

SENTENCING ACT 1995

(No. 76 of 1995)

ARRANGEMENT

Page

PART 1 — PRELIMINARY

1.	Short title	2
2.	Commencement	2
3.	Application	2
4.	Interpretation and abbreviations	3
5.	Civil liability not affected	4

PART 2 — GENERAL MATTERS

Division 1 — Sentencing principles

6.	Principles of sentencing	5
7.	Aggravating factors	6
8.	Mitigating factors	6

Sentencing Act 1995

Division 2 — Miscellaneous

9.	Statutory penalty: effect of	7
10.	Effect of change of statutory penalty	9
11.	Person not to be sentenced twice on same evidence	9
12.	Common law bonds abolished	9

PART 3 — MATTERS PRELIMINARY TO SENTENCING

Division 1 — Preliminary

13.	Interpretation	10
-----	----------------	----

Division 2 — General

14.	Offender to be present for sentencing	10
15.	Court may inform itself as it thinks fit	11
16.	Court may adjourn sentencing	11
17.	Court's powers on adjourning	12
18.	Committal for sentence	13
19.	Sentence by another judicial officer	13

Division 3 — Information about the offender

20.	Pre-sentence report: court may order	14
21.	Pre-sentence report: content	14
22.	Pre-sentence report: preparation	15
23.	Information about an offender's time in custody	15

Division 4 — Information about victims etc.

24.	Victim impact statement	16
25.	Victim impact statement: content	16
26.	Victim impact statement: use in court	17

Division 5 — Mediation

27.	Mediation report: court may order and receive	17
-----	---	----

Sentencing Act 1995

28.	Mediation report: content	17
29.	Mediation report: preparation	18
30.	Mediation report: use in court	18

Division 6 – Other pending charges

31.	Interpretation	18
32.	Pending charges: offender may request court to deal with	19
33.	Pending charges: court may deal with	19

PART 4 – THE SENTENCING PROCESS

34.	Explanation of sentence	21
35.	Reasons for imprisonment must be given	21
36.	Issue of warrant of commitment	22
37.	Correction of sentence	22
38.	Imprisonment by justices: magistrate to review	22

PART 5 – SENTENCING OPTIONS

39.	Sentences for natural person	24
40.	Sentences for body corporate	25
41.	If statutory penalty is imprisonment only: sentencing options	26
42.	If statutory penalty is imprisonment and fine: sentencing options	27
43.	If statutory penalty is imprisonment or fine: sentencing options	28
44.	If statutory penalty is fine only: sentencing options	28
45.	Spent conviction order: making and effect of	28

PART 6 – RELEASE OF OFFENDER WITHOUT SENTENCE

46.	Release without sentence	31
-----	--------------------------	----

Sentencing Act 1995

PART 7 — CONDITIONAL RELEASE ORDER

47.	When CRO may be imposed	32
48.	CRO: nature of	32
49.	CRO: requirements	33
50.	Court may direct offender to re-appear	33
51.	Ensuring compliance with CRO	34
52.	Enforcing a CRO	35

PART 8 — FINE

53.	Considerations when imposing a fine	37
54.	One fine for 2 or more offences	37
55.	Apportionment of fine between joint offenders	38
56.	Assault victim may be awarded fine	38
57.	Enforcement of fine	39
58.	Imprisonment until fine is paid	39
59.	Imprisonment if fine is not paid	40
60.	Application of fine etc.	42

PART 9 — COMMUNITY BASED ORDER

61.	CBO: pre-sentence report optional	44
62.	CBO: nature of	44
63.	CBO: standard obligations	45
64.	CBO: primary requirements	45
65.	Supervision requirement	46
66.	Programme requirement	47
67.	Community service requirement	48

PART 10 — INTENSIVE SUPERVISION ORDER

68.	ISO: pre-sentence report mandatory	50
69.	ISO: nature of	50
70.	ISO: standard obligations	51
71.	Supervision requirement	51
72.	ISO: primary requirements	52
73.	Programme requirement	53
74.	Community service requirement	54
75.	Curfew requirement	55

Sentencing Act 1995

PART 11 — SUSPENDED IMPRISONMENT

76.	Imprisonment may be suspended	57
77.	Effect of suspending imprisonment	57
78.	Re-offender may be dealt with or committed	58
79.	Complaint alleging re-offending	59
80.	How re-offender to be dealt with	60

PART 12 — DETENTION OF YOUNG ADULT OFFENDER

81.	Interpretation	63
82.	Operation of Part	63
83.	Detention under <i>Young Offenders Act 1994</i> , s. 119 may be directed	63
84.	Effect of direction as to detention	65

PART 13 — IMPRISONMENT

Division 1 — Preliminary

85.	Interpretation and calculations	67
-----	---------------------------------	----

Division 2 — Imposing imprisonment

86.	Term of 3 months or less not to be imposed	70
87.	Taking time on remand into account	70
88.	Concurrent, cumulative or partly cumulative terms	70
89.	Offender may be made eligible for parole	72
90.	Imposing life imprisonment	73
91.	Imposing strict security life imprisonment	73

Division 3 — Release from imprisonment

92.	Release from prescribed term	73
93.	When a prisoner is eligible to be released on parole	74
94.	Aggregation of parole terms for certain purposes	74
95.	Release from a fixed term (not a prescribed term)	75
96.	Release from life term	75

Sentencing Act 1995

Division 4 — Miscellaneous

97.	Application of <i>Sentence Administration Act 1995</i>	76
-----	--	----

PART 14 — INDEFINITE IMPRISONMENT

98.	Indefinite imprisonment: superior court may impose	77
99.	Other terms not precluded by indefinite imprisonment	78
100.	Commencement of indefinite imprisonment	78
101.	Release from indefinite imprisonment	78

PART 15 — OTHER ORDERS FORMING PART OF A SENTENCE

Division 1 — General matters

102.	Principles	79
103.	Disqualification orders: calculation of term	79
104.	Disqualification may be for life	79

Division 2 — Disqualification orders

105.	Driver's licence: disqualification	80
106.	Firearms licence etc.: disqualification	81
107.	Marine qualification: disqualification	83
108.	Passport: surrender etc.	84

PART 16 — REPARATION ORDERS

Division 1 — General matters

109.	Interpretation	86
110.	Principles	86
111.	Making a reparation order	87
112.	Facts relevant to making an order	87
113.	Victim's behaviour and relationship relevant	88
114.	Civil standard of proof	88
115.	Effect of order on civil proceedings etc.	89

Sentencing Act 1995

Division 2 — Compensation order

116.	Interpretation	89
117.	Compensation order in favour of a victim	90
118.	Compensation order in favour of a third party	90
119.	Enforcement of compensation order	91

Division 3 — Restitution order

120.	Court may make restitution order	91
121.	Enforcing a restitution order	92
122.	Non-compliance with restitution order is an offence	93

PART 17 — OTHER ORDERS NOT FORMING PART OF A SENTENCE

123.	Principles	94
124.	Orders to keep the peace under <i>Justices Act 1902</i> , Part VII	94

PART 18 — AMENDING AND ENFORCING CONDITIONAL RELEASE ORDERS AND COMMUNITY ORDERS

Division 1 — Preliminary

125.	Interpretation	95
------	----------------	----

Division 2 — Amending or cancelling conditional release orders and community orders

126.	Application to amend or cancel	96
127.	Court may confirm, amend or cancel	96

Division 3 — Re-offending while subject to a conditional release order or a community order

128.	Re-offender may be dealt with or committed	97
129.	Complaint alleging re-offending	99
130.	How re-offender may be dealt with	100

Sentencing Act 1995

***Division 4 — Breaching a conditional release order
or a community order***

131.	Breach of requirement: offence	101
132.	Breach of requirement: procedure and penalty	101
133.	Breach of requirement: court's powers to deal with	103

Division 5 — Miscellaneous

134.	Facilitation of proof	104
135.	Compliance with CRO or community order to be taken into account	105
136.	Re-sentencing: court's powers	105

PART 19 — ROYAL PREROGATIVE OF MERCY

137.	Royal Prerogative of Mercy not affected	107
138.	Effect of pardon	107
139.	Governor may remit order to pay money	107
140.	Petition may be referred to CCA	107
141.	Offender may be paroled	108
142.	Exercise of the Royal Prerogative in case of strict security life imprisonment	108

PART 20 — MISCELLANEOUS

143.	Guideline judgments	109
144.	Chief Justice may report to Parliament	109
145.	Failure to comply with procedural requirements	110
146.	Questions of fact in superior courts	110
147.	Operation of other Acts not affected	110
148.	Regulations	110
149.	Rules of court	110

**SCHEDULE 1
ACTS, FINES UNDER WHICH ARE NOT TO BE CREDITED TO
THE CONSOLIDATED FUND**

WESTERN AUSTRALIA

SENTENCING ACT 1995

No. 76 of 1995

**AN ACT to consolidate and amend the law relating to the
sentencing of offenders.**

[Assented to 16 January 1996]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

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

Commencement

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

Application

3. (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;
- (b) under section 63 of the *District Court of Western Australia Act 1969*, section 41 of the *Justices Act 1902* or section 156 of the *Local Courts Act 1904*; or
- (c) for contempt of a House of Parliament.

Interpretation and abbreviations

4. (1) In this Act —

“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;

“conditional release order” (“CRO”) means a conditional release order made under Part 7;

“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 1995*;

“community corrections officer” (“CCO”) has the same definition as in the *Sentence Administration Act 1995*;

“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;

“convicted”, in relation to an offence, means found guilty of the offence, whether after a plea of guilty or otherwise;

“disqualification order” means an order made under Part 15;

“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 order**” means an order made under Part 3 of the *Sentence Administration Act 1995* that a prisoner be released on parole;

“**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.

(2) In this Act these abbreviations are used:

“**CBO**” for community based order;

“**CCO**” for community corrections officer;

“**CEO**” for chief executive officer;

“**CRO**” for conditional release order;

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

“**ISO**” for intensive supervision order.

Civil liability not affected

5. 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

Principles of sentencing

6. (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;
- (b) the circumstances of the commission of the offence;
- (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.

Aggravating factors

7. (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;
- (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.

Mitigating factors

8. (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) A plea of guilty by an offender is a mitigating factor and the earlier in proceedings that it is made, or indication is given that it will be made, the greater the mitigation.

(3) The fact that property derived or realized, 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 is forfeited to the Crown under a written law is not 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.

Division 2 — Miscellaneous

Statutory penalty: effect of

9. (1) Subject to subsection (4), 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.

s. 9

(4) If under a written law the statutory penalty for an offence is a mandatory penalty or includes a minimum penalty, then a court sentencing an offender for the offence must, despite Part 5, use the sentencing option required by the statutory penalty except to the extent, if any, that the written law provides otherwise.

(5) Subsection (4) does not prevent a court from —

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

Effect of change of statutory penalty

10. 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.

Person not to be sentenced twice on same evidence

11. (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*.

Common law bonds abolished

12. The jurisdiction at common law to require an offender to enter into a bond, a recognizance, 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

Interpretation

13. 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

Offender to be present for sentencing

14. (1) A court is not to sentence an offender unless the offender is personally present in court.

(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,

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.

Court may inform itself as it thinks fit

15. 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.

Court may adjourn sentencing

- 16.** (1) A court may adjourn the sentencing of an offender —
- (a) to obtain information about the offence, the offender or a victim;
 - (b) to allow a pre-sentence report to be prepared for the court under Division 3;
 - (c) to enable a victim impact statement to be given to the court under Division 4;

- (d) to allow a mediation report to be prepared for the court under Division 5;
- (e) to allow a list of pending charges to be prepared under Division 6;
- (f) for the making or determination of an application under a written law for the forfeiture to the Crown 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.

Court's powers on adjourning

17. (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.

Committal for sentence

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

Sentence by another judicial officer

19. (1) If an offender has not been sentenced for an offence and the judicial officer who presided at the offender's trial or who took the offender's plea —

- (a) goes out of office or dies; or
- (b) will probably not be able to deal with the matter within a reasonable time because of incapacitating illness or some other exceptional reason,

another judicial officer having the same or greater jurisdiction may deal with the matter and may sentence the offender and, if necessary, deal with any motion to arrest judgment.

(2) In dealing with the matter, the latter judicial officer may take such action as he or she thinks fit, even though such action may have been taken by the former judicial officer.

(3) If possible, the latter judicial officer must consult the former judicial officer before dealing with the matter.

(4) Non-compliance with subsection (3) does not affect the validity of the latter judicial officer's decision.

(5) The Chief Justice, the Chief Judge of the District Court, the Chief Stipendiary Magistrate or the President of the Children's Court (as the case may be) is to decide whether a judicial officer will probably not be able to deal with a matter within a reasonable time because of incapacitating illness or some other exceptional reason, and that decision cannot be challenged on any ground whatsoever.

s. 20

(6) The decision of the latter judicial officer has for all purposes the same effects and consequences as if it had been given by the former judicial officer.

(7) This section does not affect any power of a judicial officer to adjourn a matter so that it can be dealt with by another judicial officer.

Division 3 — Information about the offender**Pre-sentence report: court may order**

20. (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.

(3) A court considering imposing an ISO, or making a direction under Part 12 for the detention of a young adult offender, must order a pre-sentence report about (among any other things) the offender's suitability for such a sentence.

Pre-sentence report: content

21. (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.

(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.

Pre-sentence report: preparation

22. (1) The CEO 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 21 days after being ordered.

(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.

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

Information about an offender's time in custody

23. (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 home detention order or a work release order under the *Sentence Administration Act 1995*.

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

Division 4 — Information about victims etc.

Victim impact statement

24. (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.

Victim impact statement: content

25. (1) A victim impact statement is a written or oral statement that —

- (a) gives particulars of any injury, loss, or damage suffered by the victim as a direct result of the offence; and
- (b) describes the effects on the victim of the commission of the offence.

(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.

Victim impact statement: use in court

26. (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.

Division 5 — Mediation

Mediation report: court may order and receive

27. (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.

Mediation report: content

28. (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.

s. 29

- (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.

Mediation report: preparation

29. The CEO 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.

Mediation report: use in court

30. (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**Interpretation**

31. In this Division —

“**pending charge**” means a charge, in a court of petty sessions or in the Children’s Court, of an offence (whether indictable or simple) for which no sentence has been imposed.

Pending charges: offender may request court to deal with

32. (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.

Pending charges: court may deal with

33. (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 Crown 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.

s. 33

(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.

PART 4 — THE SENTENCING PROCESS

Explanation of sentence

34. A court sentencing an offender must, if the offender is personally present in court, 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.

Reasons for imprisonment must be given

35. (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) The written reasons are to be kept as records of the court.

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

- (a) the term imposed is mandatory under a written law;
- (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*.

(4) In this section —

“**written reasons**” includes reasons given orally and subsequently transcribed.

Issue of warrant of commitment

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

Correction of sentence

37. (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.

(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.

Imprisonment by justices: magistrate to review

38. (1) If a justice or justices in a court of petty sessions —

(a) sentence an offender to suspended imprisonment;

(b) make a direction under Part 12 for the detention of a young adult offender; or

(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.

PART 5 — SENTENCING OPTIONS

Sentences for a natural person

39. (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;
- (b) with or without making a spent conviction order, under Part 7 impose a CRO and order the release of the offender;
- (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);
- (d) with or without making a spent conviction order, under Part 9 impose a CBO and order the release of the offender;
- (e) under Part 10 impose an ISO and order the release of the offender;
- (f) under Part 11 impose suspended imprisonment and order the release of the offender;
- (g) under Part 12 impose a term of imprisonment and make a direction for the detention 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 under Part 17, but any such order is not to be taken as being part of the sentence.

Sentences for a body corporate

40. (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.

(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).

s. 41

(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.

(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.

**If statutory penalty is imprisonment only:
sentencing options**

41. (1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is imprisonment only.

(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 those in paragraphs (a) or (c) of that section) and in addition fine the offender.

(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 petty sessions 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:

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

**If statutory penalty is imprisonment and fine:
sentencing options**

42. (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 those in paragraphs (a) or (c) of that section) and in addition fine the offender.

(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).

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

43. (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).

(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).

**If statutory penalty is fine only:
sentencing options**

44. If the statutory penalty for an offence is a fine only, a court sentencing an offender for the offence may —

- (a) if the offender is a natural person, use any one of the sentencing options in section 39 (2) (a), (b) and (c); or
- (b) if the offender is a body corporate, use any one of the options in section 40 (2).

Spent conviction order: making and effect of

45. (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.

(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 the offender from holding or obtaining a driver's licence under the *Road Traffic Act 1974*;

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

(b) the operation of any provision of the *Road Traffic Act 1974*, or Part 15, relating to the cancellation of, or disqualification from holding or obtaining, a driver's licence under that Act;

s. 45

- (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 reversioning 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.

PART 6 — RELEASE OF OFFENDER WITHOUT SENTENCE

Release without sentence

46. 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,

that it is not just to impose any other sentencing option.

PART 7 — CONDITIONAL RELEASE ORDER

When CRO may be imposed

47. 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.

CRO: nature of

48. (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.

CRO: requirements

49. (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.

Court may direct offender to re-appear

50. (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.

s. 51**Ensuring compliance with CRO**

51. (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 Crown 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 Crown,

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 Crown on any money deposited under this section.

Enforcing a CRO

52. (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 Crown —

- (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 Crown; 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 Crown.

(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 a defendant.

(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 Crown 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 Crown.

(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.

PART 8 — FINE

Considerations when imposing a fine

53. (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.

One fine for 2 or more offences

54. (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.

Apportionment of fine between joint offenders

55. (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.

Assault victim may be awarded fine

56. (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.

Enforcement of fine

57. (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 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*.

Imprisonment until fine is paid

58. (1) This section applies if a superior court or a court of petty sessions 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

s. 59

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.

Imprisonment if fine is not paid

59. (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;
- (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 \$50 and rounding the result up to the nearest whole number of days; and

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

(4) Regulations may amend subsection (3) (a) by substituting a greater amount for the amount of \$50.

(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:

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

(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*.

s. 60**Application of fine etc.**

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

(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, 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 Fund 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 or fund other than the Consolidated Fund, it is not subsequently recoverable from the Crown, even if on appeal the conviction or sentence concerned is set aside or quashed.

(8) In this section —

“a local government” means the council of a municipality under the *Local Government Act 1960*.

PART 9 — COMMUNITY BASED ORDER

CBO: pre-sentence report optional

61. A CBO may be imposed by a court without having received a pre-sentence report about the offender.

CBO: nature of

- 62.** (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.
- (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.

CBO: standard obligations

63. 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;
- (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change;
- (c) must not leave Western Australia except with, and in accordance with, the permission of the CEO; and
- (d) must comply with section 76 of the *Sentence Administration Act 1995*.

CBO: primary requirements

64. 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.

s. 65**Supervision requirement**

65. (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 CCO ceases to be in force.

Programme requirement

- 66.** (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 recognize, 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 of the matters in paragraphs (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.

s. 67

(5) The requirements of a programme requirement imposed as part of a CBO are additional to the requirements of any other programme requirement imposed as part of any other community order.

(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.

Community service requirement

67. (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;
- (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 under Part 7 of the *Sentence Administration Act 1995*.

(3) The number of hours set by the court must be at least 40 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.

PART 10 — INTENSIVE SUPERVISION ORDER

ISO: pre-sentence report mandatory

68. An ISO may be imposed only if the court has received a pre-sentence report about the offender.

ISO: nature of

- 69.** (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;
 - (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.

ISO: standard obligations

70. 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;
- (b) must not change address or place of employment without the prior permission of a CCO;
- (c) must not leave Western Australia except with, and in accordance with, the permission of the CEO; and
- (d) must comply with section 76 of the *Sentence Administration Act 1995*.

Supervision requirement

71. (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.

ISO: primary requirements

72. 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.

Programme requirement

73. (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 recognize, 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 of the matters in paragraphs (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 imposed as part of any other community order.

(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.

Community service requirement

74. (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;
- (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 under Part 7 of the *Sentence Administration Act 1995*.

(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.

Curfew requirement

75. (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;
- (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, for specified periods, as ordered by a CCO; and
- (b) must submit to surveillance or monitoring as ordered by a CCO.

(3) The curfew requirement may only be imposed for a term of 6 months or less, as set by the court, beginning when the ISO is imposed.

(4) Unless the court orders otherwise, the term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender.

(5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to an offender must not exceed 6 months.

(6) A court imposing the curfew requirement may give directions as to the periods when an offender ought to be subject to a curfew.

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

(9) Without limiting the means by which an offender may be kept under surveillance or monitored, a CCO may, for the purposes of subsection (2) (b), order an offender —

- (a) to wear any device; or
- (b) to permit the installation of any device or equipment at the place where the offender lives.

PART 11 — SUSPENDED IMPRISONMENT

Imprisonment may be suspended

76. (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 whole of 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 (as defined in Part 13); or
- (b) the offender is serving or is yet to serve a term of imprisonment that is not suspended.

Effect of suspending imprisonment

77. (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.

s. 78

(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 Part 13, a sentence of suspended imprisonment is to be taken as being a sentence of imprisonment.

Re-offender may be dealt with or committed

78. (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 a court of petty sessions, 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;

(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.

Complaint alleging re-offending

79. (1) If a person has been convicted and dealt with (in this State or elsewhere) for 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, then a complaint may be made alleging those matters.

(2) The complaint may be made at any time up until 2 years after the suspension period has ended.

(3) The complaint may be made by any person.

s. 80

(4) The complaint must be made in writing before a justice who may issue a summons or, if the complaint is on oath, a warrant to have the person arrested.

(5) The complaint must be filed with, and the summons must direct the person to appear before, or the warrant must direct that the offender be brought before —

(a) the court that imposed the suspended imprisonment, if the Children's Court or a superior court imposed the suspended imprisonment; or

(b) a court of petty sessions, if the suspended imprisonment was imposed by such a court.

(6) The summons must be served on the person personally or left at the place where the person was last known to be living.

(7) If a person does not appear in answer to the summons the court concerned may issue a warrant to have the person arrested and brought before it.

(8) A person who appears before a court as a result of the summons or warrant must be dealt with by the court under section 80.

How re-offender to be dealt with

80. (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;
- (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 state its reasons for not doing so.

(5) When making an order under subsection (1) (a) or (b), a court may make a parole eligibility order under Part 13 in respect of the term to be served.

(6) If a court makes an order under subsection (1) (a) or (b) the offender must serve the imprisonment —

- (a) immediately; and
- (b) concurrently with any other term of imprisonment he or she is serving or is yet to serve.

s. 80

(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.

PART 12 — DETENTION OF YOUNG ADULT OFFENDER

Interpretation

81. In this Part —

“**detention centre**” means a detention centre of a kind referred to in section 119 (1) (a) of the *Young Offenders Act 1994*;

“**prescribed offence**” means an offence prescribed for the purpose of section 119 (2) (a) of the *Young Offenders Act 1994* by regulations under that Act;

“**young adult offender**” means an offender who is at least 18 but not more than 21 years old when he or she is sentenced.

Operation of Part

82. This Part does not operate unless regulations under the *Young Offenders Act 1994* provide for the establishment and operation of detention centres and under section 13 of that Act a place is declared to be a detention centre.

Detention under *Young Offenders Act 1994*, s. 119 may be directed

83. (1) If under Part 13 a court sentences a young adult offender to imprisonment for a prescribed offence and —

(a) the term imposed, or the aggregate of the terms imposed (“**the term imposed**”) is at least 12 months but not more than 36 months;

s. 83

- (b) the term imposed is not one that, by virtue of an order under section 87 (d) is to be taken as having begun before it was imposed; and
- (c) none of the terms, if 2 or more are imposed, is a partly cumulative term,

the court may direct that the offender be detained for 4 months in a detention centre.

(2) A direction under subsection (1) may be made only if —

- (a) the offender —
 - (i) has not been previously convicted of an offence prescribed for the purposes of section 119 (2) (b) of the *Young Offenders Act 1994* by regulations under that Act; and
 - (ii) has not previously served all or any of a sentence of imprisonment or detention;
- (b) the court has received a pre-sentence report about the offender; and
- (c) the offender consents to it.

(3) A court that makes a direction under subsection (1) may nevertheless make orders under section 87 (c), 88 (3) (c) or 89.

(4) The court that makes a direction under subsection (1) may, on the application of the CEO, cancel the direction.

(5) On making an application under subsection (4), the CEO may transfer the offender to a prison or a police lock-up until the application is determined.

(6) If on an application under subsection (4), the court refuses to cancel the direction, the offender must be returned to a detention centre of the kind referred to in subsection (1) and any

period the offender spent in a prison or a lock-up, having been transferred under subsection (5), counts as time served in such a detention centre.

Effect of direction as to detention

84. (1) If a direction is made under section 83, then, unless the direction ceases to have effect under subsection (3) —

- (a) the offender is to be detained in a detention centre for 4 months;
- (b) section 121 (5) and Parts 8 (other than sections 133 (1) (c) and 147 (2) (b)), 9 and 10 of the *Young Offenders Act 1994* apply to the term imposed as if it were a term of detention imposed under that Act; and
- (c) Part 13 and the *Sentence Administration Act 1995* do not apply to the term imposed.

(2) Until it is practicable to transport an offender to a detention centre the offender is to be imprisoned in a prison or a police lock-up and any period spent there as a result counts as time served in a detention centre.

(3) If while an offender is detained under a direction made under section 83 —

- (a) the offender withdraws his or her consent to the direction;
- (b) the offender is sentenced to a term of imprisonment for another offence; or
- (c) the court cancels the direction under section 83 (4),

the direction ceases to have effect and the term imposed takes effect as if the direction had not been made.

s. 84

(4) If a direction ceases to have effect under subsection (3), the period for which the offender was detained before then counts as time served in respect of the term imposed.

(5) For the purposes of a law other than this Part and Part 13, detention directed under this Part is to be taken as being a sentence of imprisonment.

PART 13 — IMPRISONMENT

Division 1 — Preliminary

Interpretation and calculations

85. (1) In this Part —

“early release order” means —

- (a) a parole order;
- (b) a home detention order; or
- (c) a work release order,

made under the *Sentence Administration Act 1995*;

“fixed term” means a term that is not a life term;

“indefinite imprisonment” means indefinite imprisonment imposed under Part 14;

“parole eligibility order” means an order under section 89;

“parole term” means a term to which a parole eligibility order applies;

“prescribed term” means —

- (a) a term of less than 3 days;
- (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) a person sentenced to suspended imprisonment, unless an order is made under section 80 (1) (a) or (b);
- (b) a person detained under a direction under Part 12, unless the direction ceases to have effect;

“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 a life term, but does not include —

- (a) detention in strict or safe custody during the Governor’s pleasure under an order made under section 282 of *The Criminal Code*; or
- (b) indefinite imprisonment;

“life term” means —

- (a) life imprisonment;
- (b) strict security life imprisonment.

(2) For the purposes of this Part and Parts 11 and 12 and of the *Sentence Administration Act 1995*, 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 cumulatively or partly cumulatively.

(3) For the purposes of this Part and of the *Sentence Administration Act 1995* these calculations must be made as follows:

- (a) to calculate the length in days of one third of a fixed term —
 - (i) 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”);
 - (ii) then divide T by 3, disregard any remainder and add to the result the number of days of remission that the offender has been ordered to forfeit under the *Prisons Act 1981* (if any);
- (b) to calculate the length in days of two thirds of a fixed term —
 - (i) determine the date on which the term as imposed by the court will begin and end and then express the term as a number of days (“T”);
 - (ii) then divide T by 3 and disregard any remainder;
 - (iii) then subtract that result from T and add to the result the number of days of remission that the offender has been ordered to forfeit under the *Prisons Act 1981* (if any).

(4) In this Part and in the *Sentence Administration Act 1995*, the end of a fixed term is when the term as imposed by the court ends, and it does not matter if the prisoner is or may be released (under an early release order or otherwise) before then, or if the term is or may be taken to have been served before then.

Division 2 — Imposing imprisonment

Term of 3 months or less not to be imposed

86. A court must not sentence an offender to a term of 3 months or less unless —

- (a) the aggregate of the term imposed and any other term or terms imposed by the court is more than 3 months;
- (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*.

Taking time on remand into account

87. If when an offender is being sentenced to imprisonment for an offence —

- (a) he or she has previously spent time in custody in respect of that offence and for no other reason; 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.

Concurrent, cumulative or partly cumulative terms

88. (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 cumulatively on the other fixed term.

(4) If under subsection (3) (d) a court orders that a term is to be served partly cumulatively on another fixed term, the court must specify the period of the other fixed term that is to be served before the partly cumulative 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 a life term is to serve that term concurrently with any other term that he or she is serving or has yet to serve.

(6) This section does not apply to a sentence of suspended imprisonment.

s. 89**Offender may be made eligible for parole**

89. (1) A court sentencing an offender to one or more fixed terms may, if it considers that it is appropriate to do so, order that the offender be eligible for parole by making a parole eligibility order.

(2) In determining whether it is appropriate to make a parole eligibility order, a court may have regard to all or any of the following:

- (a) the seriousness and nature of the offence;
- (b) the circumstances of the commission of the offence;
- (c) the offender's antecedents;
- (d) circumstances relevant to the offender or which, in the court's opinion, might be relevant to the offender at the time when the offender would be eligible for release on parole if a parole eligibility order were made;
- (e) any other reason the court decides is relevant.

(3) A parole eligibility order must not be made if the fixed term or the aggregate of the fixed terms is less than 12 months, except where the offender, at the date of sentence, is serving or has yet to serve a parole term imposed previously.

(4) A parole eligibility order must not be made in respect of a prescribed term.

(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.

Imposing life imprisonment

90. (1) A court that sentences an offender to life imprisonment for murder must set a minimum period of at least 7 and not more than 14 years that the offender must serve before being eligible for release on parole.

(2) A court that sentences an offender to life imprisonment for wilful murder must set a minimum period of at least 15 and not more than 19 years that the offender must serve before being eligible for release on parole.

(3) The minimum period begins to run when the term of life imprisonment begins.

Imposing strict security life imprisonment

91. (1) A court that sentences an offender to strict security life imprisonment must, unless it makes an order under subsection (3), set a minimum period of at least 20 and not more than 30 years that the offender must serve before being eligible for release on parole.

(2) The minimum period begins to run when the term of strict security life imprisonment begins.

(3) A court that sentences an offender to strict security life imprisonment may, if it decides it is appropriate to do so, order that the offender is not to be paroled.

Division 3 — Release from imprisonment

Release from prescribed term

92. A prisoner serving a prescribed term is discharged from that sentence at the end of the term and, subject to Division 2 of Part 2 of the *Sentence Administration Act 1995*, must be released then.

s. 93**When a prisoner is eligible to be released on parole**

93. (1) Subject to section 94, a prisoner serving a parole term is eligible to be released on parole —

- (a) if the term is 6 years or less — when he or she has served one third of the term; or
- (b) if the term is more than 6 years — when he or she has served 2 years less than two thirds of the term.

(2) Any order for the release of a prisoner to whom this section applies must be made in accordance with Part 3 of the *Sentence Administration Act 1995*.

Aggregation of parole terms for certain purposes

94. (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 (2) or (3) those terms are to be aggregated.

(2) 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 cumulatively with that other term.

(3) 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 it is to be served concurrently with that other term or partly cumulatively with it.

(4) Subject to this section, a parole term, or an aggregate of 2 or more parole terms, may be aggregated with the aggregate of 2 or more other parole terms.

(5) For the purposes of this section a reference in this Part or in the *Sentence Administration Act 1995* 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 the reference to the term is to be taken as being a reference to the aggregate of the terms.

Release from a fixed term (not a prescribed term)

95. (1) A prisoner serving a fixed term that is neither a prescribed term nor a parole term is discharged from that sentence when he or she has served two thirds of the term and, subject to Division 2 of Part 2 of the *Sentence Administration Act 1995*, must be released then.

(2) If a prisoner serving a parole term has not been released on parole before he or she has served two thirds of the term, then the prisoner is discharged from that sentence when he or she has served two thirds of the term and, subject to Division 2 of Part 2 of the *Sentence Administration Act 1995*, must be released then.

Release from life term

96. (1) A prisoner serving life imprisonment is not to be released before he or she has served the minimum period set by the court under section 90.

(2) A prisoner serving strict security life imprisonment and in respect of whom no order has been made under section 91 (2), is not to be released before he or she has served the minimum period set by the court under section 91 (1).

(3) A prisoner serving strict security life imprisonment and in respect of whom an order has been made under section 91 (2), is not to be released on parole.

(4) Any order for the release of a prisoner to whom this section applies must be made in accordance with Part 3 of the *Sentence Administration Act 1995*.

Division 4 — Miscellaneous

Application of *Sentence Administration Act 1995*

97. Nothing in this Part affects the operation of Parts 4 and 5 of the *Sentence Administration Act 1995*.

PART 14 — INDEFINITE IMPRISONMENT

Indefinite imprisonment: superior court may impose

- 98.** (1) If a superior court —
- (a) sentences an offender for an indictable offence to a term of imprisonment;
 - (b) does not suspend that imprisonment; and
 - (c) does not make a parole eligibility order under Part 13 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.

s. 99

(3) In deciding whether an offender is a danger to society, or a part of it, the court —

- (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.

Other terms not precluded by indefinite imprisonment

99. 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.

Commencement of indefinite imprisonment

100. 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 an early release order (as defined in Part 13), while or after serving —

- (a) the nominal sentence; or
- (b) any other term imposed on the offender.

Release from indefinite imprisonment

101. 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 1995*.

PART 15 — OTHER ORDERS FORMING PART OF A SENTENCE

Division 1 — General matters

Principles

102. (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.

Disqualification orders: calculation of term

103. (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.

Disqualification may be for life

104. The term of a disqualification order made under this Part may be for the life of the offender.

Division 2 — Disqualification orders

Driver's licence: disqualification

105. (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 details of the motor vehicle offence and the order are made known to the Traffic Board constituted under section 6 of the *Road Traffic Act 1974*.

(4) This section does not affect —

- (a) the right or duty of a court to disqualify a person from holding or obtaining a driver's licence under the *Road Traffic Act 1974*;
- (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 Act 1974*;

“motor vehicle” has the same definition as in the *Road Traffic Act 1974*;

“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;
- (d) an indictable offence (whether it was tried on indictment or not) 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;
 - (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.

Firearms licence etc.: disqualification

106. (1) A court sentencing an offender for a firearms offence 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), any relevant licence, permit or approval held by the offender under the *Firearms Act 1973* 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 firearms offence and the order are made known to the Commissioner of Police.

(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*.

Marine qualification: disqualification

107. (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 certificate of competency, or a particular certificate of competency, under the *Western Australian Marine Act 1982*.

(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 certificate 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 —

“**vessel**” has the same definition as in *The Criminal Code*;

“**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.

Passport: surrender etc.

108. (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;
- (b) must refrain from applying for, or obtaining, an Australian passport;
- (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 *Passports Act 1938* of the 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) “**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.

PART 16 — REPARATION ORDERS

Division 1 — General matters

Interpretation

109. In this Part —

“**reparation order**” means —

- (a) a compensation order made under this Part; or
- (b) a restitution order made under this Part.

Principles

110. (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.

Making a reparation order

111. (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.

Facts relevant to making an order

112. (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 thing referred to in section 100 (1) (d), (e) or (f) of the *Justices Act 1902* and relevant to the offence;
- (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.

s. 113

(3) A court must not make a compensation order if satisfied that the means of the offender, so far as they are known to the court, are such that —

- (a) the offender would be unable to comply with the order;
or
- (b) compliance with the order would unduly prejudice the welfare of the offender's dependants.

(4) A court may make a compensation order even though it has been unable to find out about the matters in subsection (3).

Victim's behaviour and relationship relevant

113. 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.

Civil standard of proof

114. In deciding matters in connection with the making of a reparation order, the standard of proof is proof on the balance of probabilities.

Effect of order on civil proceedings etc.

115. (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 1985*.

(2) A court, body or person 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.

(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.

Division 2 — Compensation order

Interpretation

116. 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.

Compensation order in favour of a victim

117. (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 or damage suffered by the victim to his, her or its property as a direct or indirect result of the offence; and
- (b) any expense reasonably incurred by the victim in connection with that loss or damage.

(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.

Compensation order in favour of a third party

118. (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.

Enforcement of compensation order

119. (1) If the amount payable under a compensation order is not paid within 28 days after the date of the order, it may be recovered as a judgment debt in a court of competent jurisdiction, unless an order is made under subsection (2).

(2) A superior court that makes a compensation order may in addition make an order under section 59 and for that purpose that section, with any necessary changes, applies as if the compensation order were a fine imposed on the offender.

(3) For the purposes of subsection (1), a certified copy of a compensation order is on request to be issued (without payment of a fee) to the victim concerned and the copy may be registered (without payment of a fee) as a judgment in a court of competent jurisdiction.

Division 3 — Restitution order

Court may make restitution order

120. (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.

s. 121

(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.

(6) The operation of a restitution order made following a conviction on indictment is subject to section 694 of *The Criminal Code*.

Enforcing a restitution order

121. (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;
- (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 complaint laid in respect of an offence under section 122 and even though the court is a superior court.

Non-compliance with restitution order is an offence

122. 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 NOT FORMING PART OF A SENTENCE

Principles

123. (1) An order 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 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 under this Part.

(4) Despite subsection (1) an offender may appeal against an order made under this Part as if it were part of the sentence imposed on him or her.

Orders to keep the peace under *Justices Act 1902*, Part VII

124. (1) Subject to Part VII of the *Justices Act 1902* and this section, a court sentencing an offender may exercise the powers of justices under that Part to make an order imposing restraints on the offender.

(2) The powers referred to in subsection (1) may be exercised even though a complaint has not been made for the purposes of section 172 of the *Justices Act 1902*.

(3) Part VII of the *Justices Act 1902*, with any necessary changes, applies to an order made under that Part by virtue of subsection (1).

**PART 18 — AMENDING AND ENFORCING CONDITIONAL
RELEASE ORDERS AND COMMUNITY ORDERS**

Division 1 — Preliminary

Interpretation

125. (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 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.

***Division 2 — Amending or cancelling conditional
release orders and community orders***

Application to amend or cancel

- 126.** (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;
 - (b) if a court of petty sessions imposed the CRO or community order, to any court of petty sessions; 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.

Court may confirm, amend or cancel

- 127.** (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

Re-offender may be dealt with or committed

128. (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 complaint 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 a court of petty sessions, 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.

Complaint alleging re-offending

129. (1) If a person has been convicted and dealt with (in this State or elsewhere) for an offence (other than an offence under section 131 (1)) and the offence was committed while the person was subject to a CRO or community order imposed in relation to another offence, a complaint may be made alleging that the person committed an offence while subject to the order.

(2) The complaint may be made at any time up until 1 year after the CRO or community order ceases to be in force.

(3) The complaint may be made —

- (a) if the person was subject to a CRO, by any person;
- (b) if the person was subject to a community order, only by the CEO.

(4) The complaint must be made in writing before a justice who may issue a summons or, if the complaint is on oath, a warrant to have the person arrested.

(5) The complaint must be filed with, and the summons must direct the person to appear, or the warrant must direct that the person be brought before —

- (a) the court that imposed the order, if the Children's Court or a superior court imposed the CRO or community order;
- (b) a court of petty sessions, if the CRO or community order was imposed by such a court.

(6) The summons must be served on the person personally or left at the place where the person was last known to be living.

(7) If a person does not appear in answer to the summons the court concerned may issue a warrant to have the person arrested and brought before it.

(8) The court before which a person appears under this section may deal with the person under section 130.

How re-offender may be dealt with

130. (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***

Breach of requirement: offence

131. (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 complaint under the *Justices Act 1902* alleging an offence under subsection (1) must be in writing and may be made —

- (a) in the case of an alleged breach of a CRO, by any person;
- (b) in the case of an alleged breach of a community order, only by the CEO.

(3) A complaint may be made at any time up until 1 year after the CRO or community order ceases to be in force.

(4) The complaint is to be dealt with under the *Justices Act 1902*.

(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 complaint.

Breach of requirement: procedure and penalty

132. (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 a court of petty sessions 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 a court of petty sessions 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).

Breach of requirement: court's powers to deal with

133. (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

Facilitation of proof

134. (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 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 was signed by a person who at the time was the CEO.

Compliance with CRO or community order to be taken into account

135. (1) This section applies if a court is dealing with a person under —

- (a) section 127 (2);
- (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.

Re-sentencing: court's powers

136. (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);

(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.

PART 19 — ROYAL PREROGATIVE OF MERCY

Royal Prerogative of Mercy not affected

137. This Act does not affect the Royal Prerogative of Mercy or limit any exercise of it.

Effect of pardon

138. (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.

Governor may remit order to pay money

139. 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 Crown or not.

Petition may be referred to CCA

140. (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 Criminal 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

s. 141

(b) for an opinion on any specific matter relevant to determining the petition.

(2) The Court of Criminal Appeal must give effect to the referral.

Offender may be paroled

141. (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 1995* applies in respect of the parole order and to the offender to whom the parole order applies.

Exercise of the Royal Prerogative in case of strict security life imprisonment

142. If in the exercise of the Royal Prerogative of Mercy an order is made in relation to a person sentenced to strict security life imprisonment, 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.

PART 20 — MISCELLANEOUS

Guideline judgments

143. (1) The Full Court of the Supreme Court or the Court of Criminal 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.

Chief Justice may report to Parliament

144. (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.

Failure to comply with procedural requirements

145. (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.

Questions of fact in superior courts

146. 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.

Operation of other Acts not affected

147. 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.

Regulations

148. (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 authorize the CEO to approve forms for the purposes of this Act.

Rules of court

149. A court may make rules of court in relation to any matter necessary or convenient for giving effect to this Act.

SCHEDULE 1

ACTS, FINES UNDER WHICH ARE NOT TO BE CREDITED TO
THE CONSOLIDATED FUND

[Section 60 (2)]

Act	Person or fund to which a fine under the Act is to be paid or credited
<i>Aboriginal Communities Act 1979</i>	The council of the community that made the by-law under which the fine was imposed.
<i>Albany Port Authority Act 1926</i>	Albany Port Authority.
<i>Builders' Registration Act 1939</i>	Builders' Registration Board of Western Australia.
<i>Bunbury Port Authority Act 1909</i>	Bunbury Port Authority.
<i>Bush Fires Act 1954</i>	Bush Fires Board or a local government as provided by section 55 of that Act.
<i>Cattle Industry Compensation Act 1965</i>	Cattle Industry Compensation Fund.
<i>City of Perth Parking Facilities Act 1956</i>	Parking Fund.
<i>Colleges Act 1978</i>	The college that made the by-law under which the fine was imposed.
<i>Corporations (Western Australia) Act 1990</i>	The Commonwealth.
<i>Curtin University of Technology Act 1966</i>	Curtin University of Technology.
<i>Dampier Port Authority Act 1985</i>	Dampier Port Authority.
<i>Dental Act 1939</i>	Dental Board of Western Australia.
<i>Dog Act 1976</i>	Local Authority as provided by section 10 (3) of that Act.
<i>Edith Cowan University Act 1984</i>	Edith Cowan University.
<i>Esperance Port Authority Act 1968</i>	Esperance Port Authority.

Sch. 1

<i>Fremantle Port Authority Act 1902</i>	Fremantle Port Authority.
<i>Fruit Growing Industry (Trust Fund) Act 1941</i>	Fruit Growing Industry Trust Fund.
<i>Geraldton Port Authority Act 1968</i>	Geraldton Port Authority.
<i>Land Drainage Act 1925</i>	Water Corporation.
<i>Litter Act 1979</i>	Keep Australia Beautiful Council (W.A.) Fund or as provided by section 31 of that Act.
<i>Medical Act 1894</i>	Medical Board.
<i>Metropolitan Water Authority Act 1982</i>	Water Corporation.
<i>Metropolitan Water Supply, Sewerage, and Drainage Act 1909</i>	Water Corporation or the Water and Rivers Commission, as the case may require.
<i>Murdoch University Act 1973</i>	Senate of the Murdoch University.
<i>Painters' Registration Act 1961</i>	Painters' Registration Board.
<i>Parks and Reserves Act 1895</i>	The Board of Parks and Reserves that made the by-law under which the fine was imposed.
<i>Port Hedland Port Authority Act 1970</i>	Port Hedland Port Authority.
<i>Potato Growing Industry Trust Fund Act 1947</i>	Potato Growing Industry Trust Fund.
<i>Poultry Industry (Trust Fund) Act 1948</i>	Poultry Industry Trust Fund.
<i>Queen Elizabeth II Medical Centre Act 1966</i>	Queen Elizabeth II Medical Centre Trust.
<i>Rottnest Island Authority Act 1987</i>	Rottnest Island Authority.
<i>University of Notre Dame Australia Act 1989</i>	The Board of Governors of the University of Notre Dame Australia.
<i>University of Western Australia Act 1911</i>	Senate of the University of Western Australia.
<i>Water Boards Act 1904</i>	Water Board.

Waterways Conservation Act 1976 Water and Rivers Commission.

*Western Australian Greyhound
Racing Association Act 1981* Western Australian Greyhound
Racing Association Fund.

*Workers' Compensation and
Rehabilitation Act 1981* Workers' Compensation and
Rehabilitation General Fund.
