

WESTERN AUSTRALIA

SENTENCING REGULATIONS 1996

ARRANGEMENT

PART 1 — PRELIMINARY

1. Citation
2. Commencement
3. Interpretation

PART 2 — MATTERS PRELIMINARY TO SENTENCING

4. Mediation (ss 27-30)

PART 3 — THE SENTENCING PROCESS

5. Correction of sentence (s 37)
6. Imprisonment by justices: magistrate to review (s 38)

PART 4 — ORDERS FORMING PART OF A SENTENCE

7. Application for return of passport (s 108)

PART 5 — REPARATION ORDERS

8. Application for a reparation order (s 111)
9. Enforcing a restitution order (s 121)

**PART 6 — AMENDING AND ENFORCING CONDITIONAL
RELEASE ORDERS AND COMMUNITY ORDERS**

10. Application to amend or cancel (s 126)
11. CEO to be notified when court deals with offender on
community order

PART 7 — MISCELLANEOUS

12. Service
13. Forms

SCHEDULE 1 — FORMS

SENTENCING ACT 1995
SENTENCING REGULATIONS 1996

Made by His Excellency the Governor in Executive Council.

PART 1 — PRELIMINARY

Citation

1. These regulations may be cited as the *Sentencing Regulations 1996*.

Commencement

2. These regulations come into operation on the day on which the *Sentencing Act 1995* comes into operation.

Interpretation

3. (1) In these regulations, unless the contrary intention appears —
 “approved”, in relation to a form, means approved by the CEO;
 “court officer” means —
 - (a) in a superior court — a clerk of arraigns or the manager of the criminal registry;
 - (b) in a court of petty sessions — a clerk of petty sessions;
 - (c) in the Children’s Court — a clerk of the court.
- (2) The abbreviations used in these regulations are the same as those used in the Act.

PART 2 — MATTERS PRELIMINARY TO SENTENCING**Mediation (ss 27-30)**

4. (1) No person is to be compelled to attend or participate in any mediation or attempted mediation.

(2) When a mediator is mediating or attempting to mediate between an offender and a victim, the mediator must at all times act fairly and impartially.

(3) It is not necessary for the purposes of mediating or attempting to mediate between an offender and a victim that both such people be present at the same place at the same time.

PART 3 — THE SENTENCING PROCESS**Correction of sentence (s 37)**

5. (1) An application under section 37 (2) of the Act must be in an approved form and may be made at any time.

(2) The application must be lodged with the court that imposed the sentence concerned.

(3) On receiving an application, or in a case where a court intends to exercise the powers in section 37 (1) of the Act on its own initiative, a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.

(4) The summons must be served —

- (a) if the court intends to exercise the powers in section 37 (1) of the Act on its own initiative — by a court officer on the offender and the prosecutor;
- (b) if the application is made by the offender — by a court officer on the prosecutor;
- (c) if the application is made by the prosecutor — by the prosecutor on the offender.

(5) If satisfied that all parties concerned have been served with a summons issued under this regulation, the court may, subject to section 14 of the Act, exercise the powers in section 37 (1) of the Act.

(6) The court hearing an application under section 37 of the Act by an offender or a prosecutor need not be constituted by the same judicial officer that constituted the court that imposed the sentence sought to be corrected.

Imprisonment by justices: magistrate to review (s 38)

6. (1) Immediately after a justice or justices in a court of petty sessions impose a sentence referred to in section 38 (1) of the Act, the clerk of the court is to send a magistrate the approved form for the review of the decision together with —

- (a) the papers that were before the justice or justices including —
 - (i) the complaint;
 - (ii) the statement of facts by the prosecutor, or a transcript of it;

- (iii) a copy of the offender's criminal record (if any) tendered to the court;
 - (iv) a pre-sentence report (if any);
 - and
 - (b) the written reasons for imposing the sentence.
- (2) The form for the review of the decision may relate to more than one charge.
- (3) The decision of the magistrate under section 38 of the Act is to be communicated as soon as practicable —
- (a) to the court that imposed the sentence;
 - (b) if the offender is not in custody, to the offender; and
 - (c) if the offender is in custody, to the person in charge of the place where the offender is in custody.
- (4) If under section 38 of the Act a magistrate cancels the original sentence —
- (a) if the offender is not in custody — the magistrate may exercise the powers in section 14 (5) of the Act in relation to the offender;
 - (b) if the offender is in custody — the person in charge of the place where the offender is in custody is to give effect to any order by the magistrate as to bail for, or the remand in custody of, the offender.

PART 4 — ORDERS FORMING PART OF A SENTENCE

Application for return of passport (s 108)

7. An application under section 108 (5) of the Act for the return of an Australian passport must be made in an approved form to a court officer of the court that ordered the passport to be surrendered.

PART 5 — REPARATION ORDERS**Application for a reparation order (s 111)**

8. (1) An application to a court for a reparation order under Part 16 of the Act must be made —

- (a) orally during the relevant sentencing proceedings; or
- (b) in writing (in an approved form) during the relevant sentencing proceedings or within 12 months after the date when the offender was sentenced.

(2) On receiving a written application made after the date of sentencing a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.

(3) The summons must be served —

- (a) if the court intends to exercise the powers in Part 16 of the Act on its own initiative — by a court officer on the victim, the offender, a prosecutor and, if necessary, on any third party (as defined in section 120 (1) of the Act);
- (b) if the application is made by the victim — by a court officer on the offender, a prosecutor and, if necessary, on any third party (as defined in section 120 (1) of the Act);
- (c) if the application is made by the prosecutor — by a prosecutor on the victim, the offender and, if necessary, on any third party (as defined in section 120 (1) of the Act).

(4) If satisfied that all parties concerned have been served with a notice issued under this regulation, the court may proceed to deal with the application.

Enforcing a restitution order (s 121)

9. (1) An application under section 121 of the Act to a court is to be made in an approved form.

(2) On receiving an application a court officer is to issue a summons (in an approved form) to the person against whom the restitution order was made to a hearing on a date and at a place fixed by the officer.

(3) The summons must be served by a court officer on the person against whom the restitution order was made.

**PART 6 — AMENDING AND ENFORCING CONDITIONAL
RELEASE ORDERS AND COMMUNITY ORDERS**

Application to amend or cancel (s 126)

10. (1) An application under section 126 of the Act is to be made in an approved form.

(2) An application may only be made by a CCO with the prior approval of the CEO.

(3) On receiving an application a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.

(4) The hearing date fixed by the court officer is to be at least 7 days after the date of the application.

(5) In the case of an application to amend or cancel a CRO, the summons must be served —

- (a) in the case of an application by the offender — by a court officer on the prosecutor; or
- (b) in the case of an application by a prosecutor — by the prosecutor on the offender.

(6) In the case of an application to amend or cancel a community order, the summons must be served —

- (a) in the case of an application by the offender — by a court officer on the CEO, and the prosecutor; or
- (b) in the case of an application by a CCO — by a CCO on the offender.

(7) If satisfied that all parties concerned have been served with a summons issued under this regulation, the court may, subject to section 14 of the Act, deal with the application under section 126 of the Act.

(8) In this regulation —

“prosecutor” means the DPP or a police prosecutor, as the case requires.

CEO to be notified when court deals with offender on community order

11. If under section 127, 130, 132 or 133 of the Act a court deals with an offender in relation to a community order, a court officer is to notify the CEO of any orders made by the court.

PART 7 — MISCELLANEOUS**Service**

12. For the purposes of the Act and these regulations a summons may be served —

- (a) on an offender by serving it on the offender personally or by sending it by pre-paid post to the offender's last known address;
- (b) on a prosecutor by causing it to be delivered to the prosecutor's office;
- (c) on the CEO by causing it to be delivered to the CEO's office;
- (d) on any other person by serving it on the person personally or by sending it by pre-paid post to the person's last known address.

Forms

13. (1) Subject to this regulation the prescribed forms for the purposes of the Act are those in the Table to this regulation.

(2) The prescribed form for an arrest warrant for the purposes of sections 14, 50, 79 and 129 of the Act is Form 12 in the Schedule to the *Justices (Forms) Regulations 1982*.

(3) The prescribed form for a remand warrant for the purposes of section 17 of the Act is Form 13 in the Schedule to the *Justices (Forms) Regulations 1982*.

(4) The prescribed form for a warrant of committal to another court for the purposes of sections 78, 128 and 132 of the Act is Form 14 in the Schedule to the *Justices (Forms) Regulations 1982*.

(5) It is sufficient compliance with the Act if a form substantially in compliance with a prescribed form is used.

TABLE

Section of the Act	Description of form	Form No in Schedule 1
36	Warrant of commitment	1
58	Warrant of commitment until fine is paid	2
59	Warrant of commitment for not paying a fine	3
134	Certificate of breach of community order	4

SCHEDULE 1 — FORMS

[reg 13]

1. Warrant of commitment

WESTERN AUSTRALIA Sentencing Act 1995, s 36		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Court of Petty Sessions <input type="checkbox"/> Children's Court At:			
WARRANT OF COMMITMENT					
To	All police officers Chief executive officer under the <i>Prisons Act 1981</i>.				
Offender	Name:			Date of birth:	
Reason for issue of warrant	The offender has been sentenced to be imprisoned. This warrant authorizes and commands you to imprison the offender for the term stated below, subject to the <i>Sentencing Act 1995</i> and the <i>Sentence Administration Act 1995</i>.				
Command					
Offences and sentences	Charge Indict No	Date of offence	Description of offence	Term imposed	Cumulative Concurrent
Date of sentence			Date when term is to be taken to have begun		
Total term			Eligible for parole	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other orders	Young adult detention direction		<input type="checkbox"/> Yes <input type="checkbox"/> No		
	If life term imposed, minimum period:				
	Indefinite imprisonment		<input type="checkbox"/> Yes <input type="checkbox"/> No		
Sentence imposed by	Name of Judicial Officer:			Date:	
Warrant issued by	Signature: Judicial Officer/Clerk of Arraigns				

2. Warrant of commitment until fine is paid

WESTERN AUSTRALIA Sentencing Act 1995, s 58 WARRANT OF COMMITMENT UNTIL FINE IS PAID	<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Court of Petty Sessions <input type="checkbox"/> Children's Court At:
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To	All police officers Chief executive officer under the <i>Prisons Act 1981</i>.
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Offender	Name:	Date of birth:
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Reason for issue of warrant	The offender has been convicted of the offence(s) below and has been fined the amount(s), and ordered to pay the costs, set out below. In addition, under section 58 of the <i>Sentencing Act 1995</i> , this court ordered that the offender be imprisoned until the total of those amounts is paid, but in any event for not longer than the maximum period stated below.
Command	This warrant authorizes and commands you to take the offender into custody and to imprison the offender in accordance with the above order, unless the amount outstanding is sooner paid.

Offences	Charge/ Indict No	Date of offence	Description of offence	Fine	Costs	Period of Imp'ment
Sub-totals						

Date of sentence		Maximum period of imprisonment	
		<input type="checkbox"/> Cumulative <input type="checkbox"/> Concurrent	

Amount outstanding	Total amount to be paid (fines + costs)	\$
	Less any amount paid	- \$
	Amount outstanding	=\$
	Revenue: \$	Trust: \$

Warrant issued by	Signature: Judicial Officer/Clerk of Arraigns	Date:
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Note: The offender must either pay the amount outstanding in full or serve the maximum period of imprisonment in full. Reductions of the maximum period due to part payment are not permitted.

3. Warrant of commitment for not paying a fine

WESTERN AUSTRALIA Sentencing Act 1995, s 59		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At:			
WARRANT OF COMMITMENT FOR NOT PAYING A FINE		CWI Warrant No.			
To	All police officers Chief executive officer under the <i>Prisons Act 1981</i>.				
Offender	Name:			Date of birth:	
	Address:				
Reason for issue of warrant	The offender has been convicted of the offence(s) below and has been fined the amount(s) set out below. In addition, under section 59 of the <i>Sentencing Act 1995</i> , this court ordered that if the offender did not pay the fine by the date set for payment stated below the offender was to be imprisoned.				
Command	The offender has not paid the fine as ordered. This warrant authorizes and commands you to arrest the offender and to imprison the offender in accordance with the above order and section 59 of the <i>Sentencing Act 1995</i> .				
Offences	Charge Indict No	Date of offence	Description of offence	Fine	Period of imprisonment
Amount outstanding*	Total fines			\$	
	Less any amount paid			-\$	
	Amount outstanding			=\$	
	Revenue: \$			Trust: \$	
Date of sentence		Date set for payment			
Period of imprisonment †	<input type="checkbox"/> Set by this court				days
	<input type="checkbox"/> Determined under s 59 (3)				
	<input type="checkbox"/> Cumulative		<input type="checkbox"/> Concurrent		
Warrant issued by	Signature: Name: Official title:			Date:	

4. Certificate of breach of community order

WESTERN AUSTRALIA Sentencing Act 1995, s 134		
CERTIFICATE OF BREACH OF COMMUNITY ORDER		
Offender	Name: _____	Date of birth: _____
	Address: _____	
Community order details	Kind of order: <input type="checkbox"/> CBO <input type="checkbox"/> ISO	
	Date community order imposed	_____
	Term of order	_____
	Order imposed by: _____ court at: _____	
Particulars of alleged breach of order	_____	
Certificate	I certify that the contents of this certificate are true. Signed: Official position:	

By His Excellency's Command,

J. PRITCHARD, Clerk of the Council.



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