

Western Australia

## **Sentencing Act 1995**

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# Sentencing Act 1995

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## CONTENTS

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<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Application	2
4.	Interpretation and abbreviations	2
5.	Civil liability not affected	4
<b>Part 2 — General matters</b>		
<b>Division 1 — Sentencing principles</b>		
6.	Principles of sentencing	5
7.	Aggravating factors	6
8.	Mitigating factors	6
<b>Division 2 — Miscellaneous</b>		
9.	Statutory penalty: effect of	7
10.	Effect of change of statutory penalty	8
11.	Person not to be sentenced twice on same evidence	8
12.	Common law bonds abolished	9
<b>Part 3 — Matters preliminary to sentencing</b>		
<b>Division 1 — Preliminary</b>		
13.	Interpretation	10
<b>Division 2 — General</b>		
14.	Offender to be present for sentencing	10
14A.	Court may sentence by video link	11
15.	Court may inform itself as it thinks fit	12

16.	Court may adjourn sentencing	12
17.	Court's powers on adjourning	12
18.	Committal for sentence	13
	<b>Division 3 — Information about the offender</b>	
20.	Pre-sentence report: court may order	13
21.	Pre-sentence report: content	14
22.	Pre-sentence report: preparation	14
23.	Information about an offender's time in custody	15
	<b>Division 4 — Information about victims etc.</b>	
24.	Victim impact statement	15
25.	Victim impact statement: content	16
26.	Victim impact statement: use in court	16
	<b>Division 5 — Mediation</b>	
27.	Mediation report: court may order and receive	16
28.	Mediation report: content	17
29.	Mediation report: preparation	17
30.	Mediation report: use in court	17
	<b>Division 6 — Other pending charges</b>	
31.	Interpretation	17
32.	Pending charges: offender may request court to deal with	18
33.	Pending charges: court may deal with	18
	<b>Part 3A — Pre-sentence order</b>	
	<b>Division 1 — General</b>	
33A.	When PSO may be made	20
33B.	PSO: nature	21
33C.	Making a PSO	22
33D.	PSO: standard obligations	22
33E.	PSO: primary requirements	23
33F.	Supervision requirement	23
33G.	Programme requirement	24
33H.	Curfew requirement	25
33I.	Performance reports	28
33J.	Sentencing day: how offender to be dealt with	29
33K.	Sentencing an offender after a PSO	29
	<b>Division 2 — Amending and enforcing PSOs</b>	
33L.	Interpretation	30
33M.	Application to amend or cancel	30

33N.	Court may confirm, amend or cancel PSO	31
33O.	Re-offending while subject to a PSO	32
33P.	Breach etc. of PSO, powers of CEO and court	34
33Q.	Facilitation of proof	35
<b>Part 4 — The sentencing process</b>		
34.	Explanation of sentence	36
35.	Reasons for imprisonment must be given	36
36.	Issue of warrant of commitment	37
37.	Correction of sentence	37
37A.	Offender who reneges on promise to assist authorities may be re-sentenced	38
38.	Imprisonment by justices: magistrate to review	38
<b>Part 5 — Sentencing options</b>		
39.	Sentences for a natural person	41
40.	Sentences for a body corporate	42
41.	If statutory penalty is imprisonment only: sentencing options	43
42.	If statutory penalty is imprisonment and fine: sentencing options	44
43.	If statutory penalty is imprisonment or fine: sentencing options	45
44.	If statutory penalty is fine only: sentencing options	46
45.	Spent conviction order: making and effect of	46
<b>Part 6 — Release of offender without sentence</b>		
46.	Release without sentence	49
<b>Part 7 — Conditional release order</b>		
47.	When CRO may be imposed	50
48.	CRO: nature of	50
49.	CRO: requirements	50
50.	Court may direct offender to re-appear	51
51.	Ensuring compliance with CRO	51
52.	Enforcing a CRO	53
<b>Part 8 — Fine</b>		
53.	Considerations when imposing a fine	55

54.	One fine for 2 or more offences	55
55.	Apportionment of fine between joint offenders	56
56.	Assault victim may be awarded fine	56
57.	Enforcement of fine	56
57A.	Fine enforcement by means of WDO	57
57B.	Court may cancel order on application of Fines Enforcement Registrar	58
58.	Imprisonment until fine is paid	59
59.	Imprisonment if fine is not paid	60
60.	Application of fine etc.	62

**Part 9 — Community based order**

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

**Part 10 — Intensive supervision order**

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

**Part 11 — Suspended imprisonment**

76.	Imprisonment may be suspended	77
77.	Effect of suspending imprisonment	77
78.	Re-offender may be dealt with or committed	78
79.	Re-offending, alleging in court	79
80.	How re-offender to be dealt with	80

## **Part 12 — Conditional suspended imprisonment**

### **Division 1 — Imposition and effect of CSI**

81.	Certain courts may suspend imprisonment conditionally	83
82.	Effect of CSI	84
83.	CSI: standard obligations	84
84.	CSI: primary requirements	85
84A.	Programme requirement	85
84B.	Supervision requirement	86
84C.	Curfew requirement	87

### **Division 2 — Consequences of re-offending**

84D.	Re-offender may be dealt with or committed	90
84E.	Complaint alleging re-offending	91
84F.	How re-offender to be dealt with	92

### **Division 3 — Amending, cancelling and enforcing CSI requirements**

84G.	Interpretation	94
84H.	Application to amend or cancel	94
84I.	Court may confirm, amend or cancel requirement	95
84J.	Breach of CSI requirement: offence	95
84K.	Breach of CSI requirement: procedure and penalty	96
84L.	Breach of requirement: court's powers to deal with	96
84M.	Facilitation of proof	98

### **Division 4 — Functions of speciality courts as to CSI**

84N.	Application of this Division	98
84O.	Review of CSI by speciality court	99
84P.	Speciality court to deal with re-offender	99
84Q.	Speciality court to deal with application to amend or cancel CSI	100
84R.	Speciality court to deal with proceedings for breaches	100

## **Part 13 — Imprisonment**

### **Division 1 — Preliminary**

85.	Interpretation and calculations	101
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	<b>Division 2 — Imposing imprisonment</b>	
86.	Term of 6 months or less not to be imposed	102
87.	Taking time on remand into account	103
88.	Concurrent, cumulative or partly cumulative terms	103
89.	Offender may be made eligible for parole	104
90.	Imposing life imprisonment	105
91.	Imposing strict security life imprisonment	106
	<b>Division 3 — Release from imprisonment</b>	
93.	Release from parole term	107
94.	Aggregation of parole terms for certain purposes	107
95.	Release from fixed term that is not parole term	109
96.	Release from life term	109
	<b>Division 4 — Miscellaneous</b>	
97.	Application of <i>Sentence Administration Act 1995</i>	110
	<b>Part 14 — Indefinite imprisonment</b>	
98.	Indefinite imprisonment: superior court may impose	111
99.	Other terms not precluded by indefinite imprisonment	112
100.	Commencement of indefinite imprisonment	112
101.	Release from indefinite imprisonment	112
	<b>Part 15 — Other orders forming part of a sentence</b>	
	<b>Division 1 — General matters</b>	
102.	Principles	113
103.	Disqualification orders: calculation of term	113
104.	Disqualification may be for life	113
	<b>Division 2 — Disqualification orders</b>	
105.	Driver's licence: disqualification	113
106.	Firearms licence etc.: disqualification	115
107.	Marine qualification: disqualification	116
108.	Passport: surrender etc.	118
	<b>Part 16 — Reparation orders</b>	
	<b>Division 1 — General matters</b>	
109.	Interpretation	120
110.	Principles	120



111.	Making a reparation order	120
112.	Facts relevant to making an order	121
113.	Victim's behaviour and relationship relevant	122
114.	Civil standard of proof	122
114A.	Victim may appeal against refusal of reparation order	122
115.	Effect of order on civil proceedings etc.	123
	<b>Division 2 — Compensation order</b>	
116.	Interpretation	123
117.	Compensation order in favour of a victim	124
118.	Compensation order in favour of a third party	124
119.	Enforcing a compensation order	125
119A.	Sentencing court may order imprisonment until compensation is paid	125
	<b>Division 3 — Restitution order</b>	
120.	Court may make restitution order	126
120A.	Sheriff's powers to enforce restitution order	127
121.	Enforcing a restitution order	127
122.	Non-compliance with restitution order is an offence	128
	<b>Part 17 — Other orders not forming part of a sentence</b>	
123.	Principles	129
124.	Restraining orders	129
124A.	Offender reporting orders	129
	<b>Part 18 — Amending and enforcing conditional release orders and community orders</b>	
	<b>Division 1 — Preliminary</b>	
125.	Interpretation	130
	<b>Division 2 — Amending or cancelling conditional release orders and community orders</b>	
126.	Application to amend or cancel	130
127.	Court may confirm, amend or cancel	131

<b>Division 3 — Re-offending while subject to a conditional release order or a community order</b>		
128.	Re-offender may be dealt with or committed	132
129.	Re-offending, alleging in court	133
130.	How re-offender may be dealt with	135
<b>Division 4 — Breaching a conditional release order or a community order</b>		
131.	Breach of requirement: offence	135
132.	Breach of requirement: procedure and penalty	136
133.	Breach of requirement: court's powers to deal with	137
<b>Division 5 — Miscellaneous</b>		
134.	Facilitation of proof	138
135.	Compliance with CRO or community order to be taken into account	139
136.	Re-sentencing: court's powers	139
<b>Part 19 — Royal Prerogative of Mercy</b>		
137.	Royal Prerogative of Mercy not affected	141
138.	Effect of pardon	141
139.	Governor may remit order to pay money	141
140.	Petition may be referred to Court of Appeal	141
141.	Offender may be paroled	142
142.	Exercise of the Royal Prerogative in case of strict security life imprisonment	142
<b>Part 20 — Miscellaneous</b>		
143.	Guideline judgments	143
143A.	Sentencing guidelines for courts of summary jurisdiction	143
144.	Chief Justice may report to Parliament	144
145.	Failure to comply with procedural requirements	144
146.	Questions of fact in superior courts	144
147.	Operation of other Acts not affected	144
148.	Regulations	145
149.	Rules of court	145

**Schedule 1 — Acts, fines under which  
are not to be credited to the  
Consolidated Fund**

**Notes**

Compilation table	149
Provisions that have not come into operation	152



Western Australia

## **Sentencing Act 1995**

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

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Sentencing Act 1995* <sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation <sup>1</sup>.

### **3. Application**

- (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 29 of the *Children’s Court of Western Australia Act 1988* or section 16 of the *Magistrates Court Act 2004*; or
  - (c) for contempt of a House of Parliament.

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

### **4. Interpretation and abbreviations**

- (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;

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

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

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

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

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

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

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

**“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;

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

**“speciality court”** means a court —

- (a) that is prescribed;
- (b) that is sitting at a place prescribed; and
- (c) that is dealing with offenders of a class prescribed, by the regulations and that is constituted by a judicial officer who is approved by the judicial officer who heads the court so prescribed;

**s. 5**

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

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

**“superior court”** means the Supreme Court or the District Court.

(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;

**“CSI”** for conditional suspended imprisonment;

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

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

**“PSO”** for pre-sentence order.

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

*[Section 4 amended by No. 50 of 2003 s. 4, 14, 23 and 29(3); No. 84 of 2004 s. 65; No. 27 of 2004 s. 6(1) and (2).]*

**5. Civil liability not affected**

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



## Part 2 — General matters

### Division 1 — Sentencing principles

#### 6. Principles of sentencing

- (1) A sentence imposed on an offender must be commensurate with the seriousness of the offence.
- (2) The seriousness of an offence must be determined by taking into account —
  - (a) the statutory penalty for the offence;
  - (b) the circumstances of the commission of the offence, including the vulnerability of any victim 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.

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

**7. Aggravating factors**

- (1) Aggravating factors are factors which, in the court's opinion, increase the culpability of the offender.
- (2) An offence is not aggravated by the fact that —
  - (a) the offender pleaded not guilty to it;
  - (b) the offender has a criminal record; or
  - (c) a previous sentence has not achieved the purpose for which it was imposed.
- (3) If the statutory penalty for an offence is greater if the offence is committed in certain circumstances than if it is committed without the existence of those circumstances, then —
  - (a) an offender is not liable to the greater statutory penalty unless he or she has been charged and convicted of committing the offence in those circumstances; and
  - (b) whether or not the offender was so charged, the existence of those circumstances may be taken into account as aggravating factors.

**8. Mitigating factors**

- (1) Mitigating factors are factors which, in the court's opinion, decrease the culpability of the offender or decrease the extent to which the offender should be punished.
- (2) 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 realised, directly or indirectly, by the offender, or that is subject to the effective control of the offender, as a result of the commission of the offence 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.
- (5) If because an offender undertakes to assist law enforcement authorities a court reduces the sentence it would otherwise have imposed on the offender, the court must state that fact and the extent of the reduction in open court.

*[Section 8 amended by No. 29 of 1998 s. 15.]*

### **Division 2 — Miscellaneous**

#### **9. Statutory penalty: effect of**

- (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.

*[(4) repealed]*

- (5) The fact that a court is required to impose a mandatory penalty or a minimum penalty does not prevent it from —
  - (a) making a spent conviction order under Part 5 if the sentencing option imposed by the court is one 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.

*[Section 9 amended by No. 50 of 2003 s. 9.]*

**10.      Effect of change of statutory penalty**

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

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

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

offence under the law of that other place, the person is not to be sentenced for the offence under the law of this State.

- (3) Despite subsections (1) and (2), if an act or omission of an offender causes the death of another, the offender may be sentenced for the offence of which he or she is guilty by reason of causing the death despite the fact that he or she has already been sentenced for some other offence constituted by that act or omission.
- (4) Nothing in this section affects the operation of section 17 of *The Criminal Code*.

**12. Common law bonds abolished**

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

## **Part 3 — Matters preliminary to sentencing**

### **Division 1 — Preliminary**

#### **13. Interpretation**

In this Part —

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

- (a) a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender;
- (b) where the offence results in a death, any member of the immediate family of the deceased.

### **Division 2 — General**

#### **14. Offender to be present for sentencing**

- (1) A court is not to sentence an offender unless the offender is personally present in court or appears before the court by video link under section 14A.
- (2) Despite subsection (1), a court may, in an offender’s absence —
  - (a) under Part 6 impose no sentence; or
  - (b) under Part 8 impose a fine,and, in connection with such a sentence, may also make an order under Part 15, 16, or 17, or under another written law if that law does not require the offender to be present when such an order is made.
- (3) Despite subsection (1), a court may sentence an offender in his or her absence if the offender is in custody and the proceedings, because of the offender’s conduct, have been directed to proceed in the offender’s absence.

- (4) Despite subsection (2) or any other law that does not require an offender to be present when a sentence is imposed, a court may require an offender to appear personally to be sentenced.
- (5) For the purposes of subsections (1) and (4), a court may compel an offender to appear personally to be sentenced by —
- (a) issuing a summons and, if it is not obeyed, a warrant for the offender's arrest; or
  - (b) issuing a warrant for the offender's arrest.
- (6) A summons issued under subsection (5) is to be served by pre-paid post unless the court directs it be served personally.

*[Section 14 amended by No. 48 of 1998 s. 13.]*

**14A. Court may sentence by video link**

- (1) A court sentencing an offender may, on its own initiative or on an application by the prosecutor or the offender, direct that the offender appear before it by video link from a place in this State.
- (2) The court shall not make a direction under subsection (1) unless it is satisfied that —
- (a) the video link is available or can reasonably be made available; and
  - (b) the direction is in the interests of justice.
- (3) The place where an offender attends for sentencing by video link is taken to be part of the court for the purposes of the sentencing.
- (4) In this section —
- “video link”** means facilities (including closed circuit television) that enable, at the same time, a court at one place to see and hear a person at another place and vice versa.

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

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

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

**16. Court may adjourn sentencing**

- (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.

**17. Court's powers on adjourning**

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



- (2) If a court adjourns the sentencing of an offender, it must —
- (a) fix, or indicate by reference to a fact or event, the time; and
  - (b) fix the place,
- at which the sentence will be imposed.
- (3) If a court adjourns the sentencing of an offender, it may grant the offender bail.

**18. Committal for sentence**

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

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

*[19. Repealed by No. 29 of 1998 s. 18.]*

**Division 3 — Information about the offender**

**20. Pre-sentence report: court may order**

- (1) If a court considers it would be assisted in sentencing an offender by a pre-sentence report about the offender, it may order one.
- (2) A court committing an offender to another court for sentence may if it thinks fit order a pre-sentence report for the assistance of that other court.
- (2a) A court considering imposing a PSO must order a pre-sentence report about (among any other things) the offender's suitability to be the subject of a PSO.
- (3) A court considering imposing an ISO must order a pre-sentence report about (among any other things) the offender's suitability for such a sentence.

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

**21. Pre-sentence report: content**

- (1) When ordering a pre-sentence report a court may give instructions as to the issues to be addressed by the report.
- (2) In the absence of specific instructions from the court that ordered it, a pre-sentence report is to set out matters about the offender that are, by reason of this Act or sentencing practice, relevant to sentencing the offender or to the making of a reparation order under Part 16.
- (2a) If the court gives instructions that it do so, a pre-sentence report is to set out matters that are relevant to the making of an offender reporting order under section 13 of the *Community Protection (Offender Reporting) Act 2004* in respect of the offender.
- (3) A pre-sentence report may include reports as to the physical or mental condition of the offender, whether or not the court has asked for them.

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

**22. Pre-sentence report: preparation**

- (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.

**23. Information about an offender's time in custody**

- (1) When an offender is being sentenced for an offence the prosecutor must inform the court of the period, if any, that the offender has already spent in custody in relation to that offence and for no other reason.
- (2) If when an offender is being sentenced, he or she is already serving or sentenced to serve a term or terms of imprisonment, the prosecutor must inform the court of the date when the offender will be eligible to be released and whether the release will be on parole or not.
- (3) For the purposes of subsection (2) the date when an offender will be eligible to be released is to be determined without regard to the fact that an offender may be released under a re-entry release order made under the *Sentence Administration Act 2003*.
- (4) The CEO, on the request of a prosecutor, must give the prosecutor the information necessary for the purposes of subsections (1) and (2).

*[Section 23 amended by No. 50 of 2003 s. 29(3).]*

**Division 4 — Information about victims etc.**

**24. Victim impact statement**

- (1) A victim, or a person who may do so under subsection (2), may give a victim impact statement to a court to assist the court in determining the proper sentence for the offender.
- (2) If because of age, disability or any other reason a victim is personally incapable of giving a victim impact statement, another person may give it on the victim's behalf if the court is satisfied that it is appropriate for that other person to do so.

**25. Victim impact statement: content**

- (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.

**26. Victim impact statement: use in court**

- (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**

**27. Mediation report: court may order and receive**

- (1) If a court considers it would be assisted in sentencing an offender by a mediation report, it may order one.
- (2) A court committing an offender to another court for sentence may if it thinks fit order a mediation report for the assistance of that other court.
- (3) Whether or not a mediation report has been ordered, a mediator may give one to the sentencing court.

**28. Mediation report: content**

- (1) A mediation report is a written or oral report by a mediator about any mediation or attempted mediation between the offender and a victim.
- (2) In particular, a mediation report is to report —
  - (a) on the attitude of the offender to the victim and to the effects on the victim of the commission of the offence; and
  - (b) any agreement between the offender and the victim as to actions to be taken by the offender by way of reparation.

**29. Mediation report: preparation**

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.

**30. Mediation report: use in court**

- (1) A court may make a mediation report available to the prosecutor and to the offender, on such conditions as it thinks fit.
- (2) A court may rule as inadmissible the whole or any part of a mediation report.

**Division 6 — Other pending charges****31. Interpretation**

In this Division —

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

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

**32. Pending charges: offender may request court to deal with**

- (1) An offender who is to be sentenced by a superior court for an offence (in this Division referred to as “**the original offence**”) may request the court to also deal with any pending charges against him or her.
- (2) On such a request being made, a list of pending charges against the offender is to be prepared and served in accordance with rules of court.
- (3) The list must not include any indictable offence that the superior court would not have jurisdiction to deal with, even with the consent or at the election of the offender or the prosecutor.
- (4) For the purposes of this section a superior court is to be taken to have jurisdiction to deal with simple offences.

**33. Pending charges: court may deal with**

- (1) When a list of pending charges has been prepared and served, the superior court must ask the offender —
  - (a) to plead to any of the pending charges listed which the offender has not previously been convicted of; and
  - (b) to say if he or she wants the superior court to also pass sentence for each of those pending charges that he or she is convicted of.
- (2) If the 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.
- (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 3A — Pre-sentence order**

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

### **Division 1 — General**

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

#### **33A. When PSO may be made**

(1) In this section —

**“excluded offence”** means —

- (a) an offence the statutory penalty for which is or includes mandatory imprisonment; or
- (b) an offence under section 79 of the *Prisons Act 1981*;

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

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

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

- (a) that the seriousness of the imprisonable offence or offences warrants the imposition of a term of imprisonment under Part 13;
- (b) that a PSO would allow the offender to address his or her criminal behaviour and any factors which contributed to the behaviour; and
- (c) that if the offender were to comply with a PSO the court might not impose a term of imprisonment under Part 13 for the offence or offences.

(4) If the court makes a PSO in respect of an offender in respect of an imprisonable offence, the PSO applies in respect of any other



offence for which the court is sentencing offender, whether an imprisonable offence or not.

- (5) A court must not make a PSO in respect of an offender unless it has received a pre-sentence report about the offender.
- (6) If a pre-sentence report says that the offender is suitable to be the subject of a PSO, but the court decides not to make a PSO in respect of the offender, the court must give written reasons for its decision.
- (7) In subsection (6) —  
“**written reasons**” includes reasons given orally and subsequently transcribed.

*[Section 33A inserted by No. 50 of 2003 s. 6.]*

**33B. PSO: nature**

- (1) A PSO is an order that —
- (a) the offender must appear before the court at the time and place specified in the PSO (the “**sentencing day**”) to be sentenced for the offence or offences to which the PSO applies; and
  - (b) while the PSO is in force the offender must comply with —
    - (i) the standard obligations in section 33D; and
    - (ii) such of the primary requirements in section 33E as the court imposes.
- (2) The sentencing day must not be more than 2 years after the date on which the PSO is made.
- (3) A PSO —
- (a) comes into force on the day it is made; and
  - (b) ceases to be in force on the sentencing day or when a court cancels it, whichever happens first.

*[Section 33B inserted by No. 50 of 2003 s. 6.]*

**33C. Making a PSO**

- (1) If a court makes a PSO in respect of an offender, the court must adjourn the sentencing of the offender to the sentencing day.
- (2) When adjourning the sentencing under subsection (1) the court may also order that the offender reappear before the court prior to the sentencing day —
  - (a) at a time and place fixed by the court; or
  - (b) if and when summonsed by the court,so that the court can ascertain whether the offender is complying with the PSO.
- (3) An order may be made under subsection (2) on any reappearance of the offender pursuant to a previous order made under subsection (2).
- (4) If an offender does not reappear before a court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.
- (5) On the reappearance of an offender, section 33N applies.
- (6) If a court makes a PSO in respect of an offender, it may grant the offender bail.

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

**33D. PSO: standard obligations**

The standard obligations of a PSO are that the offender —

- (a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by a speciality court or a CCO;
- (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change, or as otherwise ordered by a speciality court;

- (c) must not leave Western Australia except with, and in accordance with, the permission of a speciality court or the CEO; and
- (d) must comply with section 76 of the *Sentence Administration Act 2003*.

*[Section 33D inserted by No. 50 of 2003 s. 6.]*

**33E. PSO: primary requirements**

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

- (a) a supervision requirement under section 33F;
- (b) a programme requirement under section 33G;
- (c) a curfew requirement under section 33H.

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

**33F. Supervision requirement**

- (1) The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —
  - (a) rehabilitating the offender;
  - (b) ensuring the offender complies with any direction given by the court when imposing the requirement.
- (2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.
- (3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —
  - (a) the effect of which could be achieved by imposing a programme requirement; or

- (b) that requires the offender to pay compensation or make restitution to any person or to perform any community or other work.
- (4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 8 weeks.
- (5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.
- (6) A supervision requirement ceases to be in force when the PSO ceases to be in force.

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

**33G. Programme requirement**

- (1) The purpose of a programme requirement is —
  - (a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and
  - (b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.
- (2) The programme requirement is a requirement that the offender must obey the orders of a speciality court or a CCO as to —
  - (a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;
  - (b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;
  - (c) attending educational, vocational, or personal development programmes or courses;
  - (d) residing at a specified place for the purposes of any of the matters in paragraph (a), (b) or (c);

- (e) more than one of the above.
- (3) A speciality court or a CCO must not order an offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.
- (4) A person is not to administer treatment of any sort mentioned in subsection (2) to an offender without the informed consent of the offender.
- (5) The requirements of a programme requirement imposed as part of a PSO are additional to the requirements of any other programme requirement applicable to the offender under another PSO or a community order or a sentence of CSI.
- (6) A programme requirement ceases to be in force when a speciality court or a CCO gives the offender notice to that effect, or the PSO ceases to be in force, whichever happens first.
- (7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 33G inserted by No. 50 of 2003 s. 6; amended by No. 27 of 2004 s. 6(4).]*

### **33H. Curfew requirement**

- (1) The purposes of the curfew requirement are —
- (a) to allow for the movements of an offender to be restricted during periods when there is a high risk of the offender offending; and
  - (b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.
- (2) The curfew requirement is a requirement that the offender —
- (a) must remain at a specified place (the “**specified place**”), for specified periods, subject to subsection (8); and

**Sentencing Act 1995**

**Part 3A** Pre-sentence order

**Division 1** General

**s. 33H**

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- (b) must submit to surveillance or monitoring as ordered by a speciality court or a CCO.
- (3) The term of a curfew requirement must be set by the court when it imposes the requirement; but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under a PSO or an ISO or a sentence of CSI, for a continuous period that exceeds 6 months.
- (4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another PSO or an ISO or a sentence of CSI unless the court orders otherwise.
- (5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under PSOs or ISOs or sentences of CSI must not exceed 6 months.
- (6) The court may give directions as to the periods when the offender ought to be subject to a curfew.
- (7) The offender is not to be required by the curfew requirement to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.
- (8) The offender may only leave the specified place during a specified period —
  - (a) to obtain urgent medical or dental treatment for the offender;
  - (b) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person;
  - (c) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere;
  - (d) for a purpose approved of by a CCO; or
  - (e) on the order of a CCO.
- (9) The curfew requirement ceases to be in force when its term ends, or when the PSO ceases to be in force, whichever happens first.

- (10) Without limiting the means by which the offender may be kept under surveillance or monitored, a speciality court or a CCO may, for the purposes of subsection (2)(b), order an offender —
- (a) to wear any device; or
  - (b) to permit the installation of any device or equipment at the place where the offender resides.
- (11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.
- (12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —
- (a) when the offender may leave;
  - (b) the period of the authorised absence;
  - (c) when the offender must return;
  - (d) the method of travel to be used by the offender during the absence; and
  - (e) the manner in which the offender must report his or her whereabouts.
- (13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —
- (a) enter or telephone the specified place;
  - (b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or
  - (c) question any person at any place referred to in paragraph (a) or (b).
- (14) A person must not —
- (a) hinder a person exercising powers under subsection (13); or

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

Penalty: \$2 000 and imprisonment for 12 months.

- (15) In this section —

**“specified”** means specified by a speciality court or the CEO from time to time.

*[Section 33H inserted by No. 50 of 2003 s. 6; amended by No. 27 of 2004 s. 6(4).]*

**33I. Performance reports**

- (1) A CCO must give a court a performance report about an offender who is subject to a PSO —
  - (a) if required to do so by the court and in the form and at a forum directed by the speciality court; and
  - (b) in any event on or before the sentencing day.
- (2) A CCO may give a court a performance report at any time if the CCO considers it appropriate to do so.
- (3) A performance report must report —
  - (a) on the offender’s behaviour while subject to the PSO; and
  - (b) if the report is required for a hearing prior to the sentencing day, on whether the offender is suitable to continue to be the subject of a PSO.
- (4) A performance report may be made —
  - (a) by more than one person; and
  - (b) in writing or orally.
- (5) A written performance report must not be given to anyone other than the court and the CEO.



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

*[Section 33I inserted by No. 50 of 2003 s. 6.]*

**33J. Sentencing day: how offender to be dealt with**

- (1) When an offender appears before the court —
- (a) on the sentencing day specified in the PSO; or
  - (b) as a result of a warrant issued under subsection (2),
- the court is to sentence the offender.
- (2) If an offender does not appear on the sentencing day specified in the PSO, the court may issue a warrant to have the offender arrested and brought before it.

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

**33K. Sentencing an offender after a PSO**

- (1) A court sentencing an offender who has been subject to a PSO, whether on the sentencing day or on a day prior to that day—
- (a) must take into account the offender's behaviour while subject to the PSO; and
  - (b) may use any sentencing option available under Part 5 to the court in respect of the offence concerned.
- (2) For the purposes of subsection (1), the court may adjourn the sentencing in order to obtain a performance report made under section 33I or any other information relevant to the offender's behaviour while subject to the PSO.
- (3) The court referred to in subsection (1) need not be constituted by the same judicial officer as constituted the court when the PSO was made.

**Sentencing Act 1995**

**Part 3A** Pre-sentence order

**Division 2** Amending and enforcing PSOs

**s. 33L**

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

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

**Division 2 — Amending and enforcing PSOs**

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

**33L. Interpretation**

- (1) In this Division —

“**requirement**”, in relation to a PSO, means the standard obligations and primary requirements of the PSO and any direction of the court that imposed the order.

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

*[Section 33L inserted by No. 50 of 2003 s. 6.]*

**33M. Application to amend or cancel**

- (1) An application to amend or cancel a PSO may be made only by the offender or a CCO.
- (2) The application must be made —
- (a) if the Children’s Court made the PSO, to that court;
  - (b) if the Magistrates Court made the PSO, to the Magistrates Court; or
  - (c) if a superior court made the PSO, to that court.
- (3) The application must be made in accordance with the regulations.
- (4) On an application made under this section, section 33N applies.

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

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

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

- (a) were wrongly or inaccurately presented to the court when it made the PSO; or
- (b) have so altered since the court made the PSO that —
  - (i) the offender will not be able to comply with the requirements of the PSO; or
  - (ii) it is no longer appropriate for the offender to be subject to the PSO,

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

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

- (a) amend the PSO —
  - (i) by amending or cancelling the primary requirements of the PSO or any direction given by the court that made the PSO;
  - (ii) by adding a primary requirement or giving a direction that could have been given by the court that made the PSO;
  - (iii) subject to section 33B(2), by changing the sentencing day; or
  - (iv) by a combination of those;

or

- (b) cancel the PSO and sentence the offender.

(3) A court that under subsection (2)(a) may amend a PSO that applies to an offender who is subject to one or more curfew requirements under PSOs or ISOs of 6 months may, despite

**Sentencing Act 1995**

**Part 3A** Pre-sentence order

**Division 2** Amending and enforcing PSOs

**s. 33O**

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sections 33H(3) and (5), 75(3) and (5) and 84C(3) and (5), amend any curfew requirement in the PSO by extending its term by not more than one month at a time or add a curfew requirement the term of which is not more than one month.

- (4) If the court decides to cancel the last remaining requirement of a PSO, the court must cancel the PSO and sentence the offender.
- (5) On a reappearances ordered under section 33C(2) or compelled under section 33C(2) or (4) or on an application made under section 33M in respect of a PSO, the court need not be constituted by the same judicial officer as constituted the court when the PSO was made.

*[Section 33N inserted by No. 50 of 2003 s. 6; amended by No. 27 of 2004 s. 6(4).]*

**33O. Re-offending while subject to a PSO**

- (1) This section applies if —
  - (a) a court convicts a person of an offence the statutory penalty for which is or includes imprisonment; and
  - (b) the offence was committed while the person was subject to a PSO made in relation to another offence.
- (2) The court —
  - (a) if it is the Children’s Court, may deal with the person under subsection (5) unless the PSO was made by a superior court in which case it must commit the person to that court and that court may deal with the person under subsection (5);
  - (b) if it is the Magistrates Court, may deal with the person under subsection (5) unless the PSO was made —
    - (i) by the Children’s Court for an indictable offence; or
    - (ii) by a superior court,

- in which case the court must commit the person to the court that made the PSO and that court may deal with the person under subsection (5);
- (c) if it is the District Court, may deal with the person under subsection (5) unless the PSO was made by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that made the PSO and that court may deal with the person under subsection (5);
  - (d) if it is the Supreme Court, may deal with the person under subsection (5).
- (3) A court that under subsection (2) commits a person to another court must certify that the person has been convicted of an offence committed while subject to a PSO.
- (4) Subsection (2) does not affect the powers of the court that convicts a person of the offence committed while the person was subject to a PSO to deal with the person for that offence.
- (5) A court that may deal with an offender under this subsection may —
- (a) if the PSO is in force —
    - (i) confirm the PSO;
    - (ii) amend the PSO in any of the ways described in section 33N(2)(a); or
    - (iii) cancel the PSO and sentence the offender.
  - (b) if the PSO is not in force and the offender has been sentenced for the offence or offences to which the PSO applied, recall the order imposing the sentence and impose a sentence that takes account of —
    - (i) the fact that the offender committed an offence while subject to the PSO; and

**Sentencing Act 1995**

**Part 3A** Pre-sentence order

**Division 2** Amending and enforcing PSOs

**s. 33P**

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

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

**33P. Breach etc. of PSO, powers of CEO and court**

- (1) If —
  - (a) an offender is subject to a PSO; and
  - (b) the CEO, has reasonable grounds to believe that the offender has been, is, or is likely to be, in breach of any requirement of the PSO,the CEO may issue a warrant to have the offender arrested and brought before —
  - (c) the court that made the PSO, if the Children’s Court or a superior court made the PSO;
  - (d) the Magistrates Court, if the PSO was made by that court.
- (2) The warrant must be in the prescribed form.
- (3) If the court before which the offender is brought is satisfied that the offender has been, is, or is likely to be, in breach of any requirement of the PSO, the court may —
  - (a) amend the PSO in any of the ways described in section 33N(2)(a); or
  - (b) cancel the PSO and sentence the offender,but otherwise must confirm the PSO.
- (4) Proceedings under this section may be dealt with simultaneously with any proceedings under section 55 of the *Bail Act 1982*.

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

**33Q. Facilitation of proof**

- (1) This section applies only in relation to proceedings under this Part.
- (2) A copy of a PSO certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.
- (3) A copy of an order amending a PSO certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.
- (4) A certificate of a court under section 33O(3) is, in the absence of evidence to the contrary, evidence of its contents.
- (5) In proceedings before a court under section 33P, evidence of an alleged breach of a requirement of a PSO may be given by tendering a certificate signed by the CEO stating the particulars of the alleged breach.
- (6) Section 134(6) applies to a certificate referred to in subsection (5).

*[Section 33Q inserted by No. 50 of 2003 s. 6.]*

## **Part 4 — The sentencing process**

### **34. Explanation of sentence**

- (1) A court sentencing an offender must, if the offender is personally present in court or appearing before the court by video link under section 14A, explain to the offender, in language likely to be understood —
  - (a) the effect of; and
  - (b) the obligations of the offender and the consequences of not complying with them that result from,  
  
the sentence and any order in addition to the sentence.
- (2) If a court sentencing an offender imposes a fixed term (as defined in section 85), the court is to state in open court the minimum period that the offender, as a result of the sentence and the operation of this Act, will serve in custody in respect of the term or, if more than one term is imposed, in respect of the aggregate of the terms.
- (3) In complying with subsection (2) a court need not take account of any other sentence of imprisonment imposed previously on the offender which the offender is serving or has yet to serve.  
  
*[Section 34 amended by No. 48 of 1998 s. 15; No. 50 of 2003 s. 24.]*

### **35. Reasons for imprisonment must be given**

- (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.

### 36. Issue of warrant of commitment

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

### 37. Correction of sentence

- (1) If a court sentences an offender in a manner that is not in accordance with this Act or the written law under which the offence is committed, the court may recall the order imposing the sentence and impose a sentence that is.
- (2) The powers in subsection (1) may be exercised by a court on its own initiative or on an application by the offender or the prosecutor made in accordance with the regulations, but in any event the court must give all parties the opportunity to be heard.
- (3) If a court’s order imposing a sentence contains a clerical mistake or an error arising from an accidental slip or omission, the court may correct it at any time on its own initiative without recalling the order, but the court must ensure that all parties and relevant authorities are notified of the correction.
- (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.

**s. 37A**

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**37A. Offender who reneges on promise to assist authorities may be re-sentenced**

- (1) If —
- (a) a court reduces the sentence it would otherwise have imposed on an offender for an offence (the “**full sentence**”) because the offender undertakes to assist law enforcement authorities; and
  - (b) the offender subsequently fails wholly or partly to fulfil the undertaking,

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

- (2) The powers in subsection (1) may be exercised by a court only on an application by the prosecutor made in accordance with the regulations, but the court must give all parties the opportunity to be heard.
- (3) The powers in subsection (1) may be exercised by a court even if the reduced sentence has been varied on appeal, and in that case any sentence imposed must be based on the varied sentence and the court must take into account the extent to which the varied sentence has taken effect and the extent to which the offender has complied with any orders made under it.
- (4) A sentence imposed under this section may be appealed.
- (5) In this section —
- “**sentence**” includes an order in addition to sentence.

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

**38. Imprisonment by justices: magistrate to review**

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

- (a) sentence an offender to suspended imprisonment or CSI;  
or
  - [(b) deleted]*
  - (c) sentence an offender to a term of imprisonment,  
a magistrate must review the sentence within 2 working days  
after it is imposed.
- (2) The review is to be based on an examination of the court papers relevant to the offence (or copies or faxes of them) in the absence of the parties and is not to involve a hearing.
  - (3) Having reviewed the original sentence, the magistrate may —
    - (a) confirm the original sentence; or
    - (b) cancel the original sentence and order the offender to appear before a magistrate to be sentenced again.
  - (4) If the original sentence is cancelled the offender must be bailed or remanded in custody to appear to be sentenced again.
  - (5) A magistrate sentencing an offender again may sentence the offender in any manner the magistrate could if he or she had just convicted the offender of the offence for which the original sentence was imposed.
  - (6) In deciding how to deal with an offender when sentencing the offender again, the magistrate must take into account any time spent in custody by the offender under the original sentence.
  - (7) A failure to review the original sentence under this section does not affect its validity.
  - (8) The original sentence, if cancelled, may not be appealed against.
  - (9) This section does not affect any right of appeal against an original sentence that is confirmed on review or that is not reviewed under this section.
  - (10) This section does not affect any right of appeal against a sentence imposed under this section by a magistrate.

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

## **Part 5 — Sentencing options**

### **39. Sentences for a natural person**

- (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 CSI and order the release of the offender; or
  - (h) under Part 13 impose a term of imprisonment.
- (3) A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.
- (4) A court must not use more than one of the sentencing options in subsection (2) when sentencing an offender for an offence except where section 41 or 42 applies.

**s. 40**

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- (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.

*[Section 39 amended by No. 29 of 1998 s. 18; No. 27 of 2004 s. 6(3).]*

**40. Sentences for a body corporate**

- (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).
- (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.

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

- (1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that imprisonment but not a fine may be imposed.
- (2) If the offender is a natural person, the court may —
  - (a) use any one of the sentencing options in section 39(2);  
or
  - (b) use any one of the sentencing options in section 39(2) (other than those in paragraphs (a) or (c) of that section) and in addition fine the offender.
- (2a) If the statutory penalty for the offence is such that imprisonment must be imposed, then despite subsection (2) the court must impose a term of imprisonment in accordance with the statutory penalty, unless the written law creating the offence provides otherwise.
- (3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.
- (4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).
- (5) If the court is a superior court and decides to fine an offender, it may impose a fine of any amount.

**s. 42**

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

(a) if the offender is a natural person:

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

(b) if the offender is a body corporate:

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

*[Section 41 amended by No. 50 of 2003 s. 10; No. 59 of 2004 s. 141.]*

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

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

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

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

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

(2a) If the statutory penalty for the offence is such that both a minimum fine and imprisonment may be imposed, then despite subsection (2) the court must impose one or both of the following —

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

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

unless the written law creating the offence provides otherwise.



- (3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.
- (4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).

*[Section 42 amended by No. 50 of 2003 s. 11.]*

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

- (1) This section applies if a court is sentencing an offender for an offence the statutory penalty for which is such that either imprisonment or a fine may be imposed.
- (2) If the offender is a natural person the court may use any one of the sentencing options in section 39(2).
- (2a) If the statutory penalty for the offence is such that either a minimum fine or imprisonment may be imposed, then despite subsection (2) the court must impose one of the following but not both —
  - (a) a fine that is at least the minimum fine and not more than any maximum fine for the offence;
  - (b) a sentencing option in section 39(2) that is listed after section 39(2)(c),

unless the written law creating the offence provides otherwise.

- (3) If a court imposes a term of imprisonment on an offender that is not suspended, it may, in addition, impose indefinite imprisonment under Part 14.
- (4) If the offender is a body corporate the court may use any one of the sentencing options in section 40(2).

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

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

- (1) If the statutory penalty for an offence is such that a fine but not imprisonment may be imposed, a court sentencing an offender for the offence may —
- (a) if the offender is a natural person —
    - (i) use any one of the sentencing options in section 39(2)(a), (b) and (c); or
    - (ii) in the case of an offence prescribed for the purposes of this section, use any one of the sentencing options in section 39(2)(a), (b), (c) and (d);
  - (b) if the offender is a body corporate, use any one of the options in section 40(2).
- (2) If the statutory penalty for an offence is such that a minimum fine must be imposed, then despite subsection (1) the court must impose a fine that is at least the minimum fine and not more than any maximum fine for the offence, unless the written law creating the offence provides otherwise.

*[Section 44 amended by No. 50 of 2003 s. 13 and 33(2).]*

**45. Spent conviction order: making and effect of**

- (1) Under section 39(2), a court sentencing an offender is not to make a spent conviction order unless —
- (a) it considers that the offender is unlikely to commit such an offence again; and
  - (b) having regard to —
    - (i) the fact that the offence is trivial; or
    - (ii) the previous good character of the offender,it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

- (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;
  - (c) the duty of the offender to comply with the sentence imposed and with any order of the court in addition to the sentence;
  - (d) the revesting or restitution of any property as a result of the conviction;
  - (e) any cancellation or disqualification that occurs by operation of any written law;
  - (f) any right of appeal against the conviction or the sentence imposed.

- (6) A spent conviction order in respect of a conviction does not prevent —
- (a) proceedings to enforce, or for a variation or contravention of, the sentence;
  - (b) subsequent proceedings against the offender for the same offence.

## **Part 6 — Release of offender without sentence**

### **46. Release without sentence**

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

- (a) the circumstances of the offence are trivial or technical;  
and
- (b) having regard to —
  - (i) the offender's character, antecedents, age, health and mental condition; and
  - (ii) any other matter that the court thinks is proper to consider,

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

## **Part 7 — Conditional release order**

### **47. When CRO may be imposed**

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

- (a) there are reasonable grounds for expecting that the offender will not re-offend during the term of the CRO; and
- (b) that the offender does not need supervising by a CCO during the term of the CRO.

### **48. CRO: nature of**

- (1) A CRO is an order —
  - (a) that if while the order is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the order relates; and
  - (b) that the offender must comply with any requirement imposed by the court under section 49.
- (2) A CRO ceases to be in force when its term ends or a court cancels it, whichever happens first.
- (3) The term of a CRO must be set by the court but must not be more than 24 months.
- (4) The term of a CRO begins on the day the order is imposed.

### **49. CRO: requirements**

- (1) A court making a CRO may impose any requirements on the offender it decides are necessary to secure the good behaviour of the offender.
- (2) A requirement imposed by a court must not be such as requires or would require the offender to be supervised, directed or instructed by a CCO.

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

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

- (1) A court that imposes a CRO may order that the offender re-appear before the court —
- (a) at a time and place fixed by the court; or
  - (b) if and when summonsed by the court,
- so that the court can ascertain whether the offender has complied with the CRO.
- (2) If an offender does not re-appear before a court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.
- (3) If on the re-appearance of an offender the court is satisfied that the offender has not complied with the CRO, the court may make an order under section 133.

**51. Ensuring compliance with CRO**

- (1) To ensure —
- (a) that an offender does not commit an offence during the term of a CRO; and
  - (b) if necessary, that the offender complies with any requirement imposed by the court,
- a court may order that the offender not be released until the offender or a surety for the offender or both have —
- (c) given a written undertaking to pay the 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.



**52. Enforcing a CRO**

- (1) Without limiting the operation of section 50, an offender who —
  - (a) commits an offence during the term of his or her CRO is liable to be dealt with under Division 3 of Part 18;
  - (b) breaches his or her CRO is liable to be dealt with under Division 4 of Part 18.
- (2) If an offender in respect of whom an order under section 51 has been made —
  - (a) commits an offence during the term of his or her CRO;  
or
  - (b) breaches his or her CRO,  
the court that imposed the CRO, on its own initiative or on an application by the 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 an accused.
- (4) Sections 49(1) and (2) and 59 of the *Bail Act 1982*, with any necessary changes, apply in respect of a court making an order under subsection (2) in respect of a surety as if the court, under section 49 of the *Bail Act 1982*, were enforcing the payment to the Crown of any sum payable by a surety under a surety undertaking made under that Act.

**s. 52**

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- (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.

*[Section 52 amended by No. 84 of 2004 s. 82.]*

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## Part 8 — Fine

### 53. Considerations when imposing a fine

- (1) Subject to Division 1 of Part 2, if a court decides to fine an offender then, in deciding the amount of the fine the court must, as far as is practicable, take into account —
  - (a) the means of the offender; and
  - (b) the extent to which payment of the fine will burden the offender.
- (2) A court may fine an offender even though it has been unable to find out about the matters in subsection (1).
- (3) A court must not fine an offender if satisfied that after paying compensation to the victim in accordance with a compensation order under Part 16, the offender will be unable to pay the fine within a reasonable time.

### 54. One fine for 2 or more offences

- (1) A court sentencing an offender for 2 or more offences that —
  - (a) are founded on the same facts; or
  - (b) form, or are part of, a series of offences of the same or a similar kind,may impose a single fine for all of the offences.
- (2) A fine imposed under subsection (1) must not be more than the sum of the fines provided by the statutory penalties for each of the offences.
- (3) If a fine is imposed under subsection (1) and on appeal a conviction for one of the offences (or more than one) is quashed, the appeal court may substitute a fine of another amount for the fine imposed.

**55. Apportionment of fine between joint offenders**

- (1) If a court sentencing 2 or more joint offenders decides to fine them it may apportion between them as it thinks fit the fine it would have imposed if there were only one offender.
- (2) If the statutory penalty for the offence is a mandatory fine or includes a minimum fine, a court apportioning a fine under subsection (1) must apportion at least the mandatory fine or the minimum fine, as the case requires.
- (3) In this section —  
    **“joint offenders”** means persons who are each convicted of an offence because a legal relationship between them (such as being co-owners of property) results in each of them being criminally responsible for the act or omission constituting the offence.

**56. Assault victim may be awarded fine**

- (1) This section applies if a court convicts a person of an offence involving an assault of another and fines the offender for the offence.
- (2) The court may order that the whole or part of the fine imposed be paid to the person assaulted.

**57. Enforcement of fine**

- (1) In this section and in sections 58, 59 and 60 —  
    **“fine”** has the same definition as in section 28 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) Unless an order is made under section 57A, 58 or 59, a fine imposed by a court must be paid, and may be enforced, under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

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

**57A. Fine enforcement by means of WDO**

- (1) In this section and section 57B words and expressions have the same definitions as in the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (2) This section applies if —
  - (a) a court fines an offender and does not also impose a term of imprisonment; and
  - (b) the offender at the time is not in custody serving a sentence of imprisonment.
- (3) The court, in addition to imposing the fine, may make a fine enforcement (WDO) order.
- (4) A fine enforcement (WDO) order is an order requiring the offender, within 7 days after the order is made —
  - (a) to pay the fine in full; or
  - (b) to report to a community corrections centre to be served with a work and development order (“WDO”) in respect of the fine.
- (5) The court must not make a fine enforcement (WDO) order unless —
  - (a) the offender is personally present in court;
  - (b) the court is satisfied by evidence on oath from the offender that the offender —
    - (i) does not have the means to pay the fine, either within 28 days or pursuant to a time to pay order;
    - (ii) is not the holder of a vehicle licence;
    - (iii) does not have any personal property that could be seized under a warrant of execution issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to satisfy, wholly or partly, the fine;
    - (iv) will be unlikely to have the means to pay, or personal property that could be so seized, within a reasonable time after the fine is imposed; and

**s. 57B**

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- (v) is mentally and physically capable of performing the requirements of a WDO;
- (c) the court is satisfied by evidence on oath from the offender that the offender —
  - (i) is the holder of a driver's licence but is disqualified from holding or obtaining such a licence; or
  - (ii) is not the holder of driver's licence;and
- (d) the court is satisfied that the issue of a licence suspension order under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* would be unlikely to result in the fine being paid within a reasonable time after the fine is imposed.
- (6) A fine enforcement (WDO) order must be served on the offender personally.
- (7) A fine enforcement (WDO) order may only be made during the sentencing proceedings and not afterwards.
- (8) Sections 48 to 53 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* apply to and in respect of a WDO served pursuant to a fine enforcement (WDO) order.  
*[Section 57A inserted by No. 9 of 2000 s. 10.]*

**57B. Court may cancel order on application of Fines Enforcement Registrar**

- (1) If under section 57A(3) a court makes a fine enforcement (WDO) order, notice of it must be given to the Registrar.
- (2) Within 28 days of the making of the order the Registrar may apply for the order to be cancelled.
- (3) The application must be made in accordance with the regulations and must be served on the offender concerned.
- (4) On an application by the Registrar, the court may cancel the order if it is satisfied, after reconsidering the matters in

section 57A(5)(b) and (c), that the order should not have been made.

- (5) If the court cancels the order, the WDO made pursuant to it is to be taken to be cancelled and the fine must be paid, and may be enforced, under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.
- (6) If the court cancels the order, then for the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine is to be taken to have been imposed on the day when the order was cancelled.
- (7) If a WDO has been wholly or partially completed at the time it is to be taken to be cancelled under subsection (5), the offender's liability to pay the fine is to be reduced in accordance with regulations made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 57B inserted by No. 9 of 2000 s. 10.]

**58. Imprisonment until fine is paid**

- (1) This section applies if a superior court or a court of summary jurisdiction constituted by a magistrate —
  - (a) fines an offender for an indictable offence, the statutory penalty for which is or includes imprisonment; or
  - (b) fines an offender for an offence and the court is satisfied that —
    - (i) the offender is about to leave the State; and
    - (ii) the absence of the offender from the State would defeat or materially prejudice the operation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the fine.
- (2) If the court does not also impose a term of imprisonment on the offender, it may order the offender to be imprisoned until the fine is paid, but in any event for not longer than a period set by the court.

**s. 59**

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- (3) The period must not be more than 24 months, but if the statutory penalty for the offence is or includes imprisonment for a lesser period, the period must not be more than that lesser period.
- (4) The period is cumulative on any other period or term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.
- (5) The period is not a term for the purposes of Part 13.
- (6) Service of the period discharges the offender from the liability to pay the fine.

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

**59. Imprisonment if fine is not paid**

- (1) If a superior court fines an offender for an offence it may order that if the offender does not pay the fine before a date set by the court the offender is to be imprisoned until the offender's liability to pay the fine is discharged —
  - (a) by payment of the whole of the fine;
  - (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 \$150 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:

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

(rounded up to the nearest whole number).

- (6) If part of a fine is paid after a warrant of commitment is issued, the warrant has effect as if the period of imprisonment specified in it were reduced in accordance with subsection (5).
- (7) For every day or part of a day that an offender serves in custody under an order made under this section, the fine is to be reduced by an amount to be determined as follows:

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

(rounded down to the nearest whole number).

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

- (8) Any period of imprisonment that an offender has to serve as a result of an order under subsection (1) is to be served cumulatively on any term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.
- (9) This section does not apply where a superior court imposes a fine under the *Juries Act 1957*.

[Section 59 amended in Gazette 3 Mar 2000 p. 1015.]

**s. 60**

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**60.      Application of fine etc.**

- (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.

*[Section 60 amended by No. 29 of 1998 s. 18.]*

## **Part 9 — Community based order**

### **61. CBO: pre-sentence report optional**

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

### **62. CBO: nature of**

- (1) A CBO is an order —
  - (a) that if while the CBO is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the CBO relates; and
  - (b) that the offender —
    - (i) must comply with such of the primary requirements in section 64 as the court imposes; and
    - (ii) while any primary requirement in section 64 is in force, must comply with the standard obligations in section 63.
- (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.

**63. CBO: standard obligations**

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 2003*.

*[Section 63 amended by No. 50 of 2003 s. 29(3).]*

**64. CBO: primary requirements**

Every CBO must contain at least one of these primary requirements:

- (a) a supervision requirement under section 65;
- (b) a programme requirement under section 66;
- (c) a community service requirement under section 67.

**65. Supervision requirement**

- (1) The purpose of a supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —
  - (a) rehabilitating the offender;
  - (b) ensuring the offender complies with any direction given by the court when imposing the requirement.
- (2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

**s. 66**

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- (3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —
  - (a) the effect of which could be achieved by imposing a programme requirement or a community service requirement; or
  - (b) that requires the offender to pay compensation or make restitution to any person; but that does not prevent a court from making a reparation order under Part 16.
- (4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 8 weeks.
- (5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.
- (6) A supervision requirement ceases to be in force when the CBO ceases to be in force.

**66. Programme requirement**

- (1) The purpose of a programme requirement is —
  - (a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and
  - (b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.
- (2) The programme requirement is a requirement that the offender must obey the orders of a CCO as to —
  - (a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

- (b) undergoing assessment and, if necessary, appropriate treatment in relation to the abuse of alcohol, drugs or other substances;
  - (c) attending educational, vocational, or personal development programmes or courses;
  - (d) residing at a specified place for the purposes of any 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 a CBO are additional to the requirements of any other programme requirement applicable to the offender under a community order or a PSO or a sentence of CSI.
- (6) A programme requirement ceases to be in force when a CCO gives the offender notice to that effect, or the CBO ceases to be in force, whichever happens first.
- (7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 66 amended by No. 50 of 2003 s. 7; No. 27 of 2004 s. 6(4).]*

## **67. Community service requirement**

- (1) The purpose of a community service requirement is to punish or rehabilitate an offender by making him or her do unpaid community work.

**s. 67**

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- (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 2003*.
- (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.

*[Section 67 amended by No. 50 of 2003 s. 29(3).]*



## Part 10 — Intensive supervision order

### 68. ISO: pre-sentence report mandatory

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

### 69. ISO: nature of

- (1) An ISO is an order —
  - (a) that if while the ISO is in force the offender commits another offence (in this State or elsewhere) the offender may be sentenced again for the offence to which the ISO relates; and
  - (b) that the offender —
    - (i) must comply with the supervision requirement in section 71;
    - (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.

**s. 70**

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- (6) The term of an ISO must be set by the court and must be at least 6 months and not more than 24 months.
- (7) The term of an ISO begins on the day the order is imposed.

**70. ISO: standard obligations**

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 2003*.

*[Section 70 amended by No. 50 of 2003 s. 29(3).]*

**71. Supervision requirement**

- (1) The purpose of the supervision requirement is to allow for the offender to be regularly monitored in the community, and to receive regular counselling, in a way and to an extent decided by a CCO, for the purpose of either or both —
  - (a) rehabilitating the offender;
  - (b) ensuring the offender complies with any direction given by the court when imposing the requirement.
- (2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.

- (3) When imposing an ISO, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —
  - (a) the effect of which could be achieved by imposing a programme requirement or a community service requirement; or
  - (b) that requires the offender to pay compensation or make restitution to any person; but that does not prevent a court from making a reparation order under Part 16.
- (4) Unless a CCO orders otherwise, an offender subject to a supervision requirement must contact a CCO at least once in any period of 28 days.
- (5) If an offender does not comply with subsection (4), he or she is to be taken to have breached the supervision requirement.
- (6) The supervision requirement ceases to be in force when the ISO ceases to be in force.

## **72. ISO: primary requirements**

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.

## **73. Programme requirement**

- (1) The purpose of a programme requirement is —
  - (a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and
  - (b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.

**s. 73**

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- (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 applicable to the offender under a community order or a PSO or a sentence of CSI.
- (6) A programme requirement ceases to be in force when a CCO gives the offender notice to that effect, or the ISO ceases to be in force, whichever happens first.
- (7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 73 amended by No. 50 of 2003 s. 8; No. 27 of 2004 s. 6(4).]*

**74. Community service requirement**

- (1) The purpose of the community service requirement is to punish or rehabilitate an offender by making him or her do unpaid community work.
- (2) The community service requirement is a requirement that within the term of the ISO the offender —
  - (a) must do unpaid community work for a number of hours set by the court;
  - (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 2003*.
- (3) The number of hours set by the court must be at least 40 and not more than 240.
- (4) Any hours of work done by an offender count as hours done under a community service requirement in any other community order, unless the court orders that the number of hours of work to be done are to be done in addition to any hours the offender has to do under another community order.
- (5) At any one time the total number of hours of work yet to be done by an offender under community orders must not exceed 240.
- (6) A community service requirement ceases to be in force when the offender finishes working the hours set to the satisfaction of a CCO or when the ISO ceases to be in force, whichever happens first.

*[Section 74 amended by No. 50 of 2003 s. 29(3).]*

**75. Curfew requirement**

- (1) The purposes of the curfew requirement are —
  - (a) to allow for the movements of an offender to be restricted during periods when there is a high risk of the offender offending; and
  - (b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.
- (2) The curfew requirement is a requirement that the offender —
  - (a) must remain at a specified place (the “**specified place**”), for specified periods, subject to subsection (8); and
  - (b) must submit to surveillance or monitoring as ordered by a CCO.
- (3) The term of a curfew requirement must be set by the court when it imposes the requirement; but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under an ISO or a sentence of CSI or a PSO, for a continuous period that exceeds 6 months.
- (4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another ISO or a sentence of CSI or a PSO, unless the court orders otherwise.
- (5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under ISOs or sentences of CSI or PSOs must not exceed 6 months.
- (6) The court may give directions as to the periods when the offender ought to be subject to a curfew.
- (7) The offender is not to be required by the curfew requirement to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.

- (8) The offender may only leave the specified place during a specified period —
- (a) to do community corrections activities as required under this Act or the *Sentence Administration Act 2003*;
  - (b) to obtain urgent medical or dental treatment for the offender;
  - (c) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person;
  - (d) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere;
  - (e) for a purpose approved of by a CCO; or
  - (f) on the order of a CCO.
- (9) The curfew requirement ceases to be in force when its term ends, or when the ISO ceases to be in force, whichever happens first.
- (10) Without limiting the means by which the offender may be kept under surveillance or monitored, a CCO may, for the purposes of subsection (2)(b), order the offender —
- (a) to wear any device; or
  - (b) to permit the installation of any device or equipment at the place where the offender resides.
- (11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.
- (12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —
- (a) when the offender may leave;
  - (b) the period of the authorised absence;
  - (c) when the offender must return;

**s. 75**

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- (d) the method of travel to be used by the offender during the absence; and
  - (e) the manner in which the offender must report his or her whereabouts.
- (13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —
- (a) enter or telephone the specified place;
  - (b) enter or telephone the offender’s place of employment or any other place where the offender is authorised or required to attend; or
  - (c) question any person at any place referred to in paragraph (a) or (b).
- (14) A person must not —
- (a) hinder a person exercising powers under subsection (13); or
  - (b) fail to answer a question put pursuant to subsection (13)(c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: \$2 000 and imprisonment for 12 months.

- (15) In this section —
- “specified”** means specified by the CEO from time to time.

*[Section 75 amended by No. 50 of 2003 s. 25; No. 27 of 2004 s. 6(4).]*



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## Part 11 — Suspended imprisonment

### 76. Imprisonment may be suspended

- (1) A court that sentences an offender to a term of imprisonment, or to an aggregate of terms of imprisonment, of 60 months or less may order that the 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; or
  - (b) the offender is serving or is yet to serve a term of imprisonment that is not suspended.
- (4) In subsection (3)(a) —

**“early release order”** means —

  - (a) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995*; or
  - (b) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*.

[Section 76 amended by No. 50 of 2003 s. 15.]

### 77. Effect of suspending imprisonment

- (1) An offender sentenced to suspended imprisonment is not to serve any part of the imprisonment that is suspended unless —
  - (a) during the suspension period he or she commits an offence (in this State or elsewhere) the statutory penalty for which is or includes imprisonment; and
  - (b) a court makes an order under section 80.

**s. 78**

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- (2) The suspension period begins on the day on which the sentence is imposed.
- (3) If during the suspension period an offender is sentenced to imprisonment for another offence that was not committed during the suspension period, the suspension period continues to elapse while the offender is serving that sentence.
- (4) An offender who is sentenced to suspended imprisonment is to be taken to be discharged from the sentence at the end of the suspension period.
- (5) Subsection (4) does not affect the operation of subsection (1) or sections 78 to 80.
- (6) For the purposes of a law other than this Part and Parts 12 and 13, a sentence of suspended imprisonment is to be taken as being a sentence of imprisonment.

*[Section 77 amended by No. 27 of 2004 s. 6(4).]*

**78. Re-offender may be dealt with or committed**

- (1) If a court convicts a person of an offence the statutory penalty for which is or includes imprisonment and that offence was committed during the suspension period of suspended imprisonment imposed on the person in relation to another offence, the court —
  - (a) if it is the Magistrates Court, must deal with the person under section 80 unless the suspended imprisonment was imposed —
    - (i) by the Children’s Court for an indictable offence;  
or
    - (ii) by a superior court,  
in which case the court must commit the person to the court that imposed the suspended imprisonment and that court must deal with the person under section 80;
  - (b) if it is the District Court, must deal with the person under section 80 unless the suspended imprisonment was

imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the suspended imprisonment and that court must deal with the person under section 80; or

- (c) if it is the Supreme Court, must deal with the person under section 80.
- (2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.
- (3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.
- (4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.
- (5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 78 amended by No. 59 of 2004 s. 141.]*

#### **79. Re-offending, alleging in court**

- (1) If —
  - (a) a person (the “**offender**”) has been convicted and dealt with (in this State or elsewhere) for an offence the statutory penalty for which is or includes imprisonment; and
  - (b) that offence was committed during the suspension period of suspended imprisonment imposed on the offender in relation to another offence,

a written notice alleging those matters may be lodged in a court in accordance with this section.

- (2) The notice may be lodged at any time up until 2 years after the last day of the suspension period.

**s. 80**

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- (3) The notice may be signed by the CEO, a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*.
- (4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.
- (5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.
- (6) The notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before the court that imposed the suspended imprisonment.
- (7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.
- (8) If an offender does not obey such a summons, the court concerned may issue a warrant to have him or her arrested and brought before it.
- (9) If an offender is arrested under a warrant issued under this section, he or she must be given a copy of the notice as soon as practicable after being arrested.
- (10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 80.

*[Section 79 inserted by No. 84 of 2004 s. 58.]*

**80. How re-offender to be dealt with**

- (1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence the statutory penalty for which is or includes imprisonment and that the offence was committed during the suspension period of suspended imprisonment, a

court that must deal with the person under this section must deal with the person by one of these methods:

- (a) unless an order under this paragraph or paragraph (b) has already been made, it may order the person to serve the term or terms of imprisonment that were suspended;
  - (b) unless an order under this paragraph or paragraph (a) has already been made, it may order the person to serve part of the term or terms of imprisonment that were suspended (even if the period to be served is 6 months or less);
  - (c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;
  - (d) it may fine the person not more than \$6 000 and make no order in respect of the suspended imprisonment.
- (2) The powers in subsection (1) may be exercised as often as is necessary.
- (3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the suspended imprisonment was imposed.
- (4) If a court does not make an order under subsection (1)(a) it must state its reasons for not doing so.
- (5) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —
- (a) section 88 applies in respect of the term to be served; and
  - (b) the court may make a parole eligibility order under section 89,

as if the term to be served were a term of imprisonment being imposed by the court.

**s. 80**

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*[(6) repealed]*

- (7) If an order is made under subsection (1)(d), then, unless the suspension period has ended, the sentence of suspended imprisonment remains in effect and the suspension period continues to elapse.
- (8) An order by a superior court under subsection (1) in a case where the sentence of suspended imprisonment was imposed for an offence for which the person had not been convicted on indictment is to be taken, for the purposes of an appeal against sentence, as being made following a conviction on indictment.

*[Section 80 amended by No. 57 of 1999 s. 36; No. 27 of 2004 s. 4.]*

## **Part 12 — Conditional suspended imprisonment**

*[Heading inserted by No. 27 of 2004 s. 5.]*

### **Division 1 — Imposition and effect of CSI**

*[Heading inserted by No. 27 of 2004 s. 5.]*

#### **81. Certain courts may suspend imprisonment conditionally**

- (1) A prescribed court that sentences an offender to a term of imprisonment, or to an aggregate of terms of imprisonment, of 60 months or less may order that the whole of the term or terms be suspended for a period set by the court, but not more than 24 months, subject to the following conditions —
  - (a) the standard obligations in section 83; and
  - (b) one or more of the primary requirements in section 84, as decided by the court.
- (2) CSI is not to be imposed unless imprisonment for a term or terms equal to that suspended would, if it were not possible to suspend imprisonment, be appropriate in all the circumstances.
- (3) CSI is not to be imposed if —
  - (a) the offence was committed when the offender was subject to an early release order; or
  - (b) the offender is serving or is yet to serve a term of imprisonment that is not suspended.
- (4) In subsection (3)(a) —  
**“early release order”** means —
  - (a) a parole order, home detention order, or work release order, made under the *Sentence Administration Act 1995*; or
  - (b) a parole order, or re-entry release order, made under the *Sentence Administration Act 2003*.

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 1** Imposition and effect of CSI

**s. 82**

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- (5) Subsection (1) does not prevent a prescribed court from imposing suspended imprisonment under Part 11.

*[Section 81 inserted by No. 27 of 2004 s. 5.]*

**82. Effect of CSI**

- (1) An offender sentenced to CSI is not to serve any part of the imprisonment that is suspended unless a court makes an order under section 84F or 84L.
- (2) The suspension period begins on the day on which the sentence is imposed.
- (3) If during the suspension period an offender is sentenced to imprisonment for another offence that was not committed during the suspension period, the suspension period continues to elapse while the offender is serving that sentence.
- (4) An offender who is sentenced to CSI is to be taken to be discharged from the sentence at the end of the suspension period.
- (5) Subsection (4) does not affect the operation of subsection (1) or sections 84D to 84F.
- (6) For the purposes of a law other than this Part and Parts 11 and 13, a sentence of CSI is to be taken as being a sentence of imprisonment.

*[Section 82 inserted by No. 27 of 2004 s. 5.]*

**83. CSI: standard obligations**

- (1) The standard obligations of CSI are that the offender —
- (a) must report to a community corrections centre within 72 hours after being released by the court, or as otherwise ordered by the speciality court or a CCO;
  - (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change, or as otherwise ordered by the speciality court;



- (c) must not leave Western Australia except with, and in accordance with, the permission of the speciality court or the CEO; and
  - (d) must comply with section 76 of the *Sentence Administration Act 2003*.
- (2) The references to the speciality court in this section and sections 84A and 84C only have effect if Division 4 applies and are references to the speciality court referred to in section 84N(1)(a) or (b).

*[Section 83 inserted by No. 27 of 2004 s. 5.]*

**84. CSI: primary requirements**

CSI must contain at least one of these primary requirements —

- (a) a programme requirement under section 84A;
- (b) a supervision requirement under section 84B;
- (c) a curfew requirement under section 84C.

*[Section 84 inserted by No. 27 of 2004 s. 5.]*

**84A. Programme requirement**

- (1) The purpose of a programme requirement is —
- (a) to allow for any personal factors which contributed to the offender's criminal behaviour to be assessed; and
  - (b) to provide an opportunity for the offender to recognise, to take steps to control and, if necessary, to receive appropriate treatment for those factors.
- (2) The programme requirement is a requirement that the offender must obey the orders of the speciality court or a CCO as to —
- (a) undergoing assessment by a medical practitioner, a psychiatrist, a psychologist or a social worker, or more than one of them and, if necessary, appropriate treatment;

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 1** Imposition and effect of CSI

**s. 84B**

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- (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) The speciality court or a CCO must not order the offender to undergo treatment of any sort unless a person qualified to recommend or administer the treatment has recommended that the offender undergo such treatment.
- (4) A person is not to administer treatment of any sort mentioned in subsection (2) to the offender without the informed consent of the offender.
- (5) The requirements of a programme requirement imposed as a condition of CSI are additional to the requirements of any other programmed requirement applicable to the offender under a community order or a PSO.
- (6) A programme requirement ceases to be in force when the speciality court or a CCO gives the offender notice to that effect, or when the suspension period ends, whichever happens first.
- (7) A CCO must not give notice unless satisfied that the offender has complied with the programme requirement.

*[Section 84A inserted by No. 27 of 2004 s. 5.]*

**84B. Supervision requirement**

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

- (a) rehabilitating the offender;
  - (b) ensuring the offender complies with any direction given by the court when imposing the requirement.
- (2) The supervision requirement is a requirement that the offender must contact a CCO, or receive visits from a CCO, as ordered by a CCO.
- (3) When imposing a supervision requirement, a court may give any directions it decides are necessary to secure the good behaviour of the offender but the court is not to make a direction —
- (a) the effect of which could be achieved by imposing a programme requirement; or
  - (b) that requires the offender to pay compensation or make restitution to any person.
- (4) Unless a CCO orders otherwise, while the offender is subject to a supervision requirement the offender must contact a CCO at least once in any period of 28 days.
- (5) If the offender does not comply with subsection (4), the offender is to be taken to have breached the supervision requirement.
- (6) A supervision requirement ceases to be in force when the suspension period ends.
- (7) Subsection (3)(b) does not prevent a court from making a reparation order under Part 16

*[Section 84B inserted by No. 27 of 2004 s. 5.]*

**84C. Curfew requirement**

- (1) The purposes of the curfew requirement are —
- (a) to allow for the movements of the offender to be restricted during periods when there is a high risk of the offender offending; and

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 1** Imposition and effect of CSI

**s. 84C**

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- (b) to subject the offender to short periods of detention at the place where the offender lives or at some other specified place.
- (2) The curfew requirement is a requirement that the offender —
  - (a) must remain at a specified place (the “**specified place**”), for specified periods, subject to subsection (8); and
  - (b) must submit to surveillance or monitoring as ordered by a speciality court or a CCO.
- (3) The term of a curfew requirement must be set by the court when it imposes the requirement, but the requirement must not be imposed so as to result in a curfew requirement being in force, whether under a sentence of CSI or an ISO or a PSO, for a continuous period that exceeds 6 months.
- (4) The term of a curfew is concurrent with the term of any other curfew requirement applicable to the offender under another sentence of CSI or an ISO or a PSO, unless the court orders otherwise.
- (5) At any one time the aggregate of the unexpired terms of curfew requirements applicable to the offender under sentences of CSI or ISOs or PSOs must not exceed 6 months.
- (6) The court may give directions as to the periods when the offender ought to be subject to a curfew.
- (7) The offender is not to be ordered by a CCO to remain at a place for periods that amount to less than 2 or more than 12 hours in any one day.
- (8) The offender may only leave the specified place during a specified period —
  - (a) to do community corrections activities as required under this Act or the *Sentence Administration Act 2003*;
  - (b) to obtain urgent medical or dental treatment for the offender;

- (c) for the purpose of averting or minimising a serious risk of death or injury to the offender or to another person;
  - (d) to obey an order issued under a written law (such as a summons) requiring the offender's presence elsewhere;
  - (e) for a purpose approved of by a CCO; or
  - (f) on the order of a CCO.
- (9) The curfew requirement ceases to be in force when its term ends, or when the suspension period ends, whichever happens first.
- (10) Without limiting the means by which the offender may be kept under surveillance or monitored, the speciality court or a CCO may, for the purposes of subsection (2)(b), order the offender —
- (a) to wear any device; or
  - (b) to permit the installation of any device or equipment at the place where the offender lives.
- (11) A CCO may give such reasonable directions to the offender as are necessary for the proper administration of the curfew requirement.
- (12) Without limiting subsection (11), if the offender is authorised under subsection (8) to leave the specified place, a CCO may give directions as to —
- (a) when the offender may leave;
  - (b) the period of the authorised absence;
  - (c) when the offender must return;
  - (d) the method of travel to be used by the offender during the absence; and
  - (e) the manner in which the offender must report the offender's whereabouts.
- (13) To ascertain whether or not the offender is complying with the curfew requirement, a CCO may, at any time —
- (a) enter or telephone the specified place;

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 2** Consequences of re-offending

**s. 84D**

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- (b) enter or telephone the offender's place of employment or any other place where the offender is authorised or required to attend; or
- (c) question any person at any place referred to in paragraph (a) or (b).

(14) A person must not —

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

Penalty: \$2 000 and imprisonment for 12 months.

(15) In this section —

**“specified”** means specified by the speciality court or the CEO from time to time.

*[Section 84C inserted by No. 27 of 2004 s. 5.]*

**Division 2 — Consequences of re-offending**

*[Heading inserted by No. 27 of 2004 s. 5.]*

**84D. Re-offender may be dealt with or committed**

- (1) Subject to section 84P(1), if a court convicts a person of an offence the statutory penalty for which is or includes imprisonment and that offence was committed during the suspension period of CSI imposed on the person in relation to another offence, the court —
  - (a) if it is the Magistrates Court, must deal with the person under section 84F unless the CSI was imposed —
    - (i) by the Children's Court for an indictable offence; or
    - (ii) by a superior court,

in which case the court must commit the person to the court that imposed the CSI and that court must deal with the person under section 84F;

- (b) if it is the District Court, must deal with the person under section 84F unless the CSI was imposed by the Children's Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the CSI and that court must deal with the person under section 84F; or
  - (c) if it is the Children's Court or the Supreme Court, must deal with the person under section 84F.
- (2) The powers in subsection (1) may be exercised by a court at any time, even if the suspension period has ended.
  - (3) Subsection (1) does not affect the powers of the court that convicts the person of the offence committed during the suspension period to deal with the person for that offence.
  - (4) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed during the suspension period.
  - (5) A certificate by a court under subsection (4) is, in the absence of evidence to the contrary, evidence of its contents.

*[Section 84D inserted by No. 27 of 2004 s. 5; amended by No. 27 of 2004 s. 7.]*

**84E. Complaint alleging re-offending**

- (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 CSI imposed on the person in relation to another offence, then a complaint may be made alleging those matters.

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 2** Consequences of re-offending

**s. 84F**

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- (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.
- (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) Subject to section 84P(3), 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 CSI, if the Children’s Court or a superior court imposed the CSI; or
  - (b) the Magistrates Court, if the CSI was imposed by that 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 84F.

*[Section 84E inserted by No. 27 of 2004 s. 5; amended by No. 27 of 2004 s. 8.]*

**84F. How re-offender to be dealt with**

- (1) If satisfied that a person has been convicted (in this State or elsewhere) of an offence the statutory penalty for which is or includes imprisonment and that the offence was committed during the suspension period of CSI, a court that must deal with the person under this section must deal with the person by one of the following methods —
  - (a) unless an order under this paragraph, paragraph (b) or section 84L(1)(a) or (b) has already been made, it may



order the person to serve the term or terms of imprisonment that were suspended;

- (b) unless an order under this paragraph, paragraph (a) or section 84L(1)(a) or (b) has already been made, it may order the person to serve part of the term or terms of imprisonment that were suspended (even if the period ordered to be served is 6 months or less);
  - (c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;
  - (d) it may fine the person not more than \$6 000 and make no order in respect of the CSI.
- (2) The powers in subsection (1) may be exercised as often as is necessary.
  - (3) A court must make an order under subsection (1)(a) unless it decides that it would be unjust to do so in view of all the circumstances that have arisen, or have become known, since the CSI was imposed.
  - (4) If a court does not make an order under subsection (1)(a) it must state its reasons for not doing so.
  - (5) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended
    - (a) section 88 applies in respect of the term to be served; and
    - (b) the court may make a parole eligibility order under section 89,

as if the term to be served were a term of imprisonment being imposed by the court.

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 3** Amending, cancelling and enforcing CSI requirements

**s. 84G**

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- (6) If an order is made under subsection (1)(d), then, unless the suspension period has ended, the sentence of CSI remains in effect and the suspension period continues to elapse.
- (7) An order by a superior court under subsection (1) in a case where the sentence of CSI was imposed for an offence for which the person had not been convicted on indictment is to be taken, for the purposes of an appeal against sentence, as being made following a conviction on indictment.

*[Section 84F inserted by No. 27 of 2004 s. 5.]*

**Division 3 — Amending, cancelling and enforcing CSI requirements**

*[Heading inserted by No. 27 of 2004 s. 5.]*

**84G. Interpretation**

In this Division —

“**CSI requirement**” means a primary requirement or standard obligation of a sentence of CSI or any direction of the court that imposed the sentence.

*[Section 84G inserted by No. 27 of 2004 s. 5.]*

**84H. Application to amend or cancel**

- (1) An application to amend or cancel a CSI requirement may be made only by the offender or a CCO.
- (2) Subject to section 84Q, the application must be made to the court that imposed the CSI.
- (3) The application must be made in accordance with the regulations.

*[Section 84H inserted by No. 27 of 2004 s. 5.]*

**84I. Court may confirm, amend or cancel requirement**

- (1) If on an application made under section 84H a court is satisfied —
- (a) that the circumstances of the offender were wrongly or inaccurately presented to the court that imposed the CSI;
  - or
  - (b) that the circumstances of the offender have so altered since the CSI was imposed that the offender will not be able to comply with the CSI requirement,

and that it is just to do so, the court may make an order amending or cancelling the CSI requirement but otherwise it must confirm the CSI requirement.

- (2) If all the CSI requirements have been cancelled under subsection (1) in relation to a sentence of CSI, the sentence is to be regarded as having been imposed as a sentence of suspended imprisonment under Part 11.

*[Section 84I inserted by No. 27 of 2004 s. 5.]*

**84J. Breach of CSI requirement: offence**

- (1) A person who breaches a CSI requirement without reasonable excuse, proof of which is on the person, commits an offence.
- (2) A prosecution for an offence under subsection (1) may be commenced —
- (a) by the CEO and only by the CEO; and
  - (b) at any time before the end of the suspension period.
- (3) Subject to section 84R, if at the time of an alleged offence under subsection (1) the alleged offender was under 18 years of age, the Children's Court is to hear and determine the prosecution.

*[Section 84J inserted by No. 27 of 2004 s. 5.]*

**84K. Breach of CSI requirement: procedure and penalty**

- (1) Subject to subsection (2), if the Children's Court convicts a person of an offence under section 84J(1), the Court may fine the person not more than \$1 000 and must deal with the person under section 84L.
- (2) However, if a superior court imposed the CSI, the Children's Court must commit the person to that superior court and that court may fine the person not more than \$1 000 and must deal with the person under section 84L.
- (3) Subject to subsection (4), if some other court of summary jurisdiction convicts a person of an offence under section 84J(1), the court may fine the person not more than \$1 000 and must deal with the person under section 84L.
- (4) However, subject to section 84R, if the CSI was imposed —
  - (a) by the Children's Court for an indictable offence; or
  - (b) by a superior court,the court of summary jurisdiction must commit the person to the court that imposed the CSI and that court may fine the person not more than \$1 000 and must deal with the person under section 84L.
- (5) Subsections (1) to (4) have effect even if the suspension period has ended.
- (6) A court that under subsection (2) or (4) commits a person to another court must certify that the person has been convicted of an offence under section 84J(1).

*[Section 84K inserted by No. 27 of 2004 s. 5.]*

**84L. Breach of requirement: court's powers to deal with**

- (1) A court that is required by section 84K or 84R to deal with a person under this section must deal with the person by one of the following methods —

- (a) unless an order under this paragraph, paragraph (b) or section 84F(1)(a) or (b) has already been made, it may order the person to serve the term or terms of imprisonment that were suspended;
  - (b) unless an order under this paragraph, paragraph (a) or section 84F(1)(a) or (b) has already been made, it may order the person to serve part of the term or terms of imprisonment that were suspended (even if the period ordered to be served is 6 months or less);
  - (c) unless the suspension period has ended, it may substitute another suspension period of not more than 24 months for the suspension period originally set; the new suspension period to begin on the day it is substituted;
  - (d) it may make no order in respect of the CSI.
- (2) The powers in subsection (1) may be exercised as often as is necessary.
- (3) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —
- (a) section 88 applies in respect of the term to be served; and
  - (b) the court may make a parole eligibility order under section 89,
- as if the term to be served were a term of imprisonment being imposed by the court.
- (4) If a person is dealt with under subsection (1)(d), then, unless the suspension period has ended, the sentence of CSI remains in effect and the suspension period continues to elapse.
- (5) In dealing with a person under this section a court must take into account the extent to which the person has complied with the CSI and how long the person has been subject to the CSI.

*[Section 84L inserted by No. 27 of 2004 s. 5.]*

**84M. Facilitation of proof**

- (1) This section applies only in relation to proceedings under this Division.
- (2) A copy of the order imposing CSI certified by the court that imposed it is, in the absence of evidence to the contrary, evidence of its contents.
- (3) A copy of an order amending a sentence of CSI certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.
- (4) In proceedings for an offence under section 84J(1) in relation to an alleged breach of a CSI requirement, evidence of the alleged breach may be given by tendering a certificate signed by the CEO stating the particulars of the alleged breach.
- (5) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the CEO was signed by a person who at the time was the CEO.

*[Section 84M inserted by No. 27 of 2004 s. 5.]*

**Division 4 — Functions of speciality courts as to CSI**

*[Heading inserted by No. 27 of 2004 s. 5.]*

**84N. Application of this Division**

- (1) This Division applies if —
  - (a) the court that imposes a sentence of CSI on an offender is a speciality court; or
  - (b) an offender is committed for trial or sentence for an offence to a superior court by a speciality court and a sentence of CSI is imposed on the offender by the superior court and the superior court orders that this Division is to apply.
- (2) In this Division —

**“the speciality court”** means the speciality court referred to in subsection (1)(a) or (b).

*[Section 84N inserted by No. 27 of 2004 s. 5.]*

**84O. Review of CSI by speciality court**

- (1) The speciality court may order that the offender appear or reappear before the speciality court after the imposition of the sentence of CSI —
  - (a) at a time and place fixed by the court; or
  - (b) if and when summonsed by the court,so that the court can ascertain whether the offender is complying with the sentence.
- (2) An order may be made under subsection (1) on any reappearance of the offender pursuant to a previous order made under subsection (1).
- (3) If an offender does not reappear before the speciality court at the time and place fixed or in response to a summons issued by the court, the court may issue a warrant to have the offender arrested and brought before the court.
- (4) On a reappearance ordered under subsection (1), or compelled under subsection (1) or (3), the speciality court may amend a CSI requirement as defined in section 84G.

*[Section 84O inserted by No. 27 of 2004 s. 5.]*

**84P. Speciality court to deal with re-offender**

- (1) If this Division applies and a court other than the speciality court convicts the offender of an offence as referred to in section 84D, that court must commit the offender to the speciality court and the speciality court must deal with the offender under section 84F.
- (2) Section 84D(2) to (5) apply for the purposes of subsection (1).

**Sentencing Act 1995**

**Part 12** Conditional suspended imprisonment

**Division 4** Functions of speciality courts as to CSI

**s. 84Q**

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- (3) If this Division applies, a complaint under section 84E(1) must be filed with the speciality court and a summons or warrant under section 84E(4) must direct the offender to appear or be brought before the speciality court.

*[Section 84P inserted by No. 27 of 2004 s. 5.]*

**84Q. Speciality court to deal with application to amend or cancel CSI**

If this Division applies, an application under section 84H is to be made to the speciality court.

*[Section 84Q inserted by No. 27 of 2004 s. 5.]*

**84R. Speciality court to deal with proceedings for breaches**

If this Division applies, a prosecution for an offence against section 84J(1) is to be commenced in, and heard and determined by, the speciality court and, if the offender is convicted, the speciality court must deal with the offender under section 84L.

*[Section 84R inserted by No. 27 of 2004 s. 5.]*



## **Part 13 — Imprisonment**

### **Division 1 — Preliminary**

#### **85. Interpretation and calculations**

(1) In this Part —

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

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

“**life term**” means —

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

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

“**parole order**” means an order made under Part 3 of the *Sentence Administration Act 2003* that a prisoner be released on parole and includes a parole order made for the purposes of section 72 or 73 of that Act;

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

“**prescribed term**” means —

*[(a) deleted]*

- (b) a term imposed for a prison offence as defined in the *Prisons Act 1981*;
- (c) a term imposed for escaping lawful custody;

“**prisoner**” means a person (whether or not he or she is in custody) who has been sentenced to a term and who has not been discharged from that term, but does not include a person sentenced to suspended imprisonment or CSI, unless an order is made under section 80(1)(a) or (b);

“**release**” means release from custody;

“**term**” means a term of imprisonment imposed on an offender by a court as a sentence, whether a fixed term or 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.
- (2) For the purposes of this Part and Part 11 and for the purposes of the *Sentence Administration Act 2003*, the aggregate of 2 or more fixed terms is the total effective period of imprisonment imposed on the offender having regard to whether the fixed terms are to be served concurrently or partly concurrently or cumulatively.
- (3) For the purposes of this Part and of the *Sentence Administration Act 2003*, to calculate the length in days of one-half of a fixed term —
- (a) determine the dates on which the term as imposed by the court will begin and end and then express the term as a number of days (“**T**”); and
  - (b) then divide T by 2 and disregard any remainder.
- (4) In this Part and in the *Sentence Administration Act 2003*, a fixed term ends when the term as imposed by the court ends, and it does not matter if the prisoner has been released before then.

*[Section 85 amended by No. 29 of 1998 s. 18; No. 50 of 2003 s. 16; No. 27 of 2004 s. 6(4).]*

### **Division 2 — Imposing imprisonment**

#### **86. Term of 6 months or less not to be imposed**

A court must not sentence an offender to a term of 6 months or less unless —

- (a) the aggregate of the term imposed and any other term or terms imposed by the court is more than 6 months;

- (b) the offender is already serving or is yet to serve another term; or
- (c) the term is imposed under section 79 of the *Prisons Act 1981*.

*[Section 86 amended by No. 50 of 2003 s. 33(3).]*

**87. Taking time on remand into account**

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.

**88. Concurrent, cumulative or partly cumulative terms**

- (1) An offender sentenced to a fixed term is to serve that term concurrently with any other fixed term that he or she is serving or has yet to serve, unless the sentencing court makes an order under subsection (3).
- (2) An offender sentenced at the one time to one or more fixed terms is to serve those terms concurrently, unless the court makes an order under subsection (3).
- (3) If at the time an offender is sentenced to a fixed term —
  - (a) the offender is serving or has yet to serve another fixed term imposed previously; or

- (b) the offender is then also sentenced to serve another fixed term,

the sentencing court may order that —

- (c) the fixed term is to be served cumulatively on the other fixed term; or
- (d) the fixed term is to be served partly concurrently with the other fixed term.
- (4) If under subsection (3)(d) a court orders that a term is to be served partly concurrently with another fixed term, the court must specify the period of the other fixed term that is to be served before the partly concurrent term is to begin, but that period must not extend beyond the earliest date on which the offender could be released (whether on parole or not) in relation to the other fixed term.
- (5) An offender sentenced to a life term is to serve that term concurrently with any other term that he or she is serving or has yet to serve.

*[Section 88 amended by No. 57 of 1999 s. 6(3); No. 50 of 2003 s. 17.]*

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

- (1) A court sentencing an offender to a fixed term may order that the offender be eligible for parole in respect of that term by making a parole eligibility order.
- (2) 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 the sentence, is serving or has yet to serve a parole term imposed previously.
- (3) A parole eligibility order must not be made in respect of a prescribed term.
- (4) A court may decide not to make a parole eligibility order in respect of a fixed term imposed on an offender if the court

considers that the offender should not be eligible for parole because of at least 2 of the following 4 factors —

- (a) the offence is serious;
  - (b) the offender has a significant criminal record;
  - (c) the offender, when released from custody under a release order made previously, did not comply with the order;
  - (d) any other reason the court considers relevant.
- (5) If a court decides that an offender is to be eligible for parole in respect of 2 or more of the fixed terms it imposes, it is to make a single parole eligibility order in respect of those terms.
- (6) The effect of a parole eligibility order made in respect of 2 or more fixed terms is subject to section 94.
- (7) This section does not affect the operation of Part 3 Division 4 of the *Sentence Administration Act 2003* in relation to the release on parole of a prisoner to whom that Division applies.
- (8) In subsection (4) —
- “release order”** means an order made (in this State or elsewhere in Australia) in respect of an offender who is subject to a sentence of imprisonment that releases the offender on conditions before the end of the sentence, and includes such an order made under a written law before the commencement of the *Sentencing Legislation Amendment and Repeal Act 2003*.

*[Section 89 inserted by No. 50 of 2003 s. 18.]*

## **90. Imposing life imprisonment**

- (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.

**91. Imposing strict security life imprisonment**

- (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 must order that the offender be imprisoned for the whole of the offender's life if it is necessary to do so in order to meet the community's interest in punishment and deterrence.
- (4) In determining whether an offence is one for which an order under subsection (3) is necessary, the only matters relating to the offence that are to be taken into account are —
  - (a) the circumstances of the commission of the offence; and
  - (b) any aggravating factors.

*[Section 91 amended by No. 38 of 1998 s. 6.]*

**Division 3 — Release from imprisonment**

*[92. Repealed by No. 50 of 2003 s. 19.]*

**93. Release from parole term**

- (1) Subject to section 94, a prisoner serving a parole term is eligible to be released on parole —
  - (a) if the term served is 4 years or less — when he or she has served one-half of the term; or
  - (b) if the term served is more than 4 years — when he or she has served 2 years less than the term.
- (2) Any order for the release on parole of a prisoner to whom subsection (1) applies must be made in accordance with Part 3 of the *Sentence Administration Act 2003*.
- (3) If a prisoner serving a parole term has not been released on parole before the term ends, the prisoner is discharged from that sentence when the term ends and, subject to Part 2 Division 2 of the *Sentence Administration Act 2003*, must be released then.

*[Section 93 inserted by No. 50 of 2003 s. 20.]*

**94. Aggregation of parole terms for certain purposes**

- (1) In the case of a prisoner serving 2 or more parole terms —
  - (a) the time when he or she is eligible to be released on parole; and
  - (b) the parole period for such a prisoner,are to be calculated by reference to the aggregate of those terms, but only if under subsection (3) or (4) those terms are to be aggregated.
- (2) If under this section the matters referred to in subsection (1) are not to be calculated by reference to the aggregate of 2 or more parole terms, the matters are to be calculated in respect of each of the 2 or more parole terms separately.
- (3) A parole term imposed at the same time as another parole term is to be aggregated with that other term for the purposes of subsection (1) unless it is to be served partly concurrently with that other term.

**Sentencing Act 1995**

**Part 13** Imprisonment

**Division 3** Release from imprisonment

**s. 94**

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- (4) A parole term imposed at a different time to another parole term is to be aggregated with that other term for the purposes of subsection (1) unless —
- (a) it is to be served concurrently with that other term or partly concurrently with it; or
  - (b) the other term was imposed before the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003*.
- (5) Subject to this section, a parole term, or an aggregate of parole terms, may be aggregated with the aggregate of 2 or more other parole terms, but a parole term, or an aggregate of parole terms, imposed before the commencement of Part 2 Division 4 of the *Sentencing Legislation Amendment and Repeal Act 2003* is not to be aggregated with a parole term, or aggregate of parole terms, imposed after that commencement.
- (6) For the purposes of applying this section a reference in this Part or in the *Sentence Administration Act 2003* to a prisoner serving a parole term is, where necessary, to be taken as including a reference to a prisoner serving more than one parole term and in such a case, if under this section the terms can be aggregated, the reference to the term is to be taken as being a reference to the aggregate of the terms.

<b>Table showing some examples of the operation of this section and sections 88 and 93, and section 7 of the <i>Sentence Administration Act 2003</i></b>			
<b>Parole term 1</b>	<b>Parole term 2</b>	<b>Whether concurrent etc.</b>	<b>Effect</b>
4 years	6 years	Concurrent	Aggregation of terms permitted for parole calculations. Aggregate = 6 years. Non-parole period = 3 years. (Calculated on aggregate). If not paroled, serve 6 years.



<b>Table showing some examples of the operation of this section and sections 88 and 93, and section 7 of the <i>Sentence Administration Act 2003</i></b>			
<b>Parole term 1</b>	<b>Parole term 2</b>	<b>Whether concurrent etc.</b>	<b>Effect</b>
4 years	6 years	Cumulative	Aggregation of terms permitted for parole calculations. Aggregate = 10 years. Non-parole period = 5 years. (Calculated on aggregate). If not paroled, serve 10 years.
4 years	6 years	Partly concurrent: 1 year of term 1 to be served before term 2 begins. (See s. 88(4))	Aggregation of terms not permitted for parole calculations. Serve 1 year of term 1. Then begin serving term 2 concurrently with rest of term 1. Non-parole period on term 2 = 3 years. Result: serve 4 years before eligible for parole. If not paroled, serve 7 years.

*[Section 94 inserted by No. 50 of 2003 s. 20.]*

**95. Release from fixed term that is not parole term**

A prisoner serving a fixed term that is not a parole term is discharged from that sentence at the end of the term and, subject to Part 2 Division 2 of the *Sentence Administration Act 2003*, must be released then.

*[Section 95 inserted by No. 50 of 2003 s. 20.]*

**96. Release from life term**

- (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(3), is not to be released before he or she has served the minimum period set by the court under section 91(1).

**Sentencing Act 1995**

**Part 13**            Imprisonment

**Division 4**        Miscellaneous

**s. 97**

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- (3) A prisoner serving strict security life imprisonment and in respect of whom an order has been made under section 91(3), 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 2003*.

*[Section 96 amended by No. 29 of 1998 s. 18; No. 50 of 2003 s. 29(3).]*

**Division 4 — Miscellaneous**

**97.      Application of *Sentence Administration Act 1995***

Nothing in this Part affects the operation of Parts 4 and 5 of the *Sentence Administration Act 2003*.

*[Section 97 amended by No. 50 of 2003 s. 29(3).]*

## Part 14 — Indefinite imprisonment

### 98. Indefinite imprisonment: superior court may impose

- (1) If a superior court —
- (a) sentences an offender for an indictable offence to a term of imprisonment;
  - (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**

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- (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.

**99. Other terms not precluded by indefinite imprisonment**

The fact that a person is sentenced to be imprisoned indefinitely does not preclude the person from being sentenced for another offence or from serving another sentence.

**100. Commencement of indefinite imprisonment**

A sentence of indefinite imprisonment begins on the day when the offender would, but for that sentence, be eligible to be released from custody, whether or not under a parole order or a re-entry release order made under the *Sentence Administration Act 2003*, while or after serving —

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

*[Section 100 amended by No. 50 of 2003 s. 21.]*

**101. Release from indefinite imprisonment**

A prisoner sentenced to indefinite imprisonment may be released at any time after the sentence of indefinite imprisonment begins by means of a parole order made under Part 3 of the *Sentence Administration Act 2003*.

*[Section 101 amended by No. 50 of 2003 s. 29(3).]*

## **Part 15 — Other orders forming part of a sentence**

### **Division 1 — General matters**

#### **102. Principles**

- (1) An order under this Part may be made in conjunction with any sentencing option available to a court sentencing an offender who is a natural person.
- (2) An order under section 106 may be made in conjunction with any sentencing option available to a court sentencing a body corporate.
- (3) An order under this Part forms part of the sentence.

#### **103. Disqualification orders: calculation of term**

- (1) If a disqualification order is made in respect of an offender, the term of the disqualification does not elapse —
  - (a) while the offender is in custody serving any sentence of imprisonment;
  - (b) while the offender is appealing against the conviction or sentence that gave rise to the disqualification order.
- (2) A disqualification order ceases to be in force when its term ends, or when a court cancels it, whichever happens first.

#### **104. Disqualification may be for life**

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

### **Division 2 — Disqualification orders**

#### **105. Driver's licence: disqualification**

- (1) A court sentencing an offender for a motor vehicle offence may order that, for a term set by the court, the offender be disqualified from holding or obtaining a driver's licence.

**Sentencing Act 1995**

**Part 15** Other orders forming part of a sentence

**Division 2** Disqualification orders

**s. 105**

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- (2) The term is concurrent with —
- (a) any other term for which the offender's driver's licence is or may be disqualified; or
  - (b) any term for which the offender's driver's licence is or may be suspended,

unless the court orders that the term is to be cumulative on those terms.

- (3) The court must ensure that the details of the motor vehicle offence and the order are made known to the chief executive officer of the department of the Public Service principally assisting in the administration of the provisions of the *Road Traffic Act 1974* that section 5 of that Act defines as the "licensing provisions of this Act" for the purposes of administering those provisions.

- (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;

- (ca) an offence where —
  - (i) a motor vehicle is used in the commission of the offence;
  - (ii) the commission of the offence is aided or facilitated by the use of a motor vehicle;
- (d) an indictable offence (whether it was tried on indictment or not) where —
  - [(i), (ii) deleted]*
  - (iii) a motor vehicle is used after the commission of the offence to provide, or to attempt to provide, a means for the offender to leave the place of the commission of the offence;
  - (iv) a motor vehicle is used by the offender after the commission of the offence to avoid, or to attempt to avoid, apprehension.

*[Section 105 amended by No. 76 of 1996 s. 42; No. 57 of 1999 s. 37; No. 7 of 2002 s. 64.]*

**106. Firearms licence etc.: disqualification**

- (1) A court sentencing an offender for an offence specified in subsection (4a) may order that, for a term set by the court, the offender be disqualified from holding or obtaining a licence or a permit or an approval, or any particular licence, permit or approval, under the *Firearms Act 1973*.
- (2) The term is concurrent with the term of any other such order which the offender is subject to, unless the court orders that it is to be cumulative on any such term.
- (3) When an order is made under subsection (1), by force of this subsection any relevant licence, permit or approval held by the offender under the *Firearms Act 1973* —
  - (a) is suspended and has no effect for so long as the disqualification order is in force; or
  - (b) if the order so specifies, is cancelled.

**Sentencing Act 1995**

**Part 15** Other orders forming part of a sentence

**Division 2** Disqualification orders

**s. 107**

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- (4) The court must ensure that details of the offence and the order are made known to the Commissioner of Police.
- (4a) This section applies to —
- (a) a firearms offence;
  - (b) an offence involving assault with a weapon;
  - (c) an offence involving violence.
- (5) In this section —
- “ammunition”** includes replica ammunition, ammunition rendered inoperative, and blank ammunition;
- “firearm”** has the same definition as in the *Firearms Act 1973* and includes a replica firearm and a firearm rendered inoperative;
- “firearms offence”** means —
- (a) stealing or attempting to steal or conspiring to steal a firearm or ammunition;
  - (b) receiving or attempting to receive or conspiring to receive a firearm or ammunition;
  - (c) an offence where a party to the offence (whether that party is charged or not) uses or is in possession of a firearm or ammunition during the commission of the offence;
  - (d) an offence where a firearm or ammunition is used after the commission of the offence (whether by the offender or by another party to the offence) to assist the offender to avoid, or to attempt to avoid, apprehension;
  - (e) an offence under the *Firearms Act 1973*.

[Section 106 amended by No. 59 of 1996 s. 52.]

**107. Marine qualification: disqualification**

- (1) A court sentencing an offender for a marine offence may order that, for a term set by the court, the offender be disqualified from holding or obtaining a 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 —  
**“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;

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

**108. Passport: surrender etc.**

- (1) A court sentencing an offender for a passport offence or to facilitate a sentence may order that, for a term set by the court, the offender —
  - (a) must remain in Australia;
  - (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**

#### **109. Interpretation**

In this Part —

“**reparation order**” means —

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

#### **110. Principles**

- (1) A reparation order is in addition to and not part of the sentence imposed on an offender.
- (2) A sentence must not be reduced because a reparation order is made.
- (3) Subsection (2) does not prevent the mitigation of a sentence in a case where an offender agrees to make good loss or damage resulting from the offence or is otherwise contrite.
- (4) A court that under Part 6 does not impose a sentence on an offender may nevertheless make a reparation order.
- (5) If a reparation order is made, compliance with it is not to be the subject of a requirement under a CRO, or of a direction under a CBO or an ISO.
- (6) Despite subsection (1) an offender may appeal against a reparation order as if it were part of the sentence imposed on him or her.

#### **111. Making a reparation order**

- (1) A reparation order may be made by a court on its own initiative or on the application of a victim or a prosecutor.

- (2) An application for a reparation order must be made in accordance with the regulations.
- (3) An application for a reparation order must be made during the sentencing proceedings or within the time after that prescribed by the regulations.
- (4) A court that makes a reparation order may make any other order that is necessary to give effect to the reparation order, including an order to be obeyed by a person other than the offender.

*[Section 111 amended by No. 57 of 1999 s. 27.]*

**112. Facts relevant to making an order**

- (1) In deciding whether to make and if so the terms of a reparation order in relation to an offence, a court may take into account as evidence —
  - (a) any evidence given during proceedings for the offence;
  - (b) the content of any record (as defined in the *Criminal Procedure Act 2004*) that is relevant to the offence and that has been disclosed to the offender by the prosecutor under that Act;
  - (c) any statement tendered, or deposition made, or exhibit tendered, at committal proceedings in relation to the offence;
  - (d) any evidence given by a victim or the offender in relation to the making of a reparation order.
- (2) In deciding whether to make and if so the terms of a reparation order in relation to an offence, a court may take into account —
  - (a) any pre-sentence report given to the court;
  - (b) any victim impact statement given to the court;
  - (c) any mediation report given to the court.

*[Section 112 amended by No. 57 of 1999 s. 28; No. 4 of 2004 s. 58; No. 59 of 2004 s. 141; No. 84 of 2004 s. 65.]*

**113.   Victim's behaviour and relationship relevant**

A court may decide not to make a reparation order or to reduce the amount to be paid under a compensation order if —

- (a) any behaviour, condition, attitude or disposition of the victim contributed directly or indirectly to the loss or damage suffered;
- (b) the offence was not reported promptly to the police;
- (c) the victim did not take reasonable steps to assist in the identification, apprehension or prosecution of the offender;
- (d) because of any relationship or connection between the offender and the victim, it would be just to do so.

**114.   Civil standard of proof**

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

**114A.   Victim may appeal against refusal of reparation order**

- (1) If a victim applies to a court for a reparation order and the court decides to make or to refuse to make a reparation order, the victim may appeal against the decision.
- (2) The appeal must be commenced and conducted under Part 2 or 3 of the *Criminal Appeals Act 2004*, as the case requires, which, with any necessary changes, applies as if a reparation order were an order that might be made as a result of a conviction.
- (3) This section does not affect the prosecutor's rights of appeal under the *Criminal Appeals Act 2004*.

*[Section 114A inserted by No. 84 of 2004 s. 60.]*

**115. Effect of order on civil proceedings etc.**

- (1) The making of a reparation order does not preclude civil proceedings being taken against an offender for any injury, loss or damage suffered or an application for compensation being made under the *Criminal Injuries Compensation Act 2003*.
- (2) A court, body or person, other than a person referred to in subsection (2a), assessing damages or compensation (“**the award**”) for the injury, loss or damage resulting from an offence is to make the assessment without regard to the compensation set under a compensation order, but the person entitled to the award may only recover an amount equal to the amount (if any) by which the award exceeds the compensation ordered to be paid under the order.
- (2a) A person assessing compensation under the *Criminal Injuries Compensation Act 2003* for the injury resulting from an offence is to make the assessment without regard to the compensation set under a compensation order made in respect of the offence.
- (3) The extent to which a restitution order has been complied with by an offender is to be taken into account by a court, body or person in awarding damages or compensation for the injury, loss or damage resulting from the offence.

[Section 115 amended by No. 57 of 1999 s. 29; No. 77 of 2003 s. 73.]

**Division 2 — Compensation order****116. Interpretation**

In this Division —

“**property**” includes real and personal property and everything, animate or inanimate, capable of being the subject of ownership;

“**victim**”, in relation to an offence, means a person who or which has suffered loss of or damage to his, her or its property as a direct or indirect result of the offence.

**117. Compensation order in favour of a victim**

- (1) A court sentencing an offender may make a compensation order in favour of a victim of the offence.
- (2) Such a compensation order is an order that the offender must pay an amount of money set by the court to the victim as compensation for —
  - (a) the loss of, or damage to, the victim’s property; and
  - (b) any expense reasonably incurred by the victim,as a direct or indirect result of the commission of the offence.
- (2a) A compensation order must not be made in respect of injury or loss within the meaning of the *Criminal Injuries Compensation Act 2003*.
- (3) In fixing the amount of money to be paid under a compensation order for loss or damage to property, it does not matter whether that loss or damage was reasonably foreseeable by the offender.  
*[Section 117 amended by No. 57 of 1999 s. 30; No. 77 of 2003 s. 73.]*

**118. Compensation order in favour of a third party**

- (1) If a court makes a restitution order against a person other than the offender (“**a third party**”), the court may make a compensation order in favour of the third party.
- (2) Such a compensation order is an order that the offender must pay an amount of money set by the court to the third party as compensation for —
  - (a) the property that the third party is required to give to the victim by reason of the restitution order made against the third party; and



- (b) any expense reasonably incurred by the third party in connection with complying with the restitution order.

**119. Enforcing a compensation order**

- (1) If the amount payable under a compensation order is not paid within 28 days after the date of the order, the person in whose favour the order is made may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (2) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.
- (3) No fee shall be charged for a certified copy of the order or for lodging it.

*[Section 119 inserted by No. 59 of 2004 s. 141.]*

**119A. Sentencing court may order imprisonment until compensation is paid**

- (1) This section applies if a court that makes a compensation order is of the opinion that the offender concerned has, or ought to have, the means to pay the compensation.
- (2) If this section applies the court may in addition to making the compensation order, order that if the offender does not pay the compensation before a date set by the court the offender is to be imprisoned until the compensation is paid, but in any event for not longer than the period determined under subsection (3) or a shorter period set by the court.
- (3) Unless the court sets a shorter period, the period of imprisonment (in days) is the period determined by dividing the amount of compensation by \$50 (or such greater amount as is prescribed) and rounding the result up to the nearest whole number of days.
- (4) Service of the period of imprisonment does not discharge the offender's liability to pay the compensation.

- (5) Any period of imprisonment that an offender has to serve as a result of an order made under subsection (2) is to be served cumulatively on any term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.
- (6) This section does not limit the operation of section 119.  
*[Section 119A inserted by No. 57 of 1999 s. 32.]*

**Division 3 — Restitution order**

**120. Court may make restitution order**

- (1) If a court sentencing an offender for an offence which involves the misappropriation of property is satisfied that —
  - (a) the offender is in possession of the property; or
  - (b) a person other than the offender (“**the third party**”) is in possession of the property,the court may make a restitution order in favour of the person who appears to the court to be entitled to the possession of the property (“**the victim**”).
- (2) A restitution order is an order that the offender or the third party (as the case may be) must give possession of the property to the victim within a period set by the court.
- (3) A restitution order may direct the offender or the third party (as the case may be) to do all such things and execute all such documents as may be necessary, or as may be specified in the order, for the purpose of giving effect to the object of the order.
- (4) A restitution order must not be made against a third party unless the third party has been given an opportunity to be heard by the court.
- (5) A restitution order does not prejudice any person’s title to the property.

*[Section 120 amended by No. 84 of 2004 s. 65.]*

**120A. Sheriff's powers to enforce restitution order**

- (1) If a person against whom a restitution order has been made does not comply with the order, the victim in whose favour the order was made may request the Sheriff of Western Australia to seize the property and deliver it to the victim.
- (2) On receiving such a request and a copy of the restitution order, the Sheriff may seize the property and deliver it to the victim and for that purpose may enter any place where the Sheriff reasonably believes the property may be.
- (3) Regulations may provide for the costs of the Sheriff to be paid by the victim and then recovered from the person who did not comply with the restitution order.

*[Section 120A inserted by No. 57 of 1999 s. 33.]*

**121. Enforcing a restitution order**

- (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).

**Sentencing Act 1995**

**Part 16**           Reparation orders

**Division 3**       Restitution order

**s. 122**

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- (5) The power in subsection (4) may be exercised by a court even though there has been no prosecution commenced for an offence under section 122 and even though the court is a superior court.

*[Section 121 amended by No. 84 of 2004 s. 65.]*

**122. Non-compliance with restitution order is an offence**

A person who without lawful excuse, proof of which is on the person, does not comply with a restitution order commits an offence punishable —

- (a) by the Supreme Court as for a contempt; or
- (b) after summary conviction by the court that imposed the order, a fine of \$10 000 or imprisonment for 12 months.

## Part 17 — Other orders not forming part of a sentence

### 123. Principles

- (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.

### 124. Restraining orders

For the purposes of section 123, a restraining order made against an offender under section 63 of the *Restraining Orders Act 1997* is taken to be an order made under this Part.

*[Section 124 inserted by No. 19 of 1997 s. 82.]*

### 124A. Offender reporting orders

For the purposes of section 123, an offender reporting order made in respect of an offender under section 13 of the *Community Protection (Offender Reporting) Act 2004* is taken to be an order made under this Part.

*[Section 124A inserted by No. 72 of 2004 s. 116(3).]*

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and community orders

**Division 1** Preliminary

**s. 125**

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**Part 18 — Amending and enforcing conditional release orders and community orders**

**Division 1 — Preliminary**

**125. Interpretation**

- (1) In this Part —  
“requirements” means —
  - (a) in relation to a CRO, the requirements of the CRO;
  - (b) in relation to a community order, the primary requirements and standard obligations of the order and any 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**

**126. Application to amend or cancel**

- (1) An application to amend or cancel —
  - (a) a CRO may be made only by the offender or the DPP or a police prosecutor;

- (b) a community order may be made only by the offender or a CCO.
- (2) The application must be made —
- (a) if the Children's Court imposed the CRO or community order, to that court;
  - (b) if the Magistrates Court imposed the CRO or community order, to the Magistrates Court; or
  - (c) if a superior court imposed the CRO or community order, to the superior court that imposed the order.
- (3) The application must be made in accordance with the regulations.

*[Section 126 amended by No. 59 of 2004 s. 141.]*

### **127. Court may confirm, amend or cancel**

- (1) If on an application under section 126 a court is satisfied —
- (a) that the circumstances of the offender were wrongly or inaccurately presented to the court when it was sentencing the offender; or
  - (b) that the circumstances of the offender have so altered since the court passed sentence that the offender will not be able to comply with the requirements of the CRO or community order,
- and that it is just to do so, the court may make an order under subsection (2) but otherwise it must confirm the CRO or community order.
- (2) If a court may make an order under this subsection, it may either —
- (a) amend the CRO or community order; or
  - (b) cancel the CRO or community order and sentence the person for the offence for which the CRO or community

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and community orders

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

**s. 128**

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order was imposed in any manner the court could if it had just convicted the person of that offence.

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

**128. Re-offender may be dealt with or committed**

(1) If a court convicts a person of an offence (other than an offence under section 131(1)) the statutory penalty for which is or includes imprisonment and the offence was committed while the person was subject to a CRO or community order imposed in relation to another offence, then, even though there is no notice lodged under section 129, the court —

- (a) if it is the Children’s Court, may deal with the person under section 130 unless the CRO or community order was imposed by a superior court in which case it must commit the person to that court and that court may deal with the person under section 130;
- (b) if it is the Magistrates Court, may deal with the person under section 130 unless the CRO or community order was imposed —
  - (i) by the Children’s Court for an indictable offence; or
  - (ii) by a superior court,

in which case the court must commit the person to the court that imposed the order and that court may deal with the person under section 130;

- (c) if it is the District Court, may deal with the person under section 130 unless the CRO or community order was imposed by the Children’s Court or the Supreme Court for an offence which the District Court would not have jurisdiction to deal with if it were committed by an adult, in which case the Court must commit the person to the court that imposed the order and that court may deal with the person under section 130;



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- (d) if it is the Supreme Court, may deal with the person under section 130.
- (2) A court that under subsection (1) commits a person to another court must certify that the person has been convicted of an offence committed while subject to a CRO or community order (as the case may be).
- (3) The powers in subsection (1) may be exercised by a court at any time, irrespective of whether or not the CRO or community order is still in force.
- (4) Subsection (1) does not affect the powers of the court that convicts a person of the offence committed while the person was subject to a CRO or community order to deal with the person for that offence.

*[Section 128 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 65.]*

**129. Re-offending, alleging in court**

- (1) If —
- (a) a person (the “**offender**”) has been convicted and dealt with (in this State or elsewhere) for an offence (other than an offence under section 131(1)); and
- (b) that offence was committed while the offender was subject to a CRO or community order imposed in relation to another offence,
- a written notice alleging those matters may be lodged in a court in accordance with this section.
- (2) The notice may be lodged at any time up until one year after the CRO or community order ceases to be in force.

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and community orders

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

**s. 129**

---

- (3) The notice may be signed —
  - (a) if the offender was subject to a CRO, by the CEO, a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*;
  - (b) if the offender was subject to a community order, only by the CEO.
- (4) The notice must be in a prescribed form and be signed in the presence of a JP or a prescribed court officer (as defined in section 3 of the *Criminal Procedure Act 2004*) who may issue a summons to the offender.
- (5) If the contents of the notice are verified on oath by the person signing it, a magistrate, on the application of that person, may issue an arrest warrant for the offender.
- (6) The notice must be lodged with, and the summons must direct the offender to appear before, or the warrant must direct that the offender be brought before the court that imposed the CRO or community order.
- (7) Sections 31 and 32 of the *Criminal Procedure Act 2004*, with any necessary changes, apply respectively to and in respect of a warrant and summons issued under this section.
- (8) If an offender does not obey such a summons, the court concerned may issue a warrant to have him or her arrested and brought before it.
- (9) If an offender is arrested under a warrant issued under this section, he or she must be given a copy of the notice as soon as practicable after being arrested.
- (10) An offender who appears before a court as a result of a summons or warrant issued under this section must be dealt with by the court under section 130.

*[Section 129 inserted by No. 84 of 2004 s. 61.]*

**130. How re-offender may be dealt with**

- (1) If satisfied that a person committed an offence while subject to a CRO or community order, a court that may deal with the person under this section may —
  - (a) if the CRO or community order is then in force, do one of the following:
    - (i) confirm the CRO or community order;
    - (ii) amend the CRO or community order;
    - (iii) cancel the CRO or community order and sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence;
  - or
  - (b) if the CRO or community order is not then in force, sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence.
- (2) In dealing with a person under subsection (1) who is or was subject to a CRO, a court is not precluded from making an order under section 52(2).

**Division 4 — Breaching a conditional release order or a community order****131. Breach of requirement: offence**

- (1) A person who breaches a CRO or community order without reasonable excuse, proof of which is on the person, commits an offence.
- (2) A prosecution for an offence under subsection (1) may be commenced —
  - (a) in the case of an alleged breach of a CRO, by the CEO, a police officer, or a person referred to in section 80(2)(a) to (e) of the *Criminal Procedure Act 2004*;

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and community orders

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

**s. 132**

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(b) in the case of an alleged breach of a community order, only by the CEO.

(3) Such a prosecution may be commenced at any time up until 1 year after the CRO or community order ceases to be in force.

*[(4) repealed]*

(5) If at the time of an alleged offence under subsection (1) the alleged offender was under 18 years old, the Children's Court is to hear and determine the charge.

*[Section 131 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 62 and 65.]*

**132. Breach of requirement: procedure and penalty**

(1) If the Children's Court convicts a person of an offence under section 131(1) the Court —

(a) if it imposed the CRO or community order, may fine the person not more than \$1 000 and may make an order under section 133;

(b) if a superior court imposed the CRO or community order, may either —

(i) fine the person not more than \$1 000; or

(ii) commit the person to the superior court that imposed the CRO or community order and that court may fine the person not more than \$1 000 and may make an order under section 133.

(2) If the Magistrates Court convicts a person of an offence under section 131(1) the court —

(a) if the Children's Court imposed the CRO or community order, may fine the person not more than \$1 000 and may make an order under section 133 unless the CRO or community order was imposed for an indictable offence in which case it may either —

(i) fine the person not more than \$1 000; or

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- (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).

*[Section 132 amended by No. 59 of 2004 s. 141.]*

**133. Breach of requirement: court's powers to deal with**

- (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

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and community orders

**Division 5** Miscellaneous

**s. 134**

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manner the court could if it had just convicted the person of that offence;

or

- (b) if the CRO or community order is not then in force, sentence the person for the offence for which the CRO or community order was imposed in any manner the court could if it had just convicted the person of that offence.
- (2) In dealing with a person under subsection (1) who is or was subject to a CRO, a court is not precluded from making an order under section 52(2).

**Division 5 — Miscellaneous**

**134. Facilitation of proof**

- (1) This section applies only in relation to proceedings under this Part.
- (2) A copy of a CRO or community order certified by the court that imposed it is, in the absence of evidence to the contrary, evidence of its contents.
- (3) A copy of an order amending a CRO or community order certified by the court that made it is, in the absence of evidence to the contrary, evidence of its contents.
- (4) A certificate by a court under section 128(2) or 132(4) is, in the absence of evidence to the contrary, evidence of its contents.
- (5) In proceedings for an offence under section 131(1) in relation to an alleged breach of a community order, evidence of the alleged breach may be given by tendering a certificate signed by the CEO 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.

**135. Compliance with CRO or community order to be taken into account**

- (1) This section applies if a court is dealing with a person under —
  - (a) section 127(2);
  - (b) section 130(1); or
  - (c) section 133(1).
- (2) In dealing with the person the court must take into account —
  - (a) the extent to which the person has complied with the CRO or community order and with any other order made under this Act or another written law in respect of the offence for which the CRO or community order was imposed; and
  - (b) how long the person has been subject to the CRO or community order or to any other order made under this Act or another written law in respect of the offence for which the CRO or community order was imposed.

**136. Re-sentencing: court's powers**

- (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

**Sentencing Act 1995**

**Part 18** Amending and enforcing conditional release orders and  
community orders

**Division 5** Miscellaneous

**s. 136**

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- (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**

### **137. Royal Prerogative of Mercy not affected**

Neither this Act nor the *Sentence Administration Act 2003* affects the Royal Prerogative of Mercy or limits any exercise of it.

*[Section 137 inserted by No. 50 of 2003 s. 26.]*

### **138. Effect of pardon**

- (1) A pardon granted in the exercise of the Royal Prerogative of Mercy has the effect of discharging the offender from the effects of the sentence imposed for the offence and of any other order made as a consequence of the offender's conviction.
- (2) A pardon does not quash or set aside the conviction for the offence.

### **139. Governor may remit order to pay money**

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.

### **140. Petition may be referred to Court of Appeal**

- (1) A petition for the exercise of the Royal Prerogative of Mercy in relation to an offender convicted on indictment, or to the sentence imposed on such an offender, may be referred by the Attorney General to the Court of Appeal either —
  - (a) for the whole case to be heard and determined as if it were an appeal by the offender against the conviction or against the sentence (as the case may be); or
  - (b) for an opinion on any specific matter relevant to determining the petition.

**s. 141**

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- (1a) When making a referral under subsection (1)(a) the Attorney General, having regard to the petition, may specify the grounds of appeal to be heard and determined by the Court of Appeal.
- (2) The Court of Appeal must give effect to the referral.  
*[Section 140 amended by No. 45 of 2004 s. 37; No. 84 of 2004 s. 63.]*

**141. Offender may be paroled**

- (1) In the exercise of the Royal Prerogative of Mercy in relation to an offender who is sentenced to imprisonment, the Governor may make a parole order in respect of the offender.
- (2) An offender may be paroled under subsection (1) whether or not he or she is or will be eligible for parole and despite section 96(3).
- (3) The release date is that set by the Governor.
- (4) The parole period is that set by the Governor; but it must be at least 6 months and not more than 5 years.
- (5) Part 3 of the *Sentence Administration Act 2003* applies in respect of the parole order and to the offender to whom the parole order applies.  
*[Section 141 amended by No. 50 of 2003 s. 29(3).]*

**142. Exercise of the Royal Prerogative in case of strict security life imprisonment**

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

### 143. Guideline judgments

- (1) The Court of Appeal may give a guideline judgment containing guidelines to be taken into account by courts sentencing offenders.
- (2) A guideline judgment may be given in any proceeding considered appropriate by the court giving it, and whether or not it is necessary for the purpose of determining the proceeding.
- (3) A guideline judgment may be reviewed, varied or revoked in a subsequent guideline judgment.

*[Section 143 amended by No. 45 of 2004 s. 37.]*

### 143A. Sentencing guidelines for courts of summary jurisdiction

- (1) For the purpose of reducing any disparity in sentences imposed by courts of summary jurisdiction, the Chief Magistrate of the Magistrates Court may from time to time publish guidelines for the sentencing of offenders in such courts.
- (2) The guidelines are not binding on courts of summary jurisdiction.
- (3) Without limiting the matters that may be included in the guidelines, they may include —
  - (a) guidance about —
    - (i) assessing the seriousness of offences;
    - (ii) the sentencing process;
    - (iii) when it is appropriate to impose particular sentencing options;
  - (b) suggestions as to the appropriate sentence to be imposed for a particular offence or class of offence.

*[Section 143A inserted by No. 57 of 1999 s. 39; amended by No. 59 of 2004 s. 141.]*

**s. 144**

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**144. Chief Justice may report to Parliament**

- (1) The Chief Justice of Western Australia, in writing, may report to Parliament on any matter connected with sentencing that he or she considers should be brought to Parliament's attention.
- (2) A report under subsection (1) is to be given to the Speaker of the Legislative Assembly and to the President of the Legislative Council who respectively must cause a copy of it to be laid before the Legislative Assembly and the Legislative Council within 15 sitting days of that House after the report is received.
- (3) A copy of any such report is to be given to the Minister.
- (4) Without limiting the matters with which a report may be concerned, a report may —
  - (a) deal with the operation, effectiveness and effects of this Act;
  - (b) recommend a review of the statutory penalty for any offence or class of offences.

**145. Failure to comply with procedural requirements**

- (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.

**146. Questions of fact in superior courts**

In proceedings under this Act before a superior court, any question of fact is to be determined by a judge and not by the verdict of a jury.

**147. Operation of other Acts not affected**

The imposition of a sentence or the making of any other order under this Act by a court does not affect the right or duty of the court under any other law to make any other order in respect of an offender.

**148. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may authorise the CEO to approve forms for the purposes of this Act.

**149. Rules of court**

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

**Sentencing Act 1995**

**Schedule 1** Acts, fines under which are not to be credited to the Consolidated Fund

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**Schedule 1**

**Acts, fines under which are not to be credited to the Consolidated Fund**

[Section 60(2)]

<b>Act</b>	<b>Person or fund to which a fine under the Act is to be paid or credited</b>
<i>Aboriginal Communities Act 1979</i>	The council of the community that made the by-law under which the fine was imposed.
<i>Architects Act 2004</i>	Architects Board of Western Australia
<i>Botanic Gardens and Parks Authority Act 1998</i>	Botanic Gardens and Parks Authority.
<i>Builders' Registration Act 1939</i>	Builders' Registration Board of Western Australia.
<i>Bush Fires Act 1954</i>	Fire and Emergency Services Authority of Western Australia or a local government as provided by section 55 of that Act.
<i>Cattle Industry Compensation Act 1965</i>	Cattle Industry Compensation Fund.
<i>Colleges Act 1978</i> <sup>2</sup>	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>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>Fruit Growing Industry (Trust Fund) Act 1941</i> <sup>3</sup>	Fruit Growing Industry Trust Fund.
<i>Health Act 1911</i>	The local government by or on whose behalf the prosecution was commenced.

<b>Act</b>	<b>Person or fund to which a fine under the Act is to be paid or credited</b>
<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>National Trust of Australia (W.A.) Act 1964</i>	The National Trust of Australia (W.A.).
<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>Perth Parking Management Act 1999</i>	Parking Fund.
<i>Queen Elizabeth II Medical Centre Act 1966</i>	Queen Elizabeth II Medical Centre Trust.
<i>Real Estate and Business Agents Act 1978</i>	Education and General Purpose Fund.
<i>Rottnest Island Authority Act 1987</i>	Rottnest Island Authority.
<i>Settlement Agents Act 1981</i>	Education and General Purpose Fund.
<i>University of Notre Dame Australia Act 1989</i>	The Board of Governors of the University of Notre Dame Australia.
<i>University of Western</i>	Senate of the University of Western Australia.

**Sentencing Act 1995****Schedule 1** Acts, fines under which are not to be credited to the Consolidated Fund

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<b>Act</b>	<b>Person or fund to which a fine under the Act is to be paid or credited</b>
<i>Australia Act 1911</i>	
<i>Water Boards Act 1904</i>	Water Board.
<i>Waterways Conservation Act 1976</i>	Water and Rivers Commission.
<i>Western Australian College of Teaching Act 2004</i>	Western Australian College of Teaching
<i>Western Australian Greyhound Racing Association Act 1981</i>	Western Australian Greyhound Racing Association Fund.
<i>Workers' Compensation and Injury Management Act 1981</i>	Workers' Compensation and Injury Management General Fund.
<i>Zoological Parks Authority Act 2001</i>	Zoological Parks Authority

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*[Schedule 1 amended by No. 59 of 1995 s. 88; No. 23 of 1998 s. 20; No. 42 of 1998 s. 38; No. 53 of 1998 s. 56; No. 5 of 1999 s. 21; No. 16 of 1999 s. 7(5); No. 24 of 2001 s. 47; No. 35 of 2003 s. 221(4); No. 8 of 2004 s. 88; No. 40 of 2004 s. 18; No. 42 of 2004 s. 169 and 174; No. 75 of 2004 s. 80; No. 84 of 2004 s. 64.]*



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## Notes

- <sup>1</sup> This is a compilation of the *Sentencing Act 1995* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Sentencing Act 1995</i>	76 of 1995	16 Jan 1996	Act other than s. 19 and Pt. 12 <sup>4</sup> ; 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Real Estate Legislation Amendment Act 1995 Pt. 5</i>	59 of 1995	20 Dec 1995	1 Jul 1996 (see s. 2 and <i>Gazette</i> 25 Jun 1996 p. 2902)
<i>Firearms Amendment Act 1996 s. 52</i>	59 of 1996	11 Nov 1996	6 Dec 1996 (see s. 3(1) and <i>Gazette</i> 6 Dec 1996 p. 6699)
<i>Road Traffic Amendment Act 1996 s. 42</i>	76 of 1996	14 Nov 1996	1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Restraining Orders Act 1997 s. 82</i>	19 of 1997	28 Aug 1997	15 Sep 1997 (see s. 2 and <i>Gazette</i> 12 Sep 1997 p. 5149)
<i>Western Australian Greyhound Racing Association Amendment Act 1998 s. 20</i>	23 of 1998	30 Jun 1998	1 Aug 1998 (see s. 3 and <i>Gazette</i> 21 Jul 1998 p. 3825)
<i>Criminal Law Amendment Act (No. 2) 1998 Pt. 6</i>	29 of 1998	6 Jul 1998	3 Aug 1998
<i>Criminal Law Amendment Act (No. 1) 1998 Pt. 3</i>	38 of 1998	25 Sep 1998	23 Oct 1998
<i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998 s. 38</i>	42 of 1998	4 Nov 1998	1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Acts Amendment (Video and Audio Links) Act 1998 Pt. 5</i>	48 of 1998	19 Nov 1998	18 Jan 1999 (see s. 2 and <i>Gazette</i> 15 Jan 1999 p. 109)
<i>Botanic Gardens and Parks Authority Act 1998 s. 56</i>	53 of 1998	7 Dec 1998	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2879)

## Sentencing Act 1995

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Short title	Number and year	Assent	Commencement
<i>Port Authorities (Consequential Provisions) Act 1999</i> s. 21	5 of 1999	13 Apr 1999	14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823)
<b>Reprint of the Sentencing Act 1995 as at 16 Apr 1999</b> (includes amendments listed above except those in the <i>Botanic Gardens and Parks Authority Act 1998</i> and the <i>Port Authorities (Consequential Provisions) Act 1999</i> )			
<i>Perth Parking Management (Consequential Provisions) Act 1999</i> s. 7(5)	16 of 1999	19 May 1999	7 Aug 1999 (see s. 2 and <i>Gazette</i> 6 Aug 1999 p. 3727)
<i>Sentencing Legislation Amendment and Repeal Act 1999</i> s. 6(3), 27-33, 36, 37 and 39 <sup>5</sup>	57 of 1999 (as amended by No. 62 of 2000 and 50 of 2003 s. 31)	16 Dec 1999	s. 37 and 39: 8 Apr 2000 (see s. 2(1) and <i>Gazette</i> 7 Apr 2000 p. 1813); Pt. 3 (s. 27-33): 8 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903); s. 6(3) and 36: 30 Jun 2001 (see s. 2(1) and <i>Gazette</i> 29 Jun 2001 p. 3111)
<i>Sentencing Amendment Regulations 2000</i> Pt. 3 (published in <i>Gazette</i> 3 Mar 2000 p. 1013-15)			3 Mar 2000
<i>Acts Amendment (Fines Enforcement) Act 2000</i> Pt. 3	9 of 2000	19 May 2000	25 Aug 2000 (see s. 2 and <i>Gazette</i> 25 Aug 2000 p. 4903)
<b>Reprint of the Sentencing Act 1995 as at 4 May 2001</b> (includes amendments listed above except those in the <i>Sentencing Legislation Amendment and Repeal Act 1999</i> s. 6(3) and 36)			
<i>Criminal Law Amendment Act 2001</i> Pt. 3	23 of 2001	26 Nov 2001	24 Dec 2001
<i>Zoological Parks Authority Act 2001</i> s. 47	24 of 2001	26 Nov 2001	22 May 2002 (see s. 2 and <i>Gazette</i> 10 May 2002 p. 2445)
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002</i> s. 64	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)

Short title	Number and year	Assent	Commencement
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003</i> s. 221(4) <sup>6</sup>	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> Pt. 2, s. 29(3) and 33 <sup>7,8</sup>	50 of 2003	9 Jul 2003	Pt. 2 Div. 1 and 3: 30 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); Pt. 2 Div. 2, 4 and 5 and s. 29(3): 31 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 33: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<b>Reprint 3: The Sentencing Act 1995 as at 10 Oct 2003</b> (includes amendments listed above except the <i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 33)			
<i>Criminal Injuries Compensation Act 2003</i> s. 73	77 of 2003	15 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Western Australian College of Teaching Act 2004</i> s. 88	8 of 2004	10 Jun 2004	15 Sep 2004 (see s. 2 and <i>Gazette</i> 3 Sep 2004 p. 3849)
<i>Sentencing Legislation Amendment Act 2004</i> Pt. 2 Div. 1	27 of 2004	14 Oct 2004	31 May 2006 (see s. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Pig, Potato and Poultry Industries (Compensation Legislation) Repeal Act 2004</i> s. 18	40 of 2004	3 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 7 Jan 2005 p. 53)
<i>Workers' Compensation Reform Act 2004</i> s. 169 and 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Community Protection</i>	72 of 2004	8 Dec 2004	25 Dec 2004 (see s. 2 and

## Sentencing Act 1995

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Short title	Number and year	Assent	Commencement
<i>(Offender Reporting) Act 2004</i> s. 116			<i>Gazette</i> 24 Dec 2004 p. 6266)
<i>Architects Act 2004</i> s. 80	75 of 2004	8 Dec 2004	16 Nov 2005 (see s. 2 and <i>Gazette</i> 15 Nov 2005 p. 5597)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 13 and s. 82 <sup>9,10</sup>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

**Reprint 4: The Sentencing Act 1995 as at 12 Aug 2005** (includes amendments listed above except those in the *Sentencing Legislation Amendment Act 2004* and the *Architects Act 2004*)

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<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

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Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment (Criminal Property) Act 2004</i> Pt. 3 <sup>11</sup>	26 of 2004	7 Oct 2004	To be proclaimed (see s. 2(2))
<i>Water Legislation Amendment (Competition Policy) Act 2005</i> s. 53 <sup>13</sup>	25 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

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<sup>2</sup> The *Colleges Act 1978* was repealed by the *Vocational Education and Training Act 1996*.

<sup>3</sup> The *Fruit Growing Industry (Trust Fund) Act 1941* was repealed by the *Fruit Growing Industry (Trust Fund) Repeal Act 1996*.

<sup>4</sup> The *Sentencing Act 1995* s. 19 and Pt. 12 did not come into operation and was repealed by the *Criminal Law Amendment Act (No. 2) 1998* s. 17 and 18.

<sup>5</sup> The Act other than s. 6(3), 27-33, 36, 37 and 39 of the *Sentencing Legislation Amendment and Repeal Act 1999* was repealed by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 31.

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<sup>6</sup> The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 reads as follows:

“

**19. Power to amend regulations**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

”

<sup>7</sup> The *Sentencing Legislation Amendment and Repeal Act 2003* Pt. 6 reads as follows:

“

**Part 6 — Review**

**107. Review**

- (1) The Minister administering the *Sentencing Act 1995* is to carry out a review of the operation and effectiveness of —
  - (a) the *Sentencing Act 1995* to the extent that it is affected by the amendments made to it by Part 2 Divisions 2 and 4 and section 33(3); and
  - (b) Part 3 of the *Sentence Administration Act 2003*,  
as soon as practicable after the expiration of 4 years from the day on which this Act receives the Royal Assent.
- (2) The Minister is to prepare a report based on the review and cause it to be laid before each House of Parliament within 5 years after the day on which this Act receives the Royal Assent.

”

<sup>8</sup> The *Sentencing Legislation Amendment and Repeal Act 2003* s. 22 and 29(2), which give effect to Sch. 1, read as follows:

“

**22. Transitional provisions**

Schedule 1 has effect in relation to the amendments effected by this Division.

**29. Sentence Administration Act 1995 repealed and consequential amendments**

- (2) Schedule 1 has effect in relation to the repeal effected by subsection (1).

”

Schedule 1 reads as follows:

“

**Schedule 1 — Transitional provisions**

[s. 22 and 29(2)]

**1. Interpretation**

- (1) In this Schedule —  
“**commencement**” means the commencement of section 22;  
“**new provisions**” means —  
    (a) the *Sentencing Act 1995* as amended by the sentencing amendments; and  
    (b) the *Sentence Administration Act 2003*;  
“**old provisions**” means the *Sentencing Act 1995*, and the repealed Act, as they would have applied had the sentencing amendments not come into operation;  
“**repealed Act**” means the *Sentence Administration Act 1995*;  
“**sentencing amendments**” means the amendments to the *Sentencing Act 1995* effected by Part 2 Division 4 and the repeal of the *Sentence Administration Act 1995* effected by section 29(1).  
(2) In this Schedule, words and expressions have the same meanings as they have in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.

**2. Sentencing courts to take into account the effect of the sentencing amendments**

- (1) If a court sentencing an offender to imprisonment proposes to impose a fixed term (with or without a parole eligibility order), it must impose a fixed term that is two thirds of the fixed term that it would have imposed had the old provisions been in operation at the time of sentencing.  
(2) For the purposes of subclause (1) —  
    (a) it does not matter that the court may be proposing to suspend the fixed term under Part 11 of the *Sentencing Act 1995*; and

- (b) a reference to imposing a fixed term includes a reference to dealing with an offender under section 80 of the *Sentencing Act 1995* in respect of a sentence of suspended imprisonment imposed under the old provisions.
- (3) Despite subclause (1), if the sentence required by that subclause would contravene section 86 of the *Sentencing Act 1995*, if the court considers that a term of imprisonment is warranted in all the circumstances, the court may impose a term of more than 6 months.
- (4) A court does not have to apply this clause if, in sentencing an offender, the court follows the practice of the court as established in accordance with the new provisions and this clause.
- (5) This clause does not apply if —
  - (a) the statutory penalty for the offence for which the offender is being sentenced has been amended since the new provisions commenced;
  - (b) a guideline judgment given under section 143 of the *Sentencing Act 1995* since the new provisions commenced applies to the offender or the offence for which the offender is being sentenced;
  - (c) the application of this clause would be inconsistent with or contrary to any other judgment given since the new provisions commenced that binds the sentencing court;
  - (d) a court is imposing a term under section 401(4) of *The Criminal Code*; or
  - (e) a court is sentencing an offender to a term that, under the old provisions, would have been a prescribed term within the meaning of section 85 of the *Sentencing Act 1995*.

**3. Application of *Interpretation Act 1984* s. 36**

Section 36 of the *Interpretation Act 1984* applies as if the *Sentence Administration Act 1995* had been repealed and re-enacted by the *Sentence Administration Act 2003*.

**4. Community orders imposed before commencement**

If immediately before commencement —

- (a) a community based order, or an intensive supervision order, made under the *Sentencing Act 1995* is in force; or

- (b) a WDO made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force,

then on and after commencement —

- (c) the *Sentence Administration Act 2003* applies to and in respect of the order; and
- (d) the reference in the order to section 76 of the *Sentence Administration Act 1995* is to be taken to be a reference to section 76 of the *Sentence Administration Act 2003*.

**5. Sentences of imprisonment imposed before commencement**

- (1) If immediately before commencement a person is subject to a fixed term that is not a parole term and to which the old provisions apply, then on and after commencement the old provisions continue to apply to that term and to the release of the person in respect of that term.
- (2) If immediately before commencement a person is subject to a parole term to which the old provisions apply, then on and after commencement —
  - (a) the old provisions apply for the purpose of calculating —
    - (i) when the person is eligible to be released on parole;
    - (ii) the parole period for the person; and
    - (iii) when the person is discharged from the sentence and must be released;
  - (b) the new provisions apply for the purpose of determining whether the person is to be released on parole;
  - (c) if the person is to be released on parole, the release is to be by means of a parole order made under Part 3 of the *Sentence Administration Act 2003* and for that purpose —
    - (i) the parole period in the order is to be the parole period calculated under the old provisions; and
    - (ii) the supervised period for the order is to be the same as the parole period;

and

  - (d) if the person is released on parole, the *Sentence Administration Act 2003* applies to and in respect of the person and the order except to the extent that paragraph (a) or (c) provides otherwise.
- (3) If immediately before commencement a person is in custody serving a life term to which the old provisions apply, then on and after commencement the new provisions apply to that term.



- (4) If immediately before commencement a person is in custody serving indefinite imprisonment, then on and after commencement the new provisions apply in respect of that person.
- (5) If immediately before commencement a person is detained in strict or safe custody during the Governor's pleasure under an order made under section 282 of *The Criminal Code*, then on and after commencement the new provisions apply in respect of that person.

**6. Early release orders made before commencement**

If immediately before commencement a person is subject to a parole order, a home detention order, or a work release order, made under the repealed Act, then on and after commencement the repealed Act continues to apply to and in respect of that order.

**7. WROs**

If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement —

- (a) subject to Part 4 of the repealed Act, a work release order may be made in respect of the person; and
- (b) Parts 4, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order.

**8. HDOs**

If immediately before commencement a person is subject to a sentence of imprisonment of less than 12 months to which the old provisions apply, then on or after commencement —

- (a) subject to Part 5 of the repealed Act, a home detention order may be made in respect of the person; and
- (b) Parts 5, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order.

**9. Warrants in force at commencement**

A warrant issued under the repealed Act and in force immediately before commencement remains in force despite the repeal of the repealed Act.

**10. Community corrections centres**

- (1) If a place is a community corrections centre under section 84 of the repealed Act immediately before commencement, then on and after commencement the place continues as a community corrections centre as if it had been declared by a notice under section 84(1) of the *Sentence Administration Act 2003*.

- (2) An order under section 84(1) of the repealed Act may be amended or cancelled by the Minister.

**11. CEO's instructions for community corrections centres**

- (1) If rules made under section 86 of the repealed Act are in force immediately before commencement, then on and after commencement the rules are to be taken to be written instructions issued under section 86 of the *Sentence Administration Act 2003* until written instructions are issued under that section.
- (2) When written instructions are issued under section 86 of the *Sentence Administration Act 2003* a reference in the repealed Act to rules made under section 86 of the repealed Act is to be taken to be a reference to those written instructions.

**12. Parole Board's report**

The Board's annual report made under section 112 of the *Sentence Administration Act 2003* must report on the operation of the repealed Act to the extent that it continues to operate by virtue of this Schedule and the *Interpretation Act 1984*.

**13. Offenders serving imprisonment imposed before 4 November 1996**

- (1) In this clause —  
“**1995 Act**” means the *Sentencing (Consequential Provisions) Act 1995*.
- (2) If immediately before commencement a person to whom section 82 of the 1995 Act applies is in custody subject to the sentence referred to in section 82, then on and after commencement section 82 continues to apply but —
- (a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and
  - (b) clause 7 of this Schedule applies to the person.
- (3) If immediately before commencement a person to whom section 83 of the 1995 Act applies is in custody subject to the sentence referred to in section 83, then on and after commencement section 83, other than paragraphs (a) and (c), continues to apply but —
- (a) any release of the person on parole in respect of the sentence is to be by means of a parole order made under Part 3 of the *Sentence Administration Act 2003*; and

- (b) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.
- (4) If immediately before commencement a person to whom section 84 of the 1995 Act applies is in custody subject to the sentence referred to in section 84, then on and after commencement section 84 continues to apply but —
  - (a) the references to the *Sentencing Act 1995* and the *Sentence Administration Act 1995* are to be read as references to those Acts as they would have applied had the sentencing amendments not come into operation; and
  - (b) clauses 5(2) and 7 of this Schedule apply to the person.
- (5) If immediately before commencement a person to whom section 86 of the 1995 Act applies is in custody subject to the sentence referred to in section 86, then on and after commencement section 86, other than paragraphs (a), (b) and (c), continues to apply but —
  - (a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;
  - (b) the parole period for the parole order is that provided by section 25(3) of the *Sentence Administration Act 2003*; and
  - (c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.
- (6) If immediately before commencement a person to whom section 87 of the 1995 Act applies is in custody subject to the sentence referred to in section 87, then on and after commencement section 87, other than paragraphs (a), (b) and (c), continues to apply but —
  - (a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;
  - (b) the parole period for the parole order is that provided by section 26(3) of the *Sentence Administration Act 2003*; and
  - (c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

- (7) If immediately before commencement a person to whom section 88(1) of the 1995 Act applies is in custody subject to the order referred to in section 88(1), then on and after commencement section 88(1) continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 2003*.
- (8) If immediately before commencement a person to whom section 90(1) of the 1995 Act applies is in custody subject to the order referred to in section 90(1), then on and after commencement section 90 continues to apply but the reference to the *Sentence Administration Act 1995* is to be read as a reference to the *Sentence Administration Act 2003*.
- (9) If immediately before commencement a person to whom section 91(1) of the 1995 Act applies is in custody subject to the direction or sentence referred to in section 91(1), then on and after commencement section 91, other than paragraphs (a), (b) and (c) of section 91(1), continues to apply but —
  - (a) any release of the person on parole in respect of the sentence is to be by means of a parole order made by the Governor under Part 3 of the *Sentence Administration Act 2003*;
  - (b) the parole period for the parole order is that provided by section 27(3) of the *Sentence Administration Act 2003*; and
  - (c) Part 3 Divisions 6 to 11 and Parts 4 to 10 of the *Sentence Administration Act 2003* apply to and in respect of the person and the parole order.

**14. Transitional regulations**

- (1) If there is no sufficient provision in this Schedule or in the old provisions or in the new provisions to provide for matters in relation to —
  - (a) the application of the old provisions to a sentence of imprisonment imposed before commencement;
  - (b) the effect after commencement of a sentence of imprisonment imposed before commencement;
  - (c) the imposition after commencement of sentences of imprisonment on offenders who are subject to sentences of imprisonment imposed before commencement;
  - (d) the combined effect of a sentence of imprisonment imposed before commencement and of a sentence of imprisonment imposed after commencement;

- (e) the application of the *Sentence Administration Act 1995* or the *Sentence Administration Act 2003* to orders made under the old provisions or under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,  
the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to those matters.
- (2) Regulations made under subclause (1) may provide that specific provisions of this Schedule, or of the old provisions, or of the new provisions —
- (a) do not apply; or
  - (b) apply with specific modifications,
- to or in relation to any matter.
- (3) Regulations made under subclause (1) must be made within 12 months after commencement.
- (4) The Governor may make any regulations that are necessary or convenient for preventing any doubt or difficulty arising as to the application or operation of clause 2 or for resolving any doubt or difficulty that may have arisen in that regard.
- (5) If regulations made under subclause (1) or (4) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement, the regulations have effect according to their terms.
- (6) In subclause (5) —  
“**specified**” means specified or described in the regulations.
- (7) If regulations contain a provision referred to in subclause (5), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the date of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication of those regulations.

”.

<sup>9</sup> The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 59 which purported to insert s. 84E cannot be included because the section it purports to repeal is not in operation (see *Sentencing Legislation Amendment Act 2004* s. 5 which has not been proclaimed).

<sup>10</sup> The *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 65 which purported to amend s. 84P(3), cannot be included because the section it purports to amend is not in operation (see *Sentencing Legislation Amendment Act 2004* s. 5 which has not been proclaimed).

<sup>11</sup> On the date as at which this compilation was prepared, the *Criminal Law Amendment (Criminal Property) Act 2004* Pt. 3 had not come into operation. It reads as follows:

“

### **Part 3 — Amendments to *Sentencing Act 1995***

#### **6. The Act amended**

The amendments in this Part are to the *Sentencing Act 1995*.

#### **7. Section 8 amended**

- (1) Section 8(3) is repealed and the following subsections are inserted instead —

“

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

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

”

- (2) After section 8(5) the following subsection is inserted —

“

(6) In this section —

**“criminal property confiscation”** means —

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

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

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

”

**8. Section 16 amended**

Section 16(1)(f) is amended by deleting “forfeiture to Crown” and inserting instead —

“

confiscation or forfeiture to the Crown (otherwise than under the *Criminal Property Confiscation Act 2000*)

”

”

<sup>12</sup> Footnote no longer applicable.

<sup>13</sup> On the date as at which this compilation was prepared, the *Water Legislation Amendment (Competition Policy) Act 2005* s. 53 had not come into operation. It reads as follows:

“

**53. Sentencing Act 1995 amended**

- (1) The amendments in this section are to the *Sentencing Act 1995*.
- (2) Schedule 1 is amended as follows:
  - (a) by deleting the item relating to the *Metropolitan Water Authority Act 1982*;
  - (b) by deleting the item relating to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*.

”