under subsection (1)(d), the person may apply to the court after the CRO has ceased to be in force for the return of the money.

(7) If the court is satisfied that the offender has not committed an offence during the term of the CRO and has complied with any requirements of the CRO, the court must order the return of the money deposited.

(8) No interest is to be paid by the State on any money deposited under this section.

*[Section 51 amended: No. 41 of 2006 s. 79.]*

## 52. Enforcing CRO

(1) Without limiting the operation of section 50, an offender who —

(a) commits an offence during the term of his or her CRO is liable to be dealt with under Division 3 of Part 18;

(b) breaches his or her CRO is liable to be dealt with under Division 4 of Part 18.

(2) If an offender in respect of whom an order under section 51 has been made —

(a) commits an offence during the term of his or her CRO; or

(b) breaches his or her CRO,

the court that imposed the CRO, on its own initiative or on an application by the State —

(c) subject to subsection (3), must order that the full amount agreed to be paid or deposited by the offender be paid or forfeited (as the case may be) to the State; and

(d) subject to subsection (4), must order that the full amount agreed to be paid or deposited by any surety be paid or forfeited (as the case may be) to the State.

(3) Sections 57(2) and 59 of the *Bail Act 1982*, with any necessary changes, apply in respect of a court making an order under subsection (2) in respect of an offender as if the court were making an order under section 57(1) of the *Bail Act 1982* in respect of an accused.

(4) Sections 49(1) and (2) and 59 of the *Bail Act 1982*, with any necessary changes, apply in respect of a court making an order under subsection (2) in respect of a surety as if the court, under section 49 of the *Bail Act 1982*, were enforcing the payment to the State of any sum payable by a surety under a surety undertaking made under that Act.

(5) Any amount ordered to be paid under subsection (2) is to be paid, and its payment may be enforced, under Part 5 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless an order has been made under subsection (6); but this subsection does not prejudice the recovery of such an amount as a civil debt due to the State.

(6) If under subsection (2) a superior court orders the payment of money, the court may make an order under section 59 in respect of the amount payable and that section, with any necessary changes, applies.

*[Section 52 amended: No. 84 of 2004 s. 82; No. 41 of 2006 s. 79.]*

# Part 8 — Fine

## 53. Considerations when imposing fine

(1) Subject to Division 1 of Part 2, if a court decides to fine an offender then, in deciding the amount of the fine the court must, as far as is practicable, take into account —

(a) the means of the offender; and

(b) the extent to which payment of the fine will burden the offender.

(2) A court may fine an offender even though it has been unable to find out about the matters in subsection (1).

(3) A court must not fine an offender if satisfied that after paying compensation to the victim in accordance with a compensation order under Part 16, the offender will be unable to pay the fine within a reasonable time.

## 54. One fine for 2 or more offences

(1) A court sentencing an offender for 2 or more offences that —

(a) are founded on the same facts; or

(b) form, or are part of, a series of offences of the same or a similar kind,

may impose a single fine for all of the offences.

(2) A fine imposed under subsection (1) must not be more than the sum of the fines provided by the statutory penalties for each of the offences.

(3) If a fine is imposed under subsection (1) and on appeal a conviction for one of the offences (or more than one) is quashed, the appeal court may substitute a fine of another amount for the fine imposed.

## 55. Apportionment of fine between joint offenders

(1) If a court sentencing 2 or more joint offenders decides to fine them it may apportion between them as it thinks fit the fine it would have imposed if there were only one offender.

(2) If the statutory penalty for the offence is a mandatory fine or includes a minimum fine, a court apportioning a fine under subsection (1) must apportion at least the mandatory fine or the minimum fine, as the case requires.

(3) In this section —

***joint offenders*** means persons who are each convicted of an offence because a legal relationship between them (such as being co-owners of property) results in each of them being criminally responsible for the act or omission constituting the offence.

### 56. Assault victim may be awarded fine

(1) This section applies if a court convicts a person of an offence involving an assault of another and fines the offender for the offence.

(2) The court may order that the whole or part of the fine imposed be paid to the person assaulted.

### 57. Enforcement of fine

(1) In this section and in sections 58, 59 and 60 —

***fine*** has the same definition as in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(2) Unless an order is made under section 57A, 58 or 59, a fine imposed by a court must be paid, and may be enforced, under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

*[Section 57 amended: No. 9 of 2000 s. 9.]*

### 57A. Enforcement of fine by means of WDO

(1) In this section and section 57B words and expressions have the same definitions as in the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(2) This section applies if —

(a) a court fines an offender and does not also impose a term of imprisonment; and

(b) the offender at the time is not in custody serving a sentence of imprisonment.

(3) The court, in addition to imposing the fine, may make a fine enforcement (WDO) order.

(4) A fine enforcement (WDO) order is an order requiring the offender, within 7 days after the order is made —

(a) to pay the fine in full; or

(b) to report to a community corrections centre to be served with a work and development order (***WDO***) in respect of the fine.

(5) The court must not make a fine enforcement (WDO) order unless the offender is personally present in court.

(5A) In considering whether to make a fine enforcement (WDO) order, the court must take into account the following matters —

(a) whether the offender has the means to pay the fine, either within 28 days or pursuant to a time to pay order;

(b) whether the offender has any personal property that could be seized under an enforcement warrant issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to satisfy, wholly or partly, the fine;

(c) the likelihood of the offender having the means to pay referred to in paragraph (a), or personal property referred to in paragraph (b), within a reasonable time after the fine is imposed;

(d) whether the offender is mentally and physically capable of performing the requirements of a WDO.

(5B) The court may satisfy itself of any of the matters referred to in subsection (5A) by evidence on oath from the offender.

(6) A fine enforcement (WDO) order must be served on the offender personally.

(7) A fine enforcement (WDO) order may only be made during the sentencing proceedings and not afterwards.

(8) The *Fines, Penalties and Infringement Notices Enforcement Act 1994* applies to and in respect of a WDO served pursuant to a fine enforcement (WDO) order.

*[Section 57A inserted: No. 9 of 2000 s. 10; amended: No. 48 of 2012 s. 78; No. 25 of 2020 s. 129.]*

### 57B. Court may cancel s. 57A order on application of Fines Enforcement Registrar

(1) If under section 57A(3) a court makes a fine enforcement (WDO) order, notice of it must be given to the Registrar.

(2) Within 28 days of the making of the order the Registrar may apply for the order to be cancelled.

(3) The application must be made in accordance with the regulations and must be served on the offender concerned.

(4) On an application by the Registrar, the court may cancel the order if it is satisfied, after reconsidering the matters in section 57A(5A), that the order should not have been made.

(5) If the court cancels the order, the WDO made pursuant to it is to be taken to be cancelled and the fine must be paid, and may be enforced, under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(6) If the court cancels the order, then for the purposes of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine is to be taken to have been imposed on the day when the order was cancelled.

(7) If a WDO has been wholly or partially completed at the time it is to be taken to be cancelled under subsection (5), the offender's liability to pay the fine is to be reduced in accordance

with regulations made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

*[Section 57B inserted: No. 9 of 2000 s. 10; amended: No. 48 of 2012 s. 79; No. 25 of 2020 s. 130.]*

## 58. Imprisonment until fine paid

(1) This section applies if a superior court or a court of summary jurisdiction constituted by a magistrate —

(a) fines an offender for an indictable offence, the statutory penalty for which is or includes imprisonment; or

(b) fines an offender for an offence and the court is satisfied that —

(i) the offender is about to leave the State; and

(ii) the absence of the offender from the State would defeat or materially prejudice the operation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the fine.

(2) If the court does not also impose a term of imprisonment on the offender, it may order the offender to be imprisoned until the fine is paid, but in any event for not longer than a period set by the court.

(3) The period must not be more than 24 months, but if the statutory penalty for the offence is or includes imprisonment for a lesser period, the period must not be more than that lesser period.

(4) The period is cumulative on any other period or term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.

(5) The period is not a term for the purposes of Part 13.

(6) Service of the period discharges the offender from the liability to pay the fine.

*[Section 58 amended: No. 59 of 2004 s. 141.]*

## 59. Imprisonment if fine not paid

(1) If a superior court fines an offender for an offence it may order that if the offender does not pay the fine before a date set by the court the offender is to be imprisoned until the offender's liability to pay the fine is discharged —

(a) by payment of the whole of the fine; or

(b) by the offender serving the whole of the period of imprisonment determined under subsection (3), or a shorter period set by the court; or

(c) by a combination of payment of part of the fine and the offender serving part of that period of imprisonment.

(2) If a court makes an order under subsection (1) and the offender contravenes the order, the court may issue a warrant of commitment in the prescribed form in respect of the offender specifying the period of imprisonment (in days) determined under subsection (3) or set by the court (as the case may be) and, if necessary, reduced under subsection (5).

(3) Unless the court sets a shorter period of imprisonment under subsection (1)(b), the period of imprisonment (in days) for the purposes of that subsection is the shorter of —

(a) the period determined by dividing the amount of the fine by the amount prescribed and rounding the result down to the nearest whole number of days; and

(b) the term of imprisonment (if any) provided by the statutory penalty for the offence concerned,

and in any event is not less than one day.

*[(4) deleted]*

(5) If part of a fine is paid after an order is made under subsection (1), the period of imprisonment (in days) determined under subsection (3) or set by the court (as the case may be) is to be reduced by a period to be determined as follows:

$$\text{Period of reduction} = \text{Period of imprisonment (in days)} \times \frac{\text{Part payment}}{\text{Fine}}$$

(rounded up to the nearest whole number).

(6) If part of a fine is paid after a warrant of commitment is issued, the warrant has effect as if the period of imprisonment specified in it were reduced in accordance with subsection (5).

(7) For every day or part of a day that an offender serves in custody under an order made under this section, the fine is to be reduced by an amount to be determined as follows:

$$\text{Amount of reduction (\$)} = \frac{\text{Fine}}{\text{Period of imprisonment}}$$

(rounded down to the nearest whole number).

where ***period of imprisonment*** is the period (in days) determined under subsection (3) or set by the court (as the case may be).

(8) Any period of imprisonment that an offender has to serve as a result of an order under subsection (1) is to be served cumulatively on any term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.

(9) This section does not apply where a superior court imposes a fine under the *Juries Act 1957*.

*[Section 59 amended: Gazette 3 Mar 2000 p. 1015; Act No. 3 of 2008 s. 18.]*

**60. Application of fine etc.**

(1) Subject to this section, a fine is to be credited to the Consolidated Account.

(2) Subject to subsection (6), a fine imposed under an Act in Schedule 1 is to be paid to the person, or credited to the fund or account, specified opposite that Act in that Schedule, except where that Act provides otherwise.

(3) Subject to subsection (6), a fine for an offence that was prosecuted by or on behalf of a local government is to be paid to the local government, except where it is expressly provided otherwise by a written law.

(4) Subject to subsection (6), a fine imposed for an offence under a law of the Commonwealth is to be credited to the Commonwealth.

(5) Subject to subsection (6), a fine or a part of a fine that under section 56 is ordered to be paid to a person who has been assaulted is to be paid to that person.

(6) If a fine or a part of a fine that under this section is not to be credited to the Consolidated Account is paid, the court to which it is paid must retain the fine —

(a) if no appeal against the conviction or sentence concerned is commenced within the time for appealing — until that time has elapsed, or until a later time ordered by the court that imposed the fine; or

(b) if an appeal against the conviction or sentence concerned is commenced within the time for appealing — until the appeal has been determined, dismissed or discontinued, or until a later time ordered by the appeal court,

and must then pay or credit the fine in accordance with any decision of the appeal court or, if there is no such decision, in accordance with this section.

(7) If a fine is retained as required by subsection (6) and then paid or credited to a person, fund or account other than the Consolidated Account, it is not subsequently recoverable from the State, even if on appeal the conviction or sentence concerned is set aside or quashed.

*[Section 60 amended: No. 29 of 1998 s. 18; No. 41 of 2006 s. 79; No. 77 of 2006 s. 4; No. 47 of 2011 s. 26(3).]*

# Part 8A — Suspended fine

*[Heading inserted: No. 45 of 2016 s. 52.]*

## 60A. When fine may be suspended

(1) A court that sentences an offender to a fine may order that the fine be suspended for a period set by the court that is not to be more than 24 months.

(2) A suspended fine is not to be imposed unless a fine equal to that suspended would, if it were not possible to suspend the fine, be appropriate in all the circumstances.

*[Section 60A inserted: No. 45 of 2016 s. 52.]*

## 60B. Effect of suspending fine

(1) An offender sentenced to a suspended fine is not to pay any part of the fine that is suspended unless —

(a) during the suspension period the offender commits an offence (in this State or elsewhere); and

(b) a court makes an order under section 60E.

(2) The suspension period begins on the day on which the sentence is imposed.

(3) An offender who is sentenced to a suspended fine is to be taken to be discharged from the sentence at the end of the suspension period.

(4) Subsection (3) does not affect the operation of subsection (1) or section 60C or 60E.

*[Section 60B inserted: No. 45 of 2016 s. 52.]*

## 60C. Re-offender may be dealt with or committed

(1) If a court convicts a person of an offence and that offence was committed during the suspension period of a suspended fine

imposed on the person in relation to another offence, the court —

(a) if it is the Magistrates Court or the Children's Court, must deal with the person under section 60E unless the suspended fine was imposed —

(i) by the Magistrates Court or the Children's Court for an indictable offence; or

(ii) by a superior court,

in which case the court must commit the person to the court that imposed the suspended fine and that court must deal with the person under section 60E; or

(b) if it is the District Court, must deal with the person under section 60E unless the suspended fine was imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the court must commit the person to the court that imposed the suspended fine and that court must deal with the person under section 60E; or

(c) if it is the Supreme Court, must deal with the person under section 60E.

(2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.

(3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.

(4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.

(5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 60C inserted: No. 45 of 2016 s. 52.]*

### 60D. Alleging re-offending in court

(1) If —

(a) a person (the ***offender***) has been convicted and dealt with (in this State or elsewhere) for an offence; and

(b) that offence was committed during the suspension period of a suspended fine imposed on the offender in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

(2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.

(3) The notice may be signed by a police officer or another person referred to in the *Criminal Procedure Act 2004* section 20(3).

(4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in the *Criminal Procedure Act 2004* section 3(1)) who may issue a summons to the offender.

(5) The notice must be lodged with, and the summons must direct the offender to appear before, the court that imposed the suspended fine.

(6) The *Criminal Procedure Act 2004* section 32, with any necessary changes, applies to and in respect of a summons issued under this section.

(7) An offender who appears before a court as a result of a summons issued under this section must be dealt with by the court under section 60E.

*[Section 60D inserted: No. 45 of 2016 s. 52.]*

### 60E. How re-offender to be dealt with

(1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence and that the offence was committed

during the suspension period of a suspended fine, a court that must deal with the person under this section must deal with the person by one of these methods —

(a) unless an order under this paragraph or paragraph (b) has already been made, it may order the person to pay the fine that was suspended;

(b) unless an order under paragraph (a) has already been made, it may order the person to pay part of the fine that was suspended;

(c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set, and the new suspension period is to begin on the day it is substituted;

(d) it may make no order in respect of the suspended fine.

(2) The powers in subsection (1) may be exercised as often as is necessary.

(3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the suspended fine was imposed.

(4) If a court does not make an order under subsection (1)(a), it must give written reasons for not doing so.

(5) If a court deals with a person under subsection (1)(d), then, unless the suspension period has ended, the sentence of a suspended fine remains in effect and the suspension period continues to elapse.

(6) An order by a superior court under subsection (1) in a case where the sentence of a suspended fine was imposed for an offence for which the person had not been convicted on indictment is to be taken, for the purposes of an appeal against the sentence, as being made following a conviction on indictment.

*[Section 60E inserted: No. 45 of 2016 s. 52.]*

# Part 9 — Community based order

## 61. Pre-sentence report optional before imposing CBO

A CBO may be imposed by a court without having received a pre-sentence report about the offender.

## 62. CBO, nature of

(1) A CBO is an order —

(a) that if while the CBO is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the CBO relates; and

(b) that the offender —

(i) must comply with such of the primary requirements in section 64 as the court imposes; and

(ii) while any primary requirement in section 64 is in force, must comply with the standard obligations in section 63; and

(iii) must comply with any direction imposed under an electronic monitoring requirement under section 67A.

(2) A court imposing a CBO must impose at least one of the primary requirements in section 64.

(3) An offender who —

(a) commits an offence during the term of his or her CBO is liable to be dealt with under Division 3 of Part 18;

(b) breaches his or her CBO is liable to be dealt with under Division 4 of Part 18.

(4) A CBO ceases to be in force when its term ends, or when a court cancels it, or when every primary requirement imposed ceases to be in force, whichever happens first.

(5) The term of a CBO must be set by the court and must be at least 6 months and not more than 24 months.

(6) The term of a CBO begins on the day the order is imposed.

*[Section 62 amended: No. 30 of 2020 s. 20.]*

### 63. CBO, standard obligations of

The standard obligations of a CBO are that the offender —

(a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by a CCO; and

(b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change; and

(c) must not leave Western Australia except with, and in accordance with, the permission of the CEO (corrections); and

(d) must comply with section 76 of the *Sentence Administration Act 2003*.

*[Section 63 amended: No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 49.]*

*[Section 63. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

### 64. CBO, primary requirements of

Every CBO must contain at least one of these primary requirements:

(a) a supervision requirement under section 65;

(b) a programme requirement under section 66;

(c) a community service requirement under section 67.

### 65. Supervision requirement

(1) The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —

(a) rehabilitating the offender;

(b) ensuring the offender complies with any direction given by the court when imposing the requirement.

(2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

(3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —

(a) the effect of which could be achieved by imposing a programme requirement or a community service requirement; or

(b) that requires the offender to pay compensation or make restitution to any person; but that does not prevent a court from making a reparation order under Part 16.

(4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 8 weeks.

(5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.

(6) A supervision requirement ceases to be in force when the CBO ceases to be in force.

### 66. Programme requirement

(1) The purpose of a programme requirement is —

(a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and

(b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.

(2) The programme requirement is a requirement that the offender must obey the orders of a CCO as to —

(a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

(b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;

(c) attending educational, vocational, or personal development programmes or courses;

(d) residing at a specified place for the purposes of any matter in paragraph (a), (b) or (c);

(e) more than one of the above.

(3) A CCO must not order an offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.

(4) A person is not to administer treatment of any sort mentioned in subsection (2) to an offender without the informed consent of the offender.

(5) The requirements of a programme requirement imposed as part of a CBO are additional to the requirements of any other programme requirement applicable to the offender under a community order or a PSO or a sentence of CSI.

(6) A programme requirement ceases to be in force when a CCO gives the offender notice to that effect, or the CBO ceases to be in force, whichever happens first.

(7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 66 amended: No. 50 of 2003 s. 7; No. 27 of 2004 s. 6(4); No. 47 of 2011 s. 26(3).]*

### 67. Community service requirement

(1) The purpose of a community service requirement is to punish or rehabilitate an offender by making him or her do unpaid community work.

(2) The community service requirement is a requirement that within the term of the CBO the offender —

(a) must do unpaid community work for a number of hours set by the court; and

(b) must do at least 12 hours of that work in any 7 day period; and

(c) must perform community corrections activities if and as ordered by the CEO (corrections) under Part 7 of the *Sentence Administration Act 2003*.

(3) The number of hours set by the court must be at least 10 and not more than 120.

(4) Any hours of work done by an offender count as hours done under a community service requirement in any other community order, unless the court orders that the number of hours of work to be done are to be done in addition to any hours the offender has to do under another community order.

(5) At any one time the total number of hours of work yet to be done by an offender under community orders must not exceed 240.

(6) A community service requirement ceases to be in force when the offender finishes working the hours set to the satisfaction of a CCO or when the CBO ceases to be in force, whichever happens first.

*[Section 67 amended: No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 49; No. 3 of 2008 s. 19.]*

### 67A. Electronic monitoring requirement

(1) This section applies if an offence in respect of which a CBO may apply is a family violence offence and the offender is a serial family violence offender.

(2) Where this section applies, a court must not make a CBO unless the court has considered whether to require electronic monitoring in respect of the offender under this section (an ***electronic monitoring requirement***).

(3) The purpose of electronic monitoring of an offender subject to a CBO is to enable the location of the offender to be monitored.

(4) An electronic monitoring requirement may be imposed only if the court has received a report from the CEO (corrections) about the suitability of electronic monitoring in the particular case.

(5) If a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under this section.

(6) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —

(a) direct the offender to wear an approved electronic monitoring device;

(b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.

(7) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

(8) An electronic monitoring requirement ceases to be in force when its term ends, or when the CBO ceases to be in force, whichever happens first.

*[Section 67A inserted: No. 30 of 2020 s. 21.]*

*[**68A.** [1M] Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

# Part 10 — Intensive supervision order

## 68. Pre-sentence report mandatory before imposing ISO

An ISO may be imposed only if the court has received a pre-sentence report about the offender.

## 69. ISO, nature of

(1) An ISO is an order —

(a) that if while the ISO is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the ISO relates; and

(b) that the offender —

(i) must comply with the supervision requirement in section 71; and

(ii) must comply with such of the primary requirements in section 72 as the court imposes; and

(iii) while the supervision requirement in section 71 or any primary requirement in section 72 is in force, must comply with the standard obligations in section 70.

(2) Every ISO contains the supervision requirement in section 71.

(3) A court imposing an ISO may impose any or all of the primary requirements in section 72.

(4) An offender who —

(a) commits an offence during the term of his or her ISO is liable to be dealt with under Division 3 of Part 18;

(b) breaches his or her ISO is liable to be dealt with under Division 4 of Part 18.

(5) An ISO ceases to be in force when its term ends or a court cancels it, whichever happens first.

(6) The term of an ISO must be set by the court and must be at least 6 months and not more than 24 months.

(7) The term of an ISO begins on the day the order is imposed.

### 70. ISO, standard obligations of

The standard obligations of an ISO are that the offender —

(a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by a CCO; and

(b) must not change address or place of employment without the prior permission of a CCO; and

(c) must not leave Western Australia except with, and in accordance with, the permission of the CEO (corrections); and

(d) must comply with section 76 of the *Sentence Administration Act 2003*.

*[Section 70 amended: No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 49.]*

*[Section 70. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

### 71. Supervision requirement

(1) The purpose of the supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —

(a) rehabilitating the offender;

(b) ensuring the offender complies with any direction given by the court when imposing the requirement.

(2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

(3) When imposing an ISO, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —

(a) the effect of which could be achieved by imposing a programme requirement or a community service requirement; or

(b) that requires the offender to pay compensation or make restitution to any person; but that does not prevent a court from making a reparation order under Part 16.

(4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 28 days.

(5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.

(6) The supervision requirement ceases to be in force when the ISO ceases to be in force.

### 72. ISO, primary requirements of

Every ISO may contain any or all of these primary requirements:

(a) a programme requirement under section 73;

(b) a community service requirement under section 74;

(c) a curfew requirement under section 75;

(d) an electronic monitoring requirement under section 76A.

*[Section 72 amended: No. 13 of 2020 s. 6.]*

### 73. Programme requirement

(1) The purpose of a programme requirement is —

(a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and

(b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.

(2) The programme requirement is a requirement that the offender must obey the orders of a CCO as to —

(a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

(b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;

(c) attending educational, vocational, or personal development programmes or courses;

(d) residing at a specified place for the purposes of any matter in paragraph (a), (b) or (c);

(e) more than one of the above.

(3) A CCO must not order an offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.

(4) A person is not to administer treatment of any sort mentioned in subsection (2) to an offender without the informed consent of the offender.

(5) The requirements of a programme requirement imposed as part of an ISO are additional to the requirements of any other programme requirement applicable to the offender under a community order or a PSO or a sentence of CSI.

(6) A programme requirement ceases to be in force when a CCO gives the offender notice to that effect, or the ISO ceases to be in force, whichever happens first.

(7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 73 amended: No. 50 of 2003 s. 8; No. 27 of 2004 s. 6(4); No. 47 of 2011 s. 26(3).]*

### 74. Community service requirement

(1) The purpose of the community service requirement is to punish or rehabilitate an offender by making him or her do unpaid community work.

(2) The community service requirement is a requirement that within the term of the ISO the offender —

(a) must do unpaid community work for a number of hours set by the court; and

(b) must do at least 12 hours of that work in any 7 day period; and

(c) must perform community corrections activities if and as ordered by the CEO (corrections) under Part 7 of the *Sentence Administration Act 2003*.

(3) The number of hours set by the court must be at least 40 and not more than 240.

(4) Any hours of work done by an offender count as hours done under a community service requirement in any other community order, unless the court orders that the number of hours of work to be done are to be done in addition to any hours the offender has to do under another community order.

(5) At any one time the total number of hours of work yet to be done by an offender under community orders must not exceed 240.

(6) A community service requirement ceases to be in force when the offender finishes working the hours set to the satisfaction of a CCO or when the ISO ceases to be in force, whichever happens first.

*[Section 74 amended: No. 50 of 2003 s. 29(3); No. 65 of 2006 s. 49.]*

*[**75A.** [1M] *Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

### 75. Curfew requirement

(1) The purposes of the curfew requirement are —

(a) to allow for the movements of an offender to be restricted during periods when there is a high risk of the offender offending; and

(b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.

(2) The curfew requirement is a requirement that the offender —

(a) must remain at a specified place (the ***specified place***), for specified periods, subject to subsection (8); and

(b) must submit to surveillance or monitoring as ordered by a CCO.

(3) The term of a curfew requirement must be set by the court when it imposes the requirement; but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under an ISO or a sentence of CSI or a PSO, for a continuous period that exceeds 6 months.

(4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another ISO or a sentence of CSI or a PSO, unless the court orders otherwise.

(5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under ISOs or sentences of CSI or PSOs must not exceed 6 months.

(6) The court may give directions as to the periods when the offender ought to be subject to a curfew.

(7) The offender is not to be required by the curfew requirement to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.

(8) The offender may only leave the specified place during a specified period —

(a) to do community corrections activities as required under this Act or the *Sentence Administration Act 2003*; or

(aa) for the purpose of the paid employment of the offender; or

(b) to obtain urgent medical or dental treatment for the offender; or

(c) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or

(d) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere; or

(e) for a purpose approved of by a CCO; or

(f) on the order of a CCO.

(9) The curfew requirement ceases to be in force when its term ends, or when the ISO ceases to be in force, whichever happens first.

(10) Without limiting the means by which the offender may be kept under surveillance or monitored, a CCO may, for the purposes of subsection (2)(b), order the offender —

(a) to wear an approved electronic monitoring device; or

(b) to permit the installation of an approved electronic monitoring device at the place where the offender resides.

(11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.

(12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —

(a) when the offender may leave; and

(b) the period of the authorised absence; and

(c) when the offender must return; and

(d) the method of travel to be used by the offender during the absence; and

(e) the manner in which the offender must report his or her whereabouts.

(13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —

(a) enter or telephone the specified place; or

(b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or

(c) question any person at any place referred to in paragraph (a) or (b).

(14) A person must not —

(a) hinder a person exercising powers under subsection (13); or

(b) fail to answer a question put pursuant to subsection (13)(c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: $2 000 and imprisonment for 12 months.

(15) In this section —

***specified*** means specified by the CEO (corrections) from time to time.

*[Section 75 amended: No. 50 of 2003 s. 25; No. 27 of 2004 s. 6(4); No. 65 of 2006 s. 49; No. 45 of 2016 s. 67; No. 13 of 2020 s. 7.]*

### 76A. Electronic monitoring requirement

(1) The purpose of electronic monitoring under this section is to enable the location of an offender to be monitored where the offender presents a high risk to —

(a) a person; or

(b) a group of persons; or

(c) the community more generally.

(1A) Where an offence in respect of which an ISO may apply is a family violence offence and the offender is a serial family violence offender, the court must consider whether to require electronic monitoring under this section.

(2) If a court considers that electronic monitoring should occur in a particular case, the court may impose a requirement (an ***electronic monitoring requirement***) under this section.

(3) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —

(a) direct the offender to wear an approved electronic monitoring device;

(b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.

(4) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

(5) An electronic monitoring requirement ceases to be in force when its term ends, or when the ISO ceases to be in force, whichever happens first.

(6) This section does not apply to an offender who, at the time of sentencing, is under 18 years of age.

*[Section 76A inserted: No. 13 of 2020 s. 8; amended: No. 30 of 2020 s. 22.]*

# Part 11 — Suspended imprisonment

## 76. When imprisonment may be suspended

(1) A court that sentences an offender to a term of imprisonment, or to an aggregate of terms of imprisonment, of 60 months or less may order that the term or terms be suspended for a period set by the court; but not more than 24 months.

(2) Suspended imprisonment is not to be imposed unless imprisonment for a term or terms equal to that suspended would, if it were not possible to suspend imprisonment, be appropriate in all the circumstances.

(3) Suspended imprisonment is not to be imposed if —

(a) the offence was committed when the offender was subject to an early release order; or

(b) the offender is serving or is yet to serve a term of imprisonment that is not suspended.

(4) In subsection (3)(a) —

***early release order*** means —

(a) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995* [1]; or

(b) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*.

*[Section 76 amended: No. 50 of 2003 s. 15; No. 45 of 2016 s. 68.]*

## 77. Effect of suspending imprisonment

(1) An offender sentenced to suspended imprisonment is not to serve any part of the imprisonment that is suspended unless —

(a) during the suspension period he or she commits an offence (in this State or elsewhere) the statutory penalty for which is or includes imprisonment; and

(b) a court makes an order under section 80.

(2) The suspension period begins on the day on which the sentence is imposed.

(3) If during the suspension period an offender is sentenced to imprisonment for another offence that was not committed during the suspension period, the suspension period continues to elapse while the offender is serving that sentence.

(4) An offender who is sentenced to suspended imprisonment is to be taken to be discharged from the sentence at the end of the suspension period.

(5) Subsection (4) does not affect the operation of subsection (1) or sections 78 to 80.

(6) For the purposes of a law other than this Part and Parts 12 and 13, a sentence of suspended imprisonment is to be taken as being a sentence of imprisonment.

*[Section 77 amended: No. 27 of 2004 s. 6(4).]*

### 78. Re-offender may be dealt with or committed

(1) If a court convicts a person of an offence the statutory penalty for which is or includes imprisonment and that offence was committed during the suspension period of suspended imprisonment imposed on the person in relation to another offence, the court —

(a) if it is the Magistrates Court, must deal with the person under section 80 unless the suspended imprisonment was imposed —

(i) by the Children's Court for an indictable offence; or

(ii) by a superior court,

in which case the court must commit the person to the court that imposed the suspended imprisonment and that court must deal with the person under section 80; or

(b) if it is the District Court, must deal with the person under section 80 unless the suspended imprisonment was imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the suspended imprisonment and that court must deal with the person under section 80; or

(c) if it is the Supreme Court, must deal with the person under section 80.

(2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.

(3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.

(4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.

(5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 78 amended: No. 59 of 2004 s. 141.]*

### 79. Re-offending, alleging in court

(1) If —

(a) a person (the ***offender***) has been convicted and dealt with (in this State or elsewhere) for an offence the statutory penalty for which is or includes imprisonment; and

(b) that offence was committed during the suspension period of suspended imprisonment imposed on the offender in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

(2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.

(3) The notice may be signed by the CEO (corrections), a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*.

(4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.

(5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.

(6) The notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before the court that imposed the suspended imprisonment.

(7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.

(8) If an offender does not obey such a summons, the court concerned may issue a warrant to have him or her arrested and brought before it.

(9) If an offender is arrested under a warrant issued under this section, he or she must be given a copy of the notice as soon as practicable after being arrested.

(10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 80.

*[Section 79 inserted: No. 84 of 2004 s. 58; amended: No. 65 of 2006 s. 49.]*

### 80. How re-offender to be dealt with

(1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence the statutory penalty for which is or includes imprisonment and that the offence was committed during the suspension period of suspended imprisonment, a court that must deal with the person under this section must deal with the person by one of these methods:

(a) unless an order under this paragraph or paragraph (b) has already been made, it may order the person to serve the term or terms of imprisonment that were suspended;

(b) unless an order under this paragraph or paragraph (a) has already been made, it may order the person to serve part of the term or terms of imprisonment that were suspended (even if the period to be served is 6 months or less);

(c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;

(d) it may fine the person not more than $6 000 and make no order in respect of the suspended imprisonment.

(2) The powers in subsection (1) may be exercised as often as is necessary.

(3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the suspended imprisonment was imposed.

(4) If a court does not make an order under subsection (1)(a) it must give written reasons for not doing so.

(5A) In subsection (4) —

***written reasons*** includes reasons that are —

(a) given orally and subsequently transcribed; or

(b) given orally but also recorded electronically in a format that enables them to be subsequently transcribed.

(5) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —

(a) section 88 applies in respect of the term to be served; and

(b) the court may make a parole eligibility order under section 89,

as if the term to be served were a term of imprisonment being imposed by the court.

*[(6) deleted]*

(7) If an order is made under subsection (1)(d), then, unless the suspension period has ended, the sentence of suspended imprisonment remains in effect and the suspension period continues to elapse.

(8) An order by a superior court under subsection (1) in a case where the sentence of suspended imprisonment was imposed for an offence for which the person had not been convicted on indictment is to be taken, for the purposes of an appeal against sentence, as being made following a conviction on indictment.

*[Section 80 amended: No. 57 of 1999 s. 36; No. 27 of 2004 s. 4; No. 20 of 2013 s. 128.]*

# Part 12 — Conditional suspended imprisonment

*[Heading inserted: No. 27 of 2004 s. 5.]*

## Division 1 — Imposition and effect of CSI

*[Heading inserted: No. 27 of 2004 s. 5.]*

### 81. Certain courts may suspend imprisonment conditionally

(1) A prescribed court that sentences an offender to a term of imprisonment, or to an aggregate of terms of imprisonment, of 60 months or less may order that the whole of the term or terms be suspended for a period set by the court, but not more than 24 months, subject to the following conditions —

(a) the standard obligations in section 83; and

(b) one or more of the primary requirements in section 84, as decided by the court.

(2) CSI is not to be imposed unless imprisonment for a term or terms equal to that suspended would, if it were not possible to suspend imprisonment, be appropriate in all the circumstances.

(3) CSI is not to be imposed if —

(a) the offence was committed when the offender was subject to an early release order; or

(b) the offender is serving or is yet to serve a term of imprisonment that is not suspended.

(4) In subsection (3)(a) —

***early release order*** means —

(a) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995* [1]; or

(b) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*.

(5) Subsection (1) does not prevent a prescribed court from imposing suspended imprisonment under Part 11.

*[Section 81 inserted: No. 27 of 2004 s. 5.]*

### 82. Effect of CSI

(1) An offender sentenced to CSI is not to serve any part of the imprisonment that is suspended unless a court makes an order under section 84F or 84L.

(2) The suspension period begins on the day on which the sentence is imposed.

(3) If during the suspension period an offender is sentenced to imprisonment for another offence that was not committed during the suspension period, the suspension period continues to elapse while the offender is serving that sentence.

(4) An offender who is sentenced to CSI is to be taken to be discharged from the sentence at the end of the suspension period.

(5) Subsection (4) does not affect the operation of subsection (1) or sections 84D to 84F.

(6) For the purposes of a law other than this Part and Parts 11 and 13, a sentence of CSI is to be taken as being a sentence of imprisonment.

*[Section 82 inserted: No. 27 of 2004 s. 5.]*

### 83. CSI, standard obligations of

(1) The standard obligations of CSI are that the offender —

(a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by the speciality court or a CCO; and

(b) must notify a CCO of any change of address or place of employment within 2 clear working days after the

change, or as otherwise ordered by the speciality court; and

(c) must not leave Western Australia except with, and in accordance with, the permission of the speciality court or the CEO (corrections); and

(d) must comply with section 76 of the *Sentence Administration Act 2003*.

(2) The references to the speciality court in this section and sections 84A and 84C only have effect if Division 4 applies and are references to the speciality court referred to in section 84N(1)(a) or (b).

*[Section 83 inserted: No. 27 of 2004 s. 5; amended: No. 65 of 2006 s. 49.]*

*[Section 83. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]*

### 84. CSI, primary requirements of

(1) CSI must contain at least one of these primary requirements —

(a) a programme requirement under section 84A;

(b) a supervision requirement under section 84B;

(c) a curfew requirement under section 84C.

(2) CSI may also contain an electronic monitoring requirement under section 84CA as a primary requirement.

*[Section 84 inserted: No. 27 of 2004 s. 5; amended: No. 13 of 2020 s. 9.]*

### 84A. Programme requirement

(1) The purpose of a programme requirement is —

(a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and

(b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.

(2) The programme requirement is a requirement that the offender must obey the orders of the speciality court or a CCO as to —

(a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

(b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;

(c) attending educational, vocational, or personal development programmes or courses;

(d) residing at a specified place for the purposes of any matter in paragraph (a), (b) or (c);

(e) more than one of the above.

(3) The speciality court or a CCO must not order the offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.

(4) A person is not to administer treatment of any sort mentioned in subsection (2) to the offender without the informed consent of the offender.

(5) The requirements of a programme requirement imposed as a condition of CSI are additional to the requirements of any other programmed requirement applicable to the offender under a community order or a PSO.

(6) A programme requirement ceases to be in force when the speciality court or a CCO gives the offender notice to that effect, or when the suspension period ends, whichever happens first.

(7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 84A inserted: No. 27 of 2004 s. 5; amended: No. 47 of 2011 s. 26(3).]*

### 84B. Supervision requirement

(1) The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —

(a) rehabilitating the offender;

(b) ensuring the offender complies with any direction given by the court when imposing the requirement.

(2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

(3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —

(a) the effect of which could be achieved by imposing a programme requirement; or

(b) that requires the offender to pay compensation or make restitution to any person.

(4) Unless a CCO orders otherwise, while the offender is subject to a supervision requirement the offender must contact a CCO at least once in any period of 28 days.

(5) If the offender does not comply with subsection (4), the offender is to be taken to have breached the supervision requirement.

(6) A supervision requirement ceases to be in force when the suspension period ends.

(7) Subsection (3)(b) does not prevent a court from making a reparation order under Part 16.

*[Section 84B inserted: No. 27 of 2004 s. 5.]*

### 84C. Curfew requirement

(1) The purposes of the curfew requirement are —

(a) to allow for the movements of the offender to be restricted during periods when there is a high risk of the offender offending; and

(b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.

(2) The curfew requirement is a requirement that the offender —

(a) must remain at a specified place (the ***specified place***), for specified periods, subject to subsection (8); and

(b) must submit to surveillance or monitoring as ordered by a speciality court or a CCO.

(3) The term of a curfew requirement must be set by the court when it imposes the requirement, but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under a sentence of CSI or an ISO or a PSO, for a continuous period that exceeds 6 months.

(4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another sentence of CSI or an ISO or a PSO, unless the court orders otherwise.

(5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under sentences of CSI or ISOs or PSOs must not exceed 6 months.

(6) The court may give directions as to the periods when the offender ought to be subject to a curfew.

(7) The offender is not to be ordered by a CCO to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.

(8) The offender may only leave the specified place during a specified period —

(a) to do community corrections activities as required under this Act or the *Sentence Administration Act 2003*; or

(b) to obtain urgent medical or dental treatment for the offender; or

(c) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person; or

(d) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere; or

(e) for a purpose approved of by a CCO; or

(f) on the order of a CCO.

(9) The curfew requirement ceases to be in force when its term ends, or when the suspension period ends, whichever happens first.

(10) Without limiting the means by which the offender may be kept under surveillance or monitored, the speciality court or a CCO may, for the purposes of subsection (2)(b), order the offender —

(a) to wear an approved electronic monitoring device; or

(b) to permit the installation of an approved electronic monitoring device at the place where the offender lives.

(11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.

(12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —

(a) when the offender may leave; and

(b) the period of the authorised absence; and

(c) when the offender must return; and

(d) the method of travel to be used by the offender during the absence; and

(e) the manner in which the offender must report the offender's whereabouts.

(13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —

(a) enter or telephone the specified place; or

(b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or

(c) question any person at any place referred to in paragraph (a) or (b).

(14) A person must not —

(a) hinder a person exercising powers under subsection (13); or

(b) fail to answer a question put pursuant to subsection (13)(c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: $2 000 and imprisonment for 12 months.

(15) In this section —

***specified*** means specified by the speciality court or the CEO (corrections) from time to time.

*[Section 84C inserted: No. 27 of 2004 s. 5; amended: No. 65 of 2006 s. 49; No. 13 of 2020 s. 10.]*

### 84CA. Electronic monitoring requirement

(1) The purpose of electronic monitoring under this section is to enable the location of an offender to be monitored where the offender presents a high risk to —

(a) a person; or

(b) a group of persons; or

(c) the community more generally.

(1A) Where an offence in respect of which CSI may apply is a family violence offence and the offender is a serial family violence offender, the court must consider whether to require electronic monitoring under this section.

(2) If a court considers that electronic monitoring should occur in a particular case, the court may impose a requirement (an ***electronic monitoring requirement***) under this section.

(3) An electronic monitoring requirement may be imposed only if the court has received a report from the CEO (corrections) about the suitability of electronic monitoring in the particular case.

(4) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —

(a) direct the offender to wear an approved electronic monitoring device;

(b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.

(5) An electronic monitoring requirement ceases to be in force when the suspension period ends.

*[Section 84CA inserted: No. 13 of 2020 s. 11; amended: No. 30 of 2020 s. 23.]*

## Division 2 — Consequences of re-offending

*[Heading inserted: No. 27 of 2004 s. 5.]*

### 84D. Re-offender may be dealt with or committed

(1) Subject to section 84P(1), if a court convicts a person of an offence the statutory penalty for which is or includes imprisonment and that offence was committed during the suspension period of CSI imposed on the person in relation to another offence, the court —

(a) if it is the Magistrates Court, must deal with the person under section 84F unless the CSI was imposed —

(i) by the Children's Court for an indictable offence; or

(ii) by a superior court,

in which case the court must commit the person to the court that imposed the CSI and that court must deal with the person under section 84F; or

(b) if it is the District Court, must deal with the person under section 84F unless the CSI was imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the CSI and that court must deal with the person under section 84F; or

(c) if it is the Children's Court or the Supreme Court, must deal with the person under section 84F.

(2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.

(3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.

(4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.

(5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 84D inserted: No. 27 of 2004 s. 5; amended: No. 27 of 2004 s. 7.]*

### 84E. Re-offending, alleging in court

(1) If —

(a) a person (the ***offender***) has been convicted and dealt with (in this State or elsewhere) for an offence the statutory penalty for which is or includes imprisonment; and

(b) that offence was committed during the suspension period of CSI imposed on the offender in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

(2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.

(3) The notice may be signed by the CEO (corrections), a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*.

(4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.

(5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.

(6) Subject to section 84P(3), the notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before, the court that imposed the CSI.

(7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.

(8) If an offender does not obey such a summons, the court concerned may issue a warrant to have the offender arrested and brought before it.

(9) If an offender is arrested under a warrant issued under this section, the offender must be given a copy of the notice as soon as practicable after being arrested.

(10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 84F.

*[Section 84E inserted: No. 41 of 2006 s. 74(1); amended: No. 46 of 2009 s. 17.]*

### 84F. How re-offender to be dealt with

(1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence the statutory penalty for which is or includes imprisonment and that the offence was committed during the suspension period of CSI, a court that must deal with the person under this section must deal with the person by one of the following methods —

(a) unless an order under this paragraph, paragraph (b) or section 84L(1)(a) or (b) has already been made, it may order the person to serve the term or terms of imprisonment that were suspended;

(b) unless an order under this paragraph, paragraph (a) or section 84L(1)(a) or (b) has already been made, it may order the person to serve part of the term or terms of

imprisonment that were suspended (even if the period ordered to be served is 6 months or less);

(c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;

(d) it may fine the person not more than $6 000 and make no order in respect of the CSI.

(2) The powers in subsection (1) may be exercised as often as is necessary.

(3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the CSI was imposed.

(4) If a court does not make an order under subsection (1)(a) it must give written reasons for not doing so.

*[(5A) deleted]*

(5) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —

(a) section 88 applies in respect of the term to be served; and

(b) the court may make a parole eligibility order,

as if the term to be served were a term of imprisonment being imposed by the court.

(6) If an order is made under subsection (1)(d), then, unless the suspension period has ended, the sentence of CSI remains in effect and the suspension period continues to elapse.

(7) An order by a superior court under subsection (1) in a case where the sentence of CSI was imposed for an offence for which the person had not been convicted on indictment is to be

taken, for the purposes of an appeal against sentence, as being made following a conviction on indictment.

*[Section 84F inserted: No. 27 of 2004 s. 5; amended: No. 20 of 2013 s. 129; No. 45 of 2016 s. 70.]*

## Division 3 — Amending, cancelling and enforcing CSI requirements

*[Heading inserted: No. 27 of 2004 s. 5.]*

### 84G. Term used: CSI requirement

In this Division —

***CSI requirement*** means a primary requirement or standard obligation of a sentence of CSI or any direction of the court that imposed the sentence.

*[Section 84G inserted: No. 27 of 2004 s. 5.]*

### 84H. Application to amend or cancel CSI requirement

(1) An application to amend or cancel a CSI requirement may be made only by the offender or a CCO.

(2) Subject to section 84Q, the application must be made to the court that imposed the CSI.

(3) The application must be made in accordance with the regulations.

*[Section 84H inserted: No. 27 of 2004 s. 5.]*

### 84I. Court may confirm, amend or cancel CSI requirement

(1) If on an application made under section 84H a court is satisfied —

(a) that the circumstances of the offender were wrongly or inaccurately presented to the court that imposed the CSI; or

(b) that the circumstances of the offender have so altered since the CSI was imposed that the offender will not be able to comply with the CSI requirement,

and that it is just to do so, the court may make an order amending or cancelling the CSI requirement but otherwise it must confirm the CSI requirement.

(2) If all the CSI requirements have been cancelled under subsection (1) in relation to a sentence of CSI, the sentence is to be regarded as having been imposed as a sentence of suspended imprisonment under Part 11.

*[Section 84I inserted: No. 27 of 2004 s. 5.]*

### 84J. Breach of CSI requirement, offence

(1) A person who breaches a CSI requirement without reasonable excuse, proof of which is on the person, commits an offence.

(2) A prosecution for an offence under subsection (1) may be commenced —

(a) by the CEO (corrections) and only by the CEO (corrections); and

(b) at any time before the end of the suspension period.

(3) Subject to section 84R, if at the time of an alleged offence under subsection (1) the alleged offender was under 18 years of age, the Children's Court is to hear and determine the prosecution.

*[Section 84J inserted: No. 27 of 2004 s. 5; amended: No. 65 of 2006 s. 49.]*

### 84K. Offence under s. 84J, procedure and penalty for

(1) Subject to subsection (2), if the Children's Court convicts a person of an offence under section 84J(1), the Court may fine the person not more than $1 000 and must deal with the person under section 84L.

(2) However, if a superior court imposed the CSI, the Children's Court must commit the person to that superior court and that court may fine the person not more than $1 000 and must deal with the person under section 84L.

(3) Subject to subsection (4), if some other court of summary jurisdiction convicts a person of an offence under section 84J(1), the court may fine the person not more than $1 000 and must deal with the person under section 84L.

(4) However, subject to section 84R, if the CSI was imposed —

(a) by the Children's Court for an indictable offence; or

(b) by a superior court,

the court of summary jurisdiction must commit the person to the court that imposed the CSI and that court may fine the person not more than $1 000 and must deal with the person under section 84L.

(5) Subsections (1) to (4) have effect even if the suspension period has ended.

(6) A court that under subsection (2) or (4) commits a person to another court must certify that the person has been convicted of an offence under section 84J(1).

(7) A certificate by a court under subsection (6) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 84K inserted: No. 27 of 2004 s. 5; amended: No. 20 of 2013 s. 130.]*

### 84L. Additional powers to deal with s. 84J offender

(1) A court that is required by section 84K or 84R to deal with a person under this section must deal with the person by one of the following methods —

(a) unless an order under this paragraph, paragraph (b) or section 84F(1)(a) or (b) has already been made, it may

order the person to serve the term or terms of imprisonment that were suspended;

(b) unless an order under this paragraph, paragraph (a) or section 84F(1)(a) or (b) has already been made, it may order the person to serve part of the term or terms of imprisonment that were suspended (even if the period ordered to be served is 6 months or less);

(c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;

(d) it may make no order in respect of the CSI.

(2) The powers in subsection (1) may be exercised as often as is necessary.

(3) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —

(a) section 88 applies in respect of the term to be served; and

(b) the court may make a parole eligibility order,

as if the term to be served were a term of imprisonment being imposed by the court.

(4) If a person is dealt with under subsection (1)(d), then, unless the suspension period has ended, the sentence of CSI remains in effect and the suspension period continues to elapse.

(5) In dealing with a person under this section a court must take into account the extent to which the person has complied with the CSI and how long the person has been subject to the CSI.

*[Section 84L inserted: No. 27 of 2004 s. 5; amended: No. 45 of 2016 s. 71.]*

### 84M. Facilitation of proof

(1) This section applies only in relation to proceedings under this Division.

(2) A copy of the order imposing CSI certified by the court that imposed it is, in the absence of evidence to the contrary, evidence of its contents.

(3) A copy of an order amending a sentence of CSI certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.

(4) In proceedings for an offence under section 84J(1) in relation to an alleged breach of a CSI requirement, evidence of the alleged breach may be given by tendering a certificate signed by the CEO (corrections) stating the particulars of the alleged breach.

(5) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the CEO (corrections) was signed by a person who at the time was the CEO (corrections).

*[Section 84M inserted: No. 27 of 2004 s. 5; amended: No. 65 of 2006 s. 49.]*

## Division 4 — Functions of speciality courts as to CSI

*[Heading inserted: No. 27 of 2004 s. 5.]*

### 84N. Application of this Division

(1) This Division applies if —

(a) the court that imposes a sentence of CSI on an offender is a speciality court; or

(b) an offender is committed for trial or sentence for an offence to a superior court by a speciality court and a sentence of CSI is imposed on the offender by the superior court and the superior court orders that this Division is to apply.

(2) In this Division —

***speciality court*** means the speciality court referred to in subsection (1)(a) or (b).

*[Section 84N inserted: No. 27 of 2004 s. 5.]*

### 84O. Speciality court may direct offender on CSI to appear

(1) The speciality court may order that the offender appear or reappear before the speciality court after the imposition of the sentence of CSI —

(a) at a time and place fixed by the court; or

(b) if and when summonsed by the court,

so that the court can ascertain whether the offender is complying with the sentence.

(2) An order may be made under subsection (1) on any reappearance of the offender pursuant to a previous order made under subsection (1).

(3) If an offender does not reappear before the speciality court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.

(4) On a reappearance ordered under subsection (1), or compelled under subsection (1) or (3), the speciality court may amend a CSI requirement as defined in section 84G.

*[Section 84O inserted: No. 27 of 2004 s. 5.]*

### 84P. Speciality court to deal with re-offender

(1) If this Division applies and a court other than the speciality court convicts the offender of an offence as referred to in section 84D, that court must commit the offender to the speciality court and the speciality court must deal with the offender under section 84F.

(2) Section 84D(2) to (5) apply for the purposes of subsection (1).

(3) If this Division applies, a notice under section 84E(1) must be lodged with the speciality court and a summons or warrant issued under section 84E must direct the offender to appear or be brought before the speciality court.

*[Section 84P inserted: No. 27 of 2004 s. 5; amended: No. 41 of 2006 s. 75(1).]*

### 84Q. Speciality court to deal with application to amend or cancel CSI

If this Division applies, an application under section 84H is to be made to the speciality court.

*[Section 84Q inserted: No. 27 of 2004 s. 5.]*

### 84R. Speciality court to deal with proceedings for breaches

If this Division applies, a prosecution for an offence against section 84J(1) is to be commenced in, and heard and determined by, the speciality court and, if the offender is convicted, the speciality court must deal with the offender under section 84L.

*[Section 84R inserted: No. 27 of 2004 s. 5.]*

# Part 13 — Imprisonment

## Division 1 — Preliminary

### 85. Terms used and calculations

(1) In this Part —

***fixed term*** means a term that is not life imprisonment;

***indefinite imprisonment*** means indefinite imprisonment imposed under Part 14;

***mandatory minimum sentence***, in relation to a prescribed offence, means —

(a) in the case of an offence against *The Criminal Code* section 297, the minimum term of imprisonment required by that section if the offence is committed in prescribed circumstances as defined in subsection (8) of that section;

(b) in the case of an offence against *The Criminal Code* section 318, the minimum term of imprisonment required by subsection (4)(a) or (b) of that section, whichever of those minimum terms is applicable to the circumstances of the offence;

(c) in the case of an offence against the *Road Traffic Act 1974* section 59, the minimum term of imprisonment required by subsection (4A)(a) of that section;

(d) in the case of an offence against the *Road Traffic Act 1974* section 59A, the minimum term of imprisonment required by subsection (4A)(a) of that section;

***parole order*** means an order made under Part 3 of the *Sentence Administration Act 2003* that a prisoner be released on parole and includes a parole order made for the purposes of section 72 or 73 of that Act;

***parole term*** means —

(a) a term to which a parole eligibility order applies; or

(b) a translated sentence in respect of which a minimum term of imprisonment is deemed to have been fixed under the *Prisoners (Interstate Transfer) Act 1983* section 26(1);

***prescribed offence*** means any of the following offences, if the offence is committed by a person who, at the time of the commission of the offence, has reached 18 years of age —

(a) an offence against *The Criminal Code* section 297, if the offence is committed in prescribed circumstances as defined in subsection (8) of that section;

(b) an offence against *The Criminal Code* section 318, if the offence is committed in prescribed circumstances as defined in subsection (5) of that section;

(c) an offence against the *Road Traffic Act 1974* section 59 or 59A, if the offence is committed in the circumstance of aggravation referred to in section 49AB(1)(c) of that Act;

***prescribed term*** means —

*[(a) deleted]*

(b) a term imposed for a prison offence as defined in the *Prisons Act 1981*;

(c) a term imposed for escaping lawful custody;

***prisoner*** means a person (whether or not he or she is in custody) who has been sentenced to a term and who has not been discharged from that term, but does not include a person sentenced to suspended imprisonment or CSI, unless an order is made under section 80(1)(a) or (b);

***release*** means release from custody;

***term*** means a term of imprisonment imposed on an offender by a court as a sentence, whether a fixed term or life imprisonment, but does not include —

(a) detention under a sentence imposed under section 279(5)(b) of *The Criminal Code*; or

(b) indefinite imprisonment;

***translated sentence*** has the meaning given in the *Prisoners (Interstate Transfer) Act 1983* section 3(1).

(2) For the purposes of this Part and Part 11 and for the purposes of the *Sentence Administration Act 2003*, the aggregate of 2 or more fixed terms is the total effective period of imprisonment imposed on the offender having regard to whether the fixed terms are to be served concurrently or partly concurrently or cumulatively.

(3) For the purposes of this Part and of the *Sentence Administration Act 2003*, to calculate the length in days of one-half of a fixed term —

(a) determine the dates on which the term as imposed by the court will begin and end and then express the term as a number of days (***T***); and

(b) then divide T by 2 and disregard any remainder.

(4) In this Part and in the *Sentence Administration Act 2003*, a fixed term ends when the term as imposed by the court ends, and it does not matter if the prisoner has been released before then.

*[Section 85 amended: No. 29 of 1998 s. 18; No. 50 of 2003 s. 16; No. 27 of 2004 s. 6(4); No. 29 of 2008 s. 22(1); No. 6 of 2014 s. 4; No. 32 of 2015 s. 4; No. 45 of 2016 s. 72.]*

## Division 2 — Imposing imprisonment

### 86. Term of 6 months or less not to be imposed

A court must not sentence an offender to a term of 6 months or less unless —

(a) the aggregate of the term imposed and any other term or terms imposed by the court is more than 6 months; or

(b) the offender is already serving or is yet to serve another term; or

(c) the term is imposed under section 79 of the *Prisons Act 1981*.

*[Section 86 amended: No. 50 of 2003 s. 33(3).]*

### 87. Time on remand may be taken into account

(1) If when an offender is being sentenced to imprisonment for an offence —

(a) the offender has previously spent time —

(i) in custody in respect of the offence for which the offender is being sentenced; or

(ii) in custody in respect of another offence, while on bail for the offence for which the offender is being sentenced;

and

(b) the sentencing court decides that that time should be taken into account,

the court may take that time into account —

(c) if it imposes a fixed term, by reducing that term by an appropriate period; or

(d) by ordering that the term it imposes is to be taken to have begun on a specified day being the day when that custody began or on some later date that is not later than the date of the sentence.

(2) Subsection (1)(a)(i) does not apply if the time in custody has already been taken into account in sentencing for another offence under subsection (1)(a)(ii).

*[Section 87 amended: No. 3 of 2008 s. 20; No. 45 of 2016 s. 74.]*

### 88. Concurrent, cumulative or partly cumulative terms

(1) An offender sentenced to a fixed term is to serve that term concurrently with any other fixed term that he or she is serving

or has yet to serve, unless the sentencing court makes an order under subsection (3).

(2) An offender sentenced at the one time to one or more fixed terms is to serve those terms concurrently, unless the court makes an order under subsection (3).

(3) If at the time an offender is sentenced to a fixed term —

(a) the offender is serving or has yet to serve another fixed term imposed previously; or

(b) the offender is then also sentenced to serve another fixed term,

the sentencing court may order that —

(c) the fixed term is to be served cumulatively on the other fixed term; or

(d) the fixed term is to be served partly concurrently with the other fixed term.

(4) If under subsection (3)(d) a court orders that a term is to be served partly concurrently with another fixed term, the court must specify the period of the other fixed term that is to be served before the partly concurrent term is to begin, but that period must not extend beyond the earliest date on which the offender could be released (whether on parole or not) in relation to the other fixed term.

(5) An offender sentenced to life imprisonment is to serve that sentence concurrently with any other term that he or she is serving or has yet to serve.

*[Section 88 amended: No. 57 of 1999 s. 6(3); No. 50 of 2003 s. 17; No. 29 of 2008 s. 22(2).]*

*[**89A.** [1M] Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section inserted 1 Nov 2009. See endnote 1M.]*

### 89. Parole eligibility order, court may make

(1) A court sentencing an offender to a fixed term of imprisonment may make an order (a ***parole eligibility order***) that the offender be eligible to be considered for parole in respect of that term by the Prisoners Review Board.

(2) A parole eligibility order must not be made if the fixed term, or the aggregate of the fixed terms, imposed by the court is less than 6 months, except where the offender, at the date of the sentence, is serving or has yet to serve —

(a) a parole term imposed previously; or

(b) a fixed term or fixed terms imposed previously —

(i) which, or the aggregate of which, is less than 6 months; and

(ii) which, with the term or terms imposed by the court, would result in an aggregate of 6 months or more.

(3) A parole eligibility order must not be made in respect of a prescribed term.

(4) A court may decide not to make a parole eligibility order in respect of a fixed term imposed on an offender if the court considers that the offender should not be eligible for parole because of at least one of the following 4 factors —

(a) the offence is serious;

(b) the offender has a significant criminal record;

(c) the offender, when released from custody under a release order made previously, did not comply with the order;

(d) any other reason the court considers relevant.

(5) If a court decides that an offender is to be eligible for parole in respect of 2 or more of the fixed terms it imposes, it is to make a single parole eligibility order in respect of those terms.

(5a) If, in a case to which subsection (2)(b) applies, a court decides that an offender is to be eligible for parole, it is to make a single parole eligibility order in respect of the fixed term or fixed terms it imposes and the term or terms imposed previously.

(5b) If, in any other case —

(a) a court decides that an offender is to be eligible for parole; and

(b) at the date of the sentence the offender is serving or has yet to serve a fixed term or fixed terms imposed previously which, or the aggregate of which, is less than 12 months,

the court may make a single parole eligibility order in respect of a fixed term or fixed terms that it imposes and the term or terms imposed previously.

(6) The effect of a parole eligibility order made in respect of 2 or more fixed terms is subject to section 94.

(7) This section does not affect the operation of Part 3 Division 4 of the *Sentence Administration Act 2003* in relation to the release on parole of a prisoner to whom that Division applies.

(8) In subsection (4) —

***release order*** means an order made (in this State or elsewhere in Australia) in respect of an offender who is subject to a sentence of imprisonment that releases the offender on conditions before the end of the sentence, and includes such an order made under a written law before the commencement of the *Sentencing Legislation Amendment and Repeal Act 2003*.

*[Section 89 inserted: No. 50 of 2003 s. 18; amended: No. 41 of 2006 s. 76; No. 45 of 2016 s. 19; No. 45 of 2016 s. 75.]*

### 90. Life imprisonment for murder, imposing

(1) A court that sentences an offender to life imprisonment for murder must either —

(a) set a minimum period of —

(i) at least 15 years, if the offence is committed by an adult offender (within the meaning given in *The Criminal Code* section 1(1)) in the course of conduct that constitutes an aggravated home burglary (within the meaning given in that section); or

(ii) at least 10 years, in any other case,

that the offender must serve before being eligible for release on parole; or

(b) order that the offender must never be released.

(2) Any minimum period so set begins to run when the sentence of life imprisonment begins.

(3) A court must make an order under subsection (1)(b) if it is necessary to do so in order to meet the community's interest in punishment and deterrence.

(4) In determining whether an offence is one for which an order under subsection (1)(b) is necessary, the only matters relating to the offence that are to be taken into account are —

(a) the circumstances of the commission of the offence; and

(b) any aggravating factors.

*[Section 90 inserted: No. 29 of 2008 s. 19; amended: No. 25 of 2015 s. 24.]*

*[**91.** Deleted: No. 29 of 2008 s. 19.]*

## Division 3 — Release from imprisonment

*[**92.** Deleted: No. 50 of 2003 s. 19.]*

### 93. Release from parole term

(1) Subject to sections 94A, 94 and 95A, a prisoner serving a parole term is eligible to be released on parole —

(a) if the term served is 4 years or less — when he or she has served one-half of the term; or

(b) if the term served is more than 4 years — when he or she has served 2 years less than the term.

(2) Any order for the release on parole of a prisoner to whom subsection (1) applies must be made in accordance with Part 3 of the *Sentence Administration Act 2003*.

(3) If a prisoner serving a parole term has not been released on parole before the term ends, the prisoner is discharged from that sentence when the term ends and, subject to Part 2 Division 2 of the *Sentence Administration Act 2003*, must be released then.

*[Section 93 inserted: No. 50 of 2003 s. 20; amended: No. 6 of 2014 s. 5; No. 32 of 2015 s. 5.]*

### 94A. Release on parole of prisoners subject to *Prisoners (Interstate Transfer) Act 1983*

(1) Despite section 93(1), a prisoner serving a parole term that is a translated sentence is eligible to be released on parole when the prisoner has served the minimum term of imprisonment deemed under the *Prisoners (Interstate Transfer) Act 1983* section 26(1) to have been fixed in respect of the sentence.

(2) For the purposes of the application of the *Sentence Administration Act 2003* to the prisoner, a reference in that Act to eligibility to be released on parole under section 93(1) is to be taken to be a reference to eligibility to be released on parole under subsection (1).

*[Section 94A inserted: No. 32 of 2015 s. 6.]*

### 94. Aggregation of parole terms for certain purposes

(1) In the case of a prisoner serving 2 or more parole terms —

(a) the time when he or she is eligible to be released on parole; and

(b) the parole period for such a prisoner,

are to be calculated by reference to the aggregate of those terms, but only if under subsection (3) or (4) those terms are to be aggregated.

(2) If under this section the matters referred to in subsection (1) are not to be calculated by reference to the aggregate of 2 or more parole terms, the matters are to be calculated in respect of each of the 2 or more parole terms separately.

(3) A parole term imposed at the same time as another parole term is to be aggregated with that other term for the purposes of subsection (1) unless it is to be served partly concurrently with that other term.

(4) A parole term imposed at a different time to another parole term is to be aggregated with that other term for the purposes of subsection (1) unless —

(a) it is to be served concurrently with that other term or partly concurrently with it; or

(b) the other term was imposed before the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003*.

(5) Subject to this section, a parole term, or an aggregate of parole terms, may be aggregated with the aggregate of 2 or more other parole terms, but a parole term, or an aggregate of parole terms, imposed before the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003* is not to be aggregated with a parole term, or aggregate of parole terms, imposed after that commencement.

(6) For the purposes of applying this section a reference in this Part or in the *Sentence Administration Act 2003* to a prisoner serving a parole term is, where necessary, to be taken as including a reference to a prisoner serving more than one parole term and in such a case, if under this section the terms can be aggregated, the reference to the term is to be taken as being a reference to the aggregate of the terms.

**Table showing some examples of the operation of this section and sections 88 and 93, and section 7 of the *Sentence Administration Act 2003***

| **Parole term 1** | **Parole term 2** | **Whether concurrent etc.** | **Effect** |
|---|---|---|---|
| 4 years | 6 years | Concurrent | Aggregation of terms permitted for parole calculations.<br>Aggregate = 6 years.<br>Non-parole period = 4 years.<br>(Calculated on aggregate).<br>If not paroled, serve 6 years. |
| 4 years | 6 years | Cumulative | Aggregation of terms permitted for parole calculations.<br>Aggregate = 10 years.<br>Non-parole period = 8 years.<br>(Calculated on aggregate).<br>If not paroled, serve 10 years. |

| **Table showing some examples of the operation of this section and sections 88 and 93, and section 7 of the *Sentence Administration Act 2003*** | | | |
|---|---|---|---|
| **Parole term 1** | **Parole term 2** | **Whether concurrent etc.** | **Effect** |
| 4 years | 6 years | Partly concurrent:<br>1 year of term 1 to be served before term 2 begins.<br>(See s. 88(4)) | Aggregation of terms not permitted for parole calculations.<br>Serve 1 year of term 1.<br>Then begin serving term 2 concurrently with rest of term 1.<br>Non-parole period on term 2 = 4 years.<br>Result: serve 5 years before eligible for parole.<br>If not paroled, serve 7 years. |

*[Section 94 inserted: No. 50 of 2003 s. 20; amended: No. 41 of 2006 s. 77.]*

### 95A. Eligibility for parole where certain mandatory minimum sentences imposed

(1) For the purposes of section 93(1), a prisoner serving a parole term for a prescribed offence is eligible to be released on parole when he or she has served the greater of —

(a) the mandatory minimum sentence applicable to that offence; or

(b) the period that, under section 93(1), he or she would be required to serve before being eligible to be released on parole if the offence were not a prescribed offence.

(2) Subsection (3) applies to a prisoner if —

(a) the prisoner is serving 2 or more parole terms; and

(b) those parole terms are to be aggregated under section 94; and

(c) 2 or more of those parole terms are for prescribed offences.

(3) If this subsection applies to a prisoner then, for the purposes of section 93(1), the prisoner is eligible to be released on parole when he or she has served the greater of —

(a) the aggregate of the mandatory minimum sentences applicable to each of the prescribed offences that he or she is serving; or

(b) the period that, under sections 93(1) and 94, he or she would be required to serve before being eligible to be released on parole if the offences were not prescribed offences.

(4) If a parole term was imposed before the *Sentencing Legislation Amendment Act 2014* Part 2 comes into operation, this Division and the *Sentence Administration Act 2003* Part 3 Division 3 apply to and in relation to that parole term as if the *Sentencing Legislation Amendment Act 2014* Part 2 had not been enacted.

*[Section 95A inserted: No. 6 of 2014 s. 6.]*

### 95. Release from fixed term that is not parole term

A prisoner serving a fixed term that is not a parole term is discharged from that sentence at the end of the term and, subject to Part 2 Division 2 of the *Sentence Administration Act 2003*, must be released then.

*[Section 95 inserted: No. 50 of 2003 s. 20.]*

### 96. Release from life imprisonment

(1) A prisoner serving a sentence of life imprisonment for an offence other than murder is not to be released before he or she has served 7 years of the sentence.

(2) A prisoner serving a sentence of life imprisonment for murder in respect of which a minimum period has been set under section 90(1)(a) is not to be released before he or she has served the minimum period.

(3) A prisoner serving a sentence of life imprisonment for murder in respect of which an order has been made under section 90(1)(b) is not to be released.

(4) Any order for the release of a prisoner referred to in this section must be made in accordance with Part 3 of the *Sentence Administration Act 2003*.

*[Section 96 inserted: No. 29 of 2008 s. 20.]*

## Division 4 — Miscellaneous

### 97. *Sentence Administration Act 2003,* operation of

Nothing in this Part affects the operation of Parts 4 and 5 of the *Sentence Administration Act 2003*.

*[Section 97 amended: No. 50 of 2003 s. 29(3).]*

### 97A. Declaration of serious violent offence for purposes of *Sentence Administration Act 2003* Part 5A

(1) In this section —

***family relationship*** has the meaning given in the Restraining Orders Act 1997 section 4(1);

***offence*** does not include an offence specified in the *High Risk Serious Offenders Act 2020* Schedule 1;

***victim*** has the meaning given in section 13.

(2) This section applies if —

(a) a court is sentencing an offender to imprisonment for an indictable offence; and

(b) the offence —

(i) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, a firearm against another person; or

(ii) involved the use of, or counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person; or

(iii) resulted in serious harm to, or the death of, another person.

(3) The sentencing court may declare the offence committed by the offender to be a serious offence for the purposes of —

(a) the *High Risk Serious Offenders Act 2020*; and

(b) the *Sentence Administration Act 2003* Part 5A.

(4) The court must regard the existence of any of the following circumstances as an aggravating factor when deciding whether to make a declaration —

(a) the offender has a history of violent offending;

(b) the offender was in a family relationship with a victim of the offence when the offence was committed;

(c) a victim of the offence was under 12 years of age when the offence was committed.

(5) A declaration may be made by the court on its own initiative or on an application by the prosecutor.

(6) In addition to subsection (2), this section applies if —

(a) a court is sentencing an offender to imprisonment for an offence; and

(b) the offence is a family violence offence; and

(c) the offender is a serial family violence offender.

(7) In a case where subsection (6) applies, the sentencing court must make a declaration under this section.

(8) This section does not limit the ability of a court to make a declaration in relation to the same person under section 124E.

*[Section 97A inserted: No. 45 of 2016 s. 20; amended: No. 6 of 2017 s. 12(2)-(4); No. 29 of 2020 s. 120(2) and (3); No. 30 of 2020 s. 24.]*

# Part 14 — Indefinite imprisonment

## 98. Indefinite imprisonment, superior court may impose

(1) If a superior court —

(a) sentences an offender for an indictable offence to a term of imprisonment; and

(b) does not suspend that imprisonment; and

(c) does not make a parole eligibility order in respect of that term,

it may in addition to imposing the term of imprisonment for the offence (the ***nominal sentence***), order the offender to be imprisoned indefinitely.

(2) Indefinite imprisonment must not be ordered unless the court is satisfied on the balance of probabilities that when the offender would otherwise be released from custody in respect of the nominal sentence or any other term, he or she would be a danger to society, or a part of it, because of one or more of these factors:

(a) the exceptional seriousness of the offence;

(b) the risk that the offender will commit other indictable offences;

(c) the character of the offender and in particular —

(i) any psychological, psychiatric or medical condition affecting the offender;

(ii) the number and seriousness of other offences of which the offender has been convicted;

(d) any other exceptional circumstances.

(3) In deciding whether an offender would be a danger to society, or a part of it, the court —

(aa) is not to decide that the offender would not be a danger merely because of the possibility that an order might be

made in respect of the offender under the *High Risk Serious Offenders Act 2020*; and

(a) is not bound by section 6 but is bound by any guidelines on the imposition of indefinite imprisonment in a guideline judgment given under section 143; and

(b) may have regard to such evidence as it thinks fit.

*[Section 98 amended: No. 17 of 2016 s. 55; No. 45 of 2016 s. 76; No. 29 of 2020 s. 121.]*

### 99. Other terms not precluded by indefinite imprisonment

The fact that a person is sentenced to be imprisoned indefinitely does not preclude the person from being sentenced for another offence or from serving another sentence.

### 100. When indefinite imprisonment commences

A sentence of indefinite imprisonment begins on the day when the offender would, but for that sentence, be eligible to be released from custody, whether or not under a parole order or a re-entry release order made under the *Sentence Administration Act 2003*, while or after serving —

(a) the nominal sentence; or

(b) any other term imposed on the offender.

*[Section 100 amended: No. 50 of 2003 s. 21.]*

### 101. Release from indefinite imprisonment

A prisoner sentenced to indefinite imprisonment may be released at any time after the sentence of indefinite imprisonment begins by means of a parole order made under Part 3 of the *Sentence Administration Act 2003*.

*[Section 101 amended: No. 50 of 2003 s. 29(3).]*

# Part 15 — Other orders forming part of a sentence

## Division 1 — General matters

### 102. General provisions

(1) An order under this Part may be made in conjunction with any sentencing option available to a court sentencing an offender who is a natural person.

(2) An order under section 106 may be made in conjunction with any sentencing option available to a court sentencing a body corporate.

(3) An order under this Part forms part of the sentence.

### 103. Disqualification order, calculation of term of

(1) If a disqualification order is made in respect of an offender, the term of the disqualification does not elapse —

(a) while the offender is in custody serving any sentence of imprisonment;

(b) while the offender is appealing against the conviction or sentence that gave rise to the disqualification order.

(2) A disqualification order ceases to be in force when its term ends, or when a court cancels it, whichever happens first.

### 104. Disqualification may be for life

The term of a disqualification order made under this Part may be for the life of the offender.

## Division 2 — Disqualification orders

### 105. Driver's licence disqualification

(1) A court sentencing an offender for a motor vehicle offence may order that, for a term set by the court, the offender be disqualified from holding or obtaining a driver's licence.

(2) The term is concurrent with —

(a) any other term for which the offender's driver's licence is or may be disqualified; or

(b) any term for which the offender's driver's licence is or may be suspended,

unless the court orders that the term is to be cumulative on those terms.

(3) The court must ensure that the details of the motor vehicle offence and the order are made known to the CEO as defined in the *Road Traffic (Administration) Act 2008* section 4.

(4) This section does not affect —

(a) the right or duty of a court to disqualify, under a road law as defined in the *Road Traffic (Administration) Act 2008* section 4, a person from holding or obtaining a driver's licence as defined in that section;

(b) the operation of section 18 of the *Motor Vehicle (Third Party Insurance) Act 1943*.

(5) In this section —

***driver's licence*** has the same definition as in the *Road Traffic (Administration) Act 2008* section 4;

***motor vehicle*** has the same definition as in the *Road Traffic (Administration) Act 2008* section 4;

***motor vehicle offence*** means —

(a) an offence an element of which is the driving or use of a motor vehicle;

(b) stealing or attempting to steal or conspiring to steal a motor vehicle;

(c) receiving or attempting to receive or conspiring to receive a motor vehicle;

(ca) an offence where —

(i) a motor vehicle is used in the commission of the offence;

(ii) the commission of the offence is aided or facilitated by the use of a motor vehicle;

(d) an indictable offence (whether it was tried on indictment or not) where —

*[(i), (ii) deleted]*

(iii) a motor vehicle is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;

(iv) a motor vehicle is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension.

*[Section 105 amended: No. 76 of 1996 s. 42; No. 57 of 1999 s. 37; No. 7 of 2002 s. 64; No. 8 of 2012 s. 176.]*

### 106. Firearms licence etc. disqualification

(1) A court sentencing an offender for an offence specified in subsection (4a) may order that, for a term set by the court, the offender be disqualified from holding or obtaining a licence or a permit or an approval, or any particular licence, permit or approval, under the *Firearms Act 1973*.

(2) The term is concurrent with the term of any other such order which the offender is subject to, unless the court orders that it is to be cumulative on any such term.

(3) When an order is made under subsection (1), by force of this subsection any relevant licence, permit or approval held by the offender under the *Firearms Act 1973* —

(a) is suspended and has no effect for so long as the disqualification order is in force; or

(b) if the order so specifies, is cancelled.

(4) The court must ensure that details of the offence and the order are made known to the Commissioner of Police.

(4a) This section applies to —

(a) a firearms offence;

(b) an offence involving assault with a weapon;

(c) an offence involving violence.

(5) In this section —

***ammunition*** includes replica ammunition, ammunition rendered inoperative, and blank ammunition;

***firearm*** has the same definition as in the *Firearms Act 1973* and includes a replica firearm and a firearm rendered inoperative;

***firearms offence*** means —

(a) stealing or attempting to steal or conspiring to steal a firearm or ammunition;

(b) receiving or attempting to receive or conspiring to receive a firearm or ammunition;

(c) an offence where a party to the offence (whether that party is charged or not) uses or is in possession of a firearm or ammunition during the commission of the offence;

(d) an offence where a firearm or ammunition is used after the commission of the offence (whether by the offender or by another party to the offence) to assist the offender to avoid, or to attempt to avoid, apprehension;

(e) an offence under the *Firearms Act 1973*.

*[Section 106 amended: No. 59 of 1996 s. 52.]*

## 107. Marine qualification disqualification

(1) A court sentencing an offender for a marine offence may order that, for a term set by the court, the offender be disqualified from holding or obtaining a marine qualification or a particular marine qualification.

(2) The term is concurrent with the term of any other such order which the offender is subject to, unless the court orders that it is to be cumulative on any such term.

(3) When an order is made under subsection (1), any relevant marine qualification held by the offender and issued under the *Western Australian Marine Act 1982* is, by force of this subsection, suspended and has no effect for so long as the disqualification order is in force.

(4) The court must ensure that details of the marine offence and the order are made known to the chief executive officer of the agency principally assisting the Minister administering the *Western Australian Marine Act 1982*.

(5) In this section —

***marine offence*** means —

(a) an offence an element of which is —

(i) the navigation, control or use of a vessel; or

(ii) having the charge of a vessel or any part of it;

(b) stealing or attempting to steal or conspiring to steal a vessel;

(c) receiving or attempting to receive or conspiring to receive a vessel;

(d) an offence where —

(i) a vessel is used in the commission of the offence;

(ii) the commission of the offence is aided or facilitated by the use of a vessel;

(iii) a vessel is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;

(iv) a vessel is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension;

***marine qualification*** means a certificate of competency or any other qualification issued to a person under the *Western Australian Marine Act 1982* in relation to navigating or operating a vessel;

***vessel*** has the same definition as in *The Criminal Code*.

*[Section 107 amended: No. 29 of 2008 s. 21.]*

### 108. Passport, surrender of etc.

(1) A court sentencing an offender for a passport offence or to facilitate a sentence may order that, for a term set by the court, the offender —

(a) must remain in Australia; or

(b) must refrain from applying for, or obtaining, an Australian passport; or

(c) must surrender possession of any Australian passport held by him or her to an officer of the court; or

(d) must do more than one of the above.

(2) The term is concurrent with the term of any other such order which the offender is subject to, unless the court orders that it is to be cumulative on any such term.

(3) The court must immediately send details of the offence and the order to the Secretary to the department administering the *Australian Passports Act 2005* (Commonwealth).

(4) If an Australian passport is surrendered pursuant to an order under subsection (1), the officer of the court must keep it in safe keeping until —

(a) the order ceases to be in force; or

(b) the passport is cancelled or expires,

whichever happens first.

(5) After an order under subsection (1) ceases to be in force, a person who surrendered an Australian passport pursuant to the

order may apply to the court for its return, and the officer keeping it must return it.

(6) In this subsection —

***passport offence*** means an offence where —

(a) a passport is used in the commission of the offence;

(b) the commission of the offence is aided or facilitated by the use of a passport;

(c) a passport is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;

(d) a passport is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension.

*[Section 108 amended: No. 17 of 2014 s. 37(3) and (4).]*

# Part 16 — Reparation orders

## Division 1 — General matters

### 109. Term used: reparation order

In this Part —

***reparation order*** means —

(a) a compensation order made under this Part; or

(b) a restitution order made under this Part.

### 110. General provisions

(1) A reparation order is in addition to and not part of the sentence imposed on an offender.

(2) A sentence must not be reduced because a reparation order is made.

(3) Subsection (2) does not prevent the mitigation of a sentence in a case where an offender agrees to make good loss or damage resulting from the offence or is otherwise contrite.

(4) A court that under Part 6 does not impose a sentence on an offender may nevertheless make a reparation order.

(5) If a reparation order is made, compliance with it is not to be the subject of a requirement under a CRO, or of a direction under a CBO or an ISO.

(6) Despite subsection (1) an offender may appeal against a reparation order as if it were part of the sentence imposed on him or her.

### 111. Making a reparation order

(1) A reparation order may be made by a court on its own initiative or on the application of a victim or a prosecutor.

(2) An application for a reparation order must be made in accordance with the regulations.

(3) An application for a reparation order must be made during the sentencing proceedings or within the time after that prescribed by the regulations.

(4) A court that makes a reparation order may make any other order that is necessary to give effect to the reparation order, including an order to be obeyed by a person other than the offender.

*[Section 111 amended: No. 57 of 1999 s. 27.]*

### 112. Facts relevant to making reparation order

(1) In deciding whether to make and if so the terms of a reparation order in relation to an offence, a court may take into account as evidence —

(a) any evidence given during proceedings for the offence;

(b) the content of any record (as defined in the *Criminal Procedure Act 2004*) that is relevant to the offence and that has been disclosed to the offender by the prosecutor under that Act;

(c) any statement tendered, or deposition made, or exhibit tendered, at committal proceedings in relation to the offence;

(d) any evidence given by a victim or the offender in relation to the making of a reparation order.

(2) In deciding whether to make and if so the terms of a reparation order in relation to an offence, a court may take into account —

(a) any pre-sentence report given to the court;

(b) any victim impact statement given to the court;

(c) any mediation report given to the court.

*[Section 112 amended: No. 57 of 1999 s. 28; No. 4 of 2004 s. 58; No. 59 of 2004 s. 141; No. 84 of 2004 s. 65.]*

### 113. Victim's behaviour and relationship relevant

A court may decide not to make a reparation order or to reduce the amount to be paid under a compensation order if —

(a) any behaviour, condition, attitude or disposition of the victim contributed directly or indirectly to the loss or damage suffered;

(b) the offence was not reported promptly to the police;

(c) the victim did not take reasonable steps to assist in the identification, apprehension or prosecution of the offender;

(d) because of any relationship or connection between the offender and the victim, it would be just to do so.

### 114. Civil standard of proof applies

In deciding matters in connection with the making of a reparation order, the standard of proof is proof on the balance of probabilities.

### 114A. Victim may appeal against refusal of reparation order

(1) If a victim applies to a court for a reparation order and the court decides to make or to refuse to make a reparation order, the victim may appeal against the decision.

(2) The appeal must be commenced and conducted under Part 2 or 3 of the *Criminal Appeals Act 2004*, as the case requires, which, with any necessary changes, applies as if a reparation order were an order that might be made as a result of a conviction.

(3) This section does not affect the prosecutor's rights of appeal under the *Criminal Appeals Act 2004*.

*[Section 114A inserted: No. 84 of 2004 s. 60.]*

### 115. Effect of reparation order on civil proceedings etc.

(1) The making of a reparation order does not preclude civil proceedings being taken against an offender for any injury, loss or damage suffered or an application for compensation being made under the *Criminal Injuries Compensation Act 2003*.

(2) A court, body or person, other than a person referred to in subsection (2a), assessing damages or compensation (the ***award***) for the injury, loss or damage resulting from an offence is to make the assessment without regard to the compensation set under a compensation order, but the person entitled to the award may only recover an amount equal to the amount (if any) by which the award exceeds the compensation ordered to be paid under the order.

(2a) A person assessing compensation under the *Criminal Injuries Compensation Act 2003* for the injury resulting from an offence is to make the assessment without regard to the compensation set under a compensation order made in respect of the offence.

(3) The extent to which a restitution order has been complied with by an offender is to be taken into account by a court, body or person in awarding damages or compensation for the injury, loss or damage resulting from the offence.

*[Section 115 amended: No. 57 of 1999 s. 29; No. 77 of 2003 s. 73.]*

## Division 2 — Compensation order

### 116. Terms used

In this Division —

***property*** includes real and personal property and everything, animate or inanimate, capable of being the subject of ownership;

***victim***, in relation to an offence, means a person who or which has suffered loss of or damage to his, her or its property as a direct or indirect result of the offence.

### 117. Compensation order in favour of victim

(1) A court sentencing an offender may make a compensation order in favour of a victim of the offence.

(2) Such a compensation order is an order that the offender must pay an amount of money set by the court to the victim as compensation for —

(a) the loss of, or damage to, the victim's property; and

(b) any expense reasonably incurred by the victim,

as a direct or indirect result of the commission of the offence.

(2a) A compensation order must not be made in respect of injury or loss within the meaning of the *Criminal Injuries Compensation Act 2003*.

(3) In fixing the amount of money to be paid under a compensation order for loss or damage to property, it does not matter whether that loss or damage was reasonably foreseeable by the offender.

*[Section 117 amended: No. 57 of 1999 s. 30; No. 77 of 2003 s. 73.]*

### 118. Compensation order in favour of third party

(1) If a court makes a restitution order against a person other than the offender (a ***third party***), the court may make a compensation order in favour of the third party.

(2) Such a compensation order is an order that the offender must pay an amount of money set by the court to the third party as compensation for —

(a) the property that the third party is required to give to the victim by reason of the restitution order made against the third party; and

(b) any expense reasonably incurred by the third party in connection with complying with the restitution order.

### 119. Enforcing compensation order

(1) If the amount payable under a compensation order is not paid within 28 days after the date of the order, the person in whose favour the order is made may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.

(2) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

(3) No fee shall be charged for a certified copy of the order or for lodging it.

*[Section 119 inserted: No. 59 of 2004 s. 141.]*

### 119A. Imprisonment until compensation paid, court may order

(1) This section applies if a court that makes a compensation order is of the opinion that the offender concerned has, or ought to have, the means to pay the compensation.

(2) If this section applies the court may in addition to making the compensation order, order that if the offender does not pay the compensation before a date set by the court the offender is to be imprisoned until the compensation is paid, but in any event for not longer than the period determined under subsection (3) or a shorter period set by the court.

(3) Unless the court sets a shorter period, the period of imprisonment (in days) is the period determined by dividing the amount of compensation by $50 (or such greater amount as is prescribed) and rounding the result up to the nearest whole number of days.

(4) Service of the period of imprisonment does not discharge the offender's liability to pay the compensation.

(5) Any period of imprisonment that an offender has to serve as a result of an order made under subsection (2) is to be served

cumulatively on any term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.

(6) This section does not limit the operation of section 119.

*[Section 119A inserted: No. 57 of 1999 s. 32.]*

## Division 3 — Restitution order

### 120. Making restitution order

(1) If a court sentencing an offender for an offence which involves the misappropriation of property is satisfied that —

(a) the offender is in possession of the property; or

(b) a person other than the offender (the ***third party***) is in possession of the property,

the court may make a restitution order in favour of the person who appears to the court to be entitled to the possession of the property (the ***victim***).

(2) A restitution order is an order that the offender or the third party (as the case may be) must give possession of the property to the victim within a period set by the court.

(3) A restitution order may direct the offender or the third party (as the case may be) to do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of giving effect to the object of the order.

(4) A restitution order must not be made against a third party unless the third party has been given an opportunity to be heard by the court.

(5) A restitution order does not prejudice any person's title to the property.

*[Section 120 amended: No. 84 of 2004 s. 65.]*

### 120A. Enforcing restitution order, Sheriff's powers for

(1) If a person against whom a restitution order has been made does not comply with the order, the victim in whose favour the order was made may request the Sheriff of Western Australia to seize the property and deliver it to the victim.

(2) On receiving a request under subsection (1), and if satisfied that the restitution order is in force, the Sheriff may —

(a) seize the property and deliver it to the victim; and

(b) for the purposes of seizing the property, enter any place where the Sheriff reasonably believes the property may be.

(3) Regulations may provide for the costs of the Sheriff to be paid by the victim and then recovered from the person who did not comply with the restitution order.

*[Section 120A inserted: No. 57 of 1999 s. 33; amended: No. 20 of 2013 s. 131.]*

### 121. Enforcing restitution order, court's powers for

(1) If a person against whom a restitution order has been made does not comply with the order, the victim in whose favour the order was made may apply to the court that made it for an order under subsection (3).

(2) The application is to be made in accordance with the regulations.

(3) On such an application, the court may —

(a) amend the restitution order; or

(b) cancel the restitution order and make a compensation order in favour of the victim; or

(c) dismiss the application.

(4) If on such an application, the court is satisfied that the offender or the third party (as the case may be) has committed an offence

under section 122, the court may deal with the offender or the third party (as the case may be) for the offence, in addition to making an order under subsection (3).

(5) The power in subsection (4) may be exercised by a court even though there has been no prosecution commenced for an offence under section 122 and even though the court is a superior court.

*[Section 121 amended: No. 84 of 2004 s. 65.]*

### 122. Non-compliance with restitution order, offence

A person who without lawful excuse, proof of which is on the person, does not comply with a restitution order commits an offence punishable —

(a) by the Supreme Court as for a contempt; or

(b) after summary conviction by the court that imposed the order, a fine of $10 000 or imprisonment for 12 months.

# Part 17 — Other orders and declarations not forming part of a sentence

*[Heading amended: No. 30 of 2020 s. 25.]*

## Division 1 — Preliminary

*[Heading inserted: No. 30 of 2020 s. 26.]*

### 123. General provisions

(1) An order or declaration under this Part is in addition to and not part of the sentence imposed on an offender.

(2) A sentence must not be reduced because an order or declaration is made under this Part.

(3) A court that under Part 6 does not impose a sentence on an offender may nevertheless make an order or declaration under this Part.

(4) Despite subsection (1) an offender may appeal against an order or declaration made under this Part as if it were part of the sentence imposed on him or her.

*[Section 123 amended: No. 30 of 2020 s. 27.]*

## Division 2 — Orders made under other Acts

*[Heading inserted: No. 30 of 2020 s. 28.]*

### 124. *Restraining Orders Act 1997* s. 63 restraining order, s. 123 applies to

For the purposes of section 123, a restraining order made against an offender under section 63 of the *Restraining Orders Act 1997* is taken to be an order made under this Part.

*[Section 124 inserted: No. 19 of 1997 s. 82.]*

### 124A. *Community Protection (Offender Reporting) Act 2004* s. 13 offender reporting order, s. 123 applies to

For the purposes of section 123, an offender reporting order made in respect of an offender under section 13 of the *Community Protection (Offender Reporting) Act 2004* is taken to be an order made under this Part.

*[Section 124A inserted: No. 72 of 2004 s. 116(3).]*

### 124B. *Prohibited Behaviour Orders Act 2010* prohibited behaviour order, s. 123 applies to

For the purposes of section 123, a prohibited behaviour order made against an offender under the *Prohibited Behaviour Orders Act 2010* is taken to be an order made under this Part.

*[Section 124B inserted: No. 59 of 2010 s. 51.]*

### 124C. Orders under *Criminal Organisations Control Act 2012*

(1) For the purposes of section 123, a control order made against an offender under the *Criminal Organisations Control Act 2012* is taken to be an order made under this Part.

(2) Only the Supreme Court can make a control order under this Part.

*[Section 124C inserted: No. 49 of 2012 s. 181(3).]*

## Division 3 — Declarations

*[Heading inserted: No. 30 of 2020 s. 29.]*

### 124D. Terms used

In this Division —

***approved expert*** means a person, or a person of a class of persons, approved by the CEO (corrections) as having the appropriate qualifications, skills and experience to carry out assessments under section 124E;

***firearm*** has the meaning given in section 106(5);

***prescribed offence*** means —

(a) a family violence offence; or

(b) an offence against a law of the Commonwealth, of another State or of a Territory, or of a place outside Australia, if the act or acts constituting the offence would, if committed in the State, constitute a family violence offence; or

(c) an attempt to commit such an offence under paragraph (a) or (b).

*[Section 124D inserted: No. 30 of 2020 s. 29.]*

### 124E. Serial family violence offenders

(1) A court convicting an offender of a family violence offence may declare the offender to be a serial family violence offender if —

(a) the offender has, on that conviction, been convicted of at least 2 prescribed offences which may only be tried on indictment, with at least 2 of those prescribed offences having been committed on different days; or

(b) the offender has, on conviction, been convicted of at least 3 prescribed offences, with at least 3 of those prescribed offences having been committed on different days.

(2) For the purposes of subsection (1) —

(a) the victim of each offence may, but need not be, the same person; and

(b) the offences need not be the same offences; and

(c) the offences need not to have occurred in the State as long as 1 of them did; and

(d) 1 or more of the convictions may have been convictions by a court outside the State; and

(e) it is immaterial in which order the offences were committed; and

(f) an offence will not be taken into account if the offence was committed by a person who, at the time of the commission of the offence, was under 18 years of age; and

(g) each of the offences taken into account must have been committed within a period of 10 years of each other unless the court is satisfied that exceptional circumstances exist that make it appropriate to make a declaration under this section (after taking into account the matters referred to in subsection (4) and such other matters as the court may consider to be relevant).

(3) A declaration may be made by the court on its own initiative or on an application by the prosecutor.

(4) Without limiting any other matter that a court dealing with an application under this section may consider to be relevant, the court must have regard to the following —

(a) the level of risk that the offender may commit another family violence offence;

(b) the offender's criminal record;

(c) the nature of the prescribed offences for which the offender has been convicted.

(5) In addition, the court may —

(a) before it makes a declaration, order an assessment of the offender by an approved expert; and

(b) take the report of that assessment into account when deciding whether to make the declaration.

(6) In connection with the operation of subsection (5) —

(a) an approved expert is authorised by this subsection to examine and assess the offender and to report in accordance with this section; and

(b) the report may indicate —

(i) the approved expert's assessment of the level of risk that the offender may commit another family violence offence; and

(ii) the reasons for this assessment;

and

(c) in preparing the report, the approved expert may —

(i) take into account any other information or report provided to, or obtained by, the approved expert; and

(ii) include in the report any other assessment or opinion, or address any other matter, that the approved expert considers to be relevant in the circumstances;

and

(d) the approved expert may prepare the report even if the offender does not cooperate, or does not fully cooperate, in any examination associated with the assessment.

*[Section 124E inserted: No. 30 of 2020 s. 29.]*

### 124F. Serial family violence offender declaration — related matters

(1) Section 124E does not limit the ability of a court to make a declaration in relation to the same person under section 97A.

(2) Except as provided in subsections (5) and (6), the declaration of a person as a serial family violence offender will have effect for an indefinite period.

(3) A person who is subject to a declaration may apply for the cancellation of the declaration if the declaration has been in effect for a period of at least 10 years.

(4) An application may be made to any court of criminal jurisdiction unless the court is an inferior court to the court that made the declaration.

(5) A court may cancel a declaration if satisfied that the declaration need no longer apply after taking into account the matters that would be taken into account by a court when considering whether to make a declaration under section 124E(1).

(6) If a person is declared to be a serial family violence offender and the person's conviction for a prescribed offence taken into account for the purposes of making the declaration is set aside or quashed, the declaration ceases to be in force at the conclusion of the proceedings in which the conviction is set aside or quashed unless there are still at least 3 other prescribed offences, or 2 other prescribed offences which may be only be tried on indictment, that qualify for the making of a declaration under section 124E(1).

*[Section 124F inserted: No. 30 of 2020 s. 29.]*

### 124G. Disqualification if declaration made

(1) If a court makes a declaration under this Division —

(a) the serial family violence offender is disqualified from —

(i) holding or obtaining a licence or permit, or an approval, for a firearm under the *Firearms Act 1973*; or

(ii) holding or obtaining a licence, permit or authorisation to hold an explosive under the *Dangerous Goods Safety Act 2004*;

and

(b) by force of this section any relevant licence, permit, approval or authorisation in relation to which a disqualification applies under paragraph (a) is cancelled; and

(c) the court must ensure that details of the declaration are made known to —

(i) the Commissioner of Police; and

(ii) the Chief Officer under the *Dangerous Goods Safety Act 2004*.

(2) The court that makes a declaration under this Division may grant an exemption from the operation of subsection (1) if it is satisfied that exceptional circumstances exist in a particular case.

*[Section 124G inserted: No. 30 of 2020 s. 29.]*

# Part 18 — Amending and enforcing conditional release orders and community orders

## Division 1 — Preliminary

### 125. Term used: requirements; and interpretation

(1) In this Part —

***requirements*** means —

(a) in relation to a CRO, the requirements of the CRO;

(b) in relation to a community order, the primary requirements and standard obligations of the order, and any requirements under section 67A, and any direction of the court that imposed the order.

(2) For the purposes of this Part a CRO or a community order may be amended by amending or cancelling its requirements, or by adding requirements, or by amending the term, or by a combination of those.

(3) In this Part a reference to the court that imposed an order includes a reference to —

(a) if the order was made by the Supreme Court — to any sitting of the Supreme Court in its criminal jurisdiction at any place in the State;

(b) if the order was made by the District Court — to any sitting of the District Court in its criminal jurisdiction at any place in the State;

(c) if the order was made by the Children's Court — to that Court sitting at any place in the State.

*[Section 125 amended: No. 30 of 2020 s. 30.]*

## Division 2 — Amending or cancelling conditional release orders and community orders

### 126. Application to amend or cancel

(1) An application to amend or cancel —

(a) a CRO may be made only by the offender or the DPP or a police prosecutor;

(b) a community order may be made only by the offender or a CCO.

(2) The application must be made —

(a) if the Children's Court imposed the CRO or community order, to that court; or

(b) if the Magistrates Court imposed the CRO or community order, to the Magistrates Court; or

(c) if a superior court imposed the CRO or community order, to the superior court that imposed the order.

(3) The application must be made in accordance with the regulations.

*[Section 126 amended: No. 59 of 2004 s. 141.]*

### 127. Court may confirm, amend or cancel

(1) If on an application under section 126 a court is satisfied —

(a) that the circumstances of the offender were wrongly or inaccurately presented to the court when it was sentencing the offender; or

(b) that the circumstances of the offender have so altered since the court passed sentence that the offender will not be able to comply with the requirements of the CRO or community order,

and that it is just to do so, the court may make an order under subsection (2) but otherwise it must confirm the CRO or community order.

(2) If a court may make an order under this subsection, it may either —

(a) amend the CRO or community order; or

(b) cancel the CRO or community order and sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence.

## Division 3 — Re-offending while subject to a conditional release order or a community order

### 128. Re-offender may be dealt with or committed

(1) If a court convicts a person of an offence (other than an offence under section 131(1)) the statutory penalty for which is or includes imprisonment and the offence was committed while the person was subject to a CRO or community order imposed in relation to another offence, then, even though there is no notice lodged under section 129, the court —

(a) if it is the Children's Court, may deal with the person under section 130 unless the CRO or community order was imposed by a superior court in which case it must commit the person to that court and that court may deal with the person under section 130;

(b) if it is the Magistrates Court, may deal with the person under section 130 unless the CRO or community order was imposed —

(i) by the Children's Court for an indictable offence; or

(ii) by a superior court,

in which case the court must commit the person to the court that imposed the order and that court may deal with the person under section 130;

(c) if it is the District Court, may deal with the person under section 130 unless the CRO or community order was

imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the order and that court may deal with the person under section 130;

(d) if it is the Supreme Court, may deal with the person under section 130.

(2) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed while subject to a CRO or community order (as the case may be).

(3) The powers in subsection (1) may be exercised by a court at any time, irrespective of whether or not the CRO or community order is still in force.

(4) Subsection (1) does not affect the powers of the court that convicts a person of the offence committed while the person was subject to a CRO or community order to deal with the person for that offence.

*[Section 128 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 65.]*

### 129. Re-offending, alleging in court

(1) If —

(a) a person (the ***offender***) has been convicted and dealt with (in this State or elsewhere) for an offence (other than an offence under section 131(1)); and

(b) that offence was committed while the offender was subject to a CRO or community order imposed in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

(2) The notice may be lodged at any time up until one year after the CRO or community order ceases to be in force.

(3) The notice may be signed —

(a) if the offender was subject to a CRO, by the CEO (corrections), a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*;

(b) if the offender was subject to a community order, only by the CEO (corrections).

(4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.

(5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.

(6) The notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before the court that imposed the CRO or community order.

(7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.

(8) If an offender does not obey such a summons, the court concerned may issue a warrant to have him or her arrested and brought before it.

(9) If an offender is arrested under a warrant issued under this section, he or she must be given a copy of the notice as soon as practicable after being arrested.

(10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 130.

*[Section 129 inserted: No. 84 of 2004 s. 61; amended: No. 65 of 2006 s. 49.]*

### 130. How re-offender may be dealt with

(1) If satisfied that a person committed an offence while subject to a CRO or community order, a court that may deal with the person under this section may —

(a) if the CRO or community order is then in force, do one of the following:

(i) confirm the CRO or community order;

(ii) amend the CRO or community order;

(iii) cancel the CRO or community order and sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence;

or

(b) if the CRO or community order is not then in force, sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence.

(2) In dealing with a person under subsection (1) who is or was subject to a CRO, a court is not precluded from making an order under section 52(2).

## Division 4 — Breaching a conditional release order or a community order

### 131. Breach of requirement, offence

(1) A person who breaches a CRO or community order without reasonable excuse, proof of which is on the person, commits an offence.

(2) A prosecution for an offence under subsection (1) may be commenced —

(a) in the case of an alleged breach of a CRO, by the CEO (corrections), a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*;

(b) in the case of an alleged breach of a community order, only by the CEO (corrections).

(3) Such a prosecution may be commenced at any time up until 1 year after the CRO or community order ceases to be in force.

*[(4) deleted]*

(5) If at the time of an alleged offence under subsection (1) the alleged offender was under 18 years old, the Children's Court is to hear and determine the charge.

*[Section 131 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 62 and 65; No. 65 of 2006 s. 49.]*

### 132. Offence under s. 131, procedure and penalty for

(1) If the Children's Court convicts a person of an offence under section 131(1) the Court —

(a) if it imposed the CRO or community order, may fine the person not more than $1 000 and may make an order under section 133;

(b) if a superior court imposed the CRO or community order, may either —

(i) fine the person not more than $1 000; or

(ii) commit the person to the superior court that imposed the CRO or community order and that court may fine the person not more than $1 000 and may make an order under section 133.

(2) If the Magistrates Court convicts a person of an offence under section 131(1) the court —

(a) if the Children's Court imposed the CRO or community order, may fine the person not more than $1 000 and may make an order under section 133 unless the CRO or community order was imposed for an indictable offence in which case it may either —

(i) fine the person not more than $1 000; or

(ii) commit the person to the Children's Court and that court may fine the person not more than $1 000 and may make an order under section 133;

(b) if the Magistrates Court imposed the CRO or community order, may fine the person not more than $1 000 and may make an order under section 133;

(c) if a superior court imposed the CRO or community order, may either —

(i) fine the person not more than $1 000; or

(ii) commit the person to the superior court that imposed the CRO or community order and that court may fine the person not more than $1 000 and may make an order under section 133.

(3) A CRO or community order is not cancelled by reason only of the imposition of a fine under subsection (1) or (2).

(4) A court that under subsection (1) or (2) commits a person to another court must certify that the person has been convicted of an offence under section 131(1).

*[Section 132 amended: No. 59 of 2004 s. 141.]*

### 133. Additional powers to deal with s. 131 offender

(1) A court that may make an order under this section in respect of a person who is or was subject to a CRO or community order may —

(a) if the CRO or community order is then in force, do one of the following:

(i) confirm the CRO or community order;

(ii) amend the CRO or community order;

(iii) cancel the CRO or community order and sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence;

or

(b) if the CRO or community order is not then in force, sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence.

(2) In dealing with a person under subsection (1) who is or was subject to a CRO, a court is not precluded from making an order under section 52(2).

## Division 5 — Miscellaneous

### 134. Facilitation of proof

(1) This section applies only in relation to proceedings under this Part.

(2) A copy of a CRO or community order certified by the court that imposed it is, in the absence of evidence to the contrary, evidence of its contents.

(3) A copy of an order amending a CRO or community order certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.

(4) A certificate by a court under section 128(2) or 132(4) is, in the absence of evidence to the contrary, evidence of its contents.

(5) In proceedings for an offence under section 131(1) in relation to an alleged breach of a community order, evidence of the alleged breach may be given by tendering a certificate signed by the CEO (corrections) stating the particulars of the alleged breach.

(6) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the CEO (corrections) was signed by a person who at the time was the CEO (corrections).

*[Section 134 amended: No. 65 of 2006 s. 49.]*

### 135. Compliance with CRO or community order to be taken into account

(1) This section applies if a court is dealing with a person under —

(a) section 127(2); or

(b) section 130(1); or

(c) section 133(1).

(2) In dealing with the person the court must take into account —

(a) the extent to which the person has complied with the CRO or community order and with any other order made under this Act or another written law in respect of the offence for which the CRO or community order was imposed; and

(b) how long the person has been subject to the CRO or community order or to any other order made under this

Act or another written law in respect of the offence for which the CRO or community order was imposed.

### 136. Re-sentencing, court's powers for

(1) For the purposes of subsection (2) a court re-sentences a person for an offence when it deals with the person under —

(a) section 127(2)(b); or

(b) section 130(1)(a)(iii) or (b); or

(c) section 133(1)(a)(iii) or (b),

for the offence for which the CRO or community order was imposed.

(2) When re-sentencing the person the court may —

(a) cancel any order forming part of the sentence imposed previously in respect of the offence, whether the order was made under this Act or another written law, other than an order that it was mandatory to make; and

(b) subject to section 135, make any order under this Act or another written law that it could if it had just convicted the person of the offence.

(3) If a superior court deals with a person under section 130 or 133 and the CRO or community order concerned was previously imposed for an offence for which the person had not been convicted on indictment, any order of the superior court under those sections is to be taken, for the purpose of an appeal against sentence, as being an order made following a conviction on indictment.

## Division 6 — Functions of speciality courts

*[Heading inserted: No. 45 of 2016 s. 77.]*

### 136A. Application of Division

This Division applies if —

(a) the court that imposes a community order on an offender is a speciality court; or

(b) an offender is committed for trial or sentence for an offence to a superior court by a speciality court and a community order is imposed on the offender by the superior court and the superior court orders that this Division is to apply.

*[Section 136A inserted: No. 45 of 2016 s. 77.]*

### 136B. Term used: court

In this Division —

***court*** means a speciality court and includes a superior court referred to in section 136A(b).

*[Section 136B inserted: No. 45 of 2016 s. 77.]*

### 136C. Court may direct offender on community order to appear

(1) The court may order that the offender appear or reappear before the court after the imposition of the community order —

(a) at a time and place fixed by the court; or

(b) if and when summonsed by the court,

so that the court can ascertain whether the offender is complying with the sentence.

(2) An order may be made under subsection (1) on any reappearance of the offender pursuant to a previous order made under subsection (1).

(3) If an offender does not reappear before the court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.

(4) On a reappearance ordered under subsection (1), or compelled under subsection (1) or (3), the court may amend a community order.

*[Section 136C inserted: No. 45 of 2016 s. 77.]*

### 136D. Court to deal with re-offender

(1) If this Division applies and a court other than the court convicts the offender of an offence as referred to in section 128, that court must commit the offender to the court and the court must deal with the offender under section 130.

(2) Section 128(2) to (4) apply for the purposes of subsection (1).

(3) If this Division applies, a notice under section 129(1) must be lodged with the court and a summons or warrant issued under section 129 must direct the offender to appear or be brought before the court.

*[Section 136D inserted: No. 45 of 2016 s. 77.]*

### 136E. Court to deal with application to amend or cancel community order

If this Division applies, an application under section 126 is to be made to the court.

*[Section 136E inserted: No. 45 of 2016 s. 77.]*

### 136F. Court to deal with proceedings for breaches

If this Division applies, a prosecution for an offence against section 131(1) is to be commenced in, and heard and determined by, the court and, if the offender is convicted, the court must deal with the offender under sections 132 and 133.

*[Section 136F inserted: No. 45 of 2016 s. 77.]*

# Part 18A — Review of conditional orders

*[Heading inserted: No. 45 of 2016 s. 78.]*

## 136G. Terms used

In this Part —

***CEO*** means —

(a) in relation to a CRO — the CEO of the department of the Public Service principally assisting the Minister in the administration of Part 7; or

(b) in relation to CSI or a CBO, ISO or PSO — the CEO (corrections);

***conditional order*** means any of the following —

(a) a CRO;

(aa) a CBO;

(b) CSI;

(c) an ISO;

(d) a PSO.

*[Section 136G inserted: No. 45 of 2016 s. 78; amended: No. 25 of 2020 s. 131.]*

## 136H. Application to review

(1) The CEO may apply to a court to review a conditional order if the CEO is of the opinion that the offender subject to the order might not be able to comply with its requirements.

(2) The application must be made to the court that imposed the conditional order.

(3) The application must be made in accordance with the regulations.

*[Section 136H inserted: No. 45 of 2016 s. 78.]*

### 136I. Court may confirm, amend or cancel

(1) If on an application under section 136H a court is satisfied that an offender subject to a conditional order might not be able to comply with its requirements, the court may make an order under subsection (2) but otherwise it must confirm the conditional order.

(2) If a court may make an order under this subsection, it may either —

(a) amend the conditional order so as to change the requirement; or

(b) if the court thinks that the circumstances of the offender have so altered since the court passed sentence that it is necessary and just to do so, cancel the conditional order and sentence the person for the offence for which the conditional order was imposed in any manner the court could if it had just convicted the person of that offence.

*[Section 136I inserted: No. 45 of 2016 s. 78.]*

# Part 19 — Royal Prerogative of Mercy

## 137. Royal Prerogative of Mercy not affected

Neither this Act nor the *Sentence Administration Act 2003* affects the Royal Prerogative of Mercy or limits any exercise of it.

*[Section 137 inserted: No. 50 of 2003 s. 26.]*

## 138. Pardon, effect of

(1) A pardon granted in the exercise of the Royal Prerogative of Mercy has the effect of discharging the offender from the effects of the sentence imposed for the offence and of any other order made as a consequence of the offender's conviction.

(2) A pardon does not quash or set aside the conviction for the offence.

## 139. Order to pay money, Governor may remit

The Governor may remit the whole or part of any sum of money that an offender is, under this Act or any other written law, ordered to pay as a penalty, or by way of forfeiture or estreat, or compensation, or costs, in relation to the offence, whether to the State or not.

*[Section 139 amended: No. 41 of 2006 s. 79.]*

## 140. Petition for mercy may be referred to Court of Appeal

(1) A petition for the exercise of the Royal Prerogative of Mercy in relation to an offender convicted on indictment, or to the sentence imposed on such an offender, may be referred by the Attorney General to the Court of Appeal either —

(a) for the whole case to be heard and determined as if it were an appeal by the offender against the conviction or against the sentence (as the case may be); or

(b) for an opinion on any specific matter relevant to determining the petition.

(1a) When making a referral under subsection (1)(a) the Attorney General, having regard to the petition, may specify the grounds of appeal to be heard and determined by the Court of Appeal.

(2) The Court of Appeal must give effect to the referral.

*[Section 140 amended: No. 45 of 2004 s. 37; No. 84 of 2004 s. 63.]*

### 141. Offender may be paroled

(1) In the exercise of the Royal Prerogative of Mercy in relation to an offender who is sentenced to imprisonment, the Governor may make a parole order in respect of the offender.

(2) An offender may be paroled under subsection (1) whether or not he or she is or will be eligible for parole and despite section 96(3).

(3) The release date is that set by the Governor.

(4) The parole period is that set by the Governor; but it must be at least 6 months and not more than 5 years.

(5) Part 3 of the *Sentence Administration Act 2003* applies in respect of the parole order and to the offender to whom the parole order applies.

*[Section 141 amended: No. 50 of 2003 s. 29(3).]*

### 142. Strict security life imprisonment, exercise of Prerogative in case of

If in the exercise of the Royal Prerogative of Mercy an order is made in relation to a person serving a sentence of life imprisonment in respect of which an order has been made under section 90(1)(b), the Minister must cause a copy of the order and a written explanation of the circumstances giving rise to it to be tabled in each House of Parliament within 15 sitting days of that House after it is made.

*[Section 142 amended: No. 29 of 2008 s. 22(3).]*

# Part 20 — Miscellaneous

## 143. Guideline judgments by Court of Appeal

(1) The Court of Appeal may give a guideline judgment containing guidelines to be taken into account by courts sentencing offenders.

(2) A guideline judgment may be given in any proceeding considered appropriate by the court giving it, and whether or not it is necessary for the purpose of determining the proceeding.

(3) A guideline judgment may be reviewed, varied or revoked in a subsequent guideline judgment.

*[Section 143 amended: No. 45 of 2004 s. 37.]*

## 143A. Sentencing guidelines for courts of summary jurisdiction

(1) For the purpose of reducing any disparity in sentences imposed by courts of summary jurisdiction, the Chief Magistrate of the Magistrates Court may from time to time publish guidelines for the sentencing of offenders in such courts.

(2) The guidelines are not binding on courts of summary jurisdiction.

(3) Without limiting the matters that may be included in the guidelines, they may include —

(a) guidance about —

(i) assessing the seriousness of offences;

(ii) the sentencing process;

(iii) when it is appropriate to impose particular sentencing options;

(b) suggestions as to the appropriate sentence to be imposed for a particular offence or class of offence.

*[Section 143A inserted: No. 57 of 1999 s. 39; amended: No. 59 of 2004 s. 141.]*

### 144. Chief Justice may report to Parliament

(1) The Chief Justice of Western Australia, in writing, may report to Parliament on any matter connected with sentencing that he or she considers should be brought to Parliament's attention.

(2) A report under subsection (1) is to be given to the Speaker of the Legislative Assembly and to the President of the Legislative Council who respectively must cause a copy of it to be laid before the Legislative Assembly and the Legislative Council within 15 sitting days of that House after the report is received.

(3) A copy of any such report is to be given to the Minister.

(4) Without limiting the matters with which a report may be concerned, a report may —

(a) deal with the operation, effectiveness and effects of this Act;

(b) recommend a review of the statutory penalty for any offence or class of offences.

### 145. Non-compliance with procedural requirements, effect of

(1) The failure of a court sentencing an offender to comply with a requirement of this Act does not invalidate a sentence imposed or an order made by it.

(2) Subsection (1) does not affect any right to appeal against a sentence or prevent a court from dealing with such an appeal.

### 145A. Existence of circumstances of aggravation is question for judge to determine

(1) In this section —

***circumstances of aggravation*** means circumstances in which an offence is committed that —

(a) are not elements of the offence; and

(b) increase the statutory penalty for the offence.

(2) If, on a plea of guilty by the accused, a superior court is required to determine in proceedings under this Act whether the offence was committed in circumstances of aggravation, that determination is the determination of a question of fact for the purposes of section 146.

*[Section 145A inserted: No. 45 of 2016 s. 46.]*

### 146. Questions of fact in superior courts

In proceedings under this Act before a superior court, any question of fact is to be determined by a judge and not by the verdict of a jury.

### 147. Operation of other Acts not affected

The imposition of a sentence or the making of any other order under this Act by a court does not affect the right or duty of the court under any other law to make any other order in respect of an offender.

### 147A. Monitoring requirements: additional provisions

(1) A CCO may give any reasonable direction to an offender as is necessary for the proper administration of a requirement imposed on the offender by or under this Act in relation to an electronic monitoring device.

(2) A CCO may suspend the electronic monitoring of an offender under this Act —

(a) while satisfied that it is not practicable to subject the offender to electronic monitoring; or

(b) while satisfied that it is not necessary for the person to be subject to electronic monitoring.

*[Section 147A inserted: No. 13 of 2020 s. 12.]*

### 148. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

necessary or convenient to be prescribed for giving effect to this Act.

(2) Regulations may authorise the chief executive officer to approve forms for the purposes of this Act.

*[Section 148 amended: No. 65 of 2006 s. 48.]*

### 149. Rules of court

A court may make rules of court in relation to any matter necessary or convenient for giving effect to this Act.

# Part 21 — Transitional and review provisions

*[Heading inserted: No. 42 of 2012 s. 5.]*

## 150A. *Sentencing Amendment Act 2012* amendments, application of

(1) In this section —

***commencement*** means the coming into operation of the *Sentencing Amendment Act 2012* section 4;

***sentencing*** includes the variation or substitution of a sentence.

(2) This Act, as amended by the *Sentencing Amendment Act 2012*, applies to the sentencing after commencement of an offender for an offence —

(a) even if the offence was committed before commencement; and

(b) even if the offender was convicted before commencement; and

(c) even if the sentencing is as a result of an appeal against a sentence imposed before commencement.

*[Section 150A inserted: No. 42 of 2012 s. 6.]*

## 150AB. Application of *Sentencing Legislation Amendment Act 2016* amendments about circumstances of aggravation

(1) In this section —

***commencement*** means the coming into operation of the *Sentencing Legislation Amendment Act 2016* Part 4 Division 2.

(2) This Act, as amended by the *Sentencing Legislation Amendment Act 2016* Part 4 Division 2, applies to the determination under section 146 of whether an offence was committed in circumstances of aggravation —

(a) even if the offence was committed before commencement; and

(b) even if the offender pleaded guilty before commencement; and

(c) even if the determination has arisen as a result of an appeal against a sentence imposed before commencement.

*[Section 150AB inserted: No. 45 of 2016 s. 47.]*

### 150B. Review of s. 9AA

(1) The Minister must review the operation and effectiveness of section 9AA as soon as practicable after the third anniversary of the day on which the *Sentencing Amendment Act 2012* section 4 comes into operation.

(2) The Minister must cause a report of the review to be laid before each House of Parliament as soon as practicable after it is done.

*[Section 150B inserted: No. 42 of 2012 s. 6.]*

### 150. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after —

(a) 1 July 2007; and

(b) the expiry of each 5 yearly interval after that day.

(2) The Minister must prepare a report based on each review under subsection (1) and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant day or expiry), must cause it to be laid before each House of Parliament.

*[Section 150 inserted: No. 41 of 2006 s. 78.]*

### 151. Review of amendments made by *Family Violence Legislation Reform Act 2020*

(1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Family Violence Legislation Reform Act 2020*, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the

day on which the *Family Violence Legislation Reform Act 2020* section 13 comes into operation.

(2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

(3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —

(a) the report has been prepared; and

(b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.

(4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.

(5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

*[Section 151 inserted: No. 30 of 2020 s. 31.]*

# Schedule 1A — Relevant indictable and simple offences for purposes of Part 2 Division 2A

[s. 9A(1)]

*[Heading inserted: No. 49 of 2012 s. 181(4).]*

## Part 1 — Relevant indictable offences

*[Heading inserted: No. 49 of 2012 s. 181(4).]*

| | Enactment | Description of offence |
|---|---|---|
| **1**. | ***The Criminal Code*** | |
| | s. 68B(2) | Being armed in or near place of public entertainment |
| | s. 68C(2) | Being armed in public in company |
| | s. 68D(2) | Having ready access to both weapons and cash |
| | s. 68E(2) | Having ready access to both weapons and illegal drugs |
| | s. 68(1) | Being armed in a way that may cause fear |
| | s. 71 | Fighting in public causing fear |
| | s. 74 | Threatening violence |
| | s. 82 | Bribery of public officer |
| | s. 83 | Corruption |
| | s. 85 | Falsification of records by public officer |
| | s. 87(2) | Impersonating a public officer |
| | s. 121 | Judicial corruption |
| | s. 122 | Official corruption not judicial but relating to offences |

| Enactment | Description of offence |
|---|---|
| s. 123 | Corrupting or threatening jurors |
| s. 124 | Perjury |
| s. 127 | False evidence before Royal Commission |
| s. 128 | Threatening witness before Royal Commission etc. |
| s. 129 | Fabricating evidence |
| s. 130 | Corruption of witnesses |
| s. 132 | Destroying evidence |
| s. 133 | Preventing witnesses from attending |
| s. 135 | Conspiring to defeat justice |
| s.136 | Compounding or concealing offences |
| s. 143 | Attempting to pervert course of justice |
| s. 151 | Obstructing officers of courts of justice |
| s. 172 | Obstructing public officers |
| s. 221E(1) | Participating in activities of criminal organisation |
| s. 221F(1) | Instructing commission of offence for benefit of criminal organisation |
| s. 279 | Murder |
| s. 280 | Manslaughter |
| s. 281 | Unlawful assault causing death |
| s. 283 | Attempt to murder |

| Enactment | Description of offence |
|---|---|
| s. 292 | Disabling in order to commit indictable offence etc |
| s. 294 | Acts intended to cause grievous bodily harm or to resist or prevent arrest |
| s. 297 | Grievous bodily harm |
| s. 301 | Wounding and similar acts |
| s. 304(2) | Acts or omissions, with intent to harm, causing bodily harm or danger |
| s. 317 | Assaults occasioning bodily harm |
| s. 317A | Assaults with intent |
| s. 318 | Serious assaults |
| s. 320(2)-(6) | Child under 13, sexual offences against |
| s. 321(2)-(6) | Child of or over 13 and under 16, sexual offences against |
| s. 323 | Indecent assault |
| s. 324 | Aggravated indecent assault |
| s. 325 | Sexual penetration without consent |
| s. 326 | Aggravated sexual penetration without consent |
| s. 327 | Sexual coercion |
| s. 328 | Aggravated sexual coercion |
| s. 330(2)-(6) | Incapable person, sexual offences against |
| s. 331B | Sexual servitude |

| Enactment | Description of offence |
|---|---|
| s. 331C | Conducting business involving sexual servitude |
| s. 331D | Deceptive recruiting for commercial sexual services |
| s. 332 | Kidnapping |
| s. 333 | Deprivation of liberty |
| s. 338A | Threats with intent to influence |
| s. 338B | Threats |
| s. 338C(1) and (2) | Statements or acts creating false apprehension as to existence of threats or danger |
| s. 338E(1) | Stalking with intent to intimidate |
| s. 378(2) | Stealing a motor vehicle, aggravated by reckless or dangerous driving |
| s. 378(4a) | Stealing an aircraft |
| s. 378(5) | Stealing if offence committed under certain circumstances |
| s. 392 | Robbery |
| s. 393 | Assault with intent to rob |
| s. 397 | Demanding property with threats with intent to extort or gain |
| s. 398 | Attempts at extortion by threats |
| s. 401(1) and (2) | Burglary |
| s. 417/417A(3) | Possessing stolen or unlawfully obtained property where the property is a motor vehicle and driven recklessly or dangerously |

| | Enactment | Description of offence |
|---|---|---|
| | s. 417/417A(4) | Possessing stolen or unlawfully obtained property where the property is an aircraft |
| | s. 444 | Criminal damage |
| | s. 557 | Making or possession of explosives under suspicious circumstances |
| | s. 558 | Conspiracy to commit indictable offence |
| | s. 563A(1) | Property laundering |
| **2**. | ***Bush Fires Act 1954*** | |
| | s. 32(2) | Offences of lighting or attempting to light fire likely to injure |
| **3**. | ***Corruption, Crime and Misconduct Act 2003*** | |
| | s. 168 | Giving false testimony |
| | s. 169 | Bribery of witness |
| | s. 172 | Preventing witness from attending |
| | s. 173 | Injury or detriment to witness |
| **4**. | ***Criminal Organisations Control Act 2012*** | |
| | s. 99(1) | Association by controlled person with another controlled person — if the offender is liable to imprisonment for 5 years |
| | s. 102 | Offence for controlled person to get funds to, from or for declared criminal organisation |
| | s. 106 | Recruiting members for declared criminal organisation |

| | Enactment | Description of offence |
|---|---|---|
| **5**. | ***Firearms Act 1973*** | |
| | s. 6(3) | Indictable offence of contravention of regulation prohibiting acquisition etc. of potentially dangerous firearm, silencer etc. |
| | s. 19(1) | Obtaining, disposing of etc. firearm or ammunition when not holder of licence or permit |
| | s. 19(4) | Repairing or manufacturing firearm or ammunition otherwise than in accordance with licence |
| | s. 23(3) and (5) | Indictable offences relating to firearms |
| **6**. | ***Misuse of Drugs Act 1981*** | |
| | s. 6(1) | Indictable offences concerned with prohibited drugs |
| | s. 7(1) | Indictable offences concerned with prohibited plants |
| | s. 7A(1) | Selling etc thing that person knows will be used in hydroponic cultivation of prohibited plants |
| | s. 14(1) | Having possession of category 1 or category 2 item in excess of prescribed quantity |
| | s. 33(1) | Attempting to commit an indictable offence under section 6(1), 7(1), 7A(1) or 14(1) |
| | s. 33(2) | Conspiring with another to commit an indictable offence under section 6(1), 7(1), 7A(1) or 14(1) |

| | Enactment | Description of offence |
|---|---|---|
| | s. 33(3) | Inciting another to commit, or becoming an accessory after the fact to, an indictable offence under section 6(1), 7(1), 7A(1) or 14(1) |
| **7**. | ***Road Traffic Act 1974*** | |
| | s. 59 | Dangerous driving causing death, injury etc. |
| | s. 59A | Dangerous driving causing bodily harm — if the offender is liable to imprisonment for 7 years |

*[Part 1 inserted: No. 49 of 2012 s. 181(4); amended: No. 11 of 2014 s. 8(1); No. 35 of 2014 s. 39.]*

## Part 2 — Relevant simple offences

*[Heading inserted: No. 49 of 2012 s. 181(4).]*

| | Enactment | Description of offence |
|---|---|---|
| **1**. | ***The Criminal Code*** | |
| | s. 206 | Supplying intoxicants to people likely to abuse them |
| | s. 313 | Common assaults |
| | s. 338E(2) | Stalking in manner reasonably expected to intimidate |
| | s. 445 | Damaging property |
| | s. 557H | Possessing a disguise |
| | s. 557I(2) | Possessing bulletproof clothing |
| | s. 560 | Conspiracy to commit simple offence |
| **2**. | ***Bail Act 1982*** | |
| | s. 50(1) | Indemnifying or agreeing to indemnify surety |

| | Enactment | Description of offence |
|---|---|---|
| | s. 50C(3) | Hindering community corrections officer in administration of home detention condition |
| | s. 50D(2) | Hindering police officer seeking to ascertain compliance with home detention condition |
| | s. 51(1), (2) and (2a) | Failure to comply with requirement or condition of bail undertaking |
| | s. 60 | Failure of accused or surety to notify change of residential address |
| | s. 62 | Giving false information for bail purposes |
| **3**. | ***Corruption, Crime and Misconduct Act 2003*** | |
| | s. 165 | Obstructing the Commission, the Parliamentary Inspector or their officers |
| | s. 171 | Destroying evidence |
| **4**. | ***Criminal Organisations Control Act 2012*** | |
| | s. 99(1) | Association by controlled person with another controlled person — if the offender is liable to imprisonment for not more than 2 years |
| | s. 99(3) | Association by controlled person with another controlled person on 3 or more occasions within 3 month period |
| | s. 103 | Other contravention of interim control order or control order |

| | Enactment | Description of offence |
|---|---|---|
| | s. 107(2) | Permitting premises to be habitually used as place of resort by members of declared criminal organisation |
| | s. 107(3) | Being knowingly concerned in the management of premises habitually used as place of resort by members of declared criminal organisation |
| **5.** | ***Firearms Act 1973*** | |
| | s. 19(2) | Obtaining, disposing of etc. firearm or ammunition from or to person not holding licence or permit |
| | s. 21(2) | Breach of or failure to observe restriction, limitation or condition of licence, permit or approval |
| | s. 22A(2) and (3) | Offences relating to possession and production of Extract of Licence |
| | s. 22C(1) | Offences relating to Extract of Licence, licences, permits etc. |
| | s. 23(1), (2), (6), (7), (8), (9), (9a), (10), (10a) and (11) | General offences |
| | s. 24(6) | Failing to cooperate with police officer in exercise of powers relating to firearms etc. |
| | s. 30(4) | Offences relating to obtaining or disposing of ammunition |
| | s. 30A(1), (2) and (3) | Offences relating to sale and disposal of firearms |
| | s. 30B(1) and (2) | Offences relating to reporting of loss, theft, destruction of firearm or disposal out of State |

| | Enactment | Description of offence |
|---|---|---|
| **6.** | ***Misuse of Drugs Act 1981*** | |
| | s. 5(1) | Offences concerned with prohibited drugs and prohibited plants |
| | s. 6(2) | Having in possession or using prohibited drug |
| | s. 7(2) | Having in possession or cultivating prohibited plant |
| | s. 7A(3) | Contravening order not to sell etc. thing that may be used in hydroponic cultivation of plants |
| | s. 8(1) and (2) | Fraudulent behaviour in relation to prohibited drugs |
| | s. 14(2) | Having possession of category 1 or category 2 item without lawful excuse |
| | s. 15(1), (2) and (3) | Offences relating to sale or supply of category 1 items |
| | s. 16(1) and (2) | Offences relating to storage of category 1 items |
| | s. 17(1) and (2) | Offences relating to sale or supply of category 2 items |
| | s. 18(1) and (2) | Offences relating to declarations |
| | s. 33(1) | Attempting to commit a simple offence under section 5(1) or 6(2) or 7(2) |
| | s. 33(2) | Conspiring with another to commit a simple offence under section 5(1) or 6(2) or 7(2) |

| | Enactment | Description of offence |
|---|---|---|
| | s. 33(3) | Inciting another to commit, or becoming an accessory after the fact to, a simple offence under section 5(1) or 6(2) or 7(2) |
| **7**. | ***Restraining Orders Act 1997*** | |
| | s. 61(1), (1A), (2) and (2a) | Breach of restraining order or police order |
| **8**. | ***Road Traffic Act 1974*** | |
| | s. 59A | Dangerous driving causing bodily harm — if the offender is not liable to imprisonment for 7 years |
| **9**. | ***Weapons Act 1999*** | |
| | s. 6(1) | Offences relating to prohibited weapons |
| | s. 7(1) and (2) | Offences relating to controlled weapons |
| | s. 8A(2) and (3) | Selling or supplying controlled weapons to children |
| | s. 8(1) | Carrying or possessing article as weapon |

*[Part 2 inserted: No. 49 of 2012 s. 181(4); amended: No. 35 of 2014 s. 39; No. 6 of 2017 s. 12(5); No. 13 of 2020 s. 13.]*

# Schedule 1 — Acts, fines under which are not to be credited to the Consolidated Account

[s. 60(2)]

*[Heading amended: No. 19 of 2010 s. 4.]*

| Act | Person or account to which a fine under the Act is to be paid or credited |
|---|---|
| *Aboriginal Communities Act 1979* | The council of the community that made the by-law under which the fine was imposed |
| *Architects Act 2004* | Architects Board of Western Australia |
| *Botanic Gardens and Parks Authority Act 1998* | Botanic Gardens and Parks Authority |
| *Corporations (Western Australia) Act 1990* | The Commonwealth |
| *Curtin University Act 1966* | Curtin University |
| *Edith Cowan University Act 1984* | Edith Cowan University |
| *Health (Miscellaneous Provisions) Act 1911* | The local government by or on whose behalf the prosecution was commenced |
| *Land Drainage Act 1925* [2] | Water Corporation |
| *Litter Act 1979* | Keep Australia Beautiful Council (W.A.) Fund or as provided by section 31 of that Act |
| *Murdoch University Act 1973* | Senate of Murdoch University |
| *National Trust of Australia (W.A.) Act 1964* | The National Trust of Australia (W.A.) |
| *Parks and Reserves Act 1895* | The Board of Parks and Reserves that made the by-law under which the fine was imposed |

| Act | Person or account to which a fine under the Act is to be paid or credited |
|---|---|
| *Queen Elizabeth II Medical Centre Act 1966* | The Queen Elizabeth II Medical Centre Trust |
| *Real Estate and Business Agents Act 1978* | Education and General Purpose Account |
| *Rottnest Island Authority Act 1987* | Rottnest Island Authority |
| *Settlement Agents Act 1981* | Education and General Purpose Account |
| *Teacher Registration Act 2012* | Teacher Registration Board Account |
| *University of Notre Dame Australia Act 1989* | The Board of Governors of The University of Notre Dame Australia |
| *University of Western Australia Act 1911* | Senate of The University of Western Australia |
| *Water Boards Act 1904* [2] | Water Board |
| *Western Australian Greyhound Racing Association Act 1981* | Western Australian Greyhound Racing Association Fund |
| *Workers' Compensation and Injury Management Act 1981* | Workers' Compensation and Injury Management General Account |
| *Zoological Parks Authority Act 2001* | Zoological Parks Authority |

*[Schedule 1 amended: No. 59 of 1995 s. 88; No. 23 of 1998 s. 20; No. 42 of 1998 s. 38; No. 53 of 1998 s. 56; No. 5 of 1999 s. 21; No. 16 of 1999 s. 7(5); No. 24 of 2001 s. 47; No. 35 of 2003 s. 221(4); No. 8 of 2004 s. 88; No. 40 of 2004 s. 18; No. 42 of 2004 s. 169 and 174; No. 75 of 2004 s. 80; No. 84 of 2004 s. 64; No. 25 of 2005 s. 53; No. 77 of 2006 s. 4; No. 24 of 2007 s. 54; No. 38 of 2007 s. 199; No. 22 of 2008 Sch. 3 cl. 52; No. 8 of 2009 s. 115(3); No. 35 of 2010 s. 155; No. 19 of 2011 s. 157; No. 47 of 2011 s. 26(2) and (3); No. 16*

*of 2012 s. 168; No. 22 of 2012 s. 141; No. 17 of 2014 s. 37(5); No. 19 of 2016 s. 101; No. 32 of 2016 s. 195.]*

# Notes

This is a compilation of the *Sentencing Act 1995* and includes amendments made by other written laws [3]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Sentencing Act 1995* | 76 of 1995 | 16 Jan 1996 | s. 1 and 2: 16 Jan 1996; Act other than s. 1, 2 and 19, and Pt. 12 [4]: 4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632) |
| *Real Estate Legislation Amendment Act 1995* Pt. 5 | 59 of 1995 | 20 Dec 1995 | 1 Jul 1996 (see s. 2 and *Gazette* 25 Jun 1996 p. 2902) |
| *Firearms Amendment Act 1996* s. 52 | 59 of 1996 | 11 Nov 1996 | 6 Dec 1996 (see s. 3(1) and *Gazette* 6 Dec 1996 p. 6699) |
| *Road Traffic Amendment Act 1996* s. 42 | 76 of 1996 | 14 Nov 1996 | 1 Feb 1997 (see s. 2 and *Gazette* 31 Jan 1997 p. 613) |
| *Restraining Orders Act 1997* s. 82 | 19 of 1997 | 28 Aug 1997 | 15 Sep 1997 (see s. 2 and *Gazette* 12 Sep 1997 p. 5149) |
| *Western Australian Greyhound Racing Association Amendment Act 1998* s. 20 | 23 of 1998 | 30 Jun 1998 | 1 Aug 1998 (see s. 3 and *Gazette* 21 Jul 1998 p. 3825) |
| *Criminal Law Amendment Act (No. 2) 1998* Pt. 6 | 29 of 1998 | 6 Jul 1998 | 3 Aug 1998 |
| *Criminal Law Amendment Act (No. 1) 1998* Pt. 3 | 38 of 1998 | 25 Sep 1998 | 23 Oct 1998 |
| *Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998* s. 38 | 42 of 1998 | 4 Nov 1998 | 1 Jan 1999 (see s. 2 and *Gazette* 22 Dec 1998 p. 6833) |
| *Acts Amendment (Video and Audio Links) Act 1998* Pt. 5 | 48 of 1998 | 19 Nov 1998 | 18 Jan 1999 (see s. 2 and *Gazette* 15 Jan 1999 p. 109) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Botanic Gardens and Parks Authority Act 1998* s. 56 | 53 of 1998 | 7 Dec 1998 | 1 Jul 1999 (see s. 2 and *Gazette* 30 Jun 1999 p. 2879) |
| *Port Authorities (Consequential Provisions) Act 1999* s. 21 | 5 of 1999 | 13 Apr 1999 | 14 Aug 1999 (see s. 2 and *Gazette* 13 Aug 1999 p. 3823) |
| **Reprint of the *Sentencing Act 1995* as at 16 Apr 1999** (includes amendments listed above except those in the *Botanic Gardens and Parks Authority Act 1998* and the *Port Authorities (Consequential Provisions) Act 1999*) | | | |
| *Perth Parking Management (Consequential Provisions) Act 1999* s. 7(5) | 16 of 1999 | 19 May 1999 | 7 Aug 1999 (see s. 2 and *Gazette* 6 Aug 1999 p. 3727) |
| *Sentencing Legislation Amendment and Repeal Act 1999* s. 4-12, 14-17, and 25-40 [5] | 57 of 1999 (amended by No. 62 of 2000 s. 4-6 [6]) | 16 Dec 1999 | s. 37 and 39: 8 Apr 2000 (see s. 2(1) and *Gazette* 7 Apr 2000 p. 1813); Pt. 3 (s. 27-33): 8 Jan 2001 (see s. 2 and *Gazette* 29 Dec 2000 p. 7903); s. 6(3) and 36: 30 Jun 2001 (see s. 2(1) and *Gazette* 29 Jun 2001 p. 3111); Act other than s. 6(3), 27-33, 36, 37 and 39 repealed by No. 50 of 2003 s. 31 |
| *Sentencing Amendment Regulations 2000* Pt. 3 published in *Gazette* 3 Mar 2000 p. 1013-15 | | | 3 Mar 2000 |
| *Acts Amendment (Fines Enforcement) Act 2000* Pt. 3 | 9 of 2000 | 19 May 2000 | 25 Aug 2000 (see s. 2 and *Gazette* 25 Aug 2000 p. 4903) |
| **Reprint of the *Sentencing Act 1995* as at 4 May 2001** (includes amendments listed above except those in the *Sentencing Legislation Amendment and Repeal Act 1999* s. 6(3) and 36) | | | |
| *Criminal Law Amendment Act 2001* Pt. 3 | 23 of 2001 | 26 Nov 2001 | 24 Dec 2001 |
| *Zoological Parks Authority Act 2001* s. 47 | 24 of 2001 | 26 Nov 2001 | 22 May 2002 (see s. 2 and *Gazette* 10 May 2002 p. 2445) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Machinery of Government (Planning and Infrastructure) Amendment Act 2002* s. 64 | 7 of 2002 | 19 Jun 2002 | 1 Jul 2002 (see s. 2 and *Gazette* 28 Jun 2002 p. 3037) |
| *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 221(4) | 35 of 2003 | 26 Jun 2003 | 1 Aug 2003 (see s. 2 and *Gazette* 29 Jul 2003 p. 3259) |
| *Sentencing Legislation Amendment and Repeal Act 2003* Pt. 2, s. 29(3) and 33 [7] | 50 of 2003 (amended by No. 41 of 2006 s. 94, No. 5 of 2008 s. 109 [8], No. 49 of 2008 s. 3-5 [9]) | 9 Jul 2003 | Pt. 2 Div. 1 and 3: 30 Aug 2003 (see s. 2 and *Gazette* 29 Aug 2003 p. 3833); Pt. 2 Div. 2, 4 and 5 and s. 29(3): 31 Aug 2003 (see s. 2 and *Gazette* 29 Aug 2003 p. 3833); s. 33: 15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445) |
| **Reprint 3: The *Sentencing Act 1995* as at 10 Oct 2003** (includes amendments listed above except those in the *Sentencing Legislation Amendment and Repeal Act 2003* s. 33) | | | |
| *Criminal Injuries Compensation Act 2003* s. 73 | 77 of 2003 | 15 Dec 2003 | 1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722) |
| *Criminal Code Amendment Act 2004* s. 58 | 4 of 2004 | 23 Apr 2004 | 21 May 2004 (see s. 2) |
| *Western Australian College of Teaching Act 2004* s. 88 | 8 of 2004 | 10 Jun 2004 | 15 Sep 2004 (see s. 2 and *Gazette* 3 Sep 2004 p. 3849) |
| *Criminal Law Amendment (Criminal Property) Act 2004* Pt. 3 | 26 of 2004 | 7 Oct 2004 | 28 May 2008 (see s. 2(2) and *Gazette* 27 May 2008 p. 2037) |
| *Sentencing Legislation Amendment Act 2004* Pt. 2 Div. 1 [10] | 27 of 2004 | 14 Oct 2004 | 31 May 2006 (see s. 2 and *Gazette* 30 May 2006 p. 1965) |
| *Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Act 2004* s. 18 | 40 of 2004 | 3 Nov 2004 | 1 Feb 2005 (see. s. 2 and *Gazette* 7 Jan 2005 p. 53) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Workers' Compensation Reform Act 2004* s. 169 and 174 | 42 of 2004 | 9 Nov 2004 | 4 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7131) |
| *Acts Amendment (Court of Appeal) Act 2004* s. 37 | 45 of 2004 | 9 Nov 2004 | 1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163) |
| *Courts Legislation Amendment and Repeal Act 2004* s. 141 | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128) |
| *Community Protection (Offender Reporting) Act 2004* s. 116 | 72 of 2004 | 8 Dec 2004 | 25 Dec 2004 (see s. 2 and *Gazette* 24 Dec 2004 p. 6266) |
| *Architects Act 2004* s. 80 | 75 of 2004 | 8 Dec 2004 | 16 Nov 2005 (see s. 2 and *Gazette* 15 Nov 2005 p. 5597) |
| *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* Pt. 13 and s. 82 [11, 12] | 84 of 2004 (amended by No. 41 of 2006 s. 74(2) and 75(2) [13]) | 16 Dec 2004 | 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53)) |
| **Reprint 4: The *Sentencing Act 1995* as at 12 Aug 2005** (includes amendments listed above except those in the *Criminal Law Amendment (Criminal Property) Act 2004*, *Sentencing Legislation Amendment Act 2004* and the *Architects Act 2004*) | | | |
| *Water Legislation Amendment (Competition Policy) Act 2005* s. 53 | 25 of 2005 | 12 Dec 2005 | 3 Jun 2006 (see s. 2 and *Gazette* 2 Jun 2006 p. 1985) |
| *Parole and Sentencing Legislation Amendment Act 2006* Pt. 3 | 41 of 2006 | 22 Sep 2006 | s. 74 and 75: 22 Sep 2006 (see s. 2(4)(b)); Pt. 3 other than s. 71, 74 and 75: 28 Jan 2007 (see s. 2 and *Gazette* 29 Dec 2006 p. 5867); s. 71: 28 May 2008 (see s. 2(3)(a) and *Gazette* 27 May 2008 p. 2037) |
| *Prisons and Sentencing Legislation Amendment Act 2006* Pt. 4 | 65 of 2006 | 8 Dec 2006 | 4 Apr 2007 (see s. 2 and *Gazette* 3 Apr 2007 p. 1491) |
| *Financial Legislation Amendment and Repeal Act 2006* s. 4 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint 5: The *Sentencing Act 1995* as at 6 Jul 2007** (includes amendments listed above except those in the *Criminal Law Amendment (Criminal Property) Act 2004* and the *Parole and Sentencing Legislation Amendment Act 2006* s. 71) | | | |
| *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 54 | 24 of 2007 | 12 Oct 2007 | 14 Aug 2010 (see s. 2(1) and *Gazette* 13 Aug 2010 p. 4021) |
| *Water Resources Legislation Amendment Act 2007* s. 199 | 38 of 2007 | 21 Dec 2007 | 1 Feb 2008 (see s. 2(2) and *Gazette* 31 Jan 2008 p. 251) |
| *Criminal Law and Evidence Amendment Act 2008* s. 70 | 2 of 2008 | 12 Mar 2008 | 27 Apr 2008 (see s. 2 and *Gazette* 24 Apr 2008 p. 1559) |
| *Fines Legislation Amendment Act 2008* Pt. 3 | 3 of 2008 | 12 Mar 2008 | 28 Mar 2008 (see s. 2(c) and *Gazette* 27 Mar 2008 p. 899) |
| *Acts Amendment (Justice) Act 2008* Pt. 20 | 5 of 2008 | 31 Mar 2008 | 30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253) |
| *Medical Practitioners Act 2008* Sch. 3 cl. 52 | 22 of 2008 | 27 May 2008 | 1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989) |
| *Criminal Law Amendment (Homicide) Act 2008* Pt. 3 | 29 of 2008 | 27 Jun 2008 | 1 Aug 2008 (see s. 2(d) and *Gazette* 22 Jul 2008 p. 3353) |
| **Reprint 6: The *Sentencing Act 1995* as at 23 Jan 2009** (includes amendments listed above except those in the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007*) | | | |
| *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 115 | 8 of 2009 | 21 May 2009 | 22 May 2009 (see s. 2(b)) |
| *Statutes (Repeals and Minor Amendments) Act 2009* s. 17 | 46 of 2009 | 3 Dec 2009 | 4 Dec 2009 (see s. 2(b)) |
| *Standardisation of Formatting Act 2010* s. 4 | 19 of 2010 | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341) |
| *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 46 | 35 of 2010 | 30 Aug 2010 | 18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6) |
| *Prohibited Behaviour Orders Act 2010* Pt. 5 Div. 4 | 59 of 2010 | 8 Dec 2010 | 23 Feb 2011 (see s. 2(b) and *Gazette* 23 Feb 2011 p. 633) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint 7: The *Sentencing Act 1995* as at 29 Apr 2011** (includes amendments listed above) | | | |
| *Building Services (Registration) Act 2011* s. 157 | 19 of 2011 | 22 Jun 2011 | 29 Aug 2011 (see s. 2(b) and *Gazette* 26 Aug 2011 p. 3475-6) |
| *Statutes (Repeals and Minor Amendments) Act 2011* s. 26 | 47 of 2011 | 25 Oct 2011 | 26 Oct 2011 (see s. 2(b)) |
| *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 47 | 8 of 2012 | 21 May 2012 | 27 Apr 2015 (see s. 2(d) and *Gazette* 17 Apr 2015 p. 1371) |
| *Teacher Registration Act 2012* s. 168 | 16 of 2012 | 3 Jul 2012 | 7 Dec 2012 (see s. 2(b) and *Gazette* 16 Nov 2012 p. 5637) |
| *Fire and Emergency Services Legislation Amendment Act 2012* Pt. 7 Div. 14 | 22 of 2012 | 29 Aug 2012 | 1 Nov 2012 (see s. 2(b) and *Gazette* 31 Oct 2012 p. 5255) |
| *Water Services Legislation Amendment and Repeal Act 2012* s. 228 | 25 of 2012 | 3 Sep 2012 | 18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028) |
| *Sentencing Amendment Act 2012* | 42 of 2012 | 22 Nov 2012 | 20 Dec 2012 |
| *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012* Pt. 4 Div. 8 | 48 of 2012 | 29 Nov 2012 | 21 Aug 2013 (see s. 2(b) and *Gazette* 20 Aug 2013 p. 3815) |
| *Criminal Organisations Control Act 2012* s. 181 | 49 of 2012 | 29 Nov 2012 | 2 Nov 2013 (see s. 2(b) and *Gazette* 1 Nov 2013 p. 4891) |
| **Reprint 8: The Sentencing Act 1995 as at 8 Mar 2013** (includes amendments listed above except those in the Road Traffic Legislation Amendment Act 2012, Water Services Legislation Amendment and Repeal Act 2012, Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 and the Criminal Organisations Control Act 2012) | | | |
| *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Pt. 3 Div. 18 (other than s. 124 and 127) | 20 of 2013 | 4 Nov 2013 | 25 Nov 2013 (see s. 2(b) and *Gazette* 22 Nov 2013 p. 5391) |
| *Sentencing Legislation Amendment Act 2014* Pt. 2 | 6 of 2014 | 22 Apr 2014 | 23 Apr 2014 (see s. 2(b)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Criminal Code Amendment (Unlawful Possession) Act 2014* Pt. 3 Div. 1 (other than s. 8(2)) [14] | 11 of 2014 (amended by No. 6 of 2017 s. 4) | 24 Jun 2014 | 13 Aug 2014 (see s. 2(b) and *Gazette* 12 Aug 2014 p. 2889) |
| *Statutes (Repeals and Minor Amendments) Act 2014* s. 37 | 17 of 2014 | 2 Jul 2014 | 6 Sep 2014 (see s. 2(b) and *Gazette* 5 Sep 2014 p. 3213) |
| *Corruption and Crime Commission Amendment (Misconduct) Act 2014* s. 39 | 35 of 2014 | 9 Dec 2014 | 1 Jul 2015 (see s. 2(b) and *Gazette* 26 Jun 2015 p. 2235) |
| *Criminal Law Amendment (Home Burglary and Other Offences) Act 2015* Pt. 3 | 25 of 2015 | 24 Sep 2015 | 31 Oct 2015 (see s. 2(b) and *Gazette* 30 Oct 2015 p. 4493) |
| *Sentencing Amendment Act 2015* | 32 of 2015 | 2 Nov 2015 | s. 1 and 2: 2 Nov 2015 (see s. 2(a)); Act other than s. 1 and 2: 3 Nov 2015 (see s. 2(b)) |
| **Reprint 9: The *Sentencing Act 1995* as at 8 Jan 2016** (includes amendments listed above) | | | |
| *Dangerous Sexual Offenders Legislation Amendment Act 2016* Pt. 7 | 17 of 2016 | 11 Jul 2016 | 10 Sep 2016 (see s. 2(b) and *Gazette* 9 Sep 2016 p. 3871) |
| *Public Health (Consequential Provisions) Act 2016* s. 101 | 19 of 2016 | 25 Jul 2016 | 24 Jan 2017 (see s. 2(1)(c) and *Gazette* 10 Jan 2017 p. 165) |
| *Universities Legislation Amendment Act 2016* Pt. 7 Div. 9 | 32 of 2016 | 19 Oct 2016 | 2 Jan 2017 (see s. 2(b) and *Gazette* 9 Dec 2016 p. 5557) |
| *Sentencing Legislation Amendment Act 2016* Pt. 3 Div. 1 and Pt. 4 (other than Div. 5 and s. 69 and 73) | 45 of 2016 | 7 Dec 2016 | Pt. 4 Div. 1 and 2: 8 Dec 2016 (see s. 2(b)); Pt. 3 Div. 1: 1 Jul 2017 (see s. 2(c) and *Gazette* 7 Feb 2017 p. 1159); Pt. 4 Div. 3, 4 and 6 (other than s. 69 and 73: 1 Oct 2017 (see s. 2(c) and *Gazette* 29 Sep 2017 p. 4983) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Statutes (Minor Amendments) Act 2017* s. 12 | 6 of 2017 | 12 Sep 2017 | 13 Sep 2017 (see s. 2(b)) |
| **Reprint 10: The *Sentencing Act 1995* as at 8 Dec 2017** (includes amendments listed above) | | | |
| *Family Violence Legislation Reform (COVID-19 Response) Act 2020* Pt. 2 | 13 of 2020 | 6 Apr 2020 | 7 Apr 2020 (see s. 2(b)) |
| *Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020* Pt. 3 Div. 8 | 25 of 2020 | 19 Jun 2020 | 29 Sep 2020 (see s. 2(1)(c) and SL 2020/159 cl. 2(a)) |
| *High Risk Serious Offenders Act 2020* s. 120 and 121 | 29 of 2020 | 9 Jul 2020 | 26 Aug 2020 (see s. 2(1)(c) and SL 2020/131 cl. 2) |
| *Family Violence Legislation Reform Act 2020* Pt. 3 | 30 of 2020 | 9 Jul 2020 | s. 31: 10 Jul 2020 (see s. 2(1)(b));<br>Pt. 3 (other than s. 13 to 31): 6 Aug 2020 (see s. 2(1)(c) and SL 2020/125 cl. 2(a)(ii));<br>s. 13 to 30: 1 Jan 2021 (see s. 2(1)(c) and SL 2020/125 cl. 2(c)(i)) |

## Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* s. 124 and 127 | 20 of 2013 | 4 Nov 2013 | To be proclaimed (see s. 2(b)) |
| *Public Health (Consequential Provisions) Act 2016* Pt. 5 Div. 23 | 19 of 2016 | 25 Jul 2016 | To be proclaimed (see s. 2(1)(c)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Sentencing Legislation Amendment Act 2016* Pt. 4 Div. 5 and s. 69 and 73 | 45 of 2016 | 7 Dec 2016 | To be proclaimed (see s. 2(c)) |
| *Veterinary Practice Act 2021* s. 235 | 19 of 2021 | 27 Oct 2021 | To be proclaimed (see s. 2(b)) |
| *Aboriginal Cultural Heritage Act 2021* s. 352 | 27 of 2021 | 22 Dec 2021 | To be proclaimed (see s. 2(e)) |
| *Firearms Amendment Act 2022* s. 85 | 13 of 2022 | 18 May 2022 | To be proclaimed (see s. 2(c)) |

## Other notes

[1M] Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 21 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

[2M] The *COVID-19 Response and Economic Recovery Omnibus Act 2020* Par 4 Division 4 Subdivision 1 modifies sections 14, 14B and 34 of the Act. The modified sections are identified by the superscript 2M appearing after the section numbers. The modification ceases on 31 December 2021 unless postponed under sections 46(3) and 52 of that Act.

[1] Repealed by the *Sentencing Legislation Amendment and Repeal Act 2003*.

[2] The *Land Drainage Act 1925* and the *Water Boards Act 1904* were repealed by the *Water Services Legislation Amendment and Repeal Act 2012*.

[3] The amendments in the *Sentencing Amendment Act 2000* Pt. 2 Div. 1 had not come into operation when it was deleted by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 32.

[4] The *Sentencing Act 1995* s. 19 and Pt. 12 did not come into operation and were deleted by the *Criminal Law Amendment Act (No. 2) 1998* s. 17 and 18.

[5] The *Sentencing Legislation Amendment and Repeal Act 1999* Pt. 2 Div. 3 (s. 14-26) are transitional provisions. They did not come into operation before the Act was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

[6] The *Sentencing Amendment (Adjustment of Sentences) Act 2000* s. 4-6 commenced 7 Dec 2000.

[7] The *Sentencing Legislation Amendment and Repeal Act 2003* s. 22 and Sch. 1 (which was amended by No. 5 of 2008 s. 109 [8] and No. 49 of 2008 s. 3-5 [9]) read as follows:

**22. Transitional provisions**

Schedule 1 has effect in relation to the amendments effected by this Division.

## Schedule 1 — Transitional provisions

[s. 22 and 29(2)]

**1. Interpretation**

(1) In this Schedule —

***commencement*** means the commencement of section 22;

***new provisions*** means —

(a) the *Sentencing Act 1995* as amended by the sentencing amendments; and

(b) the *Sentence Administration Act 2003*;

***old provisions*** means the *Sentencing Act 1995*, and the repealed Act, as they would have applied had the sentencing amendments not come into operation;

***repealed Act*** means the *Sentence Administration Act 1995*;

***sentencing amendments*** means the amendments to the *Sentencing Act 1995* effected by Part 2 Division 4 and the repeal of the *Sentence Administration Act 1995* effected by section 29(1).

(2) In this Schedule, words and expressions have the same meanings as they have in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.

*[**2.** Deleted: No. 49 of 2008 s. 3.]*

*[**3A.** As inserted: No. 49 of 2008 s. 4, expired 14 Jan 2012 (see cl. 3A(5).)]*

**3. Application of *Interpretation Act 1984* s. 36**

Section 36 of the *Interpretation Act 1984* applies as if the *Sentence Administration Act 1995* had been repealed and re-enacted by the *Sentence Administration Act 2003*.

**4. Community orders imposed before commencement**

If immediately before commencement —

(a) a community based order, or an intensive supervision order, made under the *Sentencing Act 1995* is in force; or

(b) a WDO made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force,

then on and after commencement —

(c) the *Sentence Administration Act 2003* applies to and in respect of the order; and

(d) the reference in the order to section 76 of the *Sentence Administration Act 1995* is to be taken to be a reference to section 76 of the *Sentence Administration Act 2003*.

**5. Sentences of imprisonment imposed before commencement**

(1) If immediately before commencement a person is subject to a fixed term that is not a parole term and to which the old provisions apply, then on and after commencement the old provisions continue to apply to that term and to the release of the person in respect of that term.

(2) If immediately before commencement a person is subject to a parole term to which the old provisions apply, then on and after commencement —

(a) the old provisions apply for the purpose of calculating —

(i) when the person is eligible to be released on parole;

(ii) the parole period for the person; and

(iii) when the person is discharged from the sentence and must be released;

(b) the new provisions apply for the purpose of determining whether the person is to be released on parole;

(c) if the person is to be released on parole, the release is to be by means of a parole order made under Part 3 of the *Sentence Administration Act 2003* and for that purpose —

(i) the parole period in the order is to be the parole period calculated under the old provisions; and

(ii) the supervised period for the order is to be the same as the parole period;

and

(d) if the person is released on parole, the *Sentence Administration Act 2003* applies to and in respect of the person and the order except to the extent that paragraph (a) or (c) provides otherwise.

(3) If immediately before commencement a person is in custody serving a life term to which the old provisions apply, then on and after commencement the new provisions apply to that term.

(4) If immediately before commencement a person is in custody serving indefinite imprisonment, then on and after commencement the new provisions apply in respect of that person.

(5) If immediately before commencement a person is detained in strict or safe custody during the Governor's pleasure under an order made under section 282 of *The Criminal Code*, then on and after commencement the new provisions apply in respect of that person.

**5A. Minister may discharge certain prisoners from old parole terms**

(1) In this clause —

***discharge*** means a discharge given under subclause (5);

***Minister*** means the Minister administering Part 8 of the *Sentence Administration Act 2003*;

***old parole term*** means a parole term to which the old provisions apply.

(2) This clause does not affect the operation of section 95(2) of the *Sentencing Act 1995* as it was before the sentencing amendments.

(3) The Prisoners Review Board established under the *Sentence Administration Act 2003* may at any time give the Minister a report recommending that a person who is subject to an old parole term and who has served two thirds of the term be discharged from the term.

(4) Any such report must deal with the release considerations (as that term is defined in section 5A of the *Sentence Administration Act 2003*) relating to the person.

(5) If the Minister, after considering such a report, is satisfied —

(a) that the person has served two thirds of the term; and

(b) after taking into account —

(i) the release considerations in the report relating to the person; and

(ii) section 5B of the *Sentence Administration Act 2003*,

that the person ought to be discharged from the term despite the old provisions,

the Minister, in writing, may discharge the person from the term.

(6) A discharge —

(a) has effect on the date of the discharge or on any later date specified in it; and

(b) has effect despite the old provisions.

(7) If, on the date a discharge has effect in relation to a person who is subject to an old parole term, the person is in custody, the person must be released in respect of that term.

(8) If, on the date a discharge has effect in relation to a person who is subject to an old parole term, the person is subject to a parole order made in respect of that term, the person ceases to be subject to the parole order in so far as it applies in respect of that term.

*[Clause 5A inserted: No. 5 of 2008 s. 109.]*

**6. Early release orders made before commencement**

If immediately before commencement a person is subject to a parole order, a home detention order, or a work release order, made under the repealed Act, then on and after commencement the repealed Act continues to apply to and in respect of that order.

**7. WROs**

If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement —

(a) subject to Part 4 of the repealed Act, a work release order may be made in respect of the person; and

(b) Parts 4, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order.

**8. HDOs**

If immediately before commencement a person is subject to a sentence of imprisonment of less than 12 months to which the old provisions apply, then on or after commencement —

(a) subject to Part 5 of the repealed Act, a home detention order may be made in respect of the person; and

(b) Parts 5, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order.

**9. Warrants in force at commencement**

A warrant issued under the repealed Act and in force immediately before commencement remains in force despite the repeal of the repealed Act.

**10. Community corrections centres**

(1) If a place is a community corrections centre under section 84 of the repealed Act immediately before commencement, then on and after commencement the place continues as a community corrections centre as if it had been declared by a notice under section 84(1) of the *Sentence Administration Act 2003*.

(2) An order under section 84(1) of the repealed Act may be amended or cancelled by the Minister.

**11. CEO's instructions for community corrections centres**

(1) If rules made under section 86 of the repealed Act are in force immediately before commencement, then on and after commencement the rules are to be taken to be written instructions issued under section 86 of the *Sentence Administration Act 2003* until written instructions are issued under that section.

(2) When written instructions are issued under section 86 of the *Sentence Administration Act 2003* a reference in the repealed Act to rules made under section 86 of the repealed Act is to be taken to be a reference to those written instructions.

**12. Parole Board's report**

The Board's annual report made under section 112 of the *Sentence Administration Act 2003* must report on the operation of the repealed Act to the extent that it continues to operate by virtue of this Schedule and the *Interpretation Act 1984*.

**13. Offenders serving imprisonment imposed before 4 November 1996**

(1) In this clause —

***1995 Act*** means the *Sentencing (Consequential Provisions) Act 1995*.

(2) If immediately before commencement a person to whom section 82 of the 1995 Act applies is in custody subject to the sentence referred to in section 82, then on and after commencement section 82 continues to apply but —

(a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and

(b) clause 7 of this Schedule applies to the person.

(3) If immediately before commencement a person to whom section 83 of the 1995 Act applies is in custody subject to the sentence referred to in section 83, then on and after commencement section 83, other than paragraphs (a) and (c), continues to apply but —

(a) any release of the person on parole in respect of the sentence is to be by means of a parole order made under Part 3 of the *Sentence Administration Act 2003*; and

(b) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

(4) If immediately before commencement a person to whom section 84 of the 1995 Act applies is in custody subject to the sentence referred to in section 84, then on and after commencement section 84 continues to apply but —

(a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and

(b) clauses 5(2) and 7 of this Schedule apply to the person.

(5) If immediately before commencement a person to whom section 86 of the 1995 Act applies is in custody subject to the sentence referred to in section 86, then on and after commencement section 86, other than paragraphs (a), (b) and (c), continues to apply but —

(a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;

(b) the parole period for the parole order is that provided by section 25(3) of the *Sentence Administration Act 2003*; and

(c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

(6) If immediately before commencement a person to whom section 87 of the 1995 Act applies is in custody subject to the sentence referred to in section 87, then on and after commencement section 87, other than paragraphs (a), (b) and (c), continues to apply but —

(a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;

(b) the parole period for the parole order is that provided by section 26(3) of the *Sentence Administration Act 2003*; and

(c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

(7) If immediately before commencement a person to whom section 88(1) of the 1995 Act applies is in custody subject to the order referred to in section 88(1), then on and after commencement section 88(1) continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 2003*.

(8) If immediately before commencement a person to whom section 90(1) of the 1995 Act applies is in custody subject to the order referred to in section 90(1), then on and after commencement section 90 continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 2003*.

(9) If immediately before commencement a person to whom section 91(1) of the 1995 Act applies is in custody subject to the direction or sentence referred to in section 91(1), then on and after commencement section 91, other than paragraphs (a), (b) and (c) of section 91(1), continues to apply but —

(a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;

(b) the parole period for the parole order is that provided by section 27(3) of the *Sentence Administration Act 2003*; and

(c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

*[**14.** Deleted: No. 49 of 2008 s. 5.]*

[8] The *Acts Amendment (Justice) Act 2008* s. 109 commenced 30 Sep 2008.

[9] The *Sentencing Legislation (Transitional Provisions) Amendment Act 2008* s. 3-5 commenced 14 Jan 2009.

[10] The amendments in the *Sentencing Legislation Amendment Act 2004* s. 6(4) erroneously referred to "73(3) and (5)" instead of "75(3) and (5)" when identifying the required amendments to be made to s. 33N(3).

[11] The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 59, which purported to replace s. 84E, could not be included because s. 84E was not in operation when s. 59 came into operation. Section 59 was subsequently deleted by the *Parole and Sentencing Legislation Amendment Act 2006* s. 74(2) [13].

[12] The amendments in the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 65 that purported to amend s. 84P(3) could not be included because s. 84P(3) was not in operation when s. 65 came into operation. Those amendments were subsequently deleted by the *Parole and Sentencing Legislation Amendment Act 2006* s. 75(2) [13].

[13] The *Parole and Sentencing Legislation Amendment Act 2006* s. 74(2) and 75(2) commenced 22 Sep 2006.

[14] The *Criminal Code Amendment (Unlawful Possession) Act 2014* s. 8(2) had not come into operation when it was deleted by the *Statutes (Minor Amendments Act 2017* s. 4(2).