Version No. 090

Sentencing Act 1991

Act No. 49/1991

Version incorporating amendments as at 23 February 2006

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Version No. 090

Sentencing Act 1991

Act No. 49/1991

Version incorporating amendments as at 23 February 2006

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

(a) to promote consistency of approach in the sentencing of offenders;

(b) to have within the one Act all general provisions dealing with the powers of courts to sentence offenders;

(c) to provide fair procedures—

(i) for imposing sentences; and

(ii) for dealing with offenders who breach the terms of conditions of their sentences;

(d) to prevent crime and promote respect for the law by—

(i) providing for sentences that are intended to deter the offender or other persons from committing offences of the same or a similar character; and

(ii) providing for sentences that facilitate the rehabilitation of offenders; and

(iii) providing for sentences that allow the court to denounce the type of conduct in which the offender engaged; and

(iv) ensuring that offenders are only punished to the extent justified by—

(A) the nature and gravity of their offences; and

(B) their culpability and degree of responsibility for their offences; and

(C) the presence of any aggravating or mitigating factor concerning the offender and of any other relevant circumstances; and

(v) promoting public understanding of sentencing practices and procedures;

(e) to provide sentencing principles to be applied by courts in sentencing offenders;

S. 1(f) repealed by No. 41/1993 s. 19.

* * * * *

(g) to provide for the sentencing of special categories of offender;

(h) to set out the objectives of various sentencing and other orders;

(i) to ensure that victims of crime receive adequate compensation and restitution;

(j) to provide a framework for the setting of maximum penalties;

(k) to vary the penalties that may be imposed in respect of offences under the **Crimes Act 1958**;

(l) generally to reform the sentencing laws of Victoria.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

S. 3 amended by No. 41/1993 s. 4(a).

(1) In this Act—

S. 3(1) def. of "accredited agency" inserted by No. 57/1998 s. 26(3).

"accredited agency" means a person or body approved under the **Road Safety Act 1986** as an accredited agency;

"Adult Parole Board" means Adult Parole Board established by section 61 of the **Corrections Act 1986**;

"alcoholic" has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

S. 3(1) def. of "approved drug and alcohol assessment agency" inserted by No. 48/1997 s. 25(1).

"approved drug and alcohol assessment agency" means a person or body approved under section 99E by the Secretary to the Department of Human Services for the purposes of Division 2A of Part 6;

S. 3(1) def. of "approved mental health service" inserted by No. 98/1995 s. 64(1)(a).

"approved mental health service" has the same meaning as in the **Mental Health Act 1986**;

"authorised psychiatrist" means authorized psychiatrist within the meaning of the **Mental Health Act 1986**;

S. 3(1) def. of "Chief General Manager" repealed by No. 46/1998 s. 7(Sch. 1).

*   *   *   *   *

"chief psychiatrist" means chief psychiatrist within the meaning of the **Mental Health Act 1986**;

S. 3(1) def. of "combined custody and treatment order" inserted by No. 48/1997 s. 4(a).

"combined custody and treatment order" means an order made under Subdivision (1B) of Division 2 of Part 3 sentencing an offender to a term of imprisonment of not more than 12 months and specifying a part of the term to be served in the community;

"community-based order" means an order under Division 3 of Part 3;

"community corrections centre" means community corrections centre established under Part 9 of the **Corrections Act 1986**;

"community corrections officer" means community corrections officer appointed under Part 4 of the **Corrections Act 1986**;

"community service condition", in relation to a community-based order, means the condition referred to in section 38(1)(a);

S. 3(1) def. of "detention" inserted by No. 48/1997 s. 4(b).

"detention", in relation to an order or sentence of a court, means detention in a youth training centre or youth residential centre;

"director", in relation to a body corporate, includes any person occupying the position of director of the body corporate (by whatever name called) and includes a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act;

*   *   *   *   *

S. 3(1) def. of "Director-General of Community Services" repealed by No. 46/1998 s. 7(Sch. 1).

*   *   *   *   *

S. 3(1) def. of "Director-General of Corrections" repealed by No. 45/1996 s. 18(Sch. 2 item 11.1).

"driver licence" has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of "Drug Court" inserted by No. 2/2002 s. 4(1).

"Drug Court" means the Drug Court Division of the Magistrates' Court;

S. 3(1) def. of "Drug Court officer" inserted by No. 2/2002 s. 4(1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 181.1).

"Drug Court officer" means a person who—

(a) is employed under Part 3 of the **Public Administration Act 2004**; and

(b) exercises powers or performs functions in relation to the Drug Court;

"drug-dependent person" has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

S. 3(1) def. of "drug of addiction" inserted by No. 42/1993 s. 60.

"drug of addiction" means a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**;

S. 3(1) def. of "drug treatment order" inserted by No. 2/2002 s. 4(1).

"drug treatment order" means an order under Subdivision (1C) of Division 2 of Part 3;

S. 3(1) def. of "escape offence" inserted by No. 41/1993 s. 4(b).

"escape offence" means an offence against section 479C of the **Crimes Act 1958**;

S. 3(1) def. of "fine" amended by No. 19/1999 s. 12(1).

"fine" means the sum of money payable by an offender under an order of a court made on the offender being convicted or found guilty of an offence and includes costs but does not include money payable by way of restitution or compensation or any costs of or incidental to an application for restitution or compensation payable by an offender under an order of a court;

S. 3(1) def. of "Full Court" repealed by No. 19/1999 s. 16(1).

*   *   *   *   *

S. 3(1) def. of "home detention order" inserted by No. 53/2003 s. 3.

"home detention order" means an order made under section 18ZT that a sentence of imprisonment be served by way of home detention;

S. 3(1) def. of "indefinite sentence" inserted by No. 41/1993 s. 4(c).

"indefinite sentence" means a sentence of imprisonment for an indefinite term imposed under Subdivision (1A) of Division 2 of Part 3;

"inspector" has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

"instalment order" means an order made under Division 4 of Part 3 that a fine be paid by two or more instalments and includes such an order as varied under that Division;

"intensive correction order" means an order made under section 19(1) that a term of imprisonment be served by way of intensive correction in the community;

"involuntary patient" has the same meaning as in the **Mental Health Act 1986**;

S. 3(1) def. of "justice plan" amended by No. 46/1998 s. 7(Sch. 1).

"justice plan" means a statement in respect of a person prepared by the Secretary or a person authorised on his or her behalf specifying services which are recommended for the person having regard to the principles, aim and objectives set out in Part 2 of the **Intellectually Disabled Persons' Services Act 1986** and which are designed to reduce the likelihood of the person committing further offences;

S. 3(1) def. of "lawyer" inserted by No. 18/2005 s. 18(Sch. 1 item 97.1).

"lawyer" means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of "legal practitioner" inserted by No. 18/2005 s. 18(Sch. 1 item 97.1).

"legal practitioner" means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 3(1) def. of "licence restoration report" inserted by No. 57/1998 s. 26(3).

"licence restoration report" means a report from an accredited agency on an applicant for an order under section 89(2);

"local law" means local law made under Part 5 of the **Local Government Act 1989**;

"Mental Health Review Board" means Mental Health Review Board established by the **Mental Health Act 1986**;

S. 3(1) def. of "mental illness" inserted by No. 98/1995 s. 64(1)(b).

"mental illness" has the same meaning as in the **Mental Health Act 1986**;

"motor vehicle" has the same meaning as in the **Road Safety Act 1986**;

S. 3(1) def. of "nominal sentence" inserted by No. 41/1993 s. 4(d).

"nominal sentence", in relation to an indefinite sentence, means the period fixed in accordance with section 18A(3);

"non-parole period", in relation to a sentence of imprisonment, means a period fixed in accordance with Subdivision (1) of Division 2 of Part 3 during which the offender is not eligible to be released on parole;

S. 3(1) def. of "operational period" amended by No. 48/1997 s. 14(1)(a).

"operational period", in relation to a sentence of imprisonment suspended under section 27, means the period for which the whole or a part of the sentence is suspended under section 27(1);

"personal development condition" in relation to a community-based order, means the condition referred to in section 38(1)(c);

S. 3(1) def. of "prescribed officer" substituted as "prescribed person" by No. 48/1997 s. 14(1)(b).

"prescribed person" means a person prescribed under the regulations;

"prisoner" has the same meaning as in the **Corrections Act 1986**;

"prison offence" has the same meaning as in Part 7 of the **Corrections Act 1986**;

"proper officer", in relation to a court, means the officer or officers of that court prescribed by rules of that court for the purpose of the provision in which the term is used;

"proper venue", in relation to the Magistrates' Court, has the same meaning as in the **Magistrates' Court Act 1989**;

S. 3(1) def. of "psychiatric in-patient service" repealed by No. 98/1995 s. 64(1)(c).

* * * * *

S. 3(1) def. of "Regional Manager" amended by No. 2/2002 s. 4(2).

"Regional Manager", in relation to a drug treatment order, an intensive correction order or a community-based order, means the person appointed under Part 4 of the **Corrections Act 1986** to be the Regional Manager of the region in which the community corrections centre specified in the order is located;

S. 3(1) def. of "Secretary" inserted by No. 46/1998 s. 7(Sch. 1).

"Secretary" has the same meaning as "Secretary" in the **Community Services Act 1970**;

S. 3(1) def. of "secure custody facility" inserted by No. 2/2002 s. 4(1).

"secure custody facility" means—

(a) a prison as defined in section 3 of the **Corrections Act 1986**; or

(b) a youth training centre; or

(c) any other place the Minister specifies under sub-section (2);

"security patient" has the same meaning as in the **Mental Health Act 1986**;

"security resident" has the same meaning as in the **Intellectually Disabled Persons' Services Act 1986**;

S. 3(1) def. of "serious offence" inserted by No. 41/1993 s. 4(e), amended by Nos 67/2000 s. 10(1)(a)(b), 77/2005 s. 8(4)(a).

"serious offence", for the purposes of Subdivision (1A) of Division 2 of Part 3 (indefinite sentences), means—

(a) murder; or

(b) manslaughter; or

(ba) defensive homicide; or

(c) an offence against any of the following sections of the **Crimes Act 1958**—

(i) section 16 (causing serious injury intentionally);

(ii) section 20 (threats to kill);

(iii) section 38 (rape);

(iv) section 40 (assault with intent to rape);

(v) section 44(1), (2) or (4) (incest) in circumstances other than where both people are aged 18 or older and each consented (as defined in section 36 of the **Crimes Act 1958**) to engage in the sexual act;

(vi) section 45 (sexual penetration of child under the age of 16);

* * * * *

(viii) section 47A (sexual relationship with child under the age of 16);

(ix) section 55 (abduction or detention);

(x) section 56 (abduction of child under the age of 16);

(xi) section 63A (kidnapping);

(xii) section 75A (armed robbery); or

(ca) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or

(cb) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**; or

(d) an offence against a provision of the **Crimes Act 1958** which was **repealed** before the commencement of section 4(e) of the **Sentencing (Amendment) Act 1993** and which the presiding judge is satisfied beyond reasonable doubt, having regard to the facts in evidence, could have been charged as an offence against a provision mentioned in paragraph (c) had it been committed while that provision was in force; or

(e) any of the following common law offences—

(i) rape;

(ii) assault with intent to rape; or

(f) an offence of conspiracy to commit, incitement to commit or attempting to commit, an offence referred to in paragraph (a), (b), (c), (d) or (e);

S. 3(1) defs of "serious sexual offender", "serious violent offence", "serious violent offender" inserted by No. 41/1993 s. 4(e), repealed by No. 48/1997 s. 7(1).

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S. 3(1) def. of "sexual offence" inserted by No. 41/1993 s. 4(e), amended by Nos 24/1994 s. 4(1)(a), 22/1996 s. 20, repealed by No. 48/1997 s. 7(1).

"subordinate instrument" has the same meaning as in the **Interpretation of Legislation Act 1984**;

"supervision condition", in relation to a community-based order, means the condition referred to in section 38(1)(b);

"treatment centre" has the same meaning as in the **Alcoholics and Drug-dependent Persons Act 1968**;

* * * * *

S. 3(1) def. of "treatment period" repealed by No. 48/1997 s. 14(1)(c).

"undertaking" means a written undertaking by the offender in the prescribed form;

S. 3(1) def. of "victim" inserted by No. 24/1994 s. 4(1)(b), amended by No. 54/2000 s. 22(1).

"victim", in relation to an offence, means a person who, or body that, has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender;

S. 3(1) def. of "violent offence" inserted by No. 41/1993 s. 4(f), amended by No. 24/1994 s. 4(1)(c), repealed by No. 48/1997 s. 7(1).

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S. 3(1) def. of "working day" inserted by No. 41/1993 s. 4(f).

"working day", in relation to a court, means a day on which the offices of the court are open;

S. 3(1) def. of "young person" inserted by No. 41/1993 s. 4(f), repealed by No. 48/1997 s. 4(c).

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S. 3(1) def. of "young offender" amended by No. 48/1997 s. 4(d).

"young offender" means an offender who at the time of being sentenced is under the age of 21 years;

"Youth Parole Board" means Youth Parole Board established by section 215(1) of the **Children and Young Persons Act 1989**;

S. 3(1) def. of "youth residential centre" inserted by No. 48/1997 s. 4(e).

"youth residential centre" has the same meaning as in the **Children Young Persons Act 1989**;

"youth residential centre order" means an order made under Subdivision (4) of Division 2 of Part 3 directing the detention of a young offender in a youth residential centre;

S. 3(1) def. of "youth residential centre order" inserted by No. 48/1997 s. 4(e).

"youth training centre" has the same meaning as in the **Children Young Persons Act 1989**;

S. 3(1) def. of "youth training centre" inserted by No. 48/1997 s. 4(e).

"youth training centre order" means an order made under Subdivision (4) of Division 2 of Part 3 directing the detention of a young offender in a youth training centre.

S. 3(1) def. of "youth training centre order" inserted by No. 48/1997 s. 4(e).

(2) The Minister may, by notice published in the Government Gazette, specify a place for the purposes of paragraph (c) of the definition of "secure custody facility" in sub-section (1).

S. 3(2) inserted by No. 41/1993 s. 4(g), amended by No. 24/1994 s. 4(2)(a)(i)(ii)(b), repealed by No. 48/1997 s. 7(2), new s. 3(2) inserted by No. 2/2002 s. 4(3).

(3) Section 6(b) of the **Corrections Act 1986** is taken to include an order under section 18ZL(1)(f) that a person serve a period in a place referred to in paragraph (c) of the definition of "secure custody facility" in sub-section (1).

S. 3(3) inserted by No. 2/2002 s. 4(3).

4. Application

This Act applies to all courts except the Children's Court.

PART 2—GOVERNING PRINCIPLES

5. Sentencing guidelines

(1) The only purposes for which sentences may be imposed are—

(a) to punish the offender to an extent and in a manner which is just in all of the circumstances; or

(b) to deter the offender or other persons from committing offences of the same or a similar character; or

(c) to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or

(d) to manifest the denunciation by the court of the type of conduct in which the offender engaged; or

(e) to protect the community from the offender; or

(f) a combination of two or more of those purposes.

S. 5(2AA) inserted by No. 48/1997 s. 5.

(2AA) Despite anything to the contrary in this Act, in sentencing an offender a court must not have regard to[1]—

(a) any possibility or likelihood that the length of time actually spent in custody by the offender will be affected by executive action of any kind; or

(b) any sentencing practices arising at any time out of section 10 of this Act as in force at any time before its expiry.

(2AB) If, in sentencing an offender, a court imposes a less severe sentence than it would otherwise have imposed because of an undertaking given by the offender to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, the court must announce that it is doing so and cause to be noted in the records of the court the fact that the undertaking was given and its details.

S. 5(2AB) inserted by No. 69/1997 s. 4.

(2AC) Nothing in sub-section (2AB) requires a court to state the sentence that it would have imposed but for the undertaking that was given.

S. 5(2AC) inserted by No. 69/1997 s. 4.

(2) In sentencing an offender a court must have regard to—

(a) the maximum penalty prescribed for the offence; and

(b) current sentencing practices; and

(c) the nature and gravity of the offence; and

(d) the offender's culpability and degree of responsibility for the offence; and

(daa) the impact of the offence on any victim of the offence; and

S. 5(2)(daa) inserted by No. 15/2005 s. 3.

(da) the personal circumstances of any victim of the offence; and

S. 5(2)(da) inserted by No. 24/1994 s. 5.

(db) any injury, loss or damage resulting directly from the offence; and

S. 5(2)(db) inserted by No. 24/1994 s. 5.

(e) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; and

(f) the offender's previous character; and

(g) the presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.

S. 5(2A) inserted by No. 90/1991 s. 34.

(2A) In sentencing an offender a court—

S. 5(2A)(a) amended by No. 108/1997 s. 156(a)(i).

(a) may have regard to a forfeiture order made under the **Confiscation Act 1997** in respect of property—

(i) that was used in, or in connection with, the commission of the offence;

(ii) that was intended to be used in, or in connection with, the commission of the offence;

S. 5(2A)(a)(iii) amended by No. 108/1997 s. 156(a)(ii).

(iii) that was derived or realised, or substantially derived or realised, directly or indirectly, from property referred to in sub-paragraph (i) or (ii);

S. 5(2A)(ab) inserted by No. 63/2003 s. 50(1).

(ab) if it is satisfied that property was acquired lawfully, may have regard to automatic forfeiture under the **Confiscation Act 1997** in respect of property—

(i) that was used in, or in connection with, the commission of the offence;

(ii) that was intended to be used in, or in connection with, the commission of the offence;

(iii) that was derived or realised, or substantially derived or realised, directly or indirectly, from property referred to in sub-paragraph (i) or (ii);

(b) must not have regard to a forfeiture order made under that Act in respect of property that was derived or realised, or substantially derived or realised, directly or indirectly, by any person as a result of the commission of the offence;

S. 5(2A)(b) amended by No. 108/1997 s. 156(b).

(c) may have regard to a pecuniary penalty order made under that Act to the extent to which it relates to benefits in excess of profits derived from the commission of the offence;

(d) must not have regard to a pecuniary penalty order made under that Act to the extent to which relates to profits (as opposed to benefits) derived from the commission of the offence;

(e) subject to paragraph (ab), must not have regard to any property forfeited under automatic forfeiture or a pecuniary penalty order made in relation to a Schedule 2 offence under that Act.

S. 5(2A)(e) inserted by No. 108/1997 s. 156(c), amended by Nos 63/2003 s. 50(2), 87/2004 s. 24(a).

(2B) Nothing in sub-section (2A) prevents a court from having regard to a forfeiture order or civil forfeiture order made under, or automatic forfeiture occurring by operation of, the **Confiscation Act 1997** as an indication of remorse or co-operation with the authorities on the part of the offender.

S. 5(2B) inserted by No. 90/1991 s. 34, amended by No. 108/1997 s. 156(d).

(2BA) In sentencing an offender, a court—

S. 5(2BA) inserted by No. 1/2005 s. 48.

(a) must not have regard to the fact that the offender is subject to an extended supervision order under the **Serious Sex Offenders Monitoring Act 2005** but, if relevant to the conditions of any sentence imposed by it, may have regard to the conditions of that order and the terms of any

current directions or instructions given by the Adult Parole Board under section 16 of that Act;

(b) must not have regard to any possibility or likelihood of an application being made under that Act for an extended supervision order in respect of the offender.

S. 5(2BB) inserted by No. 1/2005 s. 48.

(2BB) For the purposes of sub-section (2BA)(a), the court may request the Secretary within the meaning of the **Serious Sex Offenders Monitoring Act 2005** to provide it with a report setting out—

(a) the conditions of the extended supervision order to which the offender is subject under that Act; and

(b) the terms of any current directions or instructions given by the Adult Parole Board under section 16 of that Act in relation to that order.

S. 5(2BC) inserted by No. 34/2005 s. 27.

(2BC) In sentencing an offender a court must not have regard to any consequences that may arise under the **Sex Offenders Registration Act 2004** from the imposition of the sentence.

S. 5(2C) inserted by No. 60/1993 s. 26, amended by No. 35/1999 s. 37(1)(a)(b).

(2C) In sentencing an offender a court may have regard to the conduct of the offender on or in connection with the trial as an indication of remorse or lack of remorse on his or her part.

S. 5(2D) inserted by No. 60/1993 s. 26, substituted by No. 35/1999 s. 37(2).

(2D) In having regard to the conduct of the offender under sub-section (2C), the court may consider the extent to which the offender complied with, or failed to comply with, a requirement imposed on the offender by or under the **Crimes (Criminal Trials) Act 1999**.

(2E) An offender who pleads guilty to an offence after the determination by the Court of Appeal[2] of a question of law reserved under section 446(2) of the **Crimes Act 1958** is to be taken to have pleaded guilty immediately after arraignment.

S. 5(2E) inserted by No. 60/1993 s. 26, amended by Nos 109/1994 s. 34(14)(a), 19/1999 s. 16(2).

(3) A court must not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed.

(4) A court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender.

(4A) A court must not impose a combined custody and treatment order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a drug treatment order.

S. 5(4A) inserted by No. 48/1997 s. 8(1), amended by No. 2/2002 s. 4(4).

(4B) A court must not impose a drug treatment order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by an intensive correction order.

S. 5(4B) inserted by No. 2/2002 s. 4(5).

(5) A court must not impose an intensive correction order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a community-based order.

(6) A court must not impose a community-based order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by imposing a fine.

(7) A court must not impose a fine unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a dismissal, discharge or adjournment.

S. 5A inserted by No. 41/1993 s. 5, repealed by No. 48/1997 s. 7(3).

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6. Factors to be considered in determining offender's character

In determining the character of an offender a court may consider (among other things)—

(a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender; and

(b) the general reputation of the offender; and

(c) any significant contributions made by the offender to the community.

PART 2AA—GUIDELINE JUDGMENTS

Pt 2AA (Heading and ss 6AA–6AG) inserted by No. 13/2003 s. 4.

6AA. Definition

S. 6AA inserted by No. 13/2003 s. 4.

In this Part—

"guideline judgment" means a judgment that is expressed to contain guidelines to be taken into account by courts in sentencing offenders, being guidelines that apply—

(a) generally; or

(b) to a particular court or class of court; or

(c) to a particular offence or class of offence; or

(d) to a particular penalty or class of penalty; or

(e) to a particular class of offender.

6AB. Power of Court of Appeal to give or review guideline judgments

S. 6AB inserted by No. 13/2003 s. 4.

(1) On hearing and considering an appeal against sentence, the Court of Appeal may (on its own initiative or on an application made by a party to the appeal) consider whether—

(a) to give a guideline judgment; or

(b) to review a guideline judgment given by it in a previous proceeding.

(2) On a review of a guideline judgment, the Court of Appeal may—

(a) confirm the guideline judgment; or

(b) vary the guideline judgment; or

(c) revoke the guideline judgment; or

(d) substitute the guideline judgment with a new guideline judgment.

(3) The Court of Appeal may give or review a guideline judgment even if it is not necessary for the purpose of determining any appeal in which the judgment is given or reviewed.

(4) A decision of the Court of Appeal to give or review a guideline judgment must be a unanimous decision of the Judges constituting the Court.

(5) A guideline judgment may be given separately to, or included in, the Court of Appeal's judgment in an appeal.

(6) Nothing in this Part requires the Court of Appeal to give or review a guideline judgment if it considers it inappropriate to do so.

S. 6AC inserted by No. 13/2003 s. 4.

6AC. Content of guideline judgment

A guideline judgment may set out—

(a) criteria to be applied in selecting among various sentencing alternatives;

(b) the weight to be given to the various purposes specified in section 5(1) for which a sentence may be imposed;

(c) the criteria by which a sentencing court is to determine the gravity of an offence;

(d) the criteria which a sentencing court may use to reduce the sentence for an offence;

(e) the weighting to be given to relevant criteria;

(f) any other matter consistent with the principles contained in this Act.

6AD. Procedural requirements

S. 6AD inserted by No. 13/2003 s. 4.

If the Court of Appeal decides to give or review a guideline judgment it must—

(a) cause the Sentencing Advisory Council to be notified and consider any views stated in writing, within the period specified in the notification, by that Council; and

(b) give—

S. 6AD(b)(i) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(i) the Director of Public Prosecutions or a lawyer representing the Director; and

S. 6AD(b)(ii) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(ii) a lawyer representing Victoria Legal Aid, whether or not employed by Victoria Legal Aid, or a lawyer arranged by Victoria Legal Aid—

an opportunity to appear before the Court and make a submission on the matter.

6AE. Matters to which Court of Appeal must have regard

S. 6AE inserted by No. 13/2003 s. 4.

In considering the giving of, or in reviewing, a guideline judgment the Court of Appeal must have regard to—

(a) the need to promote consistency of approach in sentencing offenders; and

(b) the need to promote public confidence in the criminal justice system; and

S. 6AE(c) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(c) any views stated by the Sentencing Advisory Council and any submissions made by the Director of Public Prosecutions or a lawyer under section 6AD.

S. 6AF inserted by No. 13/2003 s. 4.

6AF. Use of evidence in giving or reviewing guideline judgment

Nothing in Part VI of the **Crimes Act 1958** limits the evidence or other matters that the Court of Appeal may take into consideration in giving or reviewing a guideline judgment and the Court may inform itself as it sees fit.

S. 6AG inserted by No. 13/2003 s. 4.

6AG. Relationship between guideline judgments and other sentencing matters

A guideline in a guideline judgment—

(a) is additional to any other matter that is required to be taken into account under Part 2; and

(b) does not limit or take away from any such requirement.

PART 2A—SERIOUS OFFENDERS

Pt 2A (Heading and ss 6A–6F) inserted by No. 48/1997 s. 6.

6A. Application of Part

S. 6A inserted by No. 48/1997 s. 6.

This Part applies to a court in sentencing—

(a) a serious sexual offender for a sexual offence or a violent offence;

(b) a serious violent offender for a serious violent offence;

(c) a serious drug offender for a drug offence;

(d) a serious arson offender for an arson offence.

6B. Definitions for purposes of this Part

S. 6B inserted by No. 48/1997 s. 6.

(1) In this Part—

"arson offence" means an offence to which clause 5 of Schedule 1 applies;

"drug offence" means an offence to which clause 4 of Schedule 1 applies;

"serious violent offence" means an offence to which clause 3 of Schedule 1 applies;

"sexual offence" means an offence to which clause 1 of Schedule 1 applies;

"violent offence" means an offence to which clause 2 of Schedule 1 applies.

(2) In this Part—

"serious arson offender" means an offender (other than a young offender) who has been convicted of an arson offence for which he or she has been sentenced to a term of imprisonment or detention in a youth training centre;

"serious drug offender" means an offender (other than a young offender) who has been convicted of a drug offence for which he or she has been sentenced to a term of imprisonment or detention in a youth training centre;

"serious sexual offender" means an offender (other than a young offender)—

(a) who has been convicted of 2 or more sexual offences for each of which he or she has been sentenced to a term of imprisonment or detention in a youth training centre; or

(b) who has been convicted of at least one sexual offence and at least one violent offence arising out of the one course of conduct for each of which he or she has been sentenced to a term of imprisonment or detention in a youth training centre;

"serious violent offender" means an offender (other than a young offender) who has been convicted of a serious violent offence for which he or she has been sentenced to a term of imprisonment or detention in a youth training centre.

(3) In this Part—

"relevant offence", in relation to a serious offender, means—

(a) an arson offence in the case of a serious arson offender;

(b) a drug offence in the case of a serious drug offender;

(c) a sexual offence or a violent offence in the case of a serious sexual offender;

(d) a serious violent offence in the case of a serious violent offender;

"serious offender" means—

(a) serious arson offender; or

(b) serious drug offender; or

(c) serious sexual offender; or

(d) serious violent offender.

6C. Factors relevant to consideration of whether offender is a serious offender

S. 6C inserted by No. 48/1997 s. 6.

(1) In considering whether an offender being sentenced is a serious offender, a court must have regard to a conviction or convictions for a relevant offence irrespective of whether recorded—

(a) in the current trial or hearing; or

(b) in another trial or hearing; or

(c) in different trials or hearings held at different times; or

(d) in separate trials of different counts in the one presentment.

(2) In sentencing an offender a court may only treat a conviction for an offence as a conviction for a relevant offence if it is satisfied beyond reasonable doubt that it is.

(3) Despite sub-section (2), in sentencing an offender a court must have regard to a conviction for an offence against a law of the Commonwealth or of a place outside Victoria (whether or not in Australia) and must treat it as a conviction for a relevant offence if it is satisfied beyond reasonable doubt that—

(a) the offence is substantially similar to an arson offence, drug offence, serious violent offence, sexual offence or violent offence (as the case requires); and

(b) the offender was for that offence sentenced to a term of imprisonment or detention.

(4) Section 395 of the **Crimes Act 1958** applies for the purposes of sub-section (3) in relation to the proof of a previous conviction within the meaning of that section.

S. 6D inserted by No. 48/1997 s. 6.

6D. Factors relevant to length of prison sentence

If under section 5 the Supreme Court or the County Court in sentencing a serious offender for a relevant offence considers that a sentence of imprisonment is justified, the Court, in determining the length of that sentence—

(a) must regard the protection of the community from the offender as the principal purpose for which the sentence is imposed; and

(b) may, in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence considered in the light of its objective circumstances.

S. 6E inserted by No. 48/1997 s. 6.

6E. Sentences to be served cumulatively

Every term of imprisonment imposed by a court on a serious offender for a relevant offence must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term.

6F. Serious offender status to be noted on record

S. 6F inserted by No. 48/1997 s. 6.

(1) A court that sentences a serious offender for a relevant offence must, at the time of doing so, cause to be entered in the records of the court in respect of that offence the fact that the offender was sentenced for it as a serious offender.

(2) Despite anything to the contrary in the **Evidence Act 1958** or the **Crimes Act 1958**, a statement of the fact that an offender was sentenced for a relevant offence as a serious offender may be included in a certificate issued under section 87(1) of the **Evidence Act 1958** or in a certified statement of conviction issued under section 395 of the **Crimes Act 1958**.

Pt 2B (Heading and ss 6G–6J) inserted by No. 108/1997 s. 148.

PART 2B—CONTINUING CRIMINAL ENTERPRISE OFFENDERS

S. 6G inserted by No. 108/1997 s. 148.

6G. Application of Part

This Part applies to a court in sentencing a continuing criminal enterprise offender for a continuing criminal enterprise offence.

S. 6H inserted by No. 108/1997 s. 148.

6H. Definitions for purposes of this Part

(1) In this Part—

"continuing criminal enterprise offence" means an offence referred to in Schedule 1A;

"continuing criminal enterprise offender" means an offender who is found guilty of—

(a) a continuing criminal enterprise offence and who in another trial or hearing or more than one other trial or hearing had been found guilty of 2 or more relevant offences;

(b) 2 continuing criminal enterprise offences and who in another trial or hearing had been found guilty of a relevant offence;

(c) 3 or more continuing criminal enterprise offences;

"relevant offence", in relation to a continuing criminal enterprise offence, means a continuing criminal enterprise offence of which an offender has been found guilty within the period of 10 years before the date on which the later offence was committed.

(2) For the purposes of the definition of "relevant offence" in sub-section (1), if an offence of which an offender has been found guilty was committed between two dates, the offence was committed on the earlier date.

6I. Increased maximum penalty for CCE offences

S. 6I inserted by No. 108/1997 s. 148.

(1) A continuing criminal enterprise offender is liable, for a continuing criminal enterprise offence, to a maximum term of imprisonment of 2 times the length of the maximum term prescribed for the offence or 25 years, whichever is the lesser.

(2) This section has effect despite anything to the contrary in this or any other Act.

6J. CCE offender status to be noted on record

S. 6J inserted by No. 108/1997 s. 148.

(1) A court that sentences a continuing criminal enterprise offender for a continuing criminal enterprise offence must, at the time of doing so, cause to be entered in the records of the court in respect of that offence the fact that the offender was sentenced for a continuing criminal enterprise offence.

(2) Despite anything to the contrary in the **Evidence Act 1958** or the **Crimes Act 1958**, a statement of the fact that an offender was sentenced for a continuing criminal enterprise offence as a continuing criminal enterprise offender may be included in a certificate issued under section 87(1) of the **Evidence Act 1958** or in a certified statement of conviction issued under section 395 of the **Crimes Act 1958**.

PART 3—SENTENCES

Division 1—General

S. 7 amended by No. 19/1999 s. 4 (ILA s. 39B(1)).

7. Sentencing orders

(1) If a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and subject to this Part—

(a) record a conviction and order that the offender serve a term of imprisonment; or

S. 7(1)(ab) inserted by No. 48/1997 s. 8(2)(a).

(ab) record a conviction and order that the offender serve a term of imprisonment partly in custody and partly in the community (a combined custody and treatment order); or

S. 7(1)(aab) inserted by No. 69/1997 s. 5.

(aab) subject to Part 5, record a conviction and order that the offender be admitted to and detained in an approved mental health service as a security patient (a hospital security order); or

S. 7(1)(ac) inserted by No. 2/2002 s. 4(6).

(ac) record a conviction and make a drug treatment order in respect of the offender; or

(b) record a conviction and order that the offender serve a term of imprisonment by way of intensive correction in the community (an intensive correction order); or

(c) record a conviction and order that the offender serve a term of imprisonment that is suspended by it wholly or partly; or

(d) in the case of a young offender, record a conviction and order that the young offender be detained in a youth training centre; or

S. 7(1)(d) amended by No. 48/1997 s. 8(2)(b)(i)(ii).

(da) in the case of a young offender, record a conviction and order that the young offender be detained in a youth residential centre; or

S. 7(1)(da) inserted by No. 48/1997 s. 8(2)(c).

(e) with or without recording a conviction, make a community-based order in respect of the offender; or

(f) with or without recording a conviction, order the offender to pay a fine; or

(g) record a conviction and order the release of the offender on the adjournment of the hearing on conditions; or

(h) record a conviction and order the discharge of the offender; or

(i) without recording a conviction, order the release of the offender on the adjournment of the hearing on conditions; or

(j) without recording a conviction, order the dismissal of the charge for the offence; or

(k) impose any other sentence or make any order that is authorised by this or any other Act.

(2) If the Magistrates' Court finds a person aged 18 years or more but under 25 years of age guilty of an offence, it may defer sentencing the person in accordance with section 83A.

S. 7(2) inserted by No. 19/1999 s. 4, amended by No. 72/2004 s. 38.

8. Conviction or non-conviction

(1) In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including—

(a) the nature of the offence; and

(b) the character and past history of the offender; and

(c) the impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects.

(2) Except as otherwise provided by this or any other Act, a finding of guilt without the recording of a conviction must not be taken to be a conviction for any purpose.

(3) A finding of guilt without the recording of a conviction—

(a) does not prevent a court from making any other order that it is authorised to make in consequence of the finding by this or any other Act;

(b) has the same effect as if one had been recorded for the purpose of—

(i) appeals against sentence; or

(ii) proceedings for variation or breach of sentence; or

(iii) proceedings against the offender for a subsequent offence; or

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

Division 2—Custodial Orders

Subdivision (1)—Imprisonment

9. Aggregate sentence of imprisonment[3]

S. 9 substituted by No. 48/1997 s. 9.

(1) If an offender is convicted by the Magistrates' Court of two or more offences which are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character, the Court may impose an aggregate sentence of imprisonment in respect of those offences in place of a separate sentence of imprisonment in respect of each of them.

(2) The term of an aggregate sentence of imprisonment imposed in accordance with sub-section (1) must not exceed the total effective period of imprisonment that could have been imposed in respect of the offences in accordance with this Act if the Magistrates' Court had imposed a separate sentence of imprisonment in respect of each of them.

(3) If the Magistrates' Court proposes to impose an aggregate sentence of imprisonment, it must before doing so announce in open court, in language likely to be readily understood by the offender—

(a) the decision to impose an aggregate sentence and the reasons for doing so; and

(b) the effect of the proposed aggregate sentence.

*   *   *   *   *

S. 10 amended by No. 41/1993 s. 6, repealed by No. 49/1991 s. 10(5).[4]

11. Fixing of non-parole period by sentencing court

(1) If a court sentences an offender to be imprisoned in respect of an offence for—

(a) the term of his or her natural life; or

S. 11(1)(b) amended by No. 48/1997 s. 28(1).

(b) a term of 2 years or more—

the court must, as part of the sentence, fix a period during which the offender is not eligible to be released on parole unless it considers that the nature of the offence or the past history of the offender make the fixing of such a period inappropriate.

S. 11(2) amended by No. 48/1997 s. 28(1)(2).

(2) If a court sentences an offender to be imprisoned in respect of an offence for a term of less than 2 years but not less than one year, the court may, as part of the sentence, fix a period during which the offender is not eligible to be released on parole.

(3) A non-parole period fixed under sub-section (1) or (2) must be at least 6 months less than the term of the sentence.

(4) If a court sentences an offender to be imprisoned in respect of more than one offence, any period fixed under sub-section (1) or (2) must be in respect of the aggregate period of imprisonment that the offender will be liable to serve under all the sentences then imposed.

12. References to non-parole period

A reference in this or any other Act to a non-parole period includes a reference to a minimum term fixed in accordance with Part 3 of the **Penalties and Sentences Act 1985** or any corresponding previous enactment.

13. Fixing of non-parole period otherwise than by sentencing court

S. 13(1) amended by No. 45/1996 s. 18(Sch. 2 item 11.2).

(1) The failure of the sentencing court to fix a non-parole period in accordance with section 11 does not invalidate the sentence but—

S. 13(1)(a) amended by No. 19/1999 s. 16(3).

(a) the Court of Appeal in respect of a sentence imposed by the Supreme Court or the County Court; or

(b) the County Court in respect of a sentence imposed by the Magistrates' Court—

may, on the application of the offender or of the Secretary to the Department of Justice fix a non-parole period in accordance with that section in any manner in which the sentencing court might have done so.

S. 13(2) amended by No. 41/1993 s. 7(1)(i).

(2) The Supreme Court may fix a non-parole period in accordance with section 11 in respect of a term of imprisonment or detention being served by—

(a) any person who at the commencement of this sub-section is serving a sentence of imprisonment for the term of his or her natural life in respect of which a non-parole period had not been fixed; or

S. 13(2)(b) amended by No. 41/1993 s. 7(1)(ii).

(b) any person who at that commencement is imprisoned in accordance with a pardon granted by the Governor under the royal prerogative of mercy or section 496 of the **Crimes Act 1958**, whether or not the Governor fixed a period during which the person was not eligible to be released on parole; or

S. 13(2)(c) inserted by No. 41/1993 s. 7(1)(ii).

(c) any person who at the commencement of section 7(1) of the **Sentencing (Amendment) Act 1993** is serving a period of detention during the Governor's pleasure imposed under section 473 of the **Crimes Act 1958** (as in force before its repeal).

S. 13(3) amended by Nos 41/1993 s. 7(2), 45/1996 s. 18(Sch. 2 item 11.3), 48/1997 s. 28(2).

(3) The Supreme Court may fix a non-parole period under sub-section (2) on the application of the offender or of the Secretary to the Department of Justice and it may do so as if it had just sentenced the offender to that term of imprisonment or detention and, in the case of detention, as if the detention were imprisonment for a term of not less than one year.

(4) For the purposes of Part VI of the **Crimes Act 1958 "sentence"** includes an order made under sub-section (2) and that Part applies, with any necessary modifications, to an appeal against such an order as it applies to an appeal against the sentence passed on a conviction.

14. Fixing of new non-parole period in respect of multiple sentences

(1) If—

(a) a court has sentenced an offender to be imprisoned in respect of an offence and has fixed a non-parole period in respect of the sentence; and

(b) before the end of that non-parole period the offender is sentenced by a court to a further term of imprisonment in respect of which it proposes to fix a non-parole period—

the court must fix a new single non-parole period in respect of all the sentences the offender is to serve or complete.

(2) The new single non-parole period fixed at the time of the imposition of the further sentence—

(a) supersedes any previous non-parole period that the offender is to serve or complete; and

(b) must not be such as to render the offender eligible to be released on parole earlier than would have been the case if the further sentence had not been imposed.

15. Order of service of sentences

(1) If an offender has been sentenced to several terms of imprisonment in respect of any of which a non-parole period was fixed, the offender must serve—

(a) firstly, any term or terms in respect of which a non-parole period was not fixed;

(b) secondly, the non-parole period;

(c) thirdly, unless and until released on parole, the balance of the term or terms after the end of the non-parole period.

(2) If during the service of a sentence a further sentence is imposed, service of the first-mentioned sentence must, if necessary, be suspended in order that the sentences may be served in the order referred to in sub-section (1).

16. Sentences—whether concurrent or cumulative[5]

S. 16(1) substituted by No. 41/1993 s. 8(a), amended by No. 48/1997 s. 17(1).

(1) Subject to sub-section (1A), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment or detention in a youth training centre or youth residential centre imposed on that person, whether before or at the same time as that term.

S. 16(1A) inserted by No. 41/1993 s. 8(a).

(1A) Sub-section (1) does not apply to a term of imprisonment imposed—

(a) in default of payment of a fine or sum of money; or

(b) on a prisoner in respect of a prison offence or an escape offence; or

S. 16(1A)(c) substituted by No. 48/1997 s. 7(4).

(c) on a serious offender within the meaning of Part 2A for a relevant offence within the meaning of that Part; or

S. 16(1A)(d) substituted by No. 48/1997 s. 10(1).

(d) on any person for an offence committed while released under a parole order[6]; or

S. 16(1A)(e) inserted by No. 48/1997 s. 10(1).

(e) on any person for an offence committed while released on bail in relation to another offence[7].

(2) Every term of imprisonment imposed on a person by a court in default of payment of a fine or sum of money must, unless otherwise directed by the court, be served—

S. 16(2)(a) amended by No. 48/1997 s. 17(1).

(a) cumulatively on any uncompleted sentence or sentences of imprisonment or detention in a youth training centre or youth residential centre imposed on that person in default of payment of a fine or sum of money; but

(b) concurrently with any other uncompleted sentence or sentences of imprisonment or detention imposed on that person—

whether that other sentence was, or those other sentences were, imposed before or at the same time as that term.

S. 16(2A) inserted by No. 99/2000 s. 15.

(2A) A reference in sub-section (2) to a term of imprisonment imposed on a person by a court is to be read as including a reference to a term of imprisonment imposed on a person under Schedule 7 to the **Magistrates' Court Act 1989**.

S. 16(3) amended by Nos 41/1993 s. 8(b), 48/1997 s. 17(1).

(3) Every term of imprisonment imposed on a prisoner by a court in respect of a prison offence or an escape offence must, unless otherwise directed by the court because of the existence of exceptional circumstances, be served cumulatively on any uncompleted sentence or sentences of imprisonment or detention in a youth training centre or youth residential centre imposed on that prisoner, whether before or at the same time as that term.

S. 16(3A) inserted by No. 41/1993 s. 8(c), repealed by No. 48/1997 s. 7(5).

*   *   *   *   *

S. 16(3B) inserted by No. 41/1993 s. 8(c), substituted by No. 48/1997 s. 10(2).

(3B) Every term of imprisonment imposed on a person for an offence committed while released under a parole order made in respect of another sentence of imprisonment ("the parole sentence") must, unless otherwise directed by the court because of the existence of exceptional circumstances, be served cumulatively on any period of imprisonment which he or she may be required to serve in custody in a prison on cancellation of the parole order [8].

S. 16(3C) inserted by No. 48/1997 s. 10(2).

(3C) Every term of imprisonment imposed on a person for an offence committed while released on bail in relation to any other offence or offences must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term [9].

(4) A court that imposes a term of imprisonment for an offence against the law of Victoria on a person already undergoing a sentence or sentences of imprisonment for an offence against the law of the Commonwealth must direct when the new term commences which must be no later than immediately after—

(a) the completion of that sentence or those sentences if a non-parole period or pre-release period (as defined in Part 1B of the Crimes Act 1914 of the Commonwealth) was not fixed in respect of it or them; or

(b) the end of that period if one was fixed.

S. 16(5) repealed by No. 48/1997 s. 32(1).

*   *   *   *   *

(6) This section has effect despite anything to the contrary in any Act.

17. Commencement of sentences[10]

(1) Subject to sections 16 and 18, a sentence of imprisonment commences on the day that it is imposed unless the offender is not then in custody in which case it commences on the day he or she is apprehended under a warrant to imprison issued in respect of the sentence.

(2) If an offender sentenced to a term of imprisonment is allowed to be or to go at large for any reason, the period between then and the day on which he or she is taken into custody to undergo the sentence does not count in calculating the term to be served and service of the sentence is suspended during that period.

(3) If an offender lawfully imprisoned under a sentence escapes or fails to return after an authorised absence, the period between then and the day on which he or she surrenders or is apprehended does not count in calculating the term to be served and service of the sentence is suspended during that period.

(4) Despite anything to the contrary in this or any other Act or in any rule of law or practice, a sentence of imprisonment must be calculated exclusive of any time during which service of it is suspended under sub-section (2) or (3).

S. 17(5) amended by No. 48/1997 s. 17(1).

(5) If an offender to whom sub-section (3) applies is in the period during which service of the sentence is suspended under that sub-section imprisoned or detained in a youth training centre or youth residential centre under another sentence, the unexpired portion of the suspended sentence takes effect—

(a) if it is to be served cumulatively on the sentence or sentences he or she is then undergoing—on the day that sentence is, or those sentences are, completed; or

(b) in any other case—at the end of the period of suspension.

S. 17(6) amended by No. 48/1997 s. 17(1).

(6) If an offender sentenced to a term of imprisonment and allowed to be or to go at large pending an appeal or the consideration of any question of law reserved or case stated is imprisoned or detained in a youth training centre or youth residential centre under another sentence at the time when the appeal, question of law or case stated is finally determined, the first-mentioned sentence or the unexpired portion of it takes effect—

(a) if it is to be served cumulatively on the sentence or sentences he or she is then undergoing—on the day that sentence is, or those sentences are, completed; or

(b) in any other case—on the day on which the appeal, question of law or case stated is finally determined.

(7) Sub-section (6) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

(8) If a person serving a sentence of imprisonment becomes a security patient, an involuntary patient or a security resident, time spent as such counts in calculating the term to be served.

18. Time held in custody before trial etc. to be deducted from sentence[11]

S. 18(1) amended by Nos 48/1997 s. 11(1), 69/1997 s. 6(1)(a)(b), 10/1999 s. 18(1).

(1) If an offender is sentenced to a term of imprisonment, or to a period of detention in an approved mental health service under a hospital security order, in respect of an offence, any period of time during which he or she was held in custody in relation to proceedings for that offence or proceedings arising from those proceedings (including a period pending the determination of an appeal) must, unless the sentencing court or the court fixing a non-parole period in respect of the sentence otherwise orders, be reckoned as a period of imprisonment or detention already served under the sentence.

S. 18(1A) inserted by No. 10/1999 s. 18(2), repealed by No. 1/2000 s. 8(a), new s. 18(1A) inserted by No. 53/2003 s. 4(1).

(1A) If an offender is sentenced to a term of imprisonment and is remanded in custody while the sentence is stayed while a home detention assessment report is prepared on the offender, any period of time during which he or she is held in custody on that remand must be reckoned as a period of imprisonment already served under the sentence.

*   *   *   *   *

S. 18(1B) inserted by No. 10/1999 s. 18(2), repealed by No. 1/2000 s. 8(a).

S. 18(2) amended by No. 53/2003 s. 4(2).

(2) Sub-section (1) or (1A) does not apply—

(a) to a period of custody of less than one day; or

S. 18(2)(b) amended by No. 69/1997 s. 6(2)(a).

(b) to a sentence of imprisonment or period of detention in an approved mental health service of less than one day; or

S. 18(2)(ba) inserted by No. 48/1997 s. 11(2)(a).

(ba) to an intensive correction order; or

S. 18(2)(c) amended by No. 48/1997 s. 11(2)(b).

(c) to a sentence of imprisonment that has been wholly suspended or to the suspended part of a partly suspended sentence of imprisonment; or

S. 18(2)(ca) inserted by No. 10/1999 s. 18(3), repealed by No. 1/2000 s. 8(b).

*   *   *   *   *

S. 18(2)(d) inserted by No. 48/1997 s. 11(2)(b), amended by No. 69/1997 s. 6(2)(b).

(d) to a period of custody declared on a previous occasion under this section or section 35 as reckoned to be a period of imprisonment or detention already served under another sentence of imprisonment or detention or hospital security order imposed on the offender.

S. 18(3) amended by No. 53/2003 s. 4(3).

(3) If an offender was held in custody in circumstances to which sub-section (1) or (1A) applies, then—

(a) the informant or person who arrested the offender must, if present before the court, inform it, whether from his or her own knowledge or from inquiries made by him or her, of the length of the period of custody; or

(b) if that person is not present before the court, it may take and receive other evidence (whether oral or written and whether on oath or otherwise) of the length of the period of custody.

(4) If an offender was held in custody in circumstances to which sub-section (1) applies, then the court must declare the period to be reckoned as already served under the sentence and cause to be noted in the records of the court the fact that the declaration was made and its details.

S. 18(4) amended by No. 48/1997 s. 11(3).

(4A) If an offender was held in custody in circumstances to which sub-section (1A) applies, then the court, on making its decision as to whether or not to make the home detention order, must declare the period to be reckoned as already served under the sentence and cause to be noted in the records of the court the fact that the declaration was made and its details.

S. 18(4A) inserted by No. 53/2003 s. 4(4).

(5) The person with custody of the record referred to in sub-section (4) must indorse on the warrant or other authority for the imprisonment or detention of the offender particulars of the matters referred to in that sub-section.

S. 18(5) amended by No. 69/1997 s. 6(3).

(5A) The person with custody of the record referred to in sub-section (4A) must indorse on the warrant or other authority for the imprisonment or detention of the offender or on the home detention order particulars of the matters referred to in that sub-section.

S. 18(5A) inserted by No. 53/2003 s. 4(5).

(6) If a person charged with a series of offences committed on different occasions has been in custody continuously since arrest, the period of custody for the purposes of sub-section (1) must be reckoned from the time of his or her arrest even if he or she is not convicted of the offence with respect to which he or she was first arrested or of other offences in the series.

S. 18(7) amended by No. 53/2003 s. 4(6).

(7) If on an application under this sub-section the sentencing court is satisfied that the period declared under sub-section (4) or (4A) was not correct it may declare the correct period and amend the sentence accordingly.

(8) An application under sub-section (7) may be made by—

(a) the offender; or

(b) the Director of Public Prosecutions, if the sentencing court was the Supreme Court or the County Court; or

(c) the informant or police prosecutor, if the sentencing court was the Magistrates' Court.

Pt 3 Div. 2 Subdiv. (1A) (Heading and ss 18A–18Q) inserted by No. 41/1993 s. 9.

Subdivision (1A)—Indefinite Sentences

S. 18A inserted by No. 41/1993 s. 9.

18A. Indefinite sentence

(1) If a person (other than a young person) is convicted by the Supreme Court or the County Court of a serious offence, the court may sentence him or her to an indefinite term of imprisonment.

(2) A court must not fix a non-parole period in respect of an indefinite sentence.

(3) The court must specify in the order imposing an indefinite sentence a nominal sentence of a period equal in length to the non-parole period that it would have fixed had the court sentenced the offender to be imprisoned in respect of the serious offence for a fixed term.

(4) An offender serving an indefinite sentence is not eligible to be released on parole.

(5) A court may impose an indefinite sentence—

(a) on its own initiative; or

(b) on an application made by the Director of Public Prosecutions.

(6) A court may impose an indefinite sentence in respect of a serious offence regardless of the maximum penalty prescribed for the offence.

(7) If a court is considering imposing an indefinite sentence on an offender it must also consider whether section 90 or 91 applies and, if it considers that one of those sections applies, the court must make an assessment order under section 90 or a diagnosis, assessment and treatment order under section 91, as the case requires.

18B. When court may impose indefinite sentence in respect of serious offence

S. 18B inserted by No. 41/1993 s. 9.

(1) A court may only impose an indefinite sentence on an offender in respect of a serious offence if it is satisfied, to a high degree of probability, that the offender is a serious danger to the community because of—

(a) his or her character, past history, age, health or mental condition; and

(b) the nature and gravity of the serious offence; and

(c) any special circumstances.

(2) In determining whether the offender is a serious danger to the community, the court must have regard to—

(a) whether the nature of the serious offence is exceptional;

(b) anything relevant to this issue contained in the certified transcript of any proceeding against the offender in relation to a serious offence;

(c) any medical, psychiatric or other relevant report received by it;

(d) the risk of serious danger to members of the community if an indefinite sentence were not imposed;

(e) the need to protect members of the community from the risk referred to in paragraph (d)—

and may have regard to anything else that it thinks fit.

(3) The prosecution has the onus of proving that an offender is a serious danger to the community.

S. 18C inserted by No. 41/1993 s. 9.

18C. Application for indefinite sentence

(1) An application for an indefinite sentence by the Director of Public Prosecutions—

(a) may only be made if the Director has filed with the court on the day of the conviction or within 5 working days after that day a notice of intention to make the application;

(b) must be made within 10 working days after the day of the conviction or within any longer period fixed by the court during that 10 working day period.

(2) On the filing of a notice under sub-section (1)(a), the court must revoke any order made for the offender's release pending sentencing and remand him or her in custody.

18D. Adjournment of sentencing

S. 18D inserted by No. 41/1993 s. 9.

If a court is considering imposing an indefinite sentence on an offender, whether on its own initiative or because of a notice filed under section 18C(1)(a), it must on the day of the conviction or within 5 working days after that day explain, or cause to be explained, to the offender in language likely to be readily understood by him or her—

(a) the fact that it is considering imposing an indefinite sentence; and

(b) the effect of an order for an indefinite sentence—

and adjourn sentencing until at least 25 working days after the day of the conviction.

18E. Hospital orders

S. 18E inserted by No. 41/1993 s. 9.

(1) If a court imposes an indefinite sentence on an offender as mentioned in section 92(b) after the expiry of an order made under section 90 or 91, it must deduct from the nominal sentence the period of time that the offender was detained under that order.

(2) Section 93 applies on the trial of a person for a serious offence where the court imposes an indefinite sentence in the same way as it applies on any other trial but as if—

(a) sub-section (1)(e) included a reference to detention in a psychiatric in-patient service as a security patient for an indefinite period;

(b) sub-section (4) did not require the fixing of a non-parole period but instead required the court to specify a nominal sentence as if the hospital security order were an indefinite sentence;

(c) in sub-section (5) the words "before the end of the period specified in a hospital security order" were omitted;

(d) sub-section (5) referred to an indefinite term instead of the unexpired portion of the hospital security order;

(e) sub-section (5) referred to release under a re-integration program instead of release on parole;

(f) sub-section (6) referred to a nominal sentence instead of a non-parole period.

S. 18E(3) inserted by No. 24/1994 s. 6(1).

(3) A hospital security order made under section 93(1)(e) (as applied by sub-section (2) of this section) has effect for all purposes as an indefinite sentence.

S. 18F inserted by No. 41/1993 s. 9.

18F. Sentencing hearing

Before imposing an indefinite sentence, a court must—

(a) give both the prosecution and the defence the opportunity to lead admissible evidence on any matter relevant to imposing such a sentence;

S. 18F(ab) inserted by No. 24/1994 s. 6(2).

(ab) subject to Division 1A of Part 6, take into consideration any victim impact statement made, or other evidence given, under that Division;

(b) subject to Division 2 of Part 6, take into consideration any pre-sentence report filed with the court;

(c) have regard to any submissions on sentence made to it.

18G. Reasons for indefinite sentence

S. 18G inserted by No. 41/1993 s. 9.

A court that imposes an indefinite sentence on an offender must, at the time of doing so—

(a) state the reasons for its decision; and

(b) cause those reasons to be entered in the records of the court.

18H. Review of indefinite sentence

S. 18H inserted by No. 41/1993 s. 9.

(1) A court that imposes an indefinite sentence on an offender must review the sentence—

(a) on the application of the Director of Public Prosecutions, as soon as practicable after the offender has served the nominal sentence;

(b) on the application of the offender, at any time after the expiry of three years from the carrying out of the review under paragraph (a) and thereafter at intervals of not less than three years.

(2) The Director of Public Prosecutions must make the application to the court necessary for it to carry out the review required by sub-section (1)(a) within the time specified in that sub-section.

(3) The court must cause a copy of an application by an offender under sub-section (1)(b) to be provided to the Director of Public Prosecutions as soon as practicable after it has been filed with the court.

(4) Within 10 working days after the date of filing of an application by an offender under sub-section (1)(b), the court must give directions for its hearing and, subject to those directions, must hear the application within 25 working days after the date of filing.

(5) A court on a review need not be constituted by the same judge who constituted the court when it imposed the sentence.

S. 18I inserted by No. 41/1993 s. 9.

18I. Court may order reports

S. 18I(1) amended by Nos 45/1996 s. 18(Sch. 2 item 11.4), 46/1998 s. 7(Sch. 1).

(1) At any time after the making of an application under section 18H(1)(a) or (b) the court may order the Secretary to the Department of Human Services within the meaning of the **Health Act 1958** or the Secretary to the Department of Justice or any other person or body to prepare a report in respect of the offender and file it with the court within the time directed by it.

(2) The author of a report must conduct any investigation that the author thinks appropriate or that is directed by the court.

(3) A report must relate to the period since the indefinite sentence was imposed or last reviewed, as the case requires.

S. 18J inserted by No. 41/1993 s. 9.

18J. Distribution of reports

(1) The court must, a reasonable time before the review is to take place, cause a copy of a report ordered by it under section 18I(1) to be provided to—

(a) the Director of Public Prosecutions; and

(b) the legal practitioners representing the offender; and

(c) if the court has so directed, the offender.

(2) If the prosecution or the defence has caused a report in respect of the offender to be prepared for the purposes of the review, it must, a reasonable time before the review is to take place, file it with the court and provide a copy to the Director of Public Prosecutions or the legal practitioners representing the offender, as the case requires.

18K. Disputed report

S. 18K inserted by No. 41/1993 s. 9.

(1) The Director of Public Prosecutions or the offender may file with the court a notice of intention to dispute the whole or any part of a report provided under section 18J.

(2) If a notice is filed under sub-section (1) before the review is to take place, the court must not take the report or the part in dispute (as the case requires) into consideration on the hearing of the review unless the party that filed the notice has been given the opportunity—

(a) to lead evidence on the disputed matters; and

(b) to cross-examine the author of the report on its contents.

18L. Review hearing

S. 18L inserted by No. 41/1993 s. 9.

On the hearing of a review under section 18H(1)(a) or (b), a court must—

(a) give both the Director of Public Prosecutions and the offender the opportunity to lead admissible evidence on any relevant matter;

(b) subject to section 18K, take into consideration any report in respect of the offender that is filed with the court;

(c) have regard to any submissions on the review made to it.

S. 18M inserted by No. 41/1993 s. 9.

18M. Outcome of review

(1) On a review under section 18H(1)(a) or (b) the court, unless it is satisfied (to a high degree of probability) that the offender is still a serious danger to the community, must by order—

(a) discharge the indefinite sentence; and

(b) make the offender subject to a 5 year re-integration program administered by the Adult Parole Board and issue a warrant to imprison in the same way as if it had sentenced the offender to a term of imprisonment for 5 years.

(2) The indefinite sentence continues in force if the court does not make an order under sub-section (1).

S. 18N inserted by No. 41/1993 s. 9.

18N. Re-integration program

The provisions of Division 5 of Part 8 (parole) and of section 112 (regulations) of the **Corrections Act 1986** apply to a re-integration program in the same way that they apply to parole but as if—

(a) references in those provisions to parole or release on parole were references to a re-integration program or release under a re-integration program;

(b) persons made subject to a re-integration program were serving a prison sentence of 5 years during the whole of which they were eligible to be released under the re-integration program;

(c) references in those provisions to a parole order were references to an order made by the Adult Parole Board releasing an offender under a re-integration program;

(d) references in those provisions to a non-parole period were omitted;

(e) references in those provisions to the parole period were references to the period of release under the re-integration program.

18O. Appeal[12]

S. 18O inserted by No. 41/1993 s. 9.

S. 18O(1) amended by No. 109/1994 s. 34(14)(b).

(1) An offender may appeal to the Court of Appeal against the refusal of a court to make an order under section 18M(1).

S. 18O(2) amended by No. 109/1994 s. 34(14)(b).

(2) The Director of Public Prosecutions may appeal to the Court of Appeal against an order made under section 18M(1).

S. 18O(3) amended by No. 109/1994 s. 34(14)(b).

(3) On an appeal under this section the Court of Appeal may—

(a) in the case of an appeal under sub-section (1), confirm the refusal and dismiss the appeal or uphold the appeal and make the order that it thinks ought to have been made; or

(b) in the case of an appeal under sub-section (2), confirm the order and dismiss the appeal or uphold the appeal and quash the order made.

(4) An indefinite sentence revives on the quashing of an order under section 18M(1) and the original warrant to imprison or other authority for the offender's imprisonment is to be regarded as again in force.

S. 18P inserted by No. 41/1993 s. 9.

18P. Offender to be present during hearings

(1) Subject to this section, the offender must be present—

(a) during the hearing of evidence under section 18F;

(b) during the hearing of a review under section 18H(1)(a) or (b).

(2) The court may order the officer in charge of the prison or other institution in which the offender is detained to cause the offender to be brought before the court for a hearing referred to in sub-section (1).

(3) Sub-section (2) is additional to, and does not limit, the court's powers under section 361 of the **Crimes Act 1958**.

(4) If the offender acts in a way that makes the hearing in the offender's presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence.

(5) If the offender is unable to be present at a hearing because of illness or for any other reason, the court may proceed with the hearing in his or her absence if it is satisfied that—

(a) doing so will not prejudice the offender's interests; and

(b) the interests of justice require that the hearing should proceed even in the absence of the offender.

S. 18Q inserted by No. 41/1993 s. 9, repealed by No. 24/1994 s. 6(3).

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Subdivision (1B)—Combined Custody and Treatment Orders

Pt 3 Div. 2 Subdiv. (1B) (Heading and ss 18Q–18W) inserted by No. 48/1997 s. 12.

18Q. Combined custody and treatment order

New s. 18Q inserted by No. 48/1997 s. 12.

(1) If a person is convicted by a court of an offence and the court—

(a) is satisfied that drunkenness or drug addiction contributed to the commission of the offence; and

(b) is considering sentencing him or her to a term of imprisonment of not more than 12 months; and

(c) has received a pre-sentence report—

the court, if satisfied that it is desirable to do so in the circumstances, may impose a sentence of imprisonment of not more than 12 months and order that not less than 6 months of that sentence be served in custody and the balance be served in the community on the conditions attached to the order.

(2) Before making a combined custody and treatment order a court may order a drug and alcohol assessment report in respect of the offender and adjourn the proceeding to enable the report to be prepared.

(3) A court may only make a combined custody and treatment order if the offender agrees to comply with the conditions attached to it.

(4) A court must not make a combined custody and treatment order if the sentence of imprisonment by itself for the whole term stated by the court would

not be appropriate in the circumstances having regard to the provisions of this Act.

(5) If the offender is convicted of more than one offence in the same proceeding the court may only make a combined custody and treatment order if the aggregate period of imprisonment imposed in respect of all the offences does not exceed 12 months.

(6) A combined custody and treatment order must be taken for all purposes to be a sentence of imprisonment for the whole term stated by the court.

S. 18Q(7) amended by No. 19/1999 s. 5(1).

(7) For the purposes of any proceedings under section 18VA or 18W, a combined custody and treatment order made on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought.

S. 18R inserted by No. 48/1997 s. 12.

18R. Core conditions

(1) Core conditions of a combined custody and treatment order are that the offender—

S. 18R(1)(a) amended by No. 19/1999 s. 5(2).

(a) must not during the period of the order commit, whether in or outside Victoria, another offence punishable on conviction by imprisonment;

S. 18R(1)(ab) inserted by No. 19/1999 s. 5(3).

(ab) while serving the sentence in custody must undergo treatment for alcohol or drug addiction as directed by a prescribed person or a member of a prescribed class of persons;

(b) while serving the sentence in the community must—

(i) report to a specified community corrections centre within 2 clear working days after being released from custody under the order;

(ii) undergo treatment for alcohol or drug addiction as specified in a drug and alcohol pre-release report;

(iii) report to, and receive visits from, a community corrections officer;

(iv) notify an officer at the specified community corrections centre of any change of address or employment within 2 clear working days after the change;

(v) not leave Victoria except with the permission of an officer at the specified community corrections centre granted either generally or in relation to the particular case;

(vi) obey all lawful instructions and directions of community corrections officers.

(2) A combined custody and treatment order must have all the core conditions attached to it.

(3) On making a combined custody and treatment order a court must order that a drug and alcohol pre-release report be prepared in respect of the offender prior to his or her release from custody under the order.

18S. Program conditions

S. 18S inserted by No. 48/1997 s. 12.

(1) The court may attach to a combined custody and treatment order—

S. 18S(1)(a) amended by No. 19/1999 s. 5(4).

(a) a condition that the offender during the period of the order submit to testing for alcohol or drug use as specified in the order; or

(b) any other condition relevant to the offender's drug or alcohol addiction or usage that the court considers necessary or desirable.

(2) A court is not required to attach any program conditions to a combined custody and treatment order.

(3) A court must not impose any more program conditions than are necessary to achieve the purpose or purposes for which the order is made.

S. 18T inserted by No. 48/1997 s. 12.

18T. Offender may be fined as well

A court may impose on an offender a fine authorised by law in addition to making a combined custody and treatment order.

S. 18U inserted by No. 48/1997 s. 12.

18U. Secretary may direct offender to report at another place

(1) If, because an offender has changed his or her place of residence or for any other reason it is not convenient that the offender should report at a place or to a person specified in a combined custody and treatment order, the Secretary to the Department of Justice may direct the offender to report at another place or to another person.

(2) An offender must report as directed under sub-section (1) as if that place or person had been specified in the order.

S. 18V inserted by No. 48/1997 s. 12.

18V. Suspension of combined custody and treatment order

At any time after the release from custody of an offender under a combined custody and treatment order, the Secretary to the Department of Justice may—

(a) if the offender is ill; or

(b) in other exceptional circumstances—

suspend for a period the operation of the order or of any condition of the order and, if so, that period does not count in calculating the period for which the order is to remain in force.

18VA. Variation of combined custody and treatment order

S. 18VA inserted by No. 19/1999 s. 6.

(1) If on an application under this sub-section the court which made a combined custody and treatment order is satisfied—

(a) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court or the author of a pre-sentence report before the order was made; or

(c) that the offender is no longer willing to comply with the order—

it may vary the order or cancel it and, subject to sub-section (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just convicted him or her of that offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of a combined custody and treatment order, a court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under sub-section (1) may be made at any time while the order is in force by—

(a) the offender; or

(b) a prescribed person or a member of a prescribed class of persons; or

(c) the Director of Public Prosecutions.

(4) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(5) The court may order that a warrant to arrest be issued against the offender if he or she is serving the sentence in the community and does not attend before the court on the hearing of the application.

S. 18W inserted by No. 48/1997 s. 12.

18W. Breach of combined custody and treatment order

(1) If at any time while a combined custody and treatment order is in force the offender fails without reasonable excuse to comply with any condition of it, the offender is guilty of an offence for which he or she may be proceeded against on a charge filed by a prescribed person or a member of a prescribed class of persons.

(2) A proceeding for an offence under sub-section (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.

(3) Despite anything to the contrary in the **Magistrates' Court Act 1989**—

(a) on the filing of a charge referred to in sub-section (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;

(b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the defendant to attend—

(i) at the proper venue of the Magistrates' Court, if the combined custody and treatment order was made by the Magistrates' Court; and

(ii) at the Supreme Court or the County Court, if the combined custody and treatment order was made by that court—

to answer the charge;

(c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the defendant when arrested before a bail justice or before the court by which the combined custody and treatment order was made to be dealt with according to law.

(4) Despite anything to the contrary in this or any other Act or in any rule of law, the Supreme Court or the County Court may, if the combined custody and treatment order was made by it, hear and determine without a jury an offence against sub-section (1) and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences applies so far as is appropriate to the hearing of the offence.

S. 18W(5) amended by No. 10/1999 s. 30.

(5) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may impose a level 10 fine and in addition must either—

(a) confirm the order originally made; or

S. 18W(5)(b) amended by No. 19/1999 s. 5(5).

(b) whether or not the offender has served any part of the sentence in the community, order the offender to serve in custody the whole part of the sentence that was to be served in the community.

(6) Despite anything to the contrary in sub-section (5), if on the hearing of a charge the court finds the offender guilty of the offence it must, in addition to any fine it may impose under sub-section (5), exercise the power referred to in paragraph (b) of that sub-section unless it is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the combined custody and treatment order was made.

(7) If the court decides not to exercise the power referred to in sub-section (5)(b), it must state in writing its reasons for so deciding.

(8) The part of a term of imprisonment which a court orders an offender to serve in custody under sub-section (5) must be served—

S. 18W(8)(a) amended by No. 19/1999 s. 5(6).

(a) immediately or, if the offender is still serving the original custodial part of the sentence, immediately on the completion of service of that part of the sentence; and

(b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.

(9) A fine imposed under this section must be taken for all purposes to be a fine payable on a conviction of an offence.

Subdivision (1C)—Drug Treatment Orders

Pt 3 Div. 2 Subdiv. (1C) (Heading and ss 18X–18ZS) inserted by No. 2/2002 s. 5.

18X. Purposes of drug treatment order

S. 18X inserted by No. 2/2002 s. 5.

(1) The particular purposes of a drug treatment order are—

(a) to facilitate the rehabilitation of the offender by providing a judicially-supervised, therapeutically-oriented, integrated drug or alcohol treatment and supervision regime;

(b) to take account of an offender's drug or alcohol dependency;

(c) to reduce the level of criminal activity associated with drug or alcohol dependency;

(d) to reduce the offender's health risks associated with drug or alcohol dependency.

(2) Nothing in sub-section (1) affects the operation of section 5(1) but, if considering making a drug treatment order, the Drug Court must regard the rehabilitation of the offender and the protection of the community from the offender (achieved through the offender's rehabilitation) as having greater importance than the other purposes set out in section 5(1).

18Y. Order only available at Drug Court

S. 18Y inserted by No. 2/2002 s. 5.

Only the Drug Court may make a drug treatment order.

S. 18Z inserted by No. 2/2002 s. 5.

18Z. When drug treatment order can be made

(1) The Drug Court may make a drug treatment order if—

(a) an offender pleads guilty to an offence that is within the jurisdiction of the Magistrates' Court and punishable on conviction by imprisonment, other than—

(i) a sexual offence as defined in section 6B(1); or

(ii) subject to sub-section (5), an offence involving the infliction of actual bodily harm; and

(b) the Drug Court convicts the offender of the offence; and

(c) the Drug Court is satisfied on the balance of probabilities that—

(i) the offender is dependent on drugs or alcohol; and

(ii) the offender's dependency contributed to the commission of the offence; and

(d) the Drug Court considers that—

(i) a sentence of imprisonment would otherwise be appropriate; and

(ii) it would not have ordered that the sentence be served by way of intensive correction in the community nor would it have suspended the sentence in whole or part; and

(e) the Drug Court has received a drug treatment order assessment report on the offender under section 18ZQ.

(2) However, a drug treatment order cannot be made in respect of an offender who is subject to—

(a) a parole order; or

(b) a combined custody and treatment order; or

(c) a sentencing order of the County Court or Supreme Court.

(3) The Drug Court must not make a drug treatment order unless—

(a) it is satisfied in all the circumstances that it is appropriate to do so; and

(b) the offender agrees in writing to the making of the order and to comply with the treatment and supervision part of the order.

Note: Section 18ZC sets out what the treatment and supervision part of the order is.

(4) The Drug Court may make a drug treatment order in respect of an offender regardless of whether—

(a) the offender's drug or alcohol dependency contributed on one or more previous occasions to the offender—

(i) committing an offence of which the offender was convicted or found guilty; or

(ii) failing to comply with the conditions of bail or of a sentencing order; or

(b) the offender has been previously sentenced to one or more terms of imprisonment.

(5) Despite sub-section (1)(a)(ii), the Drug Court may make a drug treatment order in respect of an offender where the offence involved the infliction of actual bodily harm if it is satisfied that the harm was of a minor nature.

S. 18ZA inserted by No. 2/2002 s. 5.

18ZA. Order can cover multiple offences

(1) A drug treatment order may be made in respect of one or more offences committed by an offender.

(2) An offender can only be subject to one drug treatment order at any particular time.

S. 18ZB inserted by No. 2/2002 s. 5.

18ZB. Effect of Drug Court declining to make an order

If an offender has pleaded guilty to an offence or offences in respect of which the Drug Court could make a drug treatment order but it does not consider it appropriate to do so, the Drug Court must—

(a) sentence the offender in relation to the offence or offences if the offender consents to the Drug Court doing so; or

(b) adjourn the matter for sentencing to the Magistrates' Court (other than the Drug Court) at that venue.

S. 18ZC inserted by No. 2/2002 s. 5.

18ZC. The parts of a drug treatment order

(1) A drug treatment order consists of 2 parts—

(a) the treatment and supervision part; and

(b) the custodial part.

(2) The treatment and supervision part of a drug treatment order—

(a) consists of the core conditions and program conditions attached to the order; and

(b) operates for 2 years or until that part of the order is cancelled under section 18ZK, 18ZN or 18ZP.

(3) The custodial part of a drug treatment order consists of the sentence of imprisonment that the Drug Court must impose on the offender under section 18ZD.

18ZD. Sentence of imprisonment must be imposed

S. 18ZD inserted by No. 2/2002 s. 5.

(1) When making a drug treatment order, the Drug Court must impose a sentence of imprisonment of no more than 2 years on the offender.

(2) The Drug Court must impose the sentence of imprisonment that it would have imposed if it had not made the drug treatment order.

(3) Despite anything to the contrary in section 11, the Drug Court must not fix a non-parole period in accordance with that section as part of the sentence imposed by it.

Note: A non-parole period may be fixed as part of certain orders under this Subdivision activating the custodial part of a drug treatment order (see section 18ZE(3)).

18ZE. Activation of custodial part of an order

S. 18ZE inserted by No. 2/2002 s. 5.

(1) Despite anything to the contrary in this Act, an offender is not to serve the custodial part of a drug treatment order, and that part of the order does not commence, except in accordance with an order under this Subdivision activating that part of the order.

Note: The Drug Court may make an order activating some or all of the custodial part under section 18ZL(1)(f) (which involves serving a period in a secure custody facility), or under section 18ZN or 18ZP.

(2) In making an order under this Subdivision activating some or all of the custodial part of a drug treatment order, the Drug Court must first—

(a) calculate the remaining length of the custodial part of the order by subtracting from the length of the sentence of imprisonment imposed under the order—

(i) each period of custody declared under this Act as reckoned to be a period already served under the sentence; and

(ii) each period of custody served in a secure custody facility under the custodial part of the order because of an order under section 18ZL(1)(f); and

(b) if the total of—

(i) the remaining length of the custodial part of the order; and

(ii) the period during which the treatment and supervision part of the order has already operated—

is more than 2 years, reduce the remaining length of the custodial part so that the total is 2 years.

(3) If the Drug Court makes an order under section 18ZN(1)(b)(i) or 18ZP(2)(a) activating the custodial part of a drug treatment order for a period of one year or more, the Drug Court may, as part of the order under that section, fix in respect of the custodial part a non-parole period in accordance with section 11, as if the Drug Court had just sentenced the offender to that term of imprisonment.

Example

The Drug Court decides to make an order activating the custodial part of a drug treatment order 18 months after the drug treatment order was made. When it made the drug treatment order, it imposed a sentence of imprisonment of 8 months. The Drug Court—

(a) calculates that the remaining length of the custodial part of the drug treatment order is 7 months because the length of the sentence of imprisonment imposed under the order was 8 months from which the Drug Court subtracts—

(i) 14 days that the offender spent in custody before sentencing; and

(ii) 16 days that the offender served in a secure custody facility because of an earlier order under section 18ZL(1)(f); and

(b) calculates that the total of—

(i) the remaining length of the custodial part (7 months); and

(ii) the period during which the treatment and supervision part of the drug treatment order has already operated (18 months)—

is 25 months, which is 1 month over 2 years; and

(c) so that the total is 2 years, reduces the remaining length of the custodial part by 1 month to 6 months.

This means that the Drug Court may make an order activating the custodial part for no more than 6 months.

18ZF. Core conditions

S. 18ZF inserted by No. 2/2002 s. 5.

(1) The core conditions attached to a drug treatment order are that, while the treatment and supervision part of the order operates, the offender—

(a) must not commit, whether in or outside Victoria, another offence punishable on conviction by imprisonment; and

(b) must attend the Drug Court when required by the Drug Court to do so; and

(c) must report to a specified community corrections centre or other specified place within 2 clear working days after the order is made; and

(d) must undergo treatment for drug or alcohol dependency as specified in the order or from time to time by—

(i) the Drug Court; or

(ii) a specified community corrections officer; or

(iii) a specified Drug Court officer; and

(e) must report to, and accept visits from, a specified community corrections officer or specified Drug Court officer; and

(f) must give notice of any change of address within 2 clear working days before the change, unless there are special circumstances, to—

(i) the Drug Court; or

(ii) a specified community corrections officer; or

(iii) a specified Drug Court officer; and

(g) must not leave Victoria except with the permission, granted either generally or in a particular case, of one of the following—

(i) the Drug Court;

(ii) a specified community corrections officer;

(iii) a specified Drug Court officer; and

(h) must obey all lawful instructions and directions of the Drug Court, community corrections officers or specified Drug Court officers.

(2) A drug treatment order must have all the core conditions attached to it and the offender must comply with all of those conditions.

S. 18ZG inserted by No. 2/2002 s. 5.

18ZG. Program conditions

(1) The program conditions that may be attached to a drug treatment order are that, while the treatment and supervision part of the order operates, the offender—

(a) must submit to drug or alcohol testing as specified in the order; and

(b) must submit to detoxification or other treatment specified in the order (whether or not residential in nature); and

(c) must attend vocational, educational, employment or other programs as specified in the order; and

(d) must submit to medical, psychiatric or psychological treatment as specified in the order; and

(e) must not associate with specified persons; and

(f) must reside at a specified place for a specified period; and

(g) must do or not do anything else that the Drug Court considers necessary or appropriate concerning—

(i) the offender's drug or alcohol dependency; or

(ii) the personal factors that the Drug Court considers contributed to the offender's criminal behaviour.

(2) The Drug Court must attach to a drug treatment order at least one program condition but must not attach any more program conditions than it considers necessary to achieve the purposes for which the order is made.

(3) An offender must comply with all of the program conditions attached to the drug treatment order.

S. 18ZH inserted by No. 2/2002 s. 5.

18ZH. Variation on assessing offender's progress

(1) The Drug Court may vary the treatment and supervision part of a drug treatment order from time to time if the Drug Court considers it appropriate to do so based on its assessment of the offender's progress.

Note: The Drug Court may also vary the treatment and supervision part of a drug treatment order under section 18ZJ, 18ZL or 18ZN.

(2) The Drug Court may do so on its own initiative or on the application of—

(a) the offender; or

(b) the informant or police prosecutor; or

(c) a prescribed person or a person in a prescribed class of persons.

(3) The treatment and supervision part of the order may be varied by—

(a) adding or removing program conditions; or

(b) varying one or more core conditions, other than the condition referred to in section 18ZF(1)(a), or program conditions, for example to vary—

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug or alcohol testing; or

(iv) the type or frequency of vocational, educational, employment or other programs that the offender must attend.

18ZI. Case conferences

S. 18ZI inserted by No. 2/2002 s. 5.

(1) For the purpose of being informed from time to time about the progress being made by an offender subject to a drug treatment order, the magistrate constituting the Drug Court may convene a case conference.

S. 18ZI(2) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(2) A case conference may be attended by a lawyer, a prosecutor, a health service provider, a community corrections officer or anyone else whom the magistrate thinks should attend.

(3) For the purposes of section 91 of the **Corrections Act 1986**, an officer referred to in that section who discloses at a case conference information about an offender subject to a drug treatment order is taken to be performing his or her official duties.

(4) No objection can be taken to a magistrate subsequently constituting the Drug Court in a proceeding on the ground that he or she had previously convened a case conference in relation to the proceeding.

18ZJ. Rewards for complying with conditions

S. 18ZJ inserted by No. 2/2002 s. 5.

(1) The Drug Court may, on its own initiative, confer a reward from time to time on an offender who is or has been fully or substantially complying with the conditions attached to a drug treatment order by doing one or more of the following—

(a) varying the treatment and supervision part of the order under sub-section (2);

(b) varying or cancelling an order under section 18ZL(1)(c), (d) or (e);

(c) making an order that some or all of a period for which the custodial part of the drug treatment order is activated under section 18ZL(1)(f), but which the offender is yet to serve in a secure custody facility, is no longer activated;

(d) conferring on the offender any other reward that the Drug Court considers appropriate.

(2) The treatment and supervision part of the order may be varied by—

(a) adding or removing program conditions; or

(b) varying one or more core conditions, other than the condition referred to in section 18ZF(1)(a), or program conditions, for example to reduce—

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug or alcohol testing.

S. 18ZK inserted by No. 2/2002 s. 5.

18ZK. Cancellation as a reward

(1) The Drug Court may, on its own initiative, as a reward cancel the treatment and supervision part and custodial part of a drug treatment order if it considers that—

(a) the offender has to date fully or substantially complied with the conditions attached to the order; and

(b) the continuation of the order is no longer necessary to meet the purposes for which it was made.

(2) To avoid doubt, if the Drug Court cancels the treatment and supervision part and custodial part of a drug treatment order under this section any earlier orders activating the custodial part of the order cease to have effect.

18ZL. Failure to comply with conditions

S. 18ZL inserted by No. 2/2002 s. 5.

(1) If the Drug Court is satisfied on the balance of probabilities that an offender has, without reasonable excuse, failed to comply with a condition attached to a drug treatment order (other than by committing an offence punishable on conviction by imprisonment for more than 12 months) the Drug Court must take one of the following actions—

(a) confirm the treatment and supervision part of the order;

(b) vary that part of the order under sub-section (3);

(c) order that a curfew, requiring the offender to remain at a specified place between specified hours, applies to the offender for a specified period;

(d) order that the offender perform up to 20 hours of unpaid community work as directed by the Regional Manager of the region in which the community corrections centre specified in the order is located;

(e) order that the offender remain at a specified place, other than a secure custody facility, for a specified period of up to 14 days;

(f) subject to section 18ZM, order that the custodial part of the drug treatment order is activated for a specified period of between one and 7 days to be served in a secure custody facility.

Note 1: If the offender commits an offence punishable on conviction by imprisonment for more than 12 months, see section 18ZN.

Note 2: Section 18ZE sets out how much of the custodial part of a drug treatment order can be activated.

Note 3: For "secure custody facility" see section 3(1).

(2) In deciding which action to take under sub-section (1), the Drug Court must consider each of the actions in the order in which they appear and must only take the first action that the Court considers to be appropriate in the circumstances.

(3) The treatment and supervision part of the order may be varied by—

(a) adding or removing program conditions; or

(b) varying one or more core conditions, other than the condition referred to in section 18ZF(1)(a), or program conditions, for example to increase—

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug or alcohol testing.

(4) If the Drug Court is satisfied on the balance of probabilities that an offender who is subject to an order under sub-section (1)(c), (d) or (e) has failed to comply with the order, the Drug Court must take one of the following actions—

(a) confirm or vary that order;

(b) cancel that order and take any action under sub-section (1), including making another order of the same kind, as though the offender had failed to comply with a condition attached to the drug treatment order.

Note: In addition, the Drug Court may cancel the treatment and supervision part of the drug treatment order and may also cancel the custodial part of that order (see section 18ZP).

(5) The Drug Court may take an action under sub-section (1) or (4) on its own initiative or on an application by—

(a) the informant or police prosecutor; or

(b) a prescribed person or a person in a prescribed class of persons.

18ZM. Service in a secure custody facility

S. 18ZM inserted by No. 2/2002 s. 5.

(1) The Drug Court may only make an order under section 18ZL(1)(f) if it is satisfied beyond reasonable doubt that the offender has failed to comply with the condition attached to the drug treatment order.

(2) If the Drug Court makes an order under that section, it—

(a) must specify in the order the kind of secure custody facility in which the period is to be served; and

(b) must only specify a youth training centre if the offender is a young offender and the Drug Court considers it appropriate to do so.

(3) An offender can only be required to serve a period in a secure custody facility in accordance with an order under section 18ZL(1)(f) when—

(a) the period under the order under section 18ZL(1)(f); or

(b) the total of the periods for which the custodial part is activated under 2 or more such orders and which the offender has not yet served—

is at least 7 days, not including so much of the period or periods as is no longer activated because of an order under section 18ZJ(1)(c).

Note: An order may be made under section 18ZJ(1)(c) as a reward for complying with the conditions attached to a drug treatment order.

(4) Before the Drug Court makes an order under section 18ZL(1)(f), notice of the hearing concerning the making of the order must be given to—

(a) the offender; and

(b) the informant or police prosecutor; and

(c) the prescribed person or the person in the prescribed class of persons—

and the Drug Court may order that a warrant to arrest be issued against the offender if he or she does not attend for the hearing.

(5) If the Drug Court makes an order under section 18ZL(1)(f) the Drug Court may, for the purposes of giving effect to that order, issue a warrant to imprison the offender under section 68 of the **Magistrates' Court Act 1989**.

18ZN. Commission of certain offences

S. 18ZN inserted by No. 2/2002 s. 5.

(1) If the Drug Court is satisfied beyond reasonable doubt that an offender has failed to comply with a condition attached to a drug treatment order, by committing an offence punishable on conviction by imprisonment for more than 12 months, the Drug Court must—

S. 18ZN(1)(a) amended by No. 35/2002 s. 28(Sch. item 5.1).

(a) take any of the actions under section 18ZL(1) as though the offender had failed to comply with any other condition attached to the order; or

(b) cancel the treatment and supervision part of the order and, after taking into account the extent to which the offender complied with that part of the order—

(i) make an order activating some or all of the custodial part of the drug treatment order; or

(ii) cancel the custodial part of the drug treatment order and deal with the offender for each offence in respect of which the drug treatment order was made in any way in which the Drug Court could deal with the offender if it had just convicted him or her of each offence, other than by making an order under section 7(1)(a).

Note 1: Section 18ZE sets out how much of the custodial part of a drug treatment order can be activated.

Note 2: The Drug Court may be required to take an action under paragraph (b) because of section 18ZO(3).

(2) The Drug Court may take an action under sub-section (1) on its own initiative or on an application by—

(a) the informant or police prosecutor; or

(b) a prescribed person or a person in a prescribed class of persons.

(3) Before the Drug Court cancels the treatment and supervision part of a drug treatment order under sub-section (1) (whether or not it also cancels the custodial part), notice of the hearing concerning the cancellation must be given to—

(a) the offender; and

(b) the informant or police prosecutor; and

(c) the prescribed person or the person in the prescribed class of persons—

and the Drug Court may order that a warrant to arrest be issued against the offender if he or she does not attend for the hearing.

S. 18ZN(3A) inserted by No. 30/2005 s. 8(1).

(3A) If notice of the hearing concerning the cancellation of the treatment and supervision part of a drug treatment order—

(a) has been given to the offender or has been, to the satisfaction of the Drug Court, attempted to be given to the offender but the attempt is not successful; and

(b) the offender does not attend for the hearing—

then the treatment and supervision part of the drug treatment order is suspended and the period between the failure to attend the hearing and the day on which the offender does attend the Drug Court for the hearing does not count in calculating the period for which that part of the order operates.

(4) To avoid doubt, if the Drug Court cancels the treatment and supervision part or custodial part of a drug treatment order under this section, any earlier orders activating the custodial part of the order cease to have effect.

18ZO. Drug Court may hear and determine certain offences

S. 18ZO inserted by No. 2/2002 s. 5.

(1) If an offender who is subject to a drug treatment order is charged with an offence, whether committed before or after the order was made, that is within the jurisdiction of the Magistrates' Court—

(a) the Drug Court may hear and determine the offence; and

(b) for the purposes of the **Magistrates' Court Act 1989**, the Drug Court is taken to be the proper venue in relation to the proceeding for that offence.

(2) If—

(a) the Drug Court convicts the offender of the offence and imposes a sentence of imprisonment on the offender in respect of the offence; and

(b) the Drug Court does neither of the following—

(i) orders that the sentence be served by way of intensive correction in the community;

(ii) suspends the sentence in whole or part; and

(c) the length of the sentence imposed is not more than the remaining length of the custodial part of the drug treatment order (as calculated in accordance with section 18ZE(2)(a)); and

(d) the offence is a kind of offence in respect of which the Drug Court could make a drug treatment order if the offender were not already subject to one—

in imposing the sentence, the Drug Court may order that the sentence is subsumed within the custodial part of the drug treatment order.

(3) If—

(a) the Drug Court convicts the offender of the offence and imposes a sentence of imprisonment on the offender in respect of the offence; and

(b) the Drug Court does neither of the following—

(i) orders that the sentence be served by way of intensive correction in the community;

(ii) suspends the sentence in whole or part; and

(c) the Drug Court does not order under sub-section (2) that the sentence is subsumed within the custodial part of the drug treatment order—

the Drug Court must cancel the treatment and supervision part of the drug treatment order under section 18ZN(1)(b) and take an action under sub-paragraph (i) or (ii) of that section.

18ZP. Cancellation

S. 18ZP inserted by No. 2/2002 s. 5.

(1) The Drug Court may cancel the treatment and supervision part of a drug treatment order if it is satisfied on the balance of probabilities that—

(a) before the order was made, the offender's circumstances were not accurately presented to either the Drug Court or the author of the drug treatment order assessment report on the offender; or

(b) the offender will not be able to comply with a condition attached to the order because the circumstances of the offender have materially changed since the order was made; or

(c) the offender is no longer willing to comply with one or more conditions attached to the order; or

(d) the continuation of the treatment and supervision part of the order is not likely to achieve one or more of the purposes for which the order was made; or

(e) the offender has breached an order under sub-section 18ZL(1)(c), (d) or (e).

Note: The Drug Court may also cancel the treatment and supervision part of the order under section 18ZK or 18ZN.

(2) When cancelling the treatment and supervision part of the order under sub-section (1), the Drug Court must, after taking into account the extent to which the offender complied with that part of the order, take one of the following actions—

(a) make an order activating some or all of the custodial part of the drug treatment order;

(b) cancel the custodial part of the drug treatment order and deal with the offender for each offence in respect of which the drug treatment order was made in any way in which the Drug Court could deal with the offender if it had just convicted him or her of each offence, other than by making an order under section 7(1)(a).

Note: Section 18ZE sets out how much of the custodial part of a drug treatment order can be activated.

(3) The Drug Court may take an action under sub-section (1) or (2) on its own initiative or on the application of—

(a) the offender; or

(b) the informant or police prosecutor; or

(c) a prescribed person or a person in a prescribed class of persons.

(4) Before the Drug Court cancels the treatment and supervision part of a drug treatment order (whether or not it also cancels the custodial part), notice of the hearing concerning the cancellation must be given to—

(a) the offender; and

(b) the informant or police prosecutor; and

(c) the prescribed person or the person in the prescribed class of persons—

and the Drug Court may order that a warrant to arrest be issued against the offender if he or she does not attend for the hearing.

S. 18ZP(4A) inserted by No. 30/2005 s. 8(2).

(4A) If notice of the hearing concerning the cancellation of the treatment and supervision part of a drug treatment order—

(a) has been given to the offender or has been, to the satisfaction of the Drug Court, attempted to be given to the offender but the attempt is not successful; and

(b) the offender does not attend for the hearing—

then the treatment and supervision part of the drug treatment order is suspended and the period between the failure to attend the hearing and the day on which the offender does attend the Drug Court for the hearing does not count in calculating the period for which that part of the order operates.

(5) To avoid doubt, if the Drug Court cancels the treatment and supervision part or custodial part of a drug treatment order under this section, any earlier orders activating the custodial part of the order cease to have effect.

S. 18ZQ inserted by No. 2/2002 s. 5.

18ZQ. Drug treatment order assessment reports

(1) If the Drug Court is considering making a drug treatment order at any stage after a defendant has indicated an intention to plead guilty to an offence, or has pleaded guilty to an offence, it must—

(a) order a drug treatment order assessment report on the defendant; and

(b) adjourn the proceeding to enable the report to be prepared by a specified Drug Court officer.

(2) The purpose of a drug treatment order assessment report is—

(a) to establish whether the defendant is a suitable person to be subject to a drug treatment order; and

(b) if so—

(i) to prepare a case management plan for the defendant; and

(ii) to establish whether the facilities necessary to implement that plan exist and, if so, to identify those facilities; and

(iii) to make recommendations to the Drug Court on the program conditions that should be attached to a drug treatment order in respect of the defendant.

(3) If the Drug Court grants a defendant bail on an adjournment under sub-section (1) it must, for the purpose of facilitating the preparation of the report, impose a condition of bail requiring the defendant to—

(a) report to the specified Drug Court officer, or other specified person or body, within a specified period; and

(b) comply with any further reporting requirements imposed by that officer, person or body.

(4) A drug treatment order assessment report may set out all or any of the following matters which, on investigation, appear to the specified Drug Court officer to be relevant to the assessment of the defendant and are readily ascertainable by the officer—

(a) the defendant's age;

(b) the defendant's social history and background;

(c) the defendant's medical and psychiatric history, including details of any treatment the defendant has undergone for drug or alcohol dependency;

(d) the defendant's educational background;

(e) the defendant's employment history;

(f) the circumstances of any other offences of which the defendant has been found guilty;

(g) the extent to which the defendant—

(i) has complied with any sentence that is no longer in force in respect of him or her; and

(ii) is complying with any sentence currently in force in respect of him or her;

(h) the defendant's financial circumstances;

(i) the defendant's housing history and needs;

(j) any special needs of the defendant;

(k) any course, program, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit.

(5) The specified Drug Court officer must include in the report any other matter relevant to the defendant which the Drug Court has directed to be set out in the report.

(6) The report must be filed with the Drug Court no later than the time directed by the Court.

(7) Within a reasonable time after the report is filed and before a drug treatment order is made, the specified Drug Court officer must provide a copy of the report to—

(a) the prosecutor; and

(b) the defendant's legal practitioner; and

(c) if the Drug Court directs the officer to do so, the defendant.

(8) The prosecution or defence may file with the Drug Court a notice of intention to dispute all or any part of a drug treatment order assessment report.

(9) If a notice is filed before a drug treatment order is made, the Drug Court must not take the disputed report or disputed part of the report into consideration when making the order unless the party that filed the notice has been given the opportunity—

(a) to lead evidence on the disputed matters; and

(b) to cross-examine the specified Drug Court officer on its contents.

(10) For the purposes of section 91 of the **Corrections Act 1986**, an officer referred to in that section who discloses to the specified Drug Court officer information about the defendant for the purposes of the preparation of a drug treatment order assessment report is taken to be performing his or her official duties.

S. 18ZR inserted by No. 2/2002 s. 5.

18ZR. Appeals

(1) On the hearing of an appeal under section 83 or 84 of the **Magistrates' Court Act 1989** against a sentencing order made by the Magistrates' Court (including the Drug Court), the County Court cannot itself make a drug treatment order, despite anything to the contrary in section 86(1) of that Act.

(2) Subdivision 1 of Division 4 of Part 4 of the **Magistrates' Court Act 1989**, and Schedule 6 to that Act, apply with respect to appeals to the County Court against any sentencing order made by the Drug Court with the following modifications—

(a) an appeal does not lie against—

(i) a refusal of the Drug Court to make a drug treatment order; or

(ii) a finding that an offender has failed to comply with a condition attached to a drug treatment order; or

(iii) the variation of the treatment and supervision part of a drug treatment order; or

(iv) the cancellation of the treatment and supervision part, or the custodial part, of a drug treatment order;

(b) if the appeal is against the custodial part of the drug treatment order and not against the treatment and supervision part of the order, the appeal does not operate as a stay of the drug treatment order, unless the County Court so orders.

(3) For the purposes of Subdivision 1 of Division 4 of Part 4 of the **Magistrates' Court Act 1989**, and Schedule 6 to that Act, an order under this Subdivision activating some or all of the custodial part of a drug treatment order is taken to be a sentencing order made by the Drug Court.

(4) Despite sub-section (1), on the hearing of an appeal under section 83 or 84 of the **Magistrates' Court Act 1989** against a drug treatment order made by the Drug Court, the County Court may—

(a) re-instate the drug treatment order set aside by it under section 86(1)(a) of that Act; or

(b) if the appeal is against the custodial part of the drug treatment order, re-instate that part set aside by it under section 86(1)(a) of that Act or vary the drug treatment order by increasing or reducing the length of the sentence of imprisonment.

(5) On the hearing of an appeal under section 83 or 84 of the **Magistrates' Court Act 1989** against a sentencing order made by the Magistrates' Court (other than the Drug Court) at a particular venue of that Court, if the County Court considers that the making of a drug treatment order may be appropriate, it may refer the matter to the Drug Court at that or another venue for consideration of the making of such an order, with or without any direction in law.

(6) However, if the offender has a usual place of residence, the County Court may only refer a matter under sub-section (5) to the Drug Court at a venue if the offender's usual place of residence is within a postcode area specified, in relation to that venue, by the Minister by notice published in the Government Gazette.

(7) Despite anything to the contrary in the **Magistrates' Court Act 1989**, a venue of the Magistrates' Court to which a matter is referred under sub-section (5) is the proper venue of that Court in relation to that matter for the purposes of that Act.

(8) If a matter is referred to the Drug Court under sub-section (5) but the Drug Court determines not to make a drug treatment order, the Drug Court must remit the matter to the County Court for the making of any order under section 86(1) of the **Magistrates' Court Act 1989** which the County Court can make.

(9) If a matter is referred to the Drug Court under sub-section (5) and the Drug Court makes a drug treatment order, the order has effect for the purposes of Subdivision 1 of Division 4 of Part 4 of the **Magistrates' Court Act 1989** as if it were a sentencing order made by the County Court on the hearing of the appeal but for all other purposes has effect as an order of the Drug Court.

18ZS. Immunity from prosecution for certain offences

S. 18ZS inserted by No. 2/2002 s. 5.

(1) A person is not liable to prosecution for any offence comprising the unlawful possession or use of drugs of addiction—

(a) as a result of any admission made in connection with any assessment of the eligibility of the person for the making of a drug treatment order; or

(b) as a result of any admission made in connection with the assessment by the Drug Court, or at a case conference convened under section 18ZI(1) by the magistrate constituting the Drug Court, of the person's progress under a drug treatment order.

(2) Sub-section (1) does not prevent a prosecution for any offence comprising the unlawful possession or use of drugs of addiction if there is evidence, other than the admission or evidence obtained as a result of the admission, to support a charge.

(3) The admission, and any evidence obtained as a result of the admission, is not admissible against the person in a prosecution referred to in sub-section (2).

Pt 3 Div. 2 Subdiv. 1D (Heading and ss 18ZT–18ZZR) inserted by No. 53/2003 s. 5.

Subdivision (1D)—Home Detention Orders

S. 18ZT inserted by No. 53/2003 s. 5.

18ZT. Home detention order

(1) A court that has sentenced a person to imprisonment for 12 months or less may make a home detention order directing that the sentence be served by way of home detention.

(2) This section is subject to this Subdivision and to Division 2B of Part 6.

(3) This section does not apply to the following sentences—

(a) a combined custody and treatment order;

(b) a drug treatment order;

(c) a hospital security order;

(d) an intensive correction order;

(e) a suspended sentence.

18ZU. Order not to be made if other residents object

S. 18ZU inserted by No. 53/2003 s. 5.

(1) A court must not make a home detention order unless the court is satisfied that all persons of or over the age of 18 years who will be residing with the offender—

(a) have been consulted by the Secretary to the Department of Justice or a person authorised by that Secretary, without the offender being present, about the making of the home detention order; and

(b) have acknowledged in writing that they understand the requirements of the home detention order and are prepared to live in conformity with them; and

(c) subject to sub-section (3), have consented in writing to the offender residing with them under a home detention order.

(2) The court must not make a home detention order unless the court is satisfied that—

(a) so far as practicable the wishes and feelings of any person under the age of 18 years who will be residing with the offender under a home detention order have been ascertained; and

(b) due consideration has been given to them, having regard to the age and understanding of the person.

(3) The court may dispense with the consent of a person under sub-section (1), if the court is satisfied that the person lacks the capacity to give that consent.

(4) If the court dispenses with the consent of a person, the court must not make the order unless the court is satisfied that—

(a) so far as practicable the wishes and feelings of the person have been ascertained; and

(b) due consideration has been given to them, having regard to the understanding of the person.

S. 18ZV inserted by No. 53/2003 s. 5.

18ZV. Home detention not available for certain offences

A court must not make a home detention order in respect of a person if the person has at any time been found guilty of any of the following—

(a) an offence to which clause 1, 2, 3 or 4 of Schedule 1 applies; or

(b) an offence, which in the opinion of the court, was committed in circumstances which involved behaviour of a sexual nature; or

(c) an offence that involves the use of a firearm or a prohibited weapon (within the meaning of the **Control of Weapons Act 1990**); or

(d) a breach of an intervention order under section 4 of the **Crimes (Family Violence) Act 1987** or an order of a corresponding nature made in another State or a Territory; or

(e) an offence under section 21A of the **Crimes Act 1958** (stalking).

18ZW. Suitability of offender for home detention

S. 18ZW inserted by No. 53/2003 s. 5.

(1) A court may only make a home detention order if the court is satisfied—

(a) that the offender is a suitable person to serve a sentence of imprisonment by way of home detention; and

(b) that it is appropriate in all of the circumstances that the sentence be served by way of home detention; and

(c) on written advice received from the Secretary to the Department of Justice, that—

(i) a place will be available for the offender in a home detention program approved by the Secretary to the Department of Justice from the day on which the offender commences his or her term of imprisonment; and

(ii) the home detention program is located close enough to the place where the offender will reside during the period of the order to ensure adequate support and supervision; and

(d) that the offender has consented in writing to the making of the order and has made the written undertakings required by section 18ZZ; and

(e) that a home detention assessment report has been prepared on the offender in accordance with section 99F.

(2) In deciding whether or not to make a home detention order, the court must have regard to the contents of a home detention assessment report on the offender.

(3) A court may, for any reason it considers sufficient, decline to make a home detention order despite the contents of a home detention assessment report.

(4) A court may make a home detention order only if a home detention assessment report states that, in the opinion of the person making the assessment, the offender is a suitable person to serve a term of imprisonment by way of home detention.

S. 18ZX inserted by No. 53/2003 s. 5.

18ZX. Concurrent and consecutive and later sentences

(1) If the offender is convicted of more than one offence in the same proceeding the court may only make a home detention order if the aggregate period of imprisonment imposed in respect of all the offences is 12 months or less.

(2) If the offender is convicted of an offence committed while serving a sentence of imprisonment by way of home detention, the court may only make a home detention order for the second or subsequent offence if the aggregate periods of imprisonment to be served by way of the original and further home detention orders is 12 months or less.

S. 18ZY inserted by No. 53/2003 s. 5.

18ZY. Assessment for home detention

(1) If the court is considering making a home detention order, the court must notify—

(a) the offender; and

(b) the Director of Public Prosecutions or the informant or police prosecutor.

(2) The offender may inform the court that he or she does not wish to consent to the making of a home detention order.

(3) After giving the notice under sub-section (1), the court must order a home detention assessment report in respect of the offender.

(4) After giving the notice under sub-section (1), the court may—

(a) direct the Secretary to the Department of Justice to arrange for the examination of the offender by a registered medical practitioner within the meaning of the **Medical Practice Act 1994**, a psychiatrist or a psychologist; and

(b) require the registered medical practitioner, psychiatrist or psychologist to give a report in writing to the court.

(5) Sub-sections (3) and (4) do not apply if the offender informs the court that he or she does not wish to be considered for a home detention order.

(6) When a court orders a home detention assessment report—

(a) the order stays the execution of the sentence; and

(b) the offender is to be remanded in custody, or granted bail in accordance with the **Bail Act 1977**, as if the offender were still awaiting sentence—

until the court decides whether or not to make a home detention order.

(7) On the court deciding whether or not to make a home detention order any stay of execution of the sentence under this section comes to an end.

18ZZ. Undertaking by offender

S. 18ZZ inserted by No. 53/2003 s. 5.

(1) Before a home detention order may be made in respect of the offender, the offender must give the following undertakings—

(a) that the offender will comply with the offender's obligations under this Subdivision; and

(b) that the offender will agree and submit to any monitoring or testing required or directed under the home detention order to ensure compliance with those obligations; and

(c) that the offender will pay the incidental costs (if any) incurred by the offender as a result of the home detention order that are determined by the Secretary to the Department of Justice to be payable by the offender.

(2) An undertaking under this section must—

(a) be in writing; and

(b) set out the obligations of the offender under a home detention order.

S. 18ZZA inserted by No. 53/2003 s. 5.

18ZZA. Obligations of offender

The obligations of an offender while serving a sentence of imprisonment by way of home detention are—

(a) to comply with any requirements of this Subdivision that relate to the offender; and

(b) to comply with the requirements of any conditions to which the offender's home detention order is subject.

S. 18ZZB inserted by No. 53/2003 s. 5.

18ZZB. Core conditions governing home detention

The core conditions of a home detention order are—

(a) that the offender must be of good behaviour and must not commit any offence during the period of the order;

(b) that the offender must advise the Secretary to the Department of Justice as soon as possible if arrested or detained by a member of the police force;

(c) that the offender must reside only at premises approved by the Secretary to the Department of Justice;

(d) that the offender must remain at the approved residence at all times other than—

(i) when the absence is authorised by the Secretary to the Department of Justice; or

(ii) when it is unsafe to remain there due to immediate danger (such as fire or medical emergency); or

(iii) when a person residing at the approved residence has withdrawn his or her consent under section 18ZZE;

(e) that during authorised absences from the approved residence the offender must adhere to a specified activity plan that—

(i) sets out the activities that the offender must carry out in accordance with the other core conditions; and

(ii) is approved or arranged by the Secretary to the Department of Justice;

(f) that the offender must advise the Secretary to the Department of Justice as soon as practicable after departure from the approved residence because—

(i) it was unsafe to remain there due to immediate danger; or

(ii) a person residing at the approved residence has withdrawn his or her consent under section 18ZZE;

(g) that the offender must accept any visit to the approved residence by the Secretary to the Department of Justice at any time;

(h) that the offender must submit to searches of places or things under the immediate control of the offender, as required by the Secretary to the Department of Justice;

(i) that the offender must submit to electronic monitoring (including voice recording) of compliance with the home detention order and comply with all instructions given by the Secretary to the Department of Justice in relation to the operation of monitoring systems;

(j) that the offender must not tamper with, damage or disable monitoring equipment;

(k) that the offender must comply with any reasonable direction of the Secretary to the Department of Justice in relation to association with specified persons;

(l) that the offender must not consume alcohol;

(m) that the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs of any kind;

(n) that the offender must submit, as required by the Secretary to the Department of Justice, to breath testing, urinalysis or other test procedures approved by the Secretary for detecting alcohol or drug use;

(o) that the offender must accept any reasonable direction of the Secretary to the Department of Justice in relation to the maintenance of or obtaining of employment;

(p) that the offender must inform any employer of the home detention order and, if directed by the Secretary to the Department of Justice, of the nature of the offence that occasioned it;

(q) that the offender must authorise and make reasonable attempts to facilitate contact between any employer of the offender and the Secretary to the Department of Justice;

(r) that the offender must engage in personal development activities or in counselling or treatment programs, as directed by the Secretary to the Department of Justice;

(s) that the offender must undertake unpaid community work (not exceeding 20 hours per week) as directed by the Secretary to the Department of Justice when not otherwise employed;

(t) that the offender must not possess or have in his or her control—

(i) any firearm; or

(ii) any prohibited weapon within the meaning of the **Control of Weapons Act 1990**; or

(iii) any controlled weapon or dangerous article within the meaning of the **Control of Weapons Act 1990** in contravention of that Act;

(u) that the offender must comply with any order made under section 84 or 86(1) (whether before or after the making of the home detention order) in relation to the offence for which the home detention order is made;

(v) that the offender must comply with all reasonable directions made by the Secretary to the Department of Justice.

S. 18ZZC inserted by No. 53/2003 s. 5.

18ZZC. Special conditions

(1) The court may attach to a home detention order any special conditions that it considers appropriate.

(2) The court may attach special conditions under sub-section (1) on its own motion or on the application of—

(a) the offender; or

(b) the Secretary to the Department of Justice; or

(c) the Director of Public Prosecutions, the informant or the police prosecutor.

(3) The court may at any time vary or revoke any special conditions attached to a home detention order on the application of—

(a) the offender; or

(b) the Secretary to the Department of Justice; or

(c) the Director of Public Prosecutions, the informant or the police prosecutor.

S. 18ZZD inserted by No. 53/2003 s. 5.

18ZZD. Sentence not to affect eligibility for benefits

If a home detention order is made under this Subdivision, the sentence of imprisonment to which the order relates must be taken not to be a sentence of imprisonment for the purpose of any enactment providing for disqualification for, or the forfeiture or suspension of, pensions or other benefits.

S. 18ZZE inserted by No. 53/2003 s. 5.

18ZZE. Withdrawal of consent

(1) A person residing with an offender who has given a consent under section 18ZU may at any time by notice in writing withdraw that consent.

(2) A notice of withdrawal of consent must be served on the Secretary to the Department of Justice.

(3) An offender must cease to reside in the residence to which the notice relates on being notified by the Secretary to the Department of Justice that a notice of withdrawal of consent has been served under this section.

18ZZF. Revocation of order on application by offender or Secretary

S. 18ZZF inserted by No. 53/2003 s. 5.

(1) If there is no longer any approved residence at which an offender can reside under a home detention order, the Secretary to the Department of Justice may apply to the Adult Parole Board for the revocation of the home detention order.

(2) Subject to sub-section (3), the Secretary to the Department of Justice must notify the offender of an application under sub-section (1).

(3) The Secretary to the Department of Justice is not required to give the notice under sub-section (2) if the Adult Parole Board is satisfied that the matter is urgent.

(4) An offender who is serving a sentence of imprisonment by way of home detention may apply to the Adult Parole Board for the revocation of the home detention order.

(5) The offender must notify the Secretary to the Department of Justice of an application under sub-section (4).

(6) The Secretary to the Department of Justice may make written submissions to the Adult Parole Board in respect of an application under this section.

(7) The offender concerned may make written submissions to the Adult Parole Board in respect of—

(a) an application under sub-section (1) of which the offender is given notice under this section; or

(b) an application under sub-section (4).

(8) The Adult Parole Board may, in its discretion, give an offender an opportunity to appear before the Board to be heard in relation to an application.

(9) On an application under this section, the Adult Parole Board after considering any submissions may revoke the home detention order.

(10) If the Adult Parole Board revokes a home detention order under this section, the Board may issue a warrant authorising any member of the police force to arrest the offender and take the offender to prison.

S. 18ZZG inserted by No. 53/2003 s. 5.

18ZZG. Alleged breach of a home detention order

If an allegation is made to the Secretary to the Department of Justice that an offender has breached a condition of a home detention order, the Secretary must—

(a) make appropriate inquiries in respect of the alleged breach; and

(b) give the offender an opportunity of making an explanation.

18ZZH. Sanctions for minor breaches

S. 18ZZH inserted by No. 53/2003 s. 5.

(1) Subject to section 18ZZI, if, after completing the relevant inquiries, the Secretary to the Department of Justice is satisfied that the offender has breached a condition of the home detention order, the Secretary may impose either of the following sanctions for the breach—

(a) a formal warning; or

(b) a more stringent application of the conditions of home detention in accordance with the terms of those conditions, (for example, an increase in the required hours of unpaid community work within the maximum fixed by the court).

(2) The Secretary to the Department of Justice must notify an offender of any sanction imposed on the offender under this section.

18ZZI. Serious breach of home detention order

S. 18ZZI inserted by No. 53/2003 s. 5.

(1) If, after completing the relevant inquiries, the Secretary to the Department of Justice is satisfied that the offender has committed a serious breach of a condition of the home detention order, the Secretary must apply to the Adult Parole Board for the revocation or variation of the order.

(2) Subject to sub-section (3), the Secretary to the Department of Justice must give the offender notice of an application under sub-section (1).

(3) The Secretary to the Department of Justice is not required to give the notice under sub-section (2) if the breach is of a core condition of the home detention order set out in section 18ZZB(d) or section 18ZZB(e).

(4) The Secretary to the Department of Justice may make written submissions to the Adult Parole Board in respect of an application under sub-section (1).

(5) The offender concerned may make written submissions to the Adult Parole Board in respect of an application under sub-section (1) of which the offender is given notice under this section.

(6) In this section **"serious breach"** in relation to a condition of a home detention order means—

(a) a breach that compromises the safety and security of the community, any person residing with the offender or the offender's family; or

(b) a breach that involves the commission of an offence; or

(c) a breach that involves non-compliance with an order made under section 84 or 86(1); or

(d) a breach that occurs after repeated failure to comply with the conditions of the order; or

(e) a breach of a core condition of the home detention order set out in section 18ZZB(d) or section 18ZZB(e).

(7) Despite anything to the contrary in this section, if the Secretary to the Department of Justice, after completing the relevant inquiries, is satisfied that a breach of a core condition of a home detention order set out in section 18ZZB(e) is of a minor nature, the Secretary—

(a) is not required to make an application under sub-section (1) in respect of that breach; and

(b) may impose a sanction under section 18ZZH in respect of that breach.

18ZZJ. Adult Parole Board may require offender to appear before it

S. 18ZZJ inserted by No. 53/2003 s. 5.

(1) If an application is made under section 18ZZI for the revocation or variation of a home detention order, the Adult Parole Board may, by notice in writing served on the offender, require the offender to appear before it on a day and at a time and place specified in the notice to be heard in relation to the application.

(2) If the offender does not appear in accordance with the notice, the Adult Parole Board may proceed in the absence of the offender.

18ZZK. Decision of Adult Parole Board

S. 18ZZK inserted by No. 53/2003 s. 5.

(1) The Adult Parole Board must consider any evidence and submissions made or given under section 18ZZI or 18ZZJ—

(a) by the offender in relation to the alleged breach of conditions; and

(b) by or on behalf of the Secretary to the Department of Justice in relation to the alleged breach of conditions.

(2) If, after complying with sub-section (1), the Adult Parole Board is satisfied that there has been a breach of the conditions of a home detention order and that it is proper in the circumstances of the case to do so, the Board may—

(a) revoke the home detention order; and

(b) issue a warrant authorising any member of the police force to arrest the offender and take the offender to prison.

(3) If, after complying with sub-section (1), the Adult Parole Board is satisfied that an offender has breached the conditions of a home detention order, the Board, instead of revoking the order, may impose any of the following sanctions for the breach—

(a) a formal warning;

(b) the addition of special conditions to the order;

(c) the variation of any special conditions in the order.

(4) The Adult Parole Board must notify an offender in writing of the revocation of a home detention order or of any sanction imposed on the offender under this section.

(5) The Adult Parole Board may be satisfied that an offender has breached a condition of a home detention order that involves non-compliance with an order made under section 84 or 86(1) whether or not a step has been taken to enforce the order made under section 84 or 86(1) in any way referred to in section 85 or 87, as the case requires.

(6) The revocation of a home detention order or the imposition of a sanction under this section in respect of a breach that involves non-compliance with an order made under section 84 or 86(1) has no effect on the enforcement of the order made under section 84 or 86(1) in any way referred to in section 85 or 87, as the case requires.

18ZZL. Effect of revocation of home detention order

S. 18ZZL inserted by No. 53/2003 s. 5.

(1) Subject to sub-section (2), if the Adult Parole Board revokes a home detention order under section 18ZZK, the offender must be taken to prison to serve a period of imprisonment that is equal to the period from the effective date of revocation of the home detention order to the date of expiry of the term of imprisonment imposed by the court.

(2) The effective date of revocation of a home detention order is the date of the making of the order revoking the home detention order unless the Adult Parole Board directs otherwise under sub-section (3).

(3) If the Adult Parole Board considers it appropriate to do so, the Board may in writing direct that the effective date of revocation of the home detention order is to be the date that the breach of the conditions occurred or any later date before the date of the making of the order revoking the home detention order that the Board determines.

(4) If the Adult Parole Board revokes a home detention order under section 18ZZF, the offender must be taken to prison to serve a period of imprisonment that is equal to the period from the date of revocation of the home detention order to the date of expiry of the term of imprisonment imposed by the court.

(5) If an offender is taken to prison after a home detention order relating to the offender is revoked, the Governor of the prison must notify the Secretary to the Department of Justice within 7 days after the offender is received into the prison.

S. 18ZZM inserted by No. 53/2003 s. 5.

18ZZM. Re-hearing of revocation made in absence of offender

(1) This section applies if—

(a) the Adult Parole Board revokes a home detention order under section 18ZZF and notice was not given to the offender of the application under that section; or

(b) the Adult Parole Board revokes a home detention order under section 18ZZK and notice was not given to the offender of the application under section 18ZZI; or

(c) the Adult Parole Board revokes a home detention order under section 18ZZK and—

(i) the Board had required the offender to appear before it under section 18ZZJ; and

(ii) the offender failed to appear.

(2) The Adult Parole Board must, by notice in writing, advise the offender that he or she may apply to the Adult Parole Board within the period of 14 days after the date of service of the notice for a re-hearing in respect of the revocation of the home detention order.

(3) If an application is made by the offender within the required time, the Adult Parole Board, after considering any evidence and submissions given by the offender and any other information and reports before it, may rescind the revocation of the home detention order.

(4) If the revocation of the home detention order is rescinded, the home detention order must be taken for the purposes of this Subdivision not to have been revoked.

(5) The Adult Parole Board may determine not to make a document or part of a document considered by the Board under sub-section (3) available to the offender if a member of the Board who is a Judge or retired Judge or Magistrate or retired Magistrate considers that to make the document or part available could endanger any person or inappropriately reveal the identity of any person.

(6) Nothing in this section limits the operation of section 18ZZN.

18ZZN. Reconsideration of revocation if approved residence available

S. 18ZZN inserted by No. 53/2003 s. 5.

(1) If the Adult Parole Board revokes a home detention order under section 18ZZF, the offender may apply to the Board to rescind the revocation of the home detention order on the ground that an approved residence at which the offender can reside has become available.

(2) On an application under sub-section (1), the Adult Parole Board may rescind the revocation of a home detention order if it is satisfied—

(a) that a residence at which the offender can reside is available; and

(b) that the premises have been approved by the Secretary to the Department of Justice; and

(c) on the advice of the Secretary, that the rescission is not prohibited under sub-section (3); and

(d) that it is appropriate in all the circumstances to do so.

(3) Section 18ZU applies to a rescission order under this section as if—

(a) a reference to the court were a reference to the Adult Parole Board; and

(b) a reference to the making of a home detention order (except in sub-sections (1)(b) and (c) and (2)(a)) were a reference to the making of the rescission order.

(4) If the revocation of the home detention order is rescinded, the home detention order must be taken for the purposes of this Subdivision not to have been revoked.

S. 18ZZO inserted by No. 53/2003 s. 5.

18ZZO. Revocation of order by court

(1) Subject to sub-section (2), if a court imposes a sentence for another offence on an offender to whom a home detention order relates, the court may revoke the home detention order.

(2) If a court imposes a sentence of imprisonment to be served in custody in a prison for another offence on an offender to whom a home detention order relates, the court must revoke the home detention order.

(3) If a court revokes a home detention order under sub-section (2), the court must commit the offender to prison for the portion of the term of imprisonment to which he or she was sentenced that was unexpired at the date of the revocation of the order.

S. 18ZZP inserted by No. 53/2003 s. 5.

18ZZP. Expiry of home detention order

Unless a home detention order is revoked under this Subdivision, the order expires at the end of the minimum term of imprisonment to which the offender was sentenced.

18ZZQ. Service of notices on offender

S. 18ZZQ inserted by No. 53/2003 s. 5.

(1) Any notice required to be served under this Subdivision on an offender in respect of a home detention order may be served on him or her personally or by posting it to the offender's approved residence.

(2) Any notice required under this Subdivision to be served on an offender in custody in a prison must be served on the Secretary to the Department of Justice.

(3) The Secretary to the Department of Justice must notify the offender of any notice served on him or her under sub-section (2).

18ZZR. Annual report

S. 18ZZR inserted by No. 53/2003 s. 5.

The Secretary to the Department of Justice must include in each report of operations prepared in respect of the Department under the **Financial Management Act 1994**—

(a) details of the number of persons placed on home detention orders during the period of the report; and

(b) details of the number of persons in respect of whom a home detention order has been revoked and who were taken to prison during that period; and

(c) details of the impact of home detention orders on persons residing with offenders; and

(d) any other matters in relation to home detention that the Minister directs to be included.

Subdivision (2)—Intensive Correction Orders

19. Intensive correction order

S. 19(1) amended by No. 48/1997 s. 28(2).

(1) If a person is convicted by a court of an offence and the court—

(a) is considering sentencing him or her to a term of imprisonment; and

(b) has received a pre-sentence report—

the court, if satisfied that it is desirable to do so in the circumstances, may impose a sentence of imprisonment of not more than one year and order that it be served by way of intensive correction in the community.

(2) A court may only make an intensive correction order if the offender agrees to comply with the order.

(3) A court must not make an intensive correction order if the sentence of imprisonment by itself would not be appropriate in the circumstances having regard to the provisions of this Act.

S. 19(4) amended by No. 48/1997 s. 28(2).

(4) If an offender is convicted of more than one offence in the same proceeding the court may only make an intensive correction order if the aggregate period of imprisonment imposed in respect of all the offences does not exceed one year.

(5) An intensive correction order must be taken to be a sentence of imprisonment for the purposes of all enactments except any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits.

(6) The period of an intensive correction order is the period of the term of imprisonment imposed.

(7) For the purpose of any proceedings under section 25 or 26, an intensive correction order made on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought.

S. 19(7) substituted by No. 48/1997 s. 13(1).

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S. 19(8) repealed by No. 48/1997 s. 13(1).

(9) On certification by the Secretary to the Department of Justice that the offender has complied with the conditions of an intensive correction order, the sentence of imprisonment must be taken to have been served and the offender shall be wholly discharged from it.

S. 19(9) amended by No. 45/1996 s. 18(Sch. 2 item 11.5).

20. Core conditions

(1) Core conditions of an intensive correction order are—

(a) that the offender does not commit, whether in or outside Victoria, another offence punishable by imprisonment during the period of the order;

S. 20(1)(a) amended by No. 19/1999 s. 7(1).

(b) that the offender reports to a specified community corrections centre within 2 clear working days after the coming into force of the order;

(c) that the offender reports to, or receives visits from, a community corrections officer at least twice during each week of the period of the order or a shorter period specified in the order for this purpose;

S. 20(1)(c) amended by No. 19/1999 s. 7(2).

S. 20(1)(d) amended by No. 19/1999 s. 7(2).

(d) that the offender attends at the specified community corrections centre, or as otherwise directed by a community corrections officer, for 12 hours during each week of the period of the order or a shorter period specified in the order for this purpose for the purpose of—

(i) performing unpaid community work as directed by the Regional Manager for not less than 8 of those hours; and

(ii) spending the balance (if any) of those hours undergoing counselling or treatment for a specified psychological, psychiatric, drug or alcohol problem as directed by the Regional Manager;

(e) that the offender notifies an officer at the specified community corrections centre of any change of address or employment within 2 clear working days after the change;

(f) that the offender does not leave Victoria except with the permission of an officer at the specified community corrections centre granted either generally or in relation to the particular case;

(g) that the offender obeys all lawful instructions and directions of community corrections officers.

(2) An intensive correction order must have all the core conditions attached to it.

21. Special condition

S. 21(1) amended by No. 19/1999 s. 7(3).

(1) If the pre-sentence report so recommends the court may attach to an intensive correction order a special condition that the offender attend at one, or more than one, specified prescribed program during the period of the order or a shorter period specified in the order for this purpose.

(2) A prescribed program specified in a special condition—

(a) may be residential or community-based; and

(b) must be designed to address the personal factors which contribute to the offender's criminal behaviour.

22. Offender may be fined as well

A court may impose on an offender a fine authorised by law in addition to making an intensive correction order.

23. Secretary may direct offender to report at another place

S. 23(1) amended by No. 45/1996 s. 18(Sch. 2 item 11.6).

(1) If, because an offender has changed his or her place of residence or for any other reason it is not convenient that the offender should report at a place or to a person specified in an intensive correction order, the Secretary to the Department of Justice may direct the offender to report at another place or to another person.

(2) An offender must report as directed under sub-section (1) as if that place or person had been specified in the order.

24. Suspension of intensive correction order

S. 24 amended by Nos 45/1996 s. 18(Sch. 2 item 11.7), 19/1999 s. 7(4).

The Secretary to the Department of Justice may—

(a) if the offender is ill; or

(b) in other exceptional circumstances—

suspend for a period the operation of an intensive correction order or of any condition of the order and, if so, that period does not count in calculating the period for which the order is to remain in force or a condition is to be complied with.

25. Variation of intensive correction order

(1) If on an application under this sub-section the court which made an intensive correction order is satisfied—

(a) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court or the author of a pre-sentence report before the order was made; or

(c) that the offender is no longer willing to comply with the order—

it may vary the order or cancel it and, subject to sub-section (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just convicted him or her of that offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of an intensive correction order, a court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under sub-section (1) may be made at any time while the order is in force by—

(a) the offender; or

S. 25(3)(b) substituted by No. 19/1999 s. 7(5).

(b) a prescribed person or a member of a prescribed class of persons; or

(c) the Director of Public Prosecutions.

(4) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(5) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

26. Breach of intensive correction order

S. 26(1) amended by Nos 41/1993 s. 10(1), 45/1996 s. 18(Sch. 2 item 11.8), 48/1997 s. 13(2)(a)(b).

(1) If at any time while an intensive correction order is in force the offender fails without reasonable excuse to comply with any condition of it or with any requirement of the regulations made for the purposes of this Subdivision, the offender is guilty of an offence for which he or she may be proceeded against on a charge filed by a prescribed person or a member of a prescribed class of persons.

S. 26(1A) inserted by No. 41/1993 s. 10(2).

(1A) A proceeding for an offence under sub-section (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.

S. 26(2) substituted by No. 48/1997 s. 13(3).

(2) Despite anything to the contrary in the **Magistrates' Court Act 1989**—

(a) on the filing of a charge referred to in sub-section (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;

(b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the defendant to attend—

(i) at the proper venue of the Magistrates' Court, if the intensive correction order was made by the Magistrates' Court; and

(ii) at the Supreme Court or the County Court, if the intensive correction order was made by that court—

to answer the charge;

(c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the defendant when arrested before a bail justice or before the court by which the intensive correction order was made to be dealt with according to law.

S. 26(3) substituted by No. 48/1997 s. 13(3).

(3) Despite anything to the contrary in this or any other Act or in any rule of law, the Supreme Court or the County Court may, if the intensive correction order was made by it, hear and determine without a jury an offence against sub-section (1) and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences applies so far as is appropriate to the hearing of the offence.

S. 26(3A) inserted by No. 48/1997 s. 13(3), amended by No. 10/1999 s. 30.

(3A) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may impose a level 10 fine and in addition must—

(a) vary the intensive correction order; or

(b) confirm the order originally made; or

(c) cancel the order (if it is still in force) and, whether or not it is still in force, commit the offender to prison for the portion of the term of imprisonment to which he or she was sentenced that was unexpired at the date of the offence under sub-section (1).

S. 26(3B) inserted by No. 48/1997 s. 13(3), amended by No. 19/1999 s. 7(6).

(3B) Despite anything to the contrary in sub-section (3A), if on the hearing of a charge the court finds the offender guilty of the offence and is satisfied that the offence was constituted, in whole or in part, by the offender committing, whether in or outside Victoria, another offence punishable by imprisonment during the period of the intensive correction order, it must, in addition to any fine it may impose under sub-section (3A), exercise the power referred to in paragraph (c) of that sub-section unless it is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the intensive correction order was made.

S. 26(3C) inserted by No. 48/1997 s. 13(3).

(3C) If the court decides not to exercise the power referred to in sub-section (3A)(c), it must state in writing its reasons for so deciding.

S. 26(4) amended by No. 48/1997 s. 13(4)(a).

(4) If a court orders an offender to serve in prison the unexpired portion of the term of imprisonment, the term must be served—

(a) immediately; and

S. 26(4)(b) amended by No. 48/1997 s. 13(4)(b).

(b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.

(5) A fine imposed under this section—

(a) does not affect the continuance of the order, if it is still in force; and

(b) must be taken for all purposes to be a fine payable on a conviction of an offence.

Subdivision (3)—Suspended Sentences of Imprisonment

27. Suspended sentence of imprisonment

S. 27(1) substituted by No. 48/1997 s. 14(2).

(1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or a part of the sentence if it is satisfied that it is desirable to do so in the circumstances.

S. 27(2) substituted by No. 48/1997 s. 14(2).

(2) A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is convicted of more than one offence in the proceeding—

(a) does not exceed 3 years in the case of the Supreme Court or the County Court; and

(b) does not exceed 2 years in the case of the Magistrates' Court.

S. 27(2A) inserted by No. 48/1997 s. 14(2).

(2A) The period for which the whole or a part of a sentence of imprisonment may be suspended is—

(a) the length of the suspended term of imprisonment; or

(b) another period specified by the court not exceeding 3 years, in the case of the Supreme Court or the County Court, or 2 years, in the case of the Magistrates' Court—

whichever is the longer.

(3) A court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate in the circumstances having regard to the provisions of this Act.

(4) A court proposing to make an order suspending a sentence of imprisonment must before making the order explain, or cause to be explained, to the offender in language likely to be readily understood by him or her—

S. 27(4) substituted by No. 48/1997 s. 14(3).

(a) the purpose and effect of the proposed order; and

(b) the consequences that may follow if he or she commits, whether in or outside Victoria, another offence punishable by imprisonment during the operational period of the sentence.

(5) A wholly suspended sentence of imprisonment must be taken to be a sentence of imprisonment for the purposes of all enactments except any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits.

* * * * *

S. 27(6) repealed by No. 48/1997 s. 14(4).

(7) If under section 31 an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment then, for the purposes of any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits the offender must be taken to have been sentenced to imprisonment on the day on which the order was made under that section.

(8) A partly suspended sentence of imprisonment must be taken for all purposes to be a sentence of imprisonment for the whole term stated by the court.

S. 27(9) substituted by No. 48/1997 s. 14(5).

(9) For the purpose of any proceedings under section 31, a suspended sentence of imprisonment imposed on an offender on appeal by the Court of Appeal must be taken to have been imposed by the court from whose decision the appeal was brought.

S. 28 amended by No. 23/1994 s. 118(Sch. 1 item 51), repealed by No. 48/1997 s. 14(6).

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S. 29 amended by No. 48/1997 s. 14(7).

29. Effect of suspended sentence

An offender in respect of whom a suspended sentence has been imposed under section 27 only has to serve the sentence or part sentence held in suspense if he or she is ordered to do so under section 31.

S. 30 repealed by No. 48/1997 s. 14(6).

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31. Breach of order suspending sentence

S. 31(1) substituted by No. 48/1997 s. 15(1).

(1) If at any time during the operational period of a suspended sentence of imprisonment, the offender commits, whether in or outside Victoria, another offence punishable by imprisonment, the offender is guilty of an offence for which he or she may be proceeded against on a charge filed by a prescribed person or a member of a prescribed class of persons.

S. 31(2) substituted by No. 48/1997 s. 15(1).

(2) A proceeding for an offence under sub-section (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.

(3) Despite anything to the contrary in the **Magistrates' Court Act 1989**—

S. 31(3) substituted by No. 48/1997 s. 15(1).

(a) on the filing of a charge referred to in sub-section (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;

(b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the defendant to attend—

(i) at the proper venue of the Magistrates' Court, if the suspended sentence was imposed by the Magistrates' Court; and

(ii) at the Supreme Court or the County Court, if the suspended sentence was imposed by that court—

to answer the charge;

(c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the defendant when arrested before a bail justice or before the court by which the suspended sentence was imposed to be dealt with according to law.

(4) Despite anything to the contrary in this or any other Act or in any rule of law, the Supreme Court or the County Court may, if the suspended sentence was imposed by it, hear and determine without a jury an offence against sub-section (1) and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences applies so far as is appropriate to the hearing of the offence.

S. 31(4) substituted by No. 48/1997 s. 15(1).

S. 31(5) substituted by No. 48/1997 s. 15(1), amended by No. 10/1999 s. 30.

(5) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may impose a level 10 fine and in addition must—

(a) restore the sentence or part sentence held in suspense and order the offender to serve it; or

(b) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or

(c) in the case of a wholly suspended sentence, extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order under this sub-section; or

(d) make no order with respect to the suspended sentence.

S. 31(5A) inserted by No. 48/1997 s. 15(1).

(5A) Despite anything to the contrary in sub-section (5), if on the hearing of a charge the court finds the offender guilty of the offence it must, in addition to any fine it may impose under sub-section (5), exercise the power referred to in paragraph (a) of that sub-section unless it is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order suspending the sentence was made.

S. 31(5B) inserted by No. 48/1997 s. 15(1).

(5B) If the court decides not to exercise the power referred to in sub-section (5)(a), it must state in writing its reasons for so deciding.

S. 31(6) amended by No. 48/1997 s. 15(2)(a).

(6) If a court orders an offender to serve a term of imprisonment that had been held in suspense, the term must be served—

(a) immediately; and

(b) unless the court otherwise orders, cumulatively on any other term of imprisonment previously imposed on the offender by that or any other court.

S. 31(6)(b) amended by No. 48/1997 s. 15(2)(b).

*   *   *   *   *

S. 31(7) repealed by No. 48/1997 s. 15(3).

(8) If a court makes no order with respect to a suspended sentence, the proper officer of the court must record that fact in the records of the court.

(9) A fine imposed under this section must be taken for all purposes to be a fine payable on a conviction of an offence.

(10) If it is not possible for the court to deal with the offender immediately, then the **Bail Act 1977** applies for the purposes of granting bail with any necessary adaptations and in particular with the modification that a reference to a person accused of an offence or an accused person is to be construed as a reference to the offender.

Subdivision (4)—Youth Training Centre Orders and Youth Residential Centre Orders

Pt 3 Div. 2 Subdiv. (4) (Heading) amended by No. 48/1997 s. 17(2).

32. Youth training centre or youth residential centre order[13]

S. 32(1) amended by No. 48/1997 ss 16(2), 17(3).

(1) Subject to sub-sections (2A) and (2B), if a sentence involving confinement is justified in respect of a young offender a court may make a youth training centre order or a youth residential centre order if it has received a pre-sentence report and—

(a) it believes that there are reasonable prospects for the rehabilitation of the young offender; or

(b) it believes that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

S. 32(2) amended by No. 48/1997 s. 17(3).

(2) In determining whether to make a youth training centre order or a youth residential order, a court must have regard to—

(a) the nature of the offence; and

S. 32(2)(b) amended by No. 48/1997 s. 16(1).

(b) the age, character and past history of the young offender.

S. 32(2A) inserted by No. 48/1997 s. 16(3).

(2A) A court must not make a youth training centre order in respect of a young offender who at the time of being sentenced is under the age of 15 years.

S. 32(2B) inserted by No. 48/1997 s. 17(4).

(2B) A court must not make a youth residential centre order in respect of a young offender who at the time of being sentenced is aged 15 or more.

S. 32(3) amended by No. 48/1997 ss 16(4), 17(5).

(3) The maximum period for which a court may direct that a young offender be detained in a youth training centre or youth residential centre is—

S. 32(3)(a) amended by No. 48/1997 s. 16(5)(a).

(a) if the court is the Magistrates' Court—2 years; and

S. 32(3)(b) amended by No. 48/1997 s. 16(5)(b).

(b) if the court is the County Court or the Supreme Court—3 years.

S. 32(4) amended by No. 48/1997 s. 16(1).

(4) Sub-section (3) applies irrespective of how many offences the young offender is convicted of in the same proceeding.

(5) If—

S. 32(5) amended by No. 48/1997 ss 16(6), 17(6).

(a) a sentence of detention is imposed on a young offender already under such a sentence; and

S. 32(5)(a) amended by No. 48/1997 ss 16(4), 17(6).

(b) the subsequent sentence is cumulative on the prior sentence; and

(c) the aggregate of the periods of the unexpired portion of the prior sentence and the subsequent sentence exceeds the relevant maximum period set out in sub-section (3)—

the subsequent sentence must be taken to be a sentence that the young offender be detained after the completion of the prior sentence for the period then remaining until that maximum period is reached.

33. Sentences to be concurrent unless otherwise directed[14]

(1) Every term of detention imposed on a young offender by a court (except one imposed in default of payment of a fine or sum of money) must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of detention or imprisonment imposed on the young offender, whether before or at the same time as that term.

S. 33(1) amended by No. 48/1997 ss 16(7)(8), 17(7).

(2) Every term of detention imposed on a young offender by a court in default of payment of a fine or sum of money must, unless otherwise directed by the court, be served—

S. 33(2) amended by No. 48/1997 ss 16(7), 17(7).

(a) cumulatively on any uncompleted sentence or sentences of detention or imprisonment imposed on the young offender in default of payment of a fine or sum of money; but

S. 33(2)(a) amended by No. 48/1997 s. 16(8).

S. 33(2)(b) amended by No. 48/1997 s. 16(8).

(b) concurrently with any other uncompleted sentence or sentences of detention or imprisonment imposed on the young offender—

whether that other sentence was, or those other sentences were, imposed before or at the same time as that term.

S. 33(3) amended by No. 48/1997 ss 16(7)(9), 17(7).

(3) A sentence of detention imposed on a young offender which is to be served concurrently with a sentence of imprisonment must be served as imprisonment in a prison until the young offender has served the sentence of imprisonment.

(4) This section has effect despite anything to the contrary in any Act.

34. Commencement of sentences[15]

S. 34(1) amended by No. 48/1997 s. 17(7).

(1) Subject to sections 33 and 35, a sentence of detention commences—

S. 34(1)(a) amended by No. 48/1997 s. 16(1).

(a) if the young offender is immediately detained in custody under the sentence—on the day that it is imposed; or

S. 34(1)(b) amended by No. 48/1997 s. 16(1).

(b) if the young offender is serving a sentence of imprisonment which is cumulative on the sentence of detention—on the day the sentence of imprisonment is completed; or

S. 34(1)(c) amended by No. 48/1997 ss 16(1), 17(8).

(c) in any other case—on the day the young offender is apprehended under a warrant to detain in a youth training centre or a youth residential centre issued in respect of the sentence.

S. 34(2) amended by No. 48/1997 ss 16(4), 17(7).

(2) If a young offender sentenced to a term of detention is allowed to be or to go at large for any reason, the period between then and the day on which he or she is taken into custody to undergo the sentence does not count in calculating the term to be served and service of the sentence is suspended during that period.

S. 34(3) amended by No. 48/1997 ss 16(4), 17(7).

(3) If a young offender lawfully detained under a sentence escapes or fails to return after an authorised absence, the period between then and the day on which he or she surrenders or is apprehended does not count in calculating the term to be served and service of the sentence is suspended during that period.

S. 34(4) amended by No. 48/1997 s. 17(7).

(4) Despite anything to the contrary in this or any other Act or in any rule of law or practice, a sentence of detention must be calculated exclusive of any time during which service of it is suspended under sub-section (2) or (3).

S. 34(5) amended by No. 48/1997 ss 16(4), 17(7).

(5) If a young offender to whom sub-section (3) applies is in the period during which service of the sentence is suspended under that sub-section detained or imprisoned under another sentence, the unexpired portion of the suspended sentence takes effect—

(a) if it is to be served cumulatively on the sentence or sentences he or she is then undergoing—on the day that sentence is, or those sentences are, completed; or

(b) in any other case—at the end of the period of suspension.

S. 34(6) amended by No. 48/1997 ss 16(4), 17(7).

(6) If a young offender sentenced to a term of detention and allowed to be or to go at large pending an appeal or the consideration of any question of law reserved or case stated is detained or imprisoned under another sentence at the time when the appeal, question of law or case stated is finally determined, the first-mentioned sentence or the unexpired portion of it takes effect—

(a) if it is to be served cumulatively on the sentence or sentences he or she is then undergoing—on the day that sentence is, or those sentences are, completed; or

(b) in any other case—on the day on which the appeal, question of law or case stated is finally determined.

(7) Sub-section (6) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

35. Time held in custody before trial etc. to be deducted from sentence[16, 17]

S. 35(1) amended by No. 48/1997 ss 11(4), 16(4), 17(7).

(1) If a young offender is sentenced to a term of detention in respect of an offence, any period of time during which he or she was held in custody in relation to proceedings for that offence or proceedings arising from those proceedings must, unless the sentencing court otherwise orders, be reckoned as a period of detention already served under the sentence.

(2) Sub-section (1) does not apply—

(a) to a period of custody of less than one day; or

S. 35(2)(b) amended by No. 48/1997 s. 11(5).

(b) to a sentence of detention of less than one day; or

(c) to a period of custody declared on a previous occasion under this section or section 18 as reckoned to be a period of detention or imprisonment already served under another sentence of detention or imprisonment or hospital security order imposed on the offender.

S. 35(2)(c) inserted by No. 48/1997 s. 11(5), amended by No. 69/1997 s. 6(4).

(3) If a young offender was held in custody in circumstances to which sub-section (1) applies, then—

S. 35(3) amended by No. 48/1997 s. 16(4).

(a) the informant or person who arrested the young offender must, if present before the court, inform it, whether from his or her own knowledge or from inquiries made by him or her, of the length of the period of custody; or

S. 35(3)(a) amended by No. 48/1997 s. 16(6).

(b) if that person is not present before the court, it may take and receive other evidence (whether oral or written and whether on oath or otherwise) of the length of the period of custody.

(4) If a young offender was held in custody in circumstances to which sub-section (1) applies, then the court must declare the period to be reckoned as already served under the sentence and cause to be noted in the records of the court the fact that the declaration was made and its details.

S. 35(4) amended by No. 48/1997 ss 11(6), 16(4).

(5) The person with custody of the record referred to in sub-section (4) must indorse on the warrant or other authority for the detention of the young offender particulars of the matters referred to in that sub-section.

S. 35(5) amended by No. 48/1997 s. 16(1).

(6) If a young offender charged with a series of offences committed on different occasions has been in custody continuously since arrest,

the period of custody for the purposes of sub-section (1) must be reckoned from the time of his

S. 35(6) amended by No. 48/1997 s. 16(7).

or her arrest even if he or she is not convicted of the offence with respect to which he or she was first arrested or of other offences in the series.

(7) If on an application under this sub-section the sentencing court is satisfied that the period declared under sub-section (4) was not correct it may declare the correct period and amend the sentence accordingly.

(8) An application under sub-section (7) may be made by—

S. 35(8)(a) amended by No. 48/1997 s. 16(1).

(a) the young offender; or

(b) the Director of Public Prosecutions, if the sentencing court was the Supreme Court or the County Court; or

(c) the informant or police prosecutor, if the sentencing court was the Magistrates' Court.

Division 3—Community-Based Orders

36. When court may make community-based order

(1) A court may only make a community-based order in respect of an offender if—

(a) it has convicted the offender, or found the offender guilty, of an offence or offences punishable on conviction by imprisonment or a fine of more than 5 penalty units; and

(b) it has received a pre-sentence report; and

(c) the offender agrees to comply with the order.

(2) A court may make a community-based order in respect of an offender in addition to sentencing the offender to a term of imprisonment of not more than 3 months provided that the sentence of imprisonment is not—

S. 36(2) amended by No. 48/1997 s. 18.

(a) ordered to be served by way of intensive correction in the community; or

(b) suspended in whole or part.

(3) The period of a community-based order must not exceed 2 years.

S. 36(3) amended by No. 48/1997 s. 28(1).

(4) For the purpose of any proceedings under section 46 or 47, a community-based order made on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought.

S. 36(4) substituted by No. 48/1997 s. 19(1).

* * * * *

S. 36(5) repealed by No. 48/1997 s. 19(1).

37. Core conditions

(1) Core conditions of a community-based order are—

(a) that the offender does not commit, whether in or outside Victoria, during the period of the order another offence punishable on conviction by imprisonment;

S. 37(1)(a) amended by No. 19/1999 s. 8(1).

(b) that the offender reports to a specified community corrections centre within 2 clear working days after the coming into force of the order;

(c) that the offender reports to, and receives visits from, a community corrections officer;

(d) that the offender notifies an officer at the specified community corrections centre of any change of address or employment within 2 clear working days after the change;

(e) that the offender does not leave Victoria except with the permission of an officer at the specified community corrections centre granted either generally or in relation to the particular case;

(f) that the offender obeys all lawful instructions and directions of community corrections officers.

(2) A community-based order must have all the core conditions attached to it.

38. Program conditions

(1) Program conditions of a community-based order are—

(a) that the offender performs unpaid community work as directed by the Regional Manager for a period determined by the court in accordance with section 39;

(b) that the offender be under the supervision of a community corrections officer;

S. 38(1)(c) amended by No. 48/1997 s. 28(2).

(c) that the offender attends for educational or other programs as directed by the Regional Manager for a period of not less than one month or more than one year;

(d) that the offender undergoes assessment and treatment for alcohol or drug addiction or submits to medical, psychological or psychiatric assessment and treatment as directed by the Regional Manager;

(e) that the offender submits to testing for alcohol or drug use, as directed by the Regional Manager;

(f) subject to Division 6 of Part 3, that the offender participates in the services specified in a justice plan;

(g) any other condition that the court considers necessary or desirable, other than one about the making of restitution or the payment of compensation, costs or damages.

(2) A community-based order must have at least one, but may have more than one, program condition attached to it.

(3) A court must not impose any more program conditions than are necessary to achieve the purpose or purposes for which the order is made.

39. Community service condition

(1) The purpose of a community service condition is to allow for the adequate punishment of an offender in the community.

(2) The number of hours for which an offender may be required to perform unpaid community work under a community service condition is that set out in sub-section (3)(b) or (4) (as the case requires) of section 109 according to the level of the offence or of the term of imprisonment or fine that may be imposed in respect of the offence.

(3) If more than one provision in section 109 is applicable, then the relevant provision is the one that sets out the lesser number of hours.

(4) The total number of hours to be worked in any period of 7 days must not exceed 20.

(5) Despite sub-section (4), an offender may work up to 40 hours in a period of 7 days if he or she requests to do so and signs a written consent to working the extra number of hours.

S. 39(6) amended by No. 41/1993 s. 11(a).

(6) If a community service condition requiring 250 or less hours of work is the only program condition attached to a community-based order, the order expires on the satisfactory completion of those hours of work.

S. 39(7) amended by No. 41/1993 s. 11(b).

(7) Despite sections 36(1)(b) and 96(2), a court is not required to order a pre-sentence report if it is considering making a community-based order to which the only program condition attached is a community service condition requiring 250 or less hours of work.

40. Supervision condition

The purpose of a supervision condition is to allow for the rehabilitation of an offender in the community and the monitoring, surveillance or supervision of an offender who demonstrates a high risk of re-offending.

41. Personal development condition

The purpose of a personal development condition is to allow an offender with high needs in areas directly related to his or her criminal behaviour to participate in programs which will address those needs.

42. Community-based orders in respect of several offences

(1) If a court makes separate community-based orders in respect of two or more offences committed by an offender, the conditions of those orders are concurrent unless the court otherwise directs.

(2) The conditions of a community-based order made in respect of an offender are, unless the court otherwise directs, concurrent with those of any other community-based order in force in respect of that offender.

(3) The number of hours of unpaid community work required to be performed under a community-based order made in default of payment of a fine or sum of money must, unless otherwise directed by the court, be performed—

(a) cumulatively on those required to be performed under another default community-based order that is in force in respect of the offender; but

(b) concurrently with those required to be performed under any other community-based order that is in force in respect of the offender—

whether that other order was made before or at the same time as the first-mentioned order.

(4) A court must not give a direction under this section that would result in any limits specified in section 39 being exceeded.

43. Offender may be fined as well

A court may impose on an offender a fine authorised by law in addition to making a community-based order.

44. Secretary may direct offender to report at another place

S. 44(1) amended by No. 45/1996 s. 18(Sch. 2 item 11.9).

(1) If, because an offender has changed his or her place of residence or for any other reason it is not convenient that the offender should report at a place or to a person specified in a community-based order, the Secretary to the Department of Justice may direct the offender to report at another place or to another person.

(2) An offender must report as directed under sub-section (1) as if that place or person had been specified in the order.

S. 45 amended by No. 45/1996 s. 18(Sch. 2 item 11.10).

45. Suspension of community-based order

The Secretary to the Department of Justice may—

(a) if the offender is ill; or

(b) in other exceptional circumstances—

suspend for a period the operation of the order or of any condition of the order and, if so, that period does not count in calculating the period for which the order is to remain in force.

46. Variation of community-based order

(1) If on an application under this sub-section the court which made a community-based order is satisfied—

(a) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court or the author of a pre-sentence report before the order was made; or

(c) that the offender is no longer willing to comply with the order—

it may vary the order or cancel it and, subject to sub-section (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found him or her guilty of that offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of a community-based order, a court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under sub-section (1) may be made at any time while the order is in force by—

(a) the offender; or

S. 46(3)(b) substituted by No. 19/1999 s. 8(2).

(b) a prescribed person or a member of a prescribed class of persons; or

(c) the Director of Public Prosecutions.

(4) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(5) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

47. Breach of community-based order

S. 47(1) amended by Nos 41/1993 s. 10(3), 45/1996 s. 18(Sch. 2 item 11.11), 48/1997 s. 19(2)(a)(b).

(1) If at any time while a community-based order is in force the offender fails without reasonable excuse to comply with any condition of it or with any requirement of the regulations made for the purposes of this Subdivision, the offender is guilty of an offence for which he or she may be proceeded against on a charge filed by a prescribed person or a member of a prescribed class of persons.

S. 47(1A) inserted by No. 41/1993 s. 10(4).

(1A) A proceeding for an offence under sub-section (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.

S. 47(2) substituted by No. 48/1997 s. 19(3).

(2) Despite anything to the contrary in the **Magistrates' Court Act 1989**—

(a) on the filing of a charge referred to in sub-section (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;

(b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the defendant to attend—

(i) at the proper venue of the Magistrates' Court, if the community-based order was made by the Magistrates' Court; and

(ii) at the Supreme Court or the County Court, if the community-based order was made by that court—

to answer the charge;

(c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the defendant when arrested before a bail justice or before the court by which the community-based order was made to be dealt with according to law.

S. 47(3) substituted by No. 48/1997 s. 19(3).

(3) Despite anything to the contrary in this or any other Act or in any rule of law, the Supreme Court or the County Court may, if the community-based order was made by it, hear and determine without a jury an offence against sub-section (1) and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences applies so far as is appropriate to the hearing of the offence.

S. 47(3A) inserted by No. 48/1997 s. 19(3), amended by No. 10/1999 s. 30.

(3A) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may impose a level 10 fine and in addition may—

(a) vary the community-based order; or

(b) confirm the order originally made; or

(c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to sub-section (4), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found him or her guilty of that offence or those offences.

(4) In determining how to deal with an offender following the cancellation by it of a community-based order, a court must take into account the extent to which the offender had complied with the order before its cancellation.

S. 47(5) amended by No. 10/2004 s. 15(Sch. 1 item 27.1(a)(b)).

(5) This section applies also to a community-based order made under Division 4 in default of payment of a fine or an instalment under an instalment order but if the court considers that the orders that it may make under this section in respect of such a community-based order are not adequate in the light of—

(a) the nature of the offence; and

(b) the characteristics of the offender; and

(c) the offender's wilful refusal to pay the fine or instalment and to perform unpaid community work—

the court may impose a sentence of imprisonment of 1 day for each penalty unit or part of a penalty unit then remaining unpaid up to a maximum of 24 months.

(6) A fine imposed under this section—

(a) does not affect the continuance of the order, if it is still in force; and

(b) must be taken for all purposes to be a fine payable on a conviction of an offence.

48. Part payment of fine to reduce community service in default

(1) In this section **"community-based order"** means a community-based order made under Division 4 in default of payment of a fine or an instalment under an instalment order.

(2) If at any time while a community-based order is in force part of the amount then remaining unpaid is paid, in accordance with the regulations, to a community corrections officer by or on behalf of the person required to perform unpaid community work, the number of hours of work which the person is required to perform must be reduced by the number of hours bearing as nearly as possible the same proportion to the total number of hours as the amount paid bears to the whole amount in respect of which the order was made.

Division 4—Fines

49. Power to fine

(1) If a person is found guilty of an offence the court may, subject to any specific provision relating to the offence, fine the offender in addition to or instead of any other sentence to which the offender may be liable.

(2) The maximum fine that a court may impose under sub-section (1) is the appropriate maximum specified in the specific provision or, if no maximum is specified there, then that specified in section 52.

50. Exercise of power to fine

(1) If a court decides to fine an offender it must in determining the amount and method of payment of the fine take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.

(2) A court is not prevented from fining an offender only because it has been unable to find out the financial circumstances of the offender.

(3) In considering the financial circumstances of the offender, the court must take into account any other order that it or any other court has made or that it proposes to make—

S. 50(3)(a) amended by No. 108/1997 s. 156(e).

(a) providing for the forfeiture of the offender's property or the automatic forfeiture of the offender's property by operation of law; or

(b) requiring the offender to make restitution or pay compensation.

(4) If the court considers—

(a) that it would be appropriate both to impose a fine and to make a restitution or compensation order; but

(b) that the offender has insufficient means to pay both—

the court must give preference to restitution or compensation, though it may impose a fine as well.

(5) A court in fixing the amount of a fine may have regard to (among other things)—

(a) any loss or destruction of, or damage to, property suffered by a person as a result of the offence; and

(b) the value of any benefit derived by the offender as a result of the offence.

(6) If the offender is a body corporate and the court is satisfied—

(a) that the body will not be able to pay an appropriate fine; and

(b) that immediately before the commission of the offence there were reasonable grounds to expect that the body would not be able to meet any liabilities that it incurred at that time—

the court may, on the application of the informant or police prosecutor, declare that any person who was a director of the body corporate at the time of the commission of the offence is jointly and severally liable for the payment of the fine.

(7) The court must not make a declaration under sub-section (6) in respect of a director who satisfies it, on the hearing of the application, that—

(a) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the body corporate would be able to meet any liabilities that it incurred at that time; and

(b) he or she had taken all reasonable steps in carrying on the business of the body corporate to ensure that it would be able to meet its liabilities as and when they became due.

51. Aggregate fines

If a person is found guilty of two or more offences which are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character, the court may impose one fine in respect of those offences that does not exceed the sum of the maximum fines that could be imposed in respect of each of those offences.

52. Amount of fine where no amount prescribed

If a person is found guilty of an offence and the court has power to fine the offender but the amount of the fine is not prescribed anywhere, then the maximum fine which may be imposed is that set out in sub-section (2) or (3)(a) (as the case requires) of section 109 according to the level of the offence or of the term of imprisonment that may be imposed in respect of the offence.

53. Instalment order

If a court decides to fine an offender it may order that the fine be paid by instalments.

54. Time to pay

If a court does not make an instalment order it may at the time of imposing the fine order that the offender be allowed time to pay it.

55. Application by person fined

S. 55 amended by No. 69/1997 s. 7(1) (ILA s. 39B(1)).

S. 55(1) amended by No. 69/1997 s. 8(1)(a).

(1) An offender who has been fined by a court may, at any time before the commencement of a hearing under section 62(10), apply to the proper officer of that court in the manner prescribed by rules of that court for one or more of the following—

(a) an order that time be allowed for the payment of the fine; or

(b) an order that the fine be paid by instalments; or

S. 55(1)(c) amended by No. 41/1993 s. 12.

(c) an order for the variation of the terms of an instalment order; or

S. 55(1)(d) inserted by No. 41/1993 s. 12, amended by Nos 69/1997 s. 8(1)(b), 10/2004 s. 15(Sch. 1 item 27.2).

(d) if the amount of the fine is not more than an amount equivalent to the value of 100 penalty units or, if it is, for a part of it up to an amount equivalent to the value of 100 penalty units, a community-based order requiring him or her to perform unpaid community work as directed by the Regional Manager for a number of hours fixed in accordance with section 63(2).

S. 55(2) inserted by No. 69/1997 s. 7(1).

(2) An offender may not apply under sub-section (1)(d) if the fine was imposed in respect of an offence heard and determined by the Magistrates' Court as a result of the revocation of an enforcement order within the meaning of, or the making of an application under clause 10(6) of, Schedule 7 to the **Magistrates' Court Act 1989**.

S. 55(3) inserted by No. 69/1997 s. 7(1).

(3) An offender on whom a fine referred to in sub-section (2) has been imposed may, at any time before the commencement of a hearing under section 62(10), apply to the Magistrates' Court constituted by a magistrate for a community-based order requiring him or her to perform unpaid community work as directed by the Regional Manager for a number of hours fixed in accordance with section 63(2).

S. 55(4) inserted by No. 69/1997 s. 7(1).

(4) On an application under sub-section (3), the Magistrates' Court may—

(a) make one or more orders of a kind referred to in sub-section (1); or

(b) confirm any order then in force.

56. Order to pay operates subject to instalment order

While an instalment order is in force and is being complied with, the order requiring the fine to be paid operates subject to it.

57. Notice of orders to be given

An order under this Division is not binding on an offender if the offender has not been given notice of it in the manner required by or under this Division.

58. Oaths

A court, or a proper officer of a court, may administer an oath for the purposes of proceedings under this Division.

59. Application of fines etc.

The whole or any part of a fine, penalty or sum of money which by or under any Act is authorised or directed to be imposed on a person forms part of, and must be paid into, the Consolidated Fund if no other way of appropriating or applying it is prescribed by law.

60. Penalty payable to body corporate

A forfeiture or penalty payable to a party aggrieved under an Act relating to an offence (whether indictable or summary) is payable to a body corporate if it is the party aggrieved.

61. Variation of instalment order or time to pay order

(1) If on an application under this sub-section the court which made an order that a fine be paid by instalments or that an offender be allowed time for the payment of a fine is satisfied—

(a) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with the order; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court or the author of a pre-sentence report before the order was made; or

(c) that the offender is no longer willing to comply with the order—

it may vary the order or cancel it and, subject to sub-section (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of that offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of an order, a court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under sub-section (1) may be made at any time while the order is in force by—

(a) the offender; or

(b) a prescribed person, or a member of a prescribed class of persons; or

(c) the Director of Public Prosecutions.

(4) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(5) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

62. Enforcement of fines against natural persons

S. 62(1) amended by Nos 41/1993 s. 13(a), 69/1997 s. 8(2), 10/2004 s. 15(Sch. 1 item 27.3).

(1) If for a period of more than one month a natural person defaults in the payment of a fine or of any instalment under an instalment order the court or the proper officer may issue a warrant to arrest against him or her unless, where the amount of the fine or instalment remaining unpaid is not more than an amount equivalent to the value of 100 penalty units, the person in default has consented to the making of a community-based order requiring him or her to perform unpaid community work as directed by the Regional Manager for a number of hours fixed in accordance with section 63(2).

(2) A warrant to arrest issued under sub-section (1) may be directed to the sheriff.

S. 62(2A) inserted by No. 69/1997 s. 9.

(2A) A warrant to arrest to be directed to the sheriff may be issued, not in paper form, but by the proper officer signing a document containing the following particulars in relation to persons against whom a warrant is to be issued under sub-section (1) and causing those particulars to be transferred electronically to the sheriff in accordance with the regulations, if any—

(a) the name of the person in default;

(b) the type of warrant;

(c) the amount of the fine or instalment remaining unpaid;

(d) the date of issue of the warrant;

(e) the name of the proper officer signing the document;

(f) any other particulars that are prescribed.

S. 62(2B) inserted by No. 69/1997 s. 9.

(2B) A warrant issued in accordance with sub-section (2A)—

(a) directs and authorises the sheriff to do all things that he or she would have been directed and authorised to do if a warrant containing the particulars referred to in sub-section (2A) and directed to the sheriff had been issued in paper form under sub-section (1) by the proper officer;

(b) must not be amended, altered or varied after its issue, unless the amendment, alteration or variation is authorised by or under this or any other Act.

(3) A warrant to arrest directed to the sheriff may, if the sheriff so directs, be executed by—

(a) a named person who is a bailiff for the purposes of the **Supreme Court Act 1986**; or

(b) generally all persons who are bailiffs for the purposes of the **Supreme Court Act 1986**; or

(c) a named member of the police force; or

(d) generally all members of the police force.

(4) A direction may be given by the sheriff under sub-section (3) by—

(a) endorsing the execution copy of the warrant with the direction; or

(b) issuing a warrant to the same effect as the warrant to arrest but directed in accordance with sub-section (3).

(5) A warrant endorsed or issued by the sheriff in accordance with sub-section (4) directs and authorises the person to whom it is directed to do all things that he or she would have been directed and authorised to do by the original warrant if it had been directed to him or her.

(6) A warrant to arrest directed to a named bailiff or member of the police force may be executed by any bailiff or member of the police force, as the case requires.

S. 62(7) amended by No. 41/1993 s. 15(1).

(7) A warrant under this section must not be executed unless the fine or instalment or any part of the fine or instalment together with all warrant costs remain unpaid for 7 days after a demand is made on the person in default by a person authorised to execute the warrant and the person in default has not within that period—

(a) obtained an instalment order or time to pay order; or

S. 62(7)(b) amended by Nos 69/1997 s. 8(3), 10/2004 s. 15(Sch. 1 item 27.4).

(b) if the amount of the fine or instalment remaining unpaid is not more than an amount equivalent to the value of 100 penalty units, consented to the making by the court of a community-based order requiring him or her to perform unpaid community work as directed by the Regional Manager for a number of hours fixed in accordance with section 63(2).

S. 62(7A) inserted by No. 41/1993 s. 15(2).

(7A) In making an order in accordance with sub-section (7)(a) or (b), the court or the proper officer may include any warrant costs in the amount of the fine.

(8) The person making the demand under sub-section (7) must deliver to the person in default a statement in writing in the prescribed form setting out a summary of the provisions of this Division relating to the enforcement of fines against natural persons.

(9) The court which sentenced the person in default may make a community-based order to which he or she has consented.

S. 62(10) amended by Nos 41/1993 s. 13(b)(i)(ii), 69/1997 s. 8(4).

(10) Subject to sub-section (10A) and (10B), if a person is arrested on a warrant under this section and brought before the court which sentenced him or her and the court is satisfied by evidence on oath or by affidavit or by the admission of the offender or from an examination of the records of the court or of a certificate purporting to contain an extract of those records and purporting to be signed by the officer of the court with custody of those records that the offender has for a period of more than one month defaulted in the payment of a fine or of any instalment under an instalment order, it may do one or more of the following—

(a) make a community-based order requiring the offender to perform unpaid community work as directed by the Regional Manager for a number of hours fixed in accordance with section 63(2); or

(b) order that the offender be imprisoned for a term fixed in accordance with section 63(1); or

(c) order that the amount of the fine then unpaid be levied under a warrant to seize property; or

(d) vary the order that the fine be paid by instalments, if that was the sentence; or

(e) adjourn the hearing or further hearing of the matter for up to 6 months on any terms that it thinks fit.

S. 62(10AA) inserted by No. 69/1997 s. 8(5), amended by No. 10/2004 s. 15(Sch. 1 item 27.5).

(10AA) A court cannot make an order under this Division in respect of a fine that would result in an offender performing unpaid community work in respect of more than an amount equivalent to the value of 100 penalty units of the amount of the fine.

S. 62(10A) inserted by No. 41/1993 s. 13(c).

(10A) If a person who was arrested on a warrant under this section and released on bail (either in accordance with the endorsement on the warrant or under section 10 of the **Bail Act 1977**) fails to attend before the court in accordance with his or her bail, the court may proceed to hear and determine the matter under sub-section (10) in the offender's absence and make any order under that sub-section without prejudice to any right of action arising out of the breach of the bail undertaking.

S. 62(10B) inserted by No. 41/1993 s. 13(c).

(10B) If a warrant to arrest issued under this section against an offender has not been executed within a reasonable period after it was issued or no warrant to arrest was issued against an offender under this section, the court may proceed to hear and determine the matter under sub-section (10) in the offender's absence and make any order under that sub-section if it is satisfied that the warrant has not been executed or was not issued only because the offender is not in Victoria.

S. 62(11) amended by No. 41/1993 s. 13(d).

(11) A court must not make an order under paragraph (b) of sub-section (10) if the offender satisfies the court that he or she did not have the capacity to pay the fine or the instalment or had another reasonable excuse for the non-payment.

(12) A court must not make an order under paragraph (b) of sub-section (10) unless it is satisfied that no other order under that sub-section is appropriate in all the circumstances of the case.

S. 62(13) inserted by No. 69/1997 s. 7(2).

(13) Despite anything to the contrary in this section, neither sub-section (1) nor (7)(b) operate to allow a person to consent to the making of a community-based order if the fine was imposed in respect of an offence heard and determined by the Magistrates' Court as a result of the revocation of an enforcement order within the meaning of, or the making of an application under clause 10(6) of, Schedule 7 to the **Magistrates' Court Act 1989**.

63. Terms of imprisonment or hours of unpaid work

S. 63(1) amended by No. 10/2004 s. 15(Sch. 1 item 27.6(a) (i)(ii)).

(1) The term for which a person in default of payment of a fine or an instalment under an instalment order may be imprisoned is 1 day for each penalty unit or part of a penalty unit then remaining unpaid with a maximum of 24 months.

S. 63(2) amended by Nos 69/1997 s. 8(6), 10/2004 s. 15(Sch. 1 item 27.6(b) (i)(ii)).

(2) The number of hours for which a person in default of payment of a fine or an instalment under an instalment order may be required to perform unpaid community work is 1 hour for each 0·2 penalty unit or part of 0·2 penalty unit then remaining unpaid up to an amount equivalent to the value of 100 penalty units with a minimum of 8 and a maximum of 500 hours.

S. 63(3) inserted by No. 41/1993 s. 14.

(3) The minimum and maximum number of hours set out in sub-section (2) apply, where the person is in default of more than one fine or instalment, to the aggregate number of hours for which he or she may be required to perform unpaid community work in respect of the amounts then remaining unpaid of all the fines or instalments of which he or she is then in default and to which the proceeding under section 62(10) relates.

S. 63(4) inserted by No. 41/1993 s. 14, amended by No. 10/2004 s. 15(Sch. 1 item 27.7(a)(b)).

(4) In determining for the purposes of this section the amount of a fine or instalment remaining unpaid, an amount equivalent to the value of 1 penalty unit must be taken as having already been paid if the person in default was held in custody under a warrant issued under section 62 and for no other reason for a period of not less than one day and another amount equivalent to the value of 1 penalty unit must be taken as having already been paid for each day or part of a day in excess of one day during which he or she was so held up to a maximum of the amount of the fine or instalment remaining unpaid immediately before the execution of the warrant.

64. Warrant to seize property returned unsatisfied

(1) If the person executing a warrant to seize property issued under section 62(10)(c) returns that he or she cannot find sufficient personal property of the offender on which to levy the sums named in the warrant together with all lawful costs of execution, the court may cause to be issued a summons requiring the offender to attend before it on a specified date and at a specified place.

(2) If an offender fails to attend as required by a summons issued under sub-section (1), the court may cause a warrant to arrest to be issued against him or her.

(3) On an offender attending before it under this section, or in his or her absence if the court is satisfied that the summons has been served, the court may order that he or she be imprisoned for a term fixed in accordance with section 63(1) and that section applies for this purpose except that the costs of execution must not be taken into account.

(4) Instead of fixing a term of imprisonment under sub-section (3) the court may, if satisfied that in all the circumstances of the case it is appropriate to do so, make a community-based order requiring the offender to perform unpaid community work for a number of hours fixed in accordance with section 63(2) and that section applies for this purpose except that the costs of execution must not be taken into account.

65. Costs

S. 65(1) amended by No. 41/1993 s. 15(3).

(1) If a court makes an order under section 62(10), it may make any order relating to costs that it thinks fit.

(2) A court in fixing a term of imprisonment or hours of unpaid community work in default of payment of a fine or an instalment under an instalment order in accordance with section 62(10)(a) or (b) may—

(a) include in the amount of the fine any costs ordered to be paid under sub-section (1); or

(b) order that those costs then unpaid be levied under a warrant to seize property.

(3) Section 64 applies to a warrant to seize property issued under sub-section (2)(b) in the same manner that it applies to such a warrant issued under section 62(10)(c).

66. Enforcement of fines against bodies corporate

(1) If for a period of more than one month a body corporate defaults in the payment of a fine or of any instalment under an instalment order the court or the proper officer may issue a warrant to seize property against it.

(2) A warrant issued under sub-section (1) must not be executed unless the fine or instalment or any part of the fine or instalment together with all lawful costs of execution remain unpaid for 7 days after a demand is made on the body corporate by a person authorised to execute the warrant and the body corporate has not within that period obtained an instalment order or time to pay order.

(3) The person making the demand under sub-section (2) must deliver to the body corporate a statement in writing in the prescribed form setting out a summary of the provisions of this Division relating to the enforcement of fines against bodies corporate.

67. Recovery of penalties

If an Act or subordinate instrument—

(a) provides for a penalty to be recovered from any person—

(i) summarily; or

(ii) on summary conviction; or

(iii) before the Magistrates' Court; or

(b) uses any other words that imply that a penalty is to be recovered before the Magistrates' Court; or

(c) does not provide a form or mode of procedure for the recovery of a penalty—

then, unless the contrary intention appears, the penalty must be recovered only before the Magistrates' Court.

68. Rules and regulations

S. 68(1) amended by No. 19/2005 s. 11(2)(a)(b).

(1) The power to make rules under the **Supreme Court Act 1986**, the **County Court Act 1958** and the **Magistrates' Court Act 1989** extends to and applies in relation to the making of rules for or with respect to—

(a) the matters to be specified in applications or orders made or notices given under this Division; or

(b) the manner of making applications under section 55; or

(c) court procedure and the procedure of the proper officer under this Division; or

(d) securing the attendance of an offender before the court and the production of documents by an offender to the court if the offender defaults in the payment of a fine or of an instalment under an instalment order and empowering the issue of a summons or warrant to arrest or the making of an order for that purpose; or

(e) the issue and execution under this Division of summonses, warrants to arrest, warrants of execution and warrants to imprison; or

(f) the functions of the proper officer of the court under this Division; or

(g) the costs of proceedings if an order is made under section 62(10)(a) or (b); or

(h) prescribing forms for the purposes of this Division; or

(i) the manner of service or filing of any documents under this Division; or

(j) generally prescribing any other matter or thing required or permitted by this Division to be prescribed or necessary to be prescribed to give effect to this Division.

*   *   *   *   *

S. 68(2)(3) repealed by No. 10/1999 s. 31(4)(a).

69. Application to PERIN procedure

This Division does not apply to the use of the procedure set out in Schedule 7 to the **Magistrates' Court Act 1989**.

Division 5—Dismissals, Discharges and Adjournments

Subdivision (1)—General

70. Purpose of orders under this Division

S. 70 amended by No. 48/1997 s. 20(1).

(1) An order may be made under this Division—

(a) to provide for the rehabilitation of an offender by allowing the sentence to be served in the community unsupervised;

(b) to take account of the trivial, technical or minor nature of the offence committed;

(c) to allow for circumstances in which it is inappropriate to record a conviction;

(d) to allow for circumstances in which it is inappropriate to inflict any punishment other than a nominal punishment;

(e) to allow for the existence of other extenuating or exceptional circumstances that justify the court showing mercy to an offender.

S. 70(2) inserted by No. 48/1997 s. 20(2).

(2) For the purpose of any proceedings under Subdivision (4), an order made under this Division on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought.

71. Abolition of common law bonds

A court does not have jurisdiction to release a convicted offender on a recognisance or bond to be of good behaviour and to appear for sentence when called on.

Subdivision (2)—Release on Conviction

72. Release on adjournment following conviction

S. 72(1) amended by No. 48/1997 s. 28(3).

(1) A court, on convicting a person of an offence, may adjourn the proceeding for a period of up to 5 years and release the offender on the offender giving an undertaking with conditions attached.

(2) An undertaking under sub-section (1) must have as conditions—

(a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned; and

(b) that the offender is of good behaviour during the period of the adjournment; and

(c) that the offender observes any special conditions imposed by the court.

S. 72(3) amended by No. 48/1997 s. 28(1).

(3) Subject to Division 6 of Part 3, a court may impose a special condition that the offender participate in the services specified in a justice plan for a period of up to 2 years specified by the court or the period of the adjournment, whichever is the shorter.

(4) An offender who has given an undertaking under sub-section (1) may be called on to appear before the court—

(a) by order of the court; or

(b) by notice issued by the proper officer of the court.

(5) An order or notice under sub-section (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.

(6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.

73. Unconditional discharge

A court may discharge a person whom it has convicted of an offence.

74. Compensation or restitution

A court may make an order for compensation or restitution in addition to making an order under this Subdivision.

Subdivision (3)—Release without Conviction

75. Release on adjournment without conviction

(1) A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) adjourn the proceeding for a period of up to 60 months and release the offender on the offender giving an undertaking with conditions attached.

(2) An undertaking under sub-section (1) must have as conditions—

(a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned; and

(b) that the offender is of good behaviour during the period of the adjournment; and

(c) that the offender observes any special conditions imposed by the court.

S. 75(3) amended by No. 48/1997 s. 28(1).

(3) Subject to Division 6 of Part 3, a court may impose a special condition that the offender participate in the services specified in a justice plan for a period of up to 2 years specified by the court or the period of the adjournment, whichever is the shorter.

(4) An offender who has given an undertaking under sub-section (1) may be called on to appear before the court—

(a) by order of the court; or

(b) by notice issued by the proper officer of the court.

(5) An order or notice under sub-section (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.

(6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it must dismiss the charge without any further hearing of the proceeding.

76. Unconditional dismissal

A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) dismiss the charge.

77. Compensation or restitution

A court may make an order for compensation or restitution in addition to making an order under this Subdivision.

Subdivision (4)—Variation and Breach of Orders for Release on Adjournment

78. Variation of order for release on adjournment

(1) A court which has under Subdivision (2) or (3) made an order for the release of an offender on an adjournment (with or without recording a conviction) may, on application under this sub-section, if satisfied—

(a) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the undertaking; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court or the author of a pre-sentence report before the order was made; or

(c) that the offender is no longer willing to comply with the conditions of the undertaking—

vary the order or cancel it and, subject to sub-section (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the

offender if it had just found the offender guilty of that offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of an order made under Subdivision (2) or (3), a court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under sub-section (1) may be made at any time while the order is in force by—

(a) the offender; or

(b) a prescribed person, or a member of a prescribed class of persons; or

(c) the Director of Public Prosecutions.

(4) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(5) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

79. Breach of order for release on adjournment

S. 79(1) substituted by No. 48/1997 s. 21(1).

(1) If at any time while an undertaking given under Subdivision (2) or (3) is in force the offender fails without reasonable excuse to comply with any condition of it, the offender is guilty of an offence for which he or she may be proceeded against on a charge filed by a prescribed person or a member of a prescribed class of persons.

(2) A proceeding for an offence under sub-section (1) may be commenced at any time up until 3 years after the date on which the offence is alleged to have been committed.

S. 79(2) substituted by No. 48/1997 s. 21(1).

(3) Despite anything to the contrary in the **Magistrates' Court Act 1989**—

S. 79(3) substituted by No. 48/1997 s. 21(1).

(a) on the filing of a charge referred to in sub-section (1), an application under section 28(1) of that Act for the issue of a summons to answer to the charge or a warrant to arrest may be made to the registrar at any venue of the Magistrates' Court;

(b) a summons to answer to the charge issued on an application referred to in paragraph (a) must direct the defendant to attend—

(i) at the proper venue of the Magistrates' Court, if the order for the release of the offender was made by the Magistrates' Court; and

(ii) at the Supreme Court or the County Court, if the order for the release of the offender was made by that court—

to answer the charge;

(c) a warrant to arrest issued on an application referred to in paragraph (a) authorises the person to whom it is directed to bring the defendant when arrested before a bail justice or before the court by which the order for the release of the offender was made to be dealt with according to law.

S. 79(3A) inserted by No. 48/1997 s. 21(1).

(3A) Despite anything to the contrary in this or any other Act or in any rule of law, the Supreme Court or the County Court may, if the order for the release of the offender was made by it, hear and determine without a jury an offence against sub-section (1) and, subject to any rules of court, the practice and procedure applicable in the Magistrates' Court to the hearing and determination of summary offences applies so far as is appropriate to the hearing of the offence.

S. 79(4) amended by Nos 48/1997 s. 21(2)(a)(b), 10/1999 s. 30.

(4) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may—

(a) vary the order; or

(b) confirm the order originally made; or

(c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to sub-section (5), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found the offender guilty of that offence or those offences—

and in addition may impose a level 10 fine.

(5) In determining how to deal with an offender following the cancellation by it of an order made under Subdivision (2) or (3), a court must take into account the extent to which the offender had complied with the order before its cancellation.

(6) A fine imposed under this section must be taken for all purposes to be a fine payable on a conviction of an offence.

Division 6—Special Conditions For Intellectually Disabled Offenders

80. Special condition of justice plans

(1) If a court finds a person guilty of an offence and is considering—

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S. 80(1)(a) repealed by No. 48/1997 s. 14(8).

(b) making a community-based order in respect of the person; or

(c) under Subdivision (2) or (3) of Division 5 releasing the offender on an adjournment, with or without recording a conviction—

it may request—

(d) a declaration of eligibility issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986**; and

(e) a justice plan; and

(f) a pre-sentence report prepared in accordance with Division 2 of Part 6.

S. 80(2) amended by No. 48/1997 s. 28(1).

(2) If the court receives the declaration, plan and report referred to in sub-section (1) and, after having considered them, decides to impose a sentence referred to in that sub-section, it may impose a special condition that the offender participate in the services specified in the justice plan for a period of up to 2 years specified by the court or the period of the sentence, whichever is the shorter.

S. 80(3) amended by No. 46/1998 s. 7(Sch. 1).

(3) If a court imposes a special condition under sub-section (2), it must cause a copy of the sentence to be supplied to the Secretary.

81. Review of justice plan by Secretary

S. 81(1) amended by No. 46/1998 s. 7(Sch. 1).

(1) The Secretary must review a justice plan—

S. 81(1)(a) amended by No. 48/1997 s. 28(2).

(a) not later than one year after the imposing of the sentence to which it refers and thereafter at intervals not exceeding one year; or

(b) as directed by the court at the time of sentencing—

until the special condition of the sentence ceases to have effect.

S. 81(2) amended by No. 46/1998 s. 7(Sch. 1).

(2) The Secretary may review a justice plan if an application is made to him or her to do so by—

(a) the offender; or

S. 81(2)(b) amended by No. 45/1996 s. 18(Sch. 2 item 11.12).

(b) if the sentence is a community-based order, the Secretary to the Department of Justice; or

S. 81(2)(c) amended by No. 48/1997 s. 14(9).

(c) if the sentence is a an order under Subdivision (2) or (3) of Division 5, a prescribed person or a member of a prescribed class of persons.

82. Review of special condition by sentencing court

(1) If on an application under this sub-section the court which imposed a special condition on a sentence under section 80(2) is satisfied—

(a) that the offender is no longer willing to comply with the special condition; or

(b) that the needs of the offender are not being met by the special condition; or

(c) that the offender has failed without reasonable excuse to comply with the special condition; or

(d) that the justice plan is no longer appropriate—

it may confirm, vary or cancel the special condition.

(2) An application under sub-section (1) may be made at any time while the special condition is in force by—

(a) the offender; or

(b) if the sentence is a community-based order, the Secretary to the Department of Justice; or

S. 82(2)(b) amended by No. 45/1996 s. 18(Sch. 2 item 11.13).

(c) if the sentence is an order under Subdivision (2) or (3) of Division 5, a prescribed person or a member of a prescribed class of persons; or

S. 82(2)(c) amended by No. 48/1997 s. 14(9).

(d) if the application relates to the appropriateness of the justice plan, the Secretary.

S. 82(2)(d) amended by No. 46/1998 s. 7(Sch. 1).

(3) Notice of an application under sub-section (1) must be given—

(a) to the offender; and

(b) to the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or to the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(4) The court may order that a warrant to arrest be issued against the offender if he or she does not attend before the court on the hearing of the application.

(5) If the court cancels the special condition, it may cancel the sentence and, subject to sub-section (6), deal with the offender for the offence or offences with respect to which the sentence was imposed in any manner in which the court could deal with the offender if it had just found the offender guilty of that offence or those offences.

(6) In determining how to deal with an offender following the cancellation by it of a sentence, a court must take into account the extent to which the offender had complied with the sentence before its cancellation.

83. Notice of application

Notice of an application under section 82(1) must be given to an offender by—

(a) not less than 14 days before the date of hearing of the application posting a true copy of the application addressed to the offender at his or her last known place of residence or business; or

(b) not less than 5 days before the date of hearing of the application—

(i) delivering to the offender personally a true copy of the application; or

(ii) leaving a true copy of the application for the offender at his or her last known place of residence or business with a person who apparently resides or works there and who apparently is not less than 16 years old.

Division 7—Deferral of Sentencing in Magistrates' Court

Pt 3 Div. 7 (Heading and s. 83A) inserted by No. 19/1999 s. 9.

83A. Deferral of sentencing

S. 83A inserted by No. 19/1999 s. 9.

(1) If the Magistrates' Court finds a person guilty of an offence and—

S. 83A(1)(a) amended by No. 72/2004 s. 39.

(a) the offender is, at the time of the finding, aged 18 years or more but under 25 years of age; and

(b) the Magistrates' Court is of the opinion that sentencing should, in the interests of the offender, be deferred; and

(c) the offender agrees to a deferral of sentencing—

the Magistrates' Court may defer sentencing the offender for a period not exceeding 6 months.

(2) If the Magistrates' Court defers sentencing an offender, it—

(a) must adjourn the proceeding for a period of up to 6 months; and

(b) may release the offender on his or her undertaking to appear before the Magistrates' Court on the date fixed for sentence or release the offender on bail or extend his or her bail to that date; and

(c) may order a pre-sentence report in respect of the offender.

(3) On the adjourned hearing, the Magistrates' Court must, in determining the appropriate sentence for an offender, have regard to—

(a) the offender's behaviour during the period of deferral; and

(b) subject to section 99, any pre-sentence report ordered under sub-section (2)(c); and

(c) any other relevant matter.

(4) If an offender is found guilty of an offence during a period of deferral under this section, the Magistrates' Court may—

(a) re-list the adjourned proceeding on a day earlier than the day to which it was adjourned under sub-section (2)(a); and

(b) on the adjourned hearing make any order that the Magistrates' Court could have made if it had not deferred sentencing.

(5) The Magistrates' Court may order that a warrant to arrest be issued against the offender if he or she does not attend before the Court on the adjourned hearing.

(6) Nothing in this section removes any requirement imposed on the Magistrates' Court by or under this or any other Act to impose any disqualification on, or make any other order in respect of, a person found guilty or convicted of an offence, including an order cancelling or suspending a driver licence or permit or disqualifying the offender from obtaining one for any period.

PART 3A—SUPERANNUATION ORDERS

Pt 3A (Heading and ss 83B–83K) inserted by No. 65/2004 s. 3.

83B. Purpose of Part

S. 83B inserted by No. 65/2004 s. 3.

The purpose of this Part is to enable a court to make a superannuation order as a new sentencing option where a person who is or has been a public sector employee is convicted of an indictable offence involving abuse of office, corruption or perversion of the course of justice.

83C. Application of Part

S. 83C inserted by No. 65/2004 s. 3.

(1) This Part applies in respect of an offender who is convicted of a relevant offence on or after 3 June 2004 irrespective of whether the relevant offence was committed before, on or after that date.

(2) A court may make a superannuation order in addition to, or instead of, any other sentence that may be imposed under this or any other Act.

(3) Despite section 50, the making of a superannuation order under this Part is not to be taken into account by a court in determining whether to impose a fine on the offender under section 49.

83D. Definitions

S. 83D inserted by No. 65/2004 s. 3.

(1) In this Part—

"administrators" means the person or persons responsible for the administration of a relevant superannuation scheme;

"authorised person" means—

(a) the Director of Public Prosecutions; or

(b) if the relevant offence is an indictable offence tried summarily, the Chief Commissioner of Police;

"dependant", in relation to an offender, means—

(a) a child of the offender; or

(b) any other person who in the opinion of the court is dependent on the offender or has a legal right to look to the offender for financial support;

"domestic partner", in relation to an offender, means a person to whom the offender is not married but with whom in the opinion of the court, the offender is living as a couple on a genuine domestic basis (irrespective of gender);

"excluded public body" means—

(a) a Council within the meaning of section 3(1) of the **Local Government Act 1989**;

(b) an institution listed in Schedule 1 to the **Tertiary Education Act 1993** that is a body politic and is governed by a council, some of the members of which are appointed by the Governor in Council or a Minister;

"member contributions by way of salary sacrifice" does not include employer contributions for which the employer is or has been liable under the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth, under an industrial award or agreement or under the provisions of the governing instrument of the relevant

superannuation scheme and which are included in the total remuneration package of a public sector employee;

"member financed component" means the amount of the superannuation benefit or superannuation benefits financed by member contributions (including member contributions by way of salary sacrifice, child contributions, spouse contributions or Government co-contributions) as at the relevant date as determined by the administrators of the relevant superannuation scheme after, where appropriate, obtaining advice from an actuary appointed by the administrators;

"offender" means a person who has been convicted of a relevant offence;

"public body" means—

(a) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose;

(b) a body whose members, or a majority of whose members, are appointed by the Governor in Council or a Minister;

(c) a company all the shares or a majority of the shares in which are held by the State or another public body;

(d) a TAFE college within the meaning of the **Vocational Education and Training Act 1990**;

(e) a public hospital within the meaning of the **Health Services Act 1988**;

(f) a State funded residential care service within the meaning of the **Health Services Act 1988**;

(g) a contractor, or a sub-contractor, within the meaning of Part 3A of the **Health Services Act 1988**, but only in its capacity as a provider of health services to public hospital patients in accordance with an agreement under section 69B(1) of that Act—

but does not include an excluded public body;

S. 83D(1) def. of "public sector employee" amended by Nos 108/2004 s. 117(1) (Sch. 3 item 181.2), 20/2005 s. 52(3).

"public sector employee" means a person who is, or was, at the time that he or she committed the relevant offence—

(a) employed under Part 3 of the **Public Administration Act 2004** or a person to whom a provision of that Act applied in accordance with Part 7 of that Act;

(b) a Ministerial officer within the meaning of section 98 of the **Public Administration Act 2004**;

(c) a Parliamentary adviser within the meaning of section 99 of the **Public Administration Act 2004**;

(d) a judicial employee within the meaning of section 101 of the **Public Administration Act 2004**;

(e) a Parliamentary officer within the meaning of the **Parliamentary Administration Act 2005**;

(f) an electorate officer employed under Part 4 of the **Parliamentary Administration Act 2005**;

(g) a member of the teaching service within the meaning of the **Teaching Service Act 1981**;

(h) employed under the **Education Act 1958**;

(i) an officer or other member of the police force of Victoria or a police recruit under the **Police Regulation Act 1958**;

(j) a police reservist appointed under section 103 of the **Police Regulation Act 1958**;

(k) a protective services officer appointed under section 118B of the **Police Regulation Act 1958**;

(l) a member of the Parliament;

(m) employed by a public body;

(n) the holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister;

"relevant date" means—

(a) if the offender is a member of a relevant superannuation scheme as at the date on which the offender is convicted of the relevant offence, the date in relation to that relevant superannuation scheme on which the offender is convicted of the relevant offence;

(b) if the offender has ceased to be a member of a relevant superannuation scheme before the date on which the offender is convicted of the relevant offence, the date in relation to that relevant superannuation scheme on which the offender ceased to be a member of the relevant superannuation scheme;

"relevant interest amount" means, where the relevant date is not the same as the date of conviction for the relevant offence, the amount of interest for the period commencing on the relevant date and ending on the date of conviction on the amount calculated under paragraph (a) of the definition of "residual employer financed component" using the Treasury bond rate for the last working day of the previous financial year;

"relevant offence" means an indictable offence committed by a person at the time when the person was a public sector employee;

"relevant superannuation scheme" means any superannuation scheme of which an offender—

(a) is a member at the date of the conviction for the relevant offence; or

(b) has been a member at any time before that date;

"residual employer financed component" means the total sum, as determined by the administrators of the relevant superannuation scheme after, where appropriate, obtaining advice from an actuary appointed by the administrators, of—

(a) the value of the total superannuation benefit as at the relevant date after deducting—

(i) the member financed component; and

(ii) the SG component; and

(iii) the amount of any adjustment to that superannuation benefit in respect of any surcharge recoverable under the governing instrument of the relevant superannuation scheme; and

(iv) the amount (if any) of the superannuation benefit financed by an employer and attributable to service by the member otherwise than as a public sector employee; and

(b) any relevant interest amount;

"SG component" means the amount determined by the administrators of a relevant superannuation scheme after, where appropriate, obtaining the advice of an actuary appointed by the administrators to be the amount that would have been the minimum employer financed amount necessary to avoid a superannuation guarantee shortfall within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth in respect of the period during which the offender was a public sector employee which falls within the period commencing on 1 July 1992 and ending on the relevant date;

"superannuation order" means an order made under section 83F;

"superannuation scheme" means a scheme one of the purposes of which is to provide superannuation benefits or pensions;

"Treasury bond rate" means the Treasury bond rate for the last working day of a financial year for bonds with a 10 year term being—

(a) if any Treasury bonds with that term were issued on that day, the annual yield on those Treasury bonds; or

(b) in any other case, the annual yield on Treasury bonds with that term as published by the Reserve Bank of Australia for that day;

"value of the total superannuation benefit as at the relevant date" means—

(a) if the offender is a member of a relevant superannuation scheme as at the date on which the offender is convicted of the relevant offence, the value of the superannuation benefit or superannuation benefits as at the date of the conviction for the relevant offence as if the offender had resigned or retired as at the date of conviction as determined by the administrators of the relevant superannuation scheme after, where appropriate, obtaining advice from an actuary appointed by the administrators;

(b) if the offender has ceased to be a member of a relevant superannuation scheme before the date on which the offender is convicted of the relevant offence, the value of the superannuation benefit or superannuation benefits as at the date the offender ceased to be a member of the relevant superannuation scheme as determined by the administrators of the relevant superannuation scheme after, where

appropriate, obtaining advice from an actuary appointed by the administrators.

(2) For the purposes of the definition of "public body" in sub-section (1), a reference to a public body specified in that definition includes a reference to a public body merged, associated or affiliated with, amalgamated into, succeeding or succeeded by that public body.

(3) For the purposes of the definitions of "public body" and "public sector employee" in sub-section (1), a reference to an Act specified in those definitions includes a reference to any corresponding previous enactment and to any corresponding subsequent enactment.

83E. Application for a superannuation order

S. 83E inserted by No. 65/2004 s. 3.

(1) If the authorised person is of the opinion that the relevant offence for which a court has convicted an offender—

(a) involved an abuse by the person of his or her office as a public sector employee; or

(b) having regard to the powers and duties of his or her office as a public sector employee was committed for a purpose that involved corruption; or

(c) was committed for the purpose of perverting, or attempting to pervert, the course of justice—

the authorised person may apply to the court for the court to make a superannuation order.

(2) An application must be supported by a certificate given by the administrators of each relevant superannuation scheme specifying—

(a) the value of the total superannuation benefit as at the relevant date;

(b) the residual employer financed component as at the relevant date;

(c) the assumptions made and factors taken into account in determining the amounts referred to in paragraphs (a) and (b);

(d) whether or not the information provided is based on actuarial advice;

(e) whether the administrators of the superannuation scheme have been served with—

(i) a superannuation agreement which provides for a payment split; or

(ii) a flag lifting agreement which provides for a payment split; or

(iii) a splitting order—

under Part VIIIB of the Family Law Act 1975 of the Commonwealth and the non-member spouse's entitlements in respect of the superannuation interest in the superannuation benefit of the offender have not been satisfied as at the relevant date.

(3) A certificate referred to in sub-section (2) is for the purposes of this Part to be taken to be evidence of the information provided in the certificate.

S. 83F inserted by No. 65/2004 s. 3.

83F. Court may make a superannuation order

(1) If a court receives an application under section 83E and is satisfied that section 83E(1)(a), 83E(1)(b) or 83E(1)(c) applies in respect of the relevant offence, the court may make a superannuation order if the court considers that having regard, as far as is practicable, to the matters specified in sub-section (2) it is appropriate to do so.

(2) The matters are—

(a) the financial circumstances of the offender, including any other order that the court or any other court has made or proposes to make—

(i) providing for the forfeiture of the offender's property or the automatic forfeiture of the offender's property by operation of law; or

(ii) requiring the offender to make restitution or pay compensation;

(b) the nature of the burden that the making of the superannuation order will impose and the degree of hardship likely to result from the making of the superannuation order on the offender or his or her spouse, domestic partner or dependants;

(c) whether the administrators of a relevant superannuation scheme have been served with—

(i) a superannuation agreement which provides for a payment split; or

(ii) a flag lifting agreement which provides for a payment split; or

(iii) a splitting order—

under Part VIIIB of the Family Law Act 1975 of the Commonwealth and the non-member spouse's entitlements in respect of the superannuation interest in the superannuation benefit of the offender have not been satisfied as at the relevant date;

(d) the length of the period of service by the offender as a public sector employee before the offender committed the relevant offence;

(e) the length of any period of membership of a relevant superannuation scheme during which the offender was not a public sector employee;

(f) the nature and gravity of the relevant offence.

(3) If the court imposes a superannuation order, the court in determining the amount to be paid by the offender under the superannuation order—

(a) must have regard to the matters referred to in sub-section (2); and

(b) must not determine an amount which exceeds the total of the residual employer financed components of the superannuation benefits under the relevant superannuation schemes.

S. 83G inserted by No. 65/2004 s. 3.

83G. Effect of superannuation order

(1) A superannuation order takes effect—

(a) at the end of the appeal period in respect of the conviction for the relevant offence or the sentence; or

(b) if the offender appeals against the conviction or sentence, subject to sub-section (2), upon the determination of the appeal.

(2) If the conviction is quashed on appeal, the superannuation order has no effect.

(3) If as the result of the determination of an appeal, the court determining the appeal considers that the superannuation order requires variation, the court may vary the superannuation order.

(4) A superannuation order varied under sub-section (3) takes effect as if it had been made under section 83F.

83H. Provisions applying to a superannuation order

S. 83H inserted by No. 65/2004 s. 3.

Sections 53, 54, 55, 56, 59, 62, 63, 64 and 65 apply to and in respect of a superannuation order as if the amount specified in the superannuation order were a fine imposed under section 49.

83I. Powers of an authorised person to require information

S. 83I inserted by No. 65/2004 s. 3.

(1) If the authorised person proposes to make an application in respect of an offender under section 83E, the authorised person may request the administrators of the relevant superannuation scheme to provide any information that the authorised person considers is necessary for the purposes of making the application and which is information the administrators have or ought to have access to.

(2) The administrators of the relevant superannuation scheme must comply with a request under sub-section (1).

Penalty: 10 penalty units.

(3) It is sufficient compliance with a request under sub-section (1) if the administrators of the relevant superannuation scheme provide information in response to the request and certify in writing that they have used their best endeavours to provide that information or are relying on the advice of, or information provided by, a specified third party.

83J. Protection of administrators providing information

S. 83J inserted by No. 65/2004 s. 3.

The administrators of a relevant superannuation scheme are not to be taken to be in breach of trust or to have failed to comply with any provision of the governing instrument of the superannuation scheme only by virtue of complying with section 83I.

S. 83K inserted by No. 65/2004 s. 3.

83K. Disclosure of information

Except to the extent necessary to comply with section 83E, an authorised person or any person employed or engaged by an authorised person must not make any use of, or disclose to any person, any information obtained under section 83I.

Penalty: 5 penalty units.

PART 4—ORDERS IN ADDITION TO SENTENCE

Division 1—Restitution

84. Restitution order

(1) If goods have been stolen and a person is found guilty or convicted of an offence connected with the theft (whether or not stealing is the gist of the offence), the court may make—

(a) an order that the person who has possession or control of the stolen goods restore them to the person entitled to them;

(b) an order that the offender deliver or transfer to another person goods that directly or indirectly represent the stolen goods (that is, goods that are the proceeds of any disposal or realisation of the whole or part of the stolen goods or of goods so representing them);

(c) an order that a sum not exceeding the value of the stolen goods be paid to another person out of money taken from the offender's possession on his or her arrest.

(2) An order under paragraph (b) or (c) of sub-section (1) may only be made in favour of a person who, if the stolen goods were in the offender's possession, would be entitled to recover them from him or her.

(3) The court may make an order under both paragraphs (b) and (c) of sub-section (1) provided that the person in whose favour the order is made does not thereby recover more than the value of the stolen goods.

(4) If the court makes an order under paragraph (a) of sub-section (1) against a person and it appears to the court that that person in good faith bought the stolen goods from, or loaned money on the security of the stolen goods to, the offender, the court may, on the application of the purchaser or lender, order that a sum not exceeding the purchase price or the amount loaned (as the case requires) be paid to the applicant out of money taken from the offender's possession on his or her arrest.

(5) An order under this section—

(a) may be made on an application made as soon as practicable after the offender is found guilty, or convicted, of the offence; and

(b) may be made in favour of a person on an application made—

(i) by that person; or

(ii) on that person's behalf by the Director of Public Prosecutions (if the sentencing court was the Supreme Court or the County Court) or the informant or police prosecutor (if the sentencing court was the Magistrates' Court).

(6) Nothing in sub-section (5)(b)(ii) requires the Director of Public Prosecutions or the informant or police prosecutor (as the case requires) to make an application on behalf of a person.

(7) A court must not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the hearing of the charge or from the available documents, together with admissions made by or on behalf of any person in connection with the proposed exercise of the powers.

(8) In sub-section (7) **"the available documents"** means—

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

(c) any written statements or admissions used as evidence in the committal proceeding.

(9) References in this section to—

(a) stealing must be construed in accordance with sub-sections (1) and (4) of section 90 of the **Crimes Act 1958**; and

(b) goods include references to a motor vehicle.

85. Enforcement of restitution order

S. 85(1) amended by No. 108/1997 s. 156(f).

(1) Subject to section 30 of the **Confiscation Act 1997**, an order made under sub-section (1)(c) or (4) of section 84 must be taken to be a judgment debt due by the offender to the person in whose favour the order is made and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

(2) An order made under section 84, other than an order referred to in sub-section (1), may be enforced in the court by which it was made by any means available to that court of enforcing an order made by it in a civil proceeding.

Division 2—Compensation

Pt 4 Div. 2 Subdiv. 1 (Heading and ss 85A–85M) inserted by No. 54/2000 s. 21.

Subdivision (1)—Compensation for pain and suffering etc.

S. 85A inserted by No. 54/2000 s. 21.

85A. Definitions

(1) In this Subdivision—

"compensation order" means an order under section 85B(1);

"injury" means—

(a) actual physical bodily harm; or

(b) mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or

(c) pregnancy; or

(d) grief, distress or trauma or other significant adverse effect; or

(e) any combination of matters referred to in paragraphs (a), (b), (c) and (d) arising from an offence—

but does not include injury arising from loss of or damage to property;

"medical expenses" includes dental, optometry, physiotherapy, psychology treatment, hospital and ambulance expenses;

"sexual offence" means an offence under Subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment or an attempt to commit any such

offence or an assault with intent to commit any such offence.

(2) References in this Subdivision to the victim of an offence must be construed having regard to the definition of "injury" in sub-section (1).

85B. Compensation order

S. 85B inserted by No. 54/2000 s. 21.

(1) If a court—

(a) finds a person guilty of an offence; or

(b) convicts a person of an offence—

it may, on the application of a person who has suffered any injury as a direct result of the offence, order the offender to pay compensation of such amount as the court thinks fit for any matter referred to in paragraphs (a) to (d) of sub-section (2).

(2) A compensation order may be made up of amounts—

(a) for pain and suffering experienced by the victim as a direct result of the offence;

(b) for some or all of any expenses actually incurred, or reasonably likely to be incurred, by the victim for reasonable counselling services as a direct result of the offence;

(c) for some or all of any medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence;

(d) for some or all of any other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence, not including any expense arising from loss of or damage to property.

(3) In sub-section (2) **"offence"** includes, in relation to a person who has been found guilty or convicted of an offence that was treated by the court as a representative or sample count, any other occurrence of the same offence involved in the course of conduct of which the count charged was representative or a sample.

(4) In making a compensation order the court may direct that the compensation be paid by instalments and that in default of payment of any one instalment the whole of the compensation remaining unpaid shall become due and payable.

S. 85C inserted by No. 54/2000 s. 21.

85C. Application for compensation order

(1) An application for a compensation order—

(a) must be made within 12 months after the offender is found guilty, or convicted, of the offence; and

(b) may be made—

(i) by the victim; or

(ii) on the victim's behalf by any person other than the offender if the victim is a child or is incapable of making the application by reason of injury, disease, senility, illness or physical or mental impairment; or

(iii) on the victim's behalf—

(A) if the sentencing court was a court other than the Magistrates' Court, by the Director of Public Prosecutions; or

(B) if the sentencing court was the Magistrates' Court, by the Director of Public Prosecutions, the informant or police prosecutor.

(2) Nothing in sub-section (1)(b)(iii) requires the Director of Public Prosecutions or the informant or police prosecutor (as the case requires) to make an application on behalf of a victim.

85D. Extension of time for making application

S. 85D inserted by No. 54/2000 s. 21.

(1) A court may, on the application of a person who wishes to apply for a compensation order, extend the time within which an application for a compensation order may be made if it is of the opinion that it is in the interests of justice to do so.

(2) A court may extend time under sub-section (1) before or after the time expires and whether or not an application for an extension is made before the time expires.

(3) A court must not extend time under sub-section (1) without giving the offender a reasonable opportunity to be heard on the matter.

85E. Proceeding on an application

S. 85E inserted by No. 54/2000 s. 21.

(1) In a proceeding on an application for a compensation order a party—

(a) may appear personally; or

(b) may be represented by—

(i) a legal practitioner; or

(ii) with the leave of the court, by any other person.

(2) A proceeding in a court on an application for a compensation order made by or on behalf of a child or other incapable person must be taken to be a civil proceeding for the purpose of any provision of an Act or rule of court relating to—

(a) the appointment or removal, and the power or authority, of a litigation guardian in a civil proceeding in that court; or

(b) the administration of money ordered to be paid to a child or such an incapable person—

and any such provision applies in relation to a proceeding on an application for a compensation order with any necessary modifications.

S. 85F inserted by No. 54/2000 s. 21.

85F. Court must not refuse to hear and determine application except in certain circumstances

(1) A court must not refuse to hear and determine an application for a compensation order unless, in its opinion, the relevant facts do not sufficiently appear from—

(a) evidence given at the hearing of the charge; or

(b) any statement of the material facts relevant to the charge given to a court in a proceeding for the offence by the prosecution and not disputed by or on behalf of the defendant; or

(c) the available documents—

together with admissions made by or on behalf of any person in connection with the application.

(2) In sub-section (1)(c) **"the available documents"** means—

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

(c) any written statements or admissions used as evidence in the committal proceeding; or

(d) any victim impact statement made to the court for the purpose of assisting it in determining sentence, including any medical report attached to it.

85G. Evidence

S. 85G inserted by No. 54/2000 s. 21.

(1) On an application for a compensation order—

(a) the victim or the offender may give evidence or may call another person to give evidence in relation to the application; and

(b) the victim, offender or other person who gives evidence may be cross-examined and re-examined; and

(c) a finding of any fact made by a court in a proceeding for the offence is evidence and, in the absence of evidence to the contrary, proof of that fact; and

(d) the finding may be proved by production of a document under the seal of the court from which the finding appears; and

(e) the court may have regard to any evidence or statement referred to in section 85F(1) and, with the consent of the parties to the application, to any available documents or admissions referred to in that section.

(2) A court must not make a compensation order without giving the offender a reasonable opportunity to be heard on the application for the order.

85H. Court may take financial circumstances of offender into account

S. 85H inserted by No. 54/2000 s. 21.

(1) If a court decides to make a compensation order, it may, in determining the amount and method of payment of the compensation, take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.

(2) A court is not prevented from making a compensation order only because it has been unable to find out the financial circumstances of the offender.

S. 85I inserted by No. 54/2000 s. 21.

85I. Court must reduce compensation by amount of any award under Victims of Crime Assistance Act 1996

If a court decides to make a compensation order, it must reduce the amount of the compensation by the amount of any award made to the victim under the **Victims of Crime Assistance Act 1996** for the expense or other matter for which compensation is being sought under this Subdivision.

S. 85J inserted by No. 54/2000 s. 21.

85J. Court to give reasons for its decision

(1) On deciding to grant or refuse an application for a compensation order or to refuse to hear and determine such an application, the court must—

(a) state in writing the reasons for its decision; and

(b) cause those reasons to be entered in the records of the court.

(2) The failure of a court to comply with sub-section (1) does not invalidate the decision made by it on the application.

S. 85K inserted by No. 54/2000 s. 21.

85K. Costs of proceeding

Despite any rule of law or practice to the contrary or any provision to the contrary made by or under any other Act, each party to a proceeding under this Subdivision must bear their own costs of the proceeding unless the court otherwise determines.

85L. Right to bring civil proceedings unaffected

S. 85L inserted by No. 54/2000 s. 21.

Nothing in this Subdivision takes away from, or affects, the right of any person to recover damages for any expense or other matter so far as it is not satisfied by payment or recovery of compensation under this Subdivision.

85M. Enforcement of order

S. 85M inserted by No. 54/2000 s. 21.

Subject to section 30 of the **Confiscation Act 1997**, a compensation order, including costs ordered to be paid by the offender on the proceeding for that order, must be taken to be a judgment debt due by the offender to the person in whose favour the order is made and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

Subdivision (2)—Compensation for property loss.

Pt 4 Div. 2 Subdiv. 2 (Heading) inserted by No. 54/2000 s. 21.

86. Compensation order

S. 86(1) amended by Nos 81/1996 s. 74(1)(a)(i)(ii), 54/2000 s. 22(2)(a)(i)(ii).

(1) If a court finds a person guilty of, or convicts a person of, an offence it may, on the application of a person suffering loss or destruction of, or damage to, property as a result of the offence, order the offender to pay any compensation for the loss, destruction or damage (not exceeding the value of the property lost, destroyed or damaged) that the court thinks fit.

(2) If a court decides to make an order under sub-section (1) it may in determining the amount and method of payment of the compensation take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.

(3) A court is not prevented from making an order under sub-section (1) only because it has been unable to find out the financial circumstances of the offender.

(4) In making an order under sub-section (1) the court may direct that the compensation be paid by instalments and that in default of payment of any one instalment the whole of the compensation remaining unpaid shall become due and payable.

(5) An order under sub-section (1)—

S. 86(5)(a) amended by Nos 81/1996 s. 74(1)(b), 54/2000 s. 22(2)(b).

(a) may be made on an application made as soon as practicable after the offender is found guilty, or convicted, of the offence; and

(b) may be made in favour of a person on an application made—

(i) by that person; or

S. 86(5)(b)(ii) amended by No. 69/1997 s. 10(a)–(c).

(ii) on that person's behalf by the Director of Public Prosecutions or (if the sentencing court was the Magistrates' Court) the informant or police prosecutor.

(6) Nothing in sub-section (5)(b)(ii) requires the Director of Public Prosecutions or the informant or police prosecutor (as the case requires) to make an application on behalf of a person.

S. 86(6A) inserted by No. 19/1999 s. 10, repealed by No. 54/2000 s. 22(2)(c).

*   *   *   *   *

(7) On an application under this section—

(a) a finding of any fact made by a court in a proceeding for the offence is evidence and, in the absence of evidence to the contrary, proof of that fact; and

(b) the finding may be proved by production of a document under the seal of the court from which the finding appears.

(8) A court must not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the hearing of the charge or from the available documents, together with admissions made by or on behalf of any person in connection with the proposed exercise of the powers.

(9) In sub-section (8) **"the available documents"** means—

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

S. 86(9)(c) amended by No. 19/1999 s. 11.

(c) any written statements or admissions used as evidence in the committal proceeding; or

S. 86(9)(d) inserted by No. 19/1999 s. 11, amended by No. 54/2000 s. 22(2)(d).

(d) any victim impact statement made to the court for the purpose of assisting it in determining sentence.

S. 86(9A)–(9C) inserted by No. 81/1996 s. 74(2), repealed by No. 54/2000 s. 22(2)(e).

*   *   *   *   *

S. 86(9D) inserted by No. 19/1999 s. 12(2).

(9D) Despite any rule of law or practice to the contrary or any provision to the contrary made by or under any other Act, each party to a proceeding under this section must bear their own costs of the proceeding unless the court otherwise determines.

S. 86(10) amended by Nos 81/1996 s. 74(3), 54/2000 s. 22(2)(f).

(10) Nothing in this section takes away from, or affects the right of, any person to recover damages for, or to be indemnified against, any loss, destruction or damage so far as it is not satisfied by payment or recovery of compensation under this section.

(11) References in this section to property include references to a motor vehicle.

S. 87 amended by Nos 108/1997 s. 156(g), 19/1999 s. 12(3).

87. Enforcement of compensation order

Subject to section 30 of the **Confiscation Act 1997**, an order under section 86(1), including costs ordered to be paid by the offender on the proceeding for that order, must be taken to be a judgment debt due by the offender to the person in whose favour the order is made and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

Division 2A—Recovery of Assistance paid under Victims of Crime Assistance Act 1996

Pt 4 Div. 2A (Heading and ss 87A, 87B) inserted by No. 81/1996 s. 75.

87A. Recovery of assistance paid under Victims of Crime Assistance Act 1996

S. 87A inserted by No. 81/1996 s. 75.

(1) If—

(a) a court finds a person guilty of, or convicts a person of, a relevant offence within the meaning of the **Victims of Crime Assistance Act 1996**; and

S. 87A(1)(b) amended by No. 54/2000 s. 23(1)(a)(b).

(b) an award of assistance was made or varied under that Act in respect of an injury (including a significant adverse effect within the meaning of that Act that in accordance with that Act is required to be regarded as an injury) or death that directly resulted from that offence—

the court may, on the application of the State, order the offender to pay to the State an amount equal to the whole or any specified part of the assistance awarded together with the whole or any specified part of any costs awarded in respect of the application for assistance.

S. 87A(2) substituted by No. 54/2000 s. 23(2).

(2) An application may only be made under sub-section (1) within the period of 6 months after—

(a) the day on which the person was found guilty or convicted of the relevant offence; or

(b) the day on which the award of assistance was made or varied under the **Victims of Crime Assistance Act 1996**—

whichever is the later.

(3) A court may require an amount payable under sub-section (1) to be paid—

(a) wholly as a lump sum; or

(b) partly as a lump sum and partly by instalments; or

(c) wholly by instalments.

(4) A court must not make an order under sub-section (1) without giving the offender a reasonable opportunity to be heard on the application for the order and without having regard to—

(a) his or her financial resources (including earning capacity) and financial needs; and

(b) any obligations owed by him or her to any other person; and

(c) any other circumstances that the court considers relevant.

(5) A court is not prevented from making an order under sub-section (1) only because it has been unable to find out the financial circumstances of the offender.

S. 87A(6) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(6) An offender may appear on the hearing of an application under sub-section (1) personally or by a lawyer or, with the leave of the court, by any other representative.

(7) The court may at any time, on the application of the State or of the offender, vary an order made under sub-section (1) (including an order that has been previously varied) in any manner that the court thinks fit.

S. 87A(8) repealed by No. 54/2000 s. 23(3).

*   *   *   *   *

87B. Enforcement of order under section 87A

S. 87B inserted by No. 81/1996 s. 75.

(1) An order under section 87A(1) must be taken to be a judgment debt due by the offender to the State and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

(2) All money paid to, or recovered by, the State under this Division must be paid into the Consolidated Fund.

Division 2B—Recovery of Costs incurred by Emergency Service Agencies

Pt 4 Div. 2B (Heading and ss 87C–87N) inserted by No. 80/2001 s. 4.

87C. Definitions

S. 87C inserted by No. 80/2001 s. 4.

In this Division—

"cost recovery order" means an order under section 87D(1);

"emergency" includes an apparent emergency;

"emergency service agency" means—

S. 87C def. of "emergency service agency" amended by No. 51/2005 s. 58(7).

(a) the police force of Victoria; or

(b) the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**; or

(c) the Country Fire Authority appointed under the **Country Fire Authority Act 1958**; or

(d) the Victoria State Emergency Service Authority established under the **Victoria State Emergency Service Act 2005**; or

(e) Ambulance Service—Victoria within the meaning of the **Ambulance Services Act 1986**; or

(f) a public hospital, private hospital, denominational hospital or privately-operated hospital within the meaning of the **Health Services Act 1988**; or

(g) any other person who, or body that, employs or engages an emergency service worker;

S. 87C def. of "emergency service worker" amended by No. 51/2005 s. 58(8).

"emergency service worker" means—

(a) an officer or other member of the police force of Victoria under the **Police Regulation Act 1958**; or

(b) a member of the Retired Police Reserve of Victoria appointed under Part VI of the **Police Regulation Act 1958**; or

(c) a protective services officer appointed under Part VIA of the **Police Regulation Act 1958**; or

(d) a person employed by the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958** or a member of a fire or emergency service unit established under that Act; or

(e) an officer or employee of the Country Fire Authority under the **Country Fire Authority Act 1958**; or

(f) an officer or member of a brigade under the **Country Fire Authority Act 1958**, whether a part-time officer or member, a permanent officer or member or a volunteer officer or member within the meaning of that Act; or

(g) a casual fire-fighter within the meaning of Part V of the **Country Fire Authority Act 1958**; or

(h) a volunteer auxiliary worker appointed under section 17A of the **Country Fire Authority Act 1958**; or

(i) a person employed in the Department of Natural Resources and Environment with emergency response duties; or

(j) a registered member or probationary member within the meaning of the **Victoria State Emergency Service Act 2005** or an employee in the Victoria State Emergency Service; or

(k) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986**; or

(l) an employee of Ambulance Service—Victoria within the meaning of the **Ambulance Services Act 1986**; or

(m) a person employed, or engaged to provide services or perform work, by a public hospital, private hospital, denominational hospital or privately-operated hospital within the meaning of the **Health Services Act 1988**; or

(n) any other person or body—

(i) required or permitted under the terms of their employment by, or contract for services with, the Crown or a government agency to respond to an emergency; or

(ii) engaged by the Crown or a government agency to provide services or perform work in relation to a particular emergency;

S. 87C def. of "government agency" amended by No. 51/2005 s. 58(8).

"government agency" has the same meaning as in the **Victoria State Emergency Service Act 2005**;

"statement of costs" means a statement referred to in section 87H(2)(d).

S. 87D inserted by No. 80/2001 s. 4.

87D. Cost recovery order

(1) If a court finds a person guilty, or convicts a person, of an offence against—

(a) Division 4 of Part I of the **Crimes Act 1958** (contamination of goods); or

(b) section 317A(1) or (2) of the **Crimes Act 1958** (bomb hoaxes)—

it may, on application, order the offender to pay to the State such amount as the court thinks fit for costs reasonably incurred by any emergency service agency in providing an immediate response to an emergency arising out of the commission of the offence.

(2) A cost recovery order may include amounts in respect of remuneration (including long service leave entitlements, holiday pay, superannuation contributions and any other employment benefits) payable to an emergency service worker involved in the provision of the immediate response referred to in sub-section (1).

(3) In making a cost recovery order the court may direct that the costs covered by the order be paid by instalments and that, in default of payment of any one instalment, the whole of those costs remaining unpaid shall become due and payable.

87E. Application for cost recovery order

S. 87E inserted by No. 80/2001 s. 4.

An application for a cost recovery order—

(a) may only be made by the Director of Public Prosecutions or, in the case of the Magistrates' Court, by the Director of Public Prosecutions or the informant or police prosecutor; and

(b) must be made within 12 months after the offender is found guilty, or convicted, of the offence.

87F. Extension of time for making application

S. 87F inserted by No. 80/2001 s. 4.

(1) A court may, on the application of a person who wishes to apply for a cost recovery order, extend the time within which an application for a cost recovery order may be made if it is of the opinion that it is in the interests of justice to do so.

(2) A court may extend time under sub-section (1) before or after the time expires and whether or not an application for an extension is made before the time expires.

(3) A court must not extend time under sub-section (1) without giving the offender a reasonable opportunity to be heard on the matter.

87G. How offender may appear on an application

S. 87G inserted by No. 80/2001 s. 4.

In a proceeding on an application for a cost recovery order the offender—

(a) may appear personally; or

(b) may be represented—

(i) by a lawyer; or

S. 87G(b)(i) amended by No. 18/2005 s. 18(Sch. 1 item 97.2).

(ii) with the leave of the court, by any other person.

S. 87H inserted by No. 80/2001 s. 4.

87H. Court may have regard to relevant facts

(1) In hearing and determining an application for a cost recovery order, a court may have regard to any relevant facts appearing from—

(a) evidence given at the hearing of the charge; or

(b) any statement of the material facts relevant to the charge given to a court in a proceeding for the offence by the prosecution and not disputed by or on behalf of the defendant; or

(c) the available documents—

together with admissions made by or on behalf of any person in connection with the application.

(2) In sub-section (1)(c) **"the available documents"** means—

(a) any written statements or admissions which were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

(c) any written statements or admissions used as evidence in the committal proceeding; or

(d) a written statement made by or on behalf of an emergency service agency detailing costs reasonably incurred by it in providing an immediate response to an emergency arising out of the commission of the offence.

S. 87I inserted by No. 80/2001 s. 4.

87I. Evidence

On an application for a cost recovery order—

(a) the court must give the offender a reasonable opportunity to be heard; and

(b) the applicant may give evidence or may call another person to give evidence in relation to the application, including in support of a statement of costs; and

(c) the offender may give evidence or may call another person to give evidence in relation to the application, including in relation to any matter contained in a statement of costs; and

(d) the court may, at the request of the offender or the applicant, call a person who has made a statement of costs to give evidence; and

(e) a person who gives evidence may be cross-examined and re-examined; and

(f) a finding of any fact made by a court in a proceeding for the offence is evidence and, in the absence of evidence to the contrary, proof of that fact; and

(g) the finding may be proved by production of a document under the seal of the court from which the finding appears; and

(h) the court may have regard to any evidence or statement referred to in section 87H(1) and, with the consent of the parties, to any available documents or admissions referred to in that section.

S. 87J inserted by No. 80/2001 s. 4.

87J. Court may take financial circumstances of offender into account

(1) If a court decides to make a cost recovery order, it may, in determining the amount and method of payment of the costs covered by the order, take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that payment of the costs will impose.

(2) A court is not prevented from making a cost recovery order only because it has been unable to find out the financial circumstances of the offender.

(3) If the court considers—

(a) that it would be appropriate, in addition to making a cost recovery order, to impose a fine or make a compensation order under Division 2 or both impose a fine and make such a compensation order; but

(b) that the offender has insufficient means to pay them all—

the court must give first preference to any compensation order, second preference to a cost recovery order and third preference to a fine.

S. 87K inserted by No. 80/2001 s. 4.

87K. Court to give reasons for its decision

(1) On deciding to grant or refuse an application for a cost recovery order, the court must—

(a) state in writing the reasons for its decision; and

(b) cause those reasons to be entered in the records of the court.

(2) The failure of a court to comply with sub-section (1) does not invalidate the decision made by it on the application.

87L. Costs of proceeding

S. 87L inserted by No. 80/2001 s. 4.

Despite any rule of law or practice to the contrary or any provision to the contrary made by or under any other Act, each party to a proceeding under this Division must bear their own costs of the proceeding unless the court otherwise determines.

87M. Right to bring civil proceedings unaffected

S. 87M inserted by No. 80/2001 s. 4.

Nothing in this Division takes away from, or affects, the right of an emergency service agency to recover any costs so far as not recovered under this Division.

87N. Enforcement of order

S. 87N inserted by No. 80/2001 s. 4.

A cost recovery order, including costs ordered to be paid by the offender on the proceeding for that order, must be taken to be a judgment debt due by the offender to the State and payment of any amount remaining unpaid under the order may be enforced in the court by which it was made.

Division 3—Forfeiture and Disqualification

87P. Interpretation

S. 87P inserted by No. 1/2002 s. 11.

(1) In this Division—

"alcohol interlock" has the meaning given by section 3(1) of the **Road Safety Act 1986**;

"alcohol interlock condition" means a condition imposed on a driver licence in accordance with a direction under section 89A;

"approved alcohol interlock" has the meaning given by section 3(1) of the **Road Safety Act 1986**;

"approved alcohol interlock supplier" has the meaning given by section 3(1) of the **Road Safety Act 1986**.

(2) In determining whether an offence is a first or subsequent offence for the purposes of section 89A or 89B—

(a) section 48(2) of the **Road Safety Act 1986** applies as though it included a reference to a person who is convicted of an offence referred to in any one of the paragraphs of section 89(1) of this Act; and

(b) section 50AA of the **Road Safety Act 1986**, including the table in that section, applies as though—

(i) section 89A(2) and (3), and section 89B(2), of this Act were specified in column 1 of the table; and

(ii) the event specified in relation to those sections in column 2 of the table were the making of the application under section 89(2).

88. Effect where punishment suffered for indictable offence

(1) If a person who has been convicted of an indictable offence has suffered the punishment imposed in respect of it, the punishment has the like effect and consequence as a pardon under the great seal.

(2) Sub-section (1) does not limit the operation of any enactment that expressly disqualifies a person who has been convicted of an indictable offence from holding any office.

89. Cancellation or suspension of driver licence

S. 89(1) amended by Nos 57/1998 s. 26(1), 59/2004 s. 9(1)(c).

(1) If a person is found guilty of—

(a) manslaughter arising out of the driving of a motor vehicle by the offender; or

(b) an offence under section 24 of the **Crimes Act 1958** in respect of serious injury arising out of the driving of a motor vehicle by the offender; or

S. 89(1)(c) amended by No. 59/2004 s. 9(1)(a).

(c) an offence under section 318 of the **Crimes Act 1958**; or

S. 89(1)(d) inserted by No. 59/2004 s. 9(1)(b).

(d) an offence under section 319 of the **Crimes Act 1958**—

the court must, if the offender holds a driver licence, cancel that licence and, whether or not the offender holds a driver licence, disqualify him or her from obtaining one for such time (not being less than 18 months, in the case of an offence under section 319 of the **Crimes Act 1958**, or 24 months in any other case) as the court thinks fit and may make a finding that the offence was committed while the offender was under the influence of alcohol or a drug which contributed to the offence.

S. 89(1A) inserted by No. 59/2004 s. 9(2).

(1A) A period of disqualification under sub-section (1) commences on the day that the order imposing it is made or on such other later day as the court specifies in the order.

(2) A driver licence must not be issued to a person who has been disqualified from obtaining one under sub-section (1) except on the order of the Magistrates' Court made on the application of the offender at the end of the period of disqualification.

(3) A person must give at least 28 days written notice of an application under sub-section (2) to the Chief Commissioner of Police and the registrar at the proper venue of the Magistrates' Court.

S. 89(3A) inserted by No. 57/1998 s. 26(2).

(3A) If—

(a) a person applies under sub-section (2) for an order as to the issue of a driver licence; and

(b) the court referred to in sub-section (1) has made a finding that the offence was committed while the person was under the influence of alcohol or a drug which contributed to the offence—

the Magistrates' Court must have regard to the reports referred to in sub-section (3B).

Note to s. 89(3A) inserted by No. 1/2002 s. 12(a).

Note: In some cases, the court is not required to have regard to the report referred to in sub-section (3B)(a): see section 89A(3)(a).

S. 89(3B) inserted by No. 57/1998 s. 26(2).

(3B) A person to whom paragraphs (a) and (b) of sub-section (3A) apply must obtain from an accredited agency—

(a) at least 12 months before applying for the order under sub-section (2), an assessment report about the person's use of alcohol or drugs, as the case requires; and

(b) within 28 days before applying for the order, a licence restoration report.

Note to s. 89(3B) inserted by No. 1/2002 s. 12(b).

Note: In some cases, the person is not required to obtain the report referred to in paragraph (a): see section 89A(3)(a).

S. 89(3C) inserted by No. 57/1998 s. 26(2).

(3C) If a person applies under sub-section (2) for an order and there was no finding referred to in sub-section (3A)(b), the Magistrates' Court may request a licence restoration report from an accredited agency.

S. 89(3D) inserted by No. 57/1998 s. 26(2).

(3D) On an application under sub-section (2) the court may, in exceptional circumstances, reduce the period of 12 months referred to in sub-section (3B)(a).

S. 89(3E) inserted by No. 57/1998 s. 26(2).

(3E) On an application under sub-section (2), the Magistrates' Court may make or refuse to make the order sought, and for the purpose of determining whether or not the order should be made—

(a) the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court; and

(b) without limiting the generality of its discretion, the court must have regard to—

(i) the conduct of the applicant with respect to intoxicating liquor or drugs (as the case may be) during the period of disqualification; and

(ii) the applicant's physical and mental condition at the time of the hearing of the application; and

(iii) the effect which the making of the order may have on the safety of the applicant or of the public; and

(iv) any licence restoration report obtained under sub-section (3B)(b) or (3C) and any report obtained under sub-section (3B)(a).

Note to s. 89(3E) inserted by No. 1/2002 s. 12(c).

Note: The court may, in making the order sought, be permitted or required to direct the Roads Corporation to impose an alcohol interlock condition on a driver licence granted to the applicant: see section 89A.

(4) If a court finds a person guilty, or convicts a person, of stealing or attempting to steal a motor vehicle, the court may (in the case of a finding of guilt) and must (in the case of a conviction)—

(a) if the offender holds a driver licence—

(i) cancel that licence and, if the court thinks fit, also disqualify him or her from obtaining one for such time as it thinks fit; or

(ii) suspend that licence for such time as it thinks fit; or

(b) if the offender does not hold a driver licence, disqualify him or her from obtaining one for such time as it thinks fit.

S. 89A inserted by No. 1/2002 s. 13.

89A. Direction to impose alcohol interlock condition

(1) This section applies if—

(a) a person was disqualified under section 89 from obtaining a driver licence because he or she was found guilty of an offence; and

(b) there was a finding that the person was under the influence of alcohol when the offence was committed which contributed to the commission of the offence; and

(c) the person makes an application under section 89(2) for an order; and

(d) the Magistrates' Court considers it appropriate to make the order.

(2) If the offence was a first offence, on making the order the court may direct the Roads Corporation that it can only grant the person a driver licence that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by an approved alcohol interlock supplier.

Note: For "approved alcohol interlock" and "approved alcohol interlock supplier", see section 87P(1).

S. 89A(3) amended by No. 49/2004 s. 43(1).

(3) Subject to sub-section (4), if the offence was not a first offence—

(a) despite section 89(3A) and (3B), the person is not required to obtain, and the court is not required to have regard to, a report referred to in section 89(3B)(a); and

(b) on making the order, the court must direct the Roads Corporation that it can only grant the person a driver licence that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by an approved alcohol interlock supplier.

S. 89A(4) inserted by No. 49/2004 s. 43(2).

(4) Despite sub-section (3), if—

(a) the offence was not a first offence; and

(b) the person was disqualified under section 89 from obtaining a driver licence on or before the commencement of section 14 of the **Road Safety (Alcohol Interlocks) Act 2002**—

sub-section (3)(a) has no application to the offence and, on making the order, the court may direct the Roads Corporation that it can only grant the person a driver licence that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.

S. 89B inserted by No. 1/2002 s. 13.

89B. Removal of alcohol interlock condition

S. 89B(1) amended by No. 110/2004 s. 45(2).

(1) If the court gives a direction under section 89A(2), 89A(3)(b) or 89A(4), it must specify in the direction a period during which the person concerned cannot apply to the court for the removal of an alcohol interlock condition imposed on his or her driver licence.

(2) The specified period must be—

S. 89B(2)(a) substituted by No. 110/2004 s. 45(1).

(a) in the case of a direction under section 89A(2), at least 6 months after the condition is imposed; or

(b) in any other case, at least 3 years after the condition is imposed.

S. 89B(3) amended by No. 49/2004 s. 44.

(3) The Roads Corporation must not remove an alcohol interlock condition imposed on a person's driver licence unless the Magistrates' Court orders, on the application of the person made at the end of the specified period and on giving 28 days written notice of the application and of the venue of the Court at which it is to be made to the Chief Commissioner of Police, that the condition be removed.

(4) Within 28 days before applying for the removal of an alcohol interlock condition imposed on a person's driver licence, the person must obtain from an accredited agency a report that—

(a) covers all of the period, but at least 6 months, since an approved alcohol interlock was installed by an approved alcohol interlock supplier, or a person or body authorised by such a supplier, in a motor vehicle driven by the person during that period; and

(b) includes—

(i) an assessment by each approved alcohol interlock supplier who maintained or authorised a person or body to maintain the approved alcohol interlock during that period on the extent to which the person complied with the manufacturer's instructions for using the approved alcohol interlock; and

(ii) an assessment of the person's use of alcohol during that period; and

(iii) the last licence restoration report obtained by the person.

(5) In determining whether to make an order to remove an alcohol interlock condition imposed on a person's driver licence—

(a) the court must hear any relevant evidence tendered by either the person or the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court; and

(b) the court, without limiting the generality of its discretion, must have regard to—

(i) the person's use of alcohol in the period since the condition was imposed; and

(ii) the person's physical and mental condition at the time of the hearing of the application; and

(iii) the effect that the making of the order may have on the safety of the person or the public; and

(iv) any report obtained under sub-section (4).

S. 89C inserted by No. 1/2002 s. 13.

89C. Appeals against direction or period specified in direction

S. 89C(1) amended by No. 110/2004 s. 45(2).

(1) If the court gives a direction under section 89A(2), 89A(3)(b) or 89A(4), the person in respect of whom the direction is given may appeal to the County Court under section 83 of the **Magistrates' Court Act 1989** against—

(a) in the case of a direction under section 89A(2)—

(i) the giving of the direction; or

(ii) the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock

condition if that period is more than 6 months; or

(b) in the case of a direction under section 89A(3)(b) or 89A(4)—the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition if that period is more than 3 years—

S. 89C(1)(b) amended by No. 110/2004 s. 45(3)(a)(b).

as if the direction were a sentencing order of a kind referred to in section 83 of the **Magistrates' Court Act 1989**.

(2) That Act applies with respect to the appeal with any necessary modifications.

89D. Offences and immobilisation orders

S. 89D inserted by No. 1/2002 s. 13.

(1) A person whose driver licence is subject to an alcohol interlock condition is guilty of an offence if—

(a) the person breaches that condition; or

(b) the person drives a motor vehicle with an approved alcohol interlock in accordance with that condition but the motor vehicle has been started—

(i) with the approved alcohol interlock disengaged; or

(ii) in a way that does not comply with the manufacturer's instructions for the use of the approved alcohol interlock; or

(iii) in a way other than by the person blowing directly into the appropriate part of the approved alcohol interlock.

Note: Sections 50AAH and 50AAI of the **Road Safety Act 1986** may affect whether a person has breached the condition.

(2) A person who is guilty of an offence against sub-section (1) is liable to a fine of not more than 30 penalty units or to imprisonment for a term of not more than 4 months.

(3) If—

(a) a person breaches an alcohol interlock condition by driving a motor vehicle with a type of alcohol interlock—

(i) the approval of which is cancelled under section 50AAH of the **Road Safety Act 1986**; or

(ii) that is installed or maintained by a person or body whose approval as an alcohol interlock supplier is cancelled under section 50AAI of the **Road Safety Act 1986**; or

(iii) that is installed or maintained by a person or body who would be authorised by an approved alcohol interlock supplier except that the supplier's approval is cancelled under section 50AAI of the **Road Safety Act 1986**; and

(b) the person is charged with an offence against sub-section (1)(a) in respect of that breach—

it is a defence if the person proves that he or she reasonably believed at the time of the breach that the type of alcohol interlock was an approved alcohol interlock, or the person or body was an approved alcohol interlock supplier or authorised by such a supplier, as the case may be.

(4) A court finding a person guilty, or convicting a person, of an offence against sub-section (1)(b) may, if the court considers it appropriate to do so, order that the motor vehicle concerned be immobilised (whether by wheel clamps or any other means) for a period specified in the order of up to 12 months.

(5) An order under sub-section (4) may be made subject to specified conditions.

(6) The court may make an order under sub-section (4) whether the motor vehicle is owned by the offender or another person.

(7) If the court considers that another person, who is not present at the hearing concerning the making of an order under sub-section (4), may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.

(8) On the return of the summons, the court may, after hearing the evidence brought before it, make or refuse to make the order.

PART 5—HOSPITAL ORDERS

S. 90 amended by No. 98/1995 s. 64(2)(a).

90. Assessment orders

If on the trial of a person for an offence—

(a) the person is found guilty; and

(b) the court is of the opinion that—

S. 90(b)(i) amended by No. 98/1995 s. 64(2)(b).

(i) the person appears to be mentally ill and may require treatment for the illness; and

S. 90(b)(ii) amended by No. 98/1995 s. 64(2)(a).

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

S. 90(b)(iii) substituted by No. 98/1995 s. 64(2)(c).

(iii) because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

S. 90(c) amended by No. 98/1995 s. 64(2)(d).

(c) the court has received advice in writing from the authorised psychiatrist of the approved mental health service to which it is proposed to admit the person that it has the facilities to undertake an assessment of the person's suitability for an order under section 93—

the court may make an order (an assessment order) under which the person is admitted to and detained in an approved mental health service as an involuntary patient for a period (not exceeding 72 hours) to be specified in the order to enable an assessment to be made of his or her suitability for an order under section 93.

91. Diagnosis, assessment and treatment orders

S. 91 amended by No. 98/1995 s. 64(3)(d).

If on the trial of a person for an offence—

(a) the person is found guilty; and

(b) the court is satisfied by the production of a certificate in the prescribed form of a psychiatrist and any other evidence that it may require that—

S. 91(b)(i) amended by No. 98/1995 s. 64(3)(a).

(i) the person appears to be mentally ill and to require treatment for the illness; and

S. 91(b)(ii) amended by No. 98/1995 s. 64(3)(b).

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

S. 91(b)(iii) substituted by No. 98/1995 s. 64(3)(c).

(iii) because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

S. 91(c) amended by No. 98/1995 s. 64(3)(d).

(c) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service to which it is proposed to admit the person recommending the proposed admission—

the court may make an order (a diagnosis, assessment and treatment order) under which the person is admitted to and detained in the approved mental health service as an involuntary patient to enable diagnosis, assessment and treatment for a period (not exceeding 3 months) to be specified in the order.

92. Termination of assessment orders and diagnosis, assessment and treatment orders

At the expiry of an order made under section 90 or 91 or at any time before then if the authorised psychiatrist applies or the Mental Health Review Board or the chief psychiatrist discharges the person under the **Mental Health Act 1986**, the court, after considering a report from the authorised psychiatrist specifying the results of the assessment or the diagnosis, assessment and treatment (as the case requires)—

(a) may make an order under section 93; or

(b) may pass sentence on the person according to law and, if the sentence is a term of imprisonment, must deduct the period of time that the person was detained under the assessment order or the diagnosis, assessment and treatment order.

93. Hospital orders and hospital security orders

(1) If on the trial of a person for an offence—

(a) the person is found guilty; and

(b) the court is satisfied by the production of a certificate in the prescribed form of a psychiatrist and any other evidence that it may require that—

S. 93(1)(b)(i) amended by No. 98/1995 s. 64(4)(b).

(i) the person appears to be mentally ill and to require treatment for the illness; and

S. 93(1)(b)(ii) amended by No. 98/1995 s. 64(4)(a).

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

(iii) because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

S. 93(1)(b)(iii) substituted by No. 98/1995 s. 64(4)(c).

(c) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service to which it is proposed to admit the person recommending the proposed admission—

S. 93(1)(c) amended by No. 98/1995 s. 64(4)(d).

the court may—

(d) instead of passing sentence make an order (a hospital order) under which the person is admitted to and detained in an approved mental health service as an involuntary patient; or

S. 93(1)(d) amended by No. 98/1995 s. 64(4)(a).

(e) by way of sentence make an order (a hospital security order) under which the person is admitted to and detained in an approved mental health service as a security patient for a period specified in the order.

S. 93(1)(e) amended by No. 98/1995 s. 64(4)(a).

(2) A court must not make a hospital security order unless, but for the mental illness of the person, the court would have sentenced the person to a term of imprisonment.

(3) A court must not in a hospital security order specify a period of detention in an approved mental health service that is longer than the period of imprisonment to which the person would have been sentenced had the order not been made.

S. 93(3) amended by No. 98/1995 s. 64(5).

S. 93(4) amended by No. 69/1997 s. 11.

(4) A court, when making a hospital security order, must fix a non-parole period in accordance with section 11 as if the order were a term of imprisonment.

S. 93(5) amended by No. 48/1997 s. 22.

(5) If at any time before the end of the period specified in a hospital security order the Mental Health Review Board or the chief psychiatrist orders under Division 4 of Part 4 of the **Mental Health Act 1986** that the person be discharged as a security patient, the hospital security order has effect as a sentence of imprisonment for the unexpired portion of it and that unexpired portion must be served in a prison unless the person is released on parole.

(6) A non-parole period fixed under sub-section (4) is only relevant in the circumstances referred to in sub-section (5).

94. Custody of admitted person

(1) A court, when making an order under this Part, may include in the order the names of a person or persons who shall be responsible for taking the offender—

S. 94(1)(a) amended by No. 98/1995 s. 64(6).

(a) to the approved mental health service named in the order; and

S. 94(1)(b) amended by No. 98/1995 s. 64(6).

(b) from the approved mental health service to the court in connection with the exercise by the court of its powers under section 92.

S. 94(2) amended by No. 98/1995 s. 64(6).

(2) A copy of the order and the advice or report (as the case requires) of the authorised psychiatrist is to accompany the offender to the approved mental health service named in the order.

(3) Unless the court otherwise directs, a member of the police force may by authority of this section exercise the power of a person named in the order in place of that person to take an offender to or from an approved mental health service.

S. 94(3) inserted by No. 26/1997 s. 54.

(4) An offender who is being taken by a member of the police force to or from an approved mental health service under an order under this Part is deemed to be in the custody of the Chief Commissioner of Police whilst being so taken.

S. 94(4) inserted by No. 26/1997 s. 54.

PART 6—MAKING OF SENTENCING AND OTHER ORDERS

Division 1—Explanation of Orders

95. Explanation of orders

If a court proposes to make an order which has attached to it conditions to which a person is required to consent or which requires a person to give an undertaking, it must before making the order explain, or cause to be explained, to the person in language likely to be readily understood by him or her—

(a) the purpose and effect of the proposed order; and

(b) the consequences that may follow if he or she fails without reasonable excuse to comply with the proposed order; and

(c) the manner in which the proposed order may be varied.

Pt 6 Div. 1A (Heading and ss 95A–95E) inserted by No. 24/1994 s. 7.

Division 1A—Victim Impact Statements

S. 95A inserted by No. 24/1994 s. 7.

95A. Victim may make victim impact statement

(1) If a court finds a person guilty of an offence, a victim of the offence may make a victim impact statement to the court for the purpose of assisting the court in determining sentence.

(2) A victim impact statement may be made—

(a) in writing by statutory declaration; or

(b) in writing by statutory declaration and orally by sworn evidence.

(3) A victim impact statement may be made by another person on behalf of a victim—

(a) who is under the age of 18 years; or

(b) who the court is satisfied is incapable of making the statement because of mental illness or for any other reason; or

(c) that is not an individual.

95B. Contents of victim impact statement

S. 95B inserted by No. 24/1994 s. 7.

(1) A victim impact statement contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence.

S. 95B(1) amended by No. 15/2005 s. 4.

(2) The court may rule as inadmissible the whole or any part of a victim impact statement, including the whole or any part of a medical report attached to it.

S. 95B(2) amended by No. 19/1999 s. 14(1).

95BA. Medical reports

S. 95BA inserted by No. 19/1999 s. 13.

(1) A medical report may be attached to a victim impact statement.

(2) In this section—

"dentist" means—

S. 95BA(2) def. of "dentist" amended by No. 26/1999 s. 107 (Sch. item 8(a)(b)) (as amended by No. 27/2000 s. 40(c)).

(a) a person who is a registered dentist or qualified to be a registered dentist under the **Dental Practice Act 1999** or any corresponding enactment of another State or a Territory of the Commonwealth; or

(b) a person entitled to practise dentistry in a place out of Australia under an enactment of that place corresponding to the **Dental Practice Act 1999**, whether or not the person does so practise;

"medical expert" means medical practitioner, dentist or psychologist;

"medical matters" includes dental matters and psychological matters;

"medical practitioner" means—

(a) a person registered or qualified to be registered as a medical practitioner under the **Medical Practice Act 1994** or any corresponding enactment of another State or a Territory of the Commonwealth; or

(b) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the **Medical Practice Act 1994**, whether or not the person does so practise;

"medical report" means a written statement on medical matters concerning the victim made and signed by a medical expert and includes any document which the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document which the medical expert obtained or caused to be brought into existence subsequently;

"psychologist" means—

S. 95BA(2) def. of "psych-ologist" amended by No. 41/2000 s. 102(Sch. item 6).

(a) a psychologist registered under section 6 of the **Psychologists Registration Act 2000**; or

(b) a person who is qualified in accordance with section 5 of the **Psychologists Registration Act 2000** to be registered under section 6 of that Act; or

(c) a person who practises psychology in a place out of Victoria.

95C. Distribution of written statement

S. 95C inserted by No. 24/1994 s. 7, amended by No. 19/1999 s. 14(2).

If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place—

(a) file a copy with the court; and

(b) provide a copy to—

(i) the offender or the legal practitioner representing the offender; and

(ii) the prosecutor—

and the copy must include a copy of any medical report attached to the victim impact statement.

95D. Examination of victim

S. 95D inserted by No. 24/1994 s. 7.

S. 95D(1) amended by No. 19/1999 s. 14(3).

(1) The court may, at the request of the offender or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on behalf of a victim, or a medical expert who made a medical report attached to a victim impact statement, to give evidence.

(2) A victim or other person who gives evidence under sub-section (1) may be cross-examined and re-examined.

S. 95E inserted by No. 24/1994 s. 7.

95E. Witnesses

S. 95E(1) amended by No. 19/1999 s. 14(4).

(1) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement or in a medical report attached to it.

(2) A witness who gives evidence under sub-section (1) may be cross-examined and re-examined.

S. 95E(3) amended by No. 19/1999 s. 14(5).

(3) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement or in a medical report attached to it.

S. 95F inserted by No. 15/2005 s. 5.

95F. Reading aloud of victim impact statement

(1) If a victim who has made, or on behalf of whom another person has made, a victim impact statement so requests, the court must ensure that any admissible parts of the statement that are appropriate and relevant to sentencing are read aloud by the prosecutor in open court in the course of the sentencing hearing.

(2) Nothing in this section prevents the presiding judge or magistrate from reading aloud any admissible part of a victim impact statement in the course of sentencing the offender or at any other time in the course of the sentencing hearing.

Division 2—Pre-Sentence Reports

96. Court may order pre-sentence report[18]

(1) If a court finds a person guilty of an offence it may, before passing sentence, order a pre-sentence report in respect of the offender and adjourn the proceeding to enable the report to be prepared.

S. 96(2) amended by No. 48/1997 ss 17(9), 23.

(2) A court must order a pre-sentence report if it is considering making a combined custody and treatment order, an intensive correction order, a youth training centre order, a youth residential centre order or a community-based order so that it may—

(a) establish the person's suitability for the order being considered; and

(b) establish that any necessary facilities exist; and

(c) if the order being considered is an intensive correction order or a community-based order, gain advice concerning the most appropriate program condition or conditions to be attached to the order.

(3) If a court orders a pre-sentence report, it must be prepared by—

S. 96(3)(a) amended by Nos 48/1997 s. 17(10), 46/1998 s. 7(Sch. 1).

(a) the Secretary if the court is considering making a youth training centre order or a youth residential centre order; or

S. 96(3)(b) repealed by No. 48/1997 s. 14(10).

* * * * *

S. 96(3)(c) amended by No. 45/1996 s. 18(Sch. 2 item 11.14).

(c) the Secretary to the Department of Justice in any other case.

(4) The author of a pre-sentence report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

97. Contents of pre-sentence report

(1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her—

(a) the age of the offender;

(b) the social history and background of the offender;

(c) the medical and psychiatric history of the offender;

(d) the offender's educational background;

(e) the offender's employment history;

(f) the circumstances of any other offences of which the offender has been found guilty and which are known to the court;

(g) the extent to which the offender is complying with any sentence currently in force in respect of him or her;

(h) the offender's financial circumstances;

(i) any special needs of the offender;

(j) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit.

(2) The author of a pre-sentence report must include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

98. Distribution of report

(1) A pre-sentence report must be filed with the court no later than the time directed by the court.

(2) The author of a pre-sentence report must, a reasonable time before sentencing is to take place, provide a copy of the report to—

(a) the prosecutor; and

(b) the legal practitioners representing the offender; and

(c) if the court has so directed, the offender.

99. Disputed pre-sentence report

(1) The prosecution or the defence may file with the court a notice of intention to dispute the whole or any part of a pre-sentence report.

(2) If a notice is filed under sub-section (1) before sentencing is to take place, the court must not take the report or the part in dispute (as the case requires) into consideration when determining sentence unless the party that filed the notice has been given the opportunity—

(a) to lead evidence on the disputed matters; and

(b) to cross-examine the author of the report on its contents.

Pt 6 Div. 2A (Heading and ss 99A–99E) inserted by No. 48/1997 s. 24.

Division 2A—Drug and Alcohol Reports

S. 99A inserted by No. 48/1997 s. 24.

99A. Drug and alcohol assessment report

(1) If a court considering making a combined custody and treatment order orders a drug and alcohol assessment report, it must be prepared by an approved drug and alcohol assessment agency.

(2) The purpose of a drug and alcohol assessment report is—

(a) to assess whether the offender is an alcoholic or drug-dependent person; and

(b) to make recommendations as to his or her suitability to undergo treatment under a combined custody and treatment order.

(3) A drug and alcohol assessment report may set out any matters which, on investigation, appear to the author of the report to be relevant to the assessment of the offender and are readily ascertainable by him or her.

(4) The author of a drug and alcohol assessment report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

S. 99B inserted by No. 48/1997 s. 24.

99B. Distribution of drug and alcohol assessment report

(1) A drug and alcohol assessment report must be filed with the court no later than the time directed by the court.

(2) The author of a drug and alcohol assessment report must, a reasonable time before sentencing is to take place, provide a copy of the report to—

(a) the prosecutor; and

(b) the legal practitioners representing the offender; and

(c) if the court has so directed, the offender.

99C. Disputed drug and alcohol assessment report

S. 99C inserted by No. 48/1997 s. 24.

(1) The prosecution or the defence may file with the court a notice of intention to dispute the whole or any part of a drug and alcohol assessment report.

(2) If a notice is filed under sub-section (1) before sentencing is to take place, the court must not take the report or the part in dispute (as the case requires) into consideration when determining sentence unless the party that filed the notice has been given the opportunity—

(a) to lead evidence on the disputed matters; and

(b) to cross-examine the author of the report on its contents.

99D. Drug and alcohol pre-release report

S. 99D inserted by No. 48/1997 s. 24.

(1) A drug and alcohol pre-release report in respect of an offender must be prepared by an approved drug and alcohol assessment agency.

(2) A drug and alcohol pre-release report must specify any treatment for alcohol or drug addiction that the offender is to undergo during the period of the combined custody and treatment order on release from custody.

(3) The author of a drug and alcohol pre-release report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

(4) The author of a drug and alcohol pre-release report must, a reasonable time before the offender's release from custody is to take place, provide a copy of the report to—

(a) the officer in charge of the community corrections centre specified in the combined custody and treatment order; and

(b) the offender.

S. 99E inserted by No. 48/1997 s. 24.

99E. Approved drug and alcohol assessment agencies

(1) A person or body may apply to the Secretary to the Department of Human Services for approval for the purposes of this Division.

(2) The Secretary to the Department of Human Services—

(a) may grant an approval subject to any conditions, limitations or restrictions specified in the approval; and

(b) must specify the period during which an approval continues in force.

Pt 6 Div. 2B (Heading and ss 99F–99J) inserted by No. 53/2003 s. 6.

Division 2B—Home Detention Assessment Reports

S. 99F inserted by No. 53/2003 s. 6.

99F. Home detention assessment report

(1) If a court orders a home detention assessment report, the Secretary to the Department of Justice must prepare the report.

(2) The purpose of a home detention assessment report is to assess the suitability of the offender for a home detention order.

(3) The Secretary to the Department of Justice must conduct any investigation that he or she thinks appropriate or that is directed by the court for the purpose of preparing the report.

99G. Contents of home detention assessment report

S. 99G inserted by No. 53/2003 s. 6.

(1) A home detention assessment report must set out the following matters—

(a) the age of the offender;

(b) the social history and background of the offender;

(c) the medical and psychiatric history of the offender;

(d) the offender's educational background;

(e) the offender's employment history;

(f) the circumstances of any other offences of which the offender has been found guilty and which are known to the author of the report;

(g) the extent to which the offender is complying with any sentence currently in force in respect of him or her;

(h) the offender's financial circumstances;

(i) any special needs of the offender;

(j) any courses, programs, treatment, therapy or other assistance that may be available to the offender and from which he or she may benefit;

(k) an assessment as to whether the offender is an alcoholic or drug-dependent person;

(l) an assessment of the likelihood that the offender will commit an offence in respect of which an intervention order could be made under the **Crimes (Family Violence) Act 1987**;

(m) an assessment as to whether any circumstances of the offender's residence, employment, study or other prospective activities would not permit effective monitoring of a home detention order;

(n) an assessment as to whether persons with whom the offender intends to reside or to continue to reside understand the requirements of the order and are prepared to live in conformity with them;

(o) whether the making of the order would place at risk of harm any person who would reside with or in the vicinity of the offender;

(p) any other prescribed matter.

(2) In preparing the assessment report, the Secretary to the Department of Justice may also take into account any other relevant matters.

S. 99H inserted by No. 53/2003 s. 6.

99H. Distribution of home detention assessment report

(1) A home detention assessment report must be filed with the court no later than the time directed by the court.

(2) The Secretary to the Department of Justice must, a reasonable time before the court is to consider the report, provide a copy of the report to—

(a) the Director of Public Prosecutions, the informant or the police prosecutor; and

(b) the offender and the legal practitioners representing the offender.

99I. Disputed home detention assessment report

S. 99I inserted by No. 53/2003 s. 6.

(1) The prosecution or the defence may file with the court a notice of intention to dispute the whole or any part of a home detention assessment report.

(2) If a notice is filed under sub-section (1), the court must not make a decision to make or not to make a home detention order unless the party that filed the notice has been given the opportunity—

(a) to lead evidence on disputed matters; and

(b) to cross-examine the author of the report on its contents.

99J. Disclosure of information

S. 99J inserted by No. 53/2003 s. 6.

(1) Except to the extent necessary to comply with section 99H, the Secretary to the Department of Justice or any employee of that Department must not disclose to any person—

(a) any home detention assessment report; or

(b) any information obtained for the purpose of preparing that report.

Penalty: 5 penalty units.

(2) Sub-section (1) does not apply to a disclosure made—

(a) to the Secretary to the Department of Justice or an employee of that Department in the course of carrying out a duty under this Act; or

(b) with the leave of the court that ordered the preparation of the report.

(3) For the purpose of determining an application for leave under sub-section (2), the court may order that the relevant document be produced to it and may inspect it but must not make the document available, or disclose its contents, to the applicant for leave.

(4) Without limiting the matters the court may take into account for the purpose of determining whether or not to grant leave under sub-section (2), the court must take into account the likelihood, and the nature or extent, of harm that could be caused to any person if the information is disclosed.

(5) The court may grant leave under this section in respect of the whole or part of a document.

Division 3—Taking Other Charges Into Account

100. Disposal of other pending charges

(1) If a court convicts a person of an offence or offences, not being or including treason or murder, and the court is satisfied that—

S. 100(1)(a) amended by No. 48/1997 s. 25(2).

(a) there has been filed in court a document in the form of Schedule 2 showing on the back in the form prescribed by Part C of that Schedule a list of other offences, whether indictable or summary, not being or including treason or murder, in respect of which the offender has been charged or presented for trial; and

(b) a copy of that document has been provided to the offender; and

(c) in all the circumstances it is proper to do so—

the court may, with the consent of the prosecution, before passing sentence ask the offender whether the offender admits having committed all or any of the listed offences and wishes them to be taken into account by the court when passing sentence for the offence or offences of which the offender has been convicted.

(2) A document referred to in sub-section (1) must be signed by—

S. 100(2)(a) amended by Nos 43/1994 s. 56(Sch. item 6.1), 36/1995 s. 13(1).

(a) a member of the police force or the Director of Public Prosecutions or a Crown Prosecutor or Associate Crown Prosecutor; and

(b) the offender.

(3) If the offender admits having committed all or any of the listed offences and wishes them to be taken into account, the court may, if it thinks fit, do so but must not impose a sentence in respect of an offence of which the offender has been convicted in excess of the maximum sentence that might have been imposed if no listed offence had been taken into account.

(4) If an offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 4 if the offender had been convicted before the court of the offence but must not otherwise impose any separate punishment for the offence.

(5) An order made under sub-section (4) in respect of an offence taken into account may be appealed against as if it had been made on the conviction of the offender for that offence.

(6) Despite anything in sub-section (3), a court must not take into account any charge of an indictable offence which it would not have jurisdiction to try even with the consent of the person charged with it.

S. 100(7) amended by No. 48/1997 s. 25(2).

(7) The court must certify in the form prescribed by Part B of Schedule 2 on the document filed in court any listed offences that have been so taken into account and the convictions in respect of which this has been done.

(8) Proceedings shall not be taken or continued in respect of any listed offence certified under sub-section (7) unless each conviction in respect of which it has been taken into account has been quashed or set aside.

(9) An admission made under and for the purposes of this section is not admissible in evidence in any proceeding taken or continued in respect of the offence to which it relates.

(10) A person must not for any purpose be taken to have been convicted of an offence taken into account under and in accordance with this section only because it was so taken into account.

(11) Whenever, in or in relation to any criminal proceeding, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a person was convicted of an indictable offence, reference may likewise be made to, or evidence may likewise be given of, the taking into account under this section of any other offence or offences when sentence was imposed in respect of that conviction.

(12) The fact that an offence was taken into account under this section may be proved in the same manner as the conviction or convictions in respect of which it was taken into account may be proved.

Division 4—Passing of Sentence

101. Time and place of sentence

(1) The sentence for an offence may be imposed in open court at any time and at any place in Victoria.

(2) The judge or magistrate presiding at the trial of an offence or receiving a plea of guilty to an offence or any other judge or magistrate empowered to impose sentence may, when he or she thinks it desirable in the interests of justice so to do and from time to time if necessary—

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

(b) fix the place—

at which the sentence is to be imposed.

(3) The judge or magistrate who is to impose sentence for an offence may—

(a) release the person to be sentenced on the person giving an undertaking conditioned for that person's appearance at the proper time and place; or

(b) make an order or orders for the removal in custody of that person from one place in Victoria to another.

* * * * *

S. 101(4) amended by No. 45/1996 s. 18(Sch. 2 item 11.15), repealed by No. 45/2001 s. 45.

(5) This section does not take away from any power possessed by a judge or magistrate under statute or at common law.

102. Sentence by another judge or magistrate

(1) Sub-section (2) applies where on the trial of an offence—

(a) a verdict of guilty has been found or a plea of guilty has been received but no judgment or sentence has been given or passed on it; and

(b) the judge or magistrate who presided at the trial or received the plea (as the case requires) goes out of office or it appears to be probable that because of incapacitating illness or other serious cause he or she will be unable to give judgment or pass sentence within a reasonable time.

(2) If this sub-section applies any other judge of the Supreme Court or the County Court or magistrate (as the case requires) may in open court take (if necessary) all steps preliminary to the giving of judgment or the passing of sentence and may give judgment or pass sentence.

(3) In all cases where it is possible so to do the judge or magistrate referred to in sub-section (1)(b) must be consulted before judgment is given or sentence is passed under sub-section (2).

(4) Non-compliance with sub-section (3) does not affect the validity of the judgment or sentence.

(5) The question whether it appears probable that a judge or magistrate will be unable for the reasons mentioned in sub-section (1)(b) to give judgment or pass sentence within a reasonable time must be decided by the Chief Justice of the Supreme Court or the Chief Judge of the County Court or the Chief Magistrate (as the case requires) and his or her decision is not liable to be challenged on any ground whatsoever.

(6) If on the trial of an offence—

(a) a verdict of guilty has been found or a plea of guilty has been received; and

(b) all steps preliminary to the giving of judgment or the passing of sentence have been taken but no judgment or sentence has been given or passed—

any other judge of the Supreme Court or the County Court or magistrate (as the case requires) may give the judgment or pass the sentence determined by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(7) If at any time before the commencement of the trial of an indictable offence (including one heard summarily) the accused person pleads guilty, any judge of the Supreme Court or the County Court or magistrate (as the case requires) other than the one receiving the plea may take (if necessary) all steps preliminary to the giving of judgment or passing of sentence and may give judgment or pass sentence.

(8) A judgment given or sentence passed under sub-section (2), (6) or (7) has for all purposes the same effects and consequences as if it had been given or passed by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(9) This section does not take away from any power possessed by a judge or magistrate under statute or at common law.

103. Sentences not invalidated by failure to comply with procedural requirements

(1) The failure of a court to give reasons or to comply with any other procedural requirement contained in this Act in sentencing an offender does not invalidate any sentence imposed by it.

(2) Nothing in sub-section (1) prevents a court on an appeal against sentence from reviewing a sentence imposed by a court in circumstances where there has been a failure that is referred to in that sub-section.

PART 7—CORRECTION OF SENTENCES

104. Correction of sentences by Supreme Court

(1) If—

(a) a person has been sentenced (whether at first instance or on appeal) by a court (including the Supreme Court) for an offence; and

(b) if the sentencing court was the County Court or the Magistrates' Court, application is made to the Supreme Court for relief or remedy in the nature of certiorari to remove the proceeding into the Supreme Court; and

(c) the Supreme Court determines that the sentence imposed was beyond the power of the sentencing court or its own power, if it was the sentencing court—

the Supreme Court may, instead of quashing the conviction, amend the conviction by substituting for the sentence imposed a sentence which the sentencing court had power to impose.

(2) Unless the Supreme Court otherwise directs, a sentence of imprisonment imposed by it under sub-section (1) commences on the day on which the sentence imposed in the earlier proceeding purported to take effect but in calculating the term to be served under the sentence any time during which the offender was at large (whether on bail or otherwise) must be disregarded.

(3) Sub-sections (1) and (2) extend and apply, with any necessary modifications, with respect to any order made on, but not forming part of, the conviction of an offender as if any reference in those sub-sections to a conviction or sentence included a reference to such an order.

S. 104A inserted by No. 48/1997 s. 26.

104A. Power to correct clerical mistakes, etc.

(1) The judge or magistrate who gave judgment or passed sentence, or purported to give judgment or pass sentence, on the trial or hearing of an offence may, on his or her own initiative or on an application made on behalf of the defence or the prosecution, amend the judgment or sentence or purported judgment or sentence if satisfied—

(a) that it contains—

(i) a clerical mistake; or

(ii) an error arising from an accidental slip or omission; or

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect of form; or

(b) that it fails to deal with a matter that it would have undoubtedly dealt with in accordance with the amendment if the attention of the judge or magistrate had been drawn to it.

(2) The power conferred by sub-section (1) on a judge or magistrate may be exercised at any time up until the end of the fourteenth day after the judgment was given or purportedly given or the sentence was passed or purportedly passed.

(3) The power conferred by sub-section (1) on a judge or magistrate may be exercised by any other judge of the Supreme Court or the County Court or magistrate (as the case requires) if the first-mentioned judge or magistrate is unable for any reason to do so within a reasonable time.

(4) It is not necessary for a proceeding under this section to be conducted in open court, or for a judge or magistrate considering the exercise of the power conferred by sub-section (1) to hear or invite written submissions from any other party, unless the judge or magistrate considers that it is desirable or necessary to do so in the interests of justice in the particular case.

(5) This section applies, with any necessary modifications, in relation to any judgment given or sentence passed, or purportedly given or passed, by the Court of Appeal.

(6) This section does not take away from—

(a) any power possessed by a judge or magistrate under statute or at common law; or

(b) any right to appeal against, or to seek leave to appeal against or a review of, a judgment or sentence that any party to a criminal proceeding otherwise has.

PART 8—APPEALS AGAINST SENTENCE IMPOSED ON VARIATION OR BREACH

105. Appeal against sentence imposed on variation or breach

A person sentenced by a court in a proceeding for variation or breach of a sentencing order has a right of appeal against sentence as if—

(a) the court had immediately before imposing it found the person guilty, or convicted the person, of the offence in respect of which the sentencing order was originally made; and

(b) the sentence were a sentence imposed on that finding of guilt or conviction.

PART 9—ROYAL PREROGATIVE OF MERCY

106. Saving of royal prerogative of mercy

This Act does not affect in any manner Her Majesty's royal prerogative of mercy.

107. Release by Governor in exercise of royal prerogative of mercy

(1) The Governor may, in any case in which he or she is authorised on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment, do so by directing that he or she be released, even before the end of a non-parole period—

(a) on giving an undertaking; or

(b) on parole under and subject to the **Corrections Act 1986** or the **Children and Young Persons Act 1989**, as the case requires.

(2) An undertaking under sub-section (1)(a)—

(a) must have as a condition that the person be of good behaviour; and

(b) may have as a condition that the person be under the supervision of a community corrections officer; and

(c) may have any other condition that the Governor considers to be in the interests of the person or the community.

(3) The period of an undertaking under sub-section (1)(a) is the period fixed by the Governor, which must not be less than the unexpired term of the original sentence.

(4) A person who gives an undertaking under sub-section (1)(a) must be released from custody.

(5) If at any time during the period of an undertaking under sub-section (1)(a) the Magistrates' Court is satisfied by evidence on oath or by affidavit or by the admission of the person who gave the undertaking that that person has failed without reasonable excuse to comply with any condition of the undertaking, it may impose a fine not exceeding level 12 and direct that the person be committed to prison for the unexpired term of the original sentence.

(6) Except with the consent of the person who gave the undertaking, the Magistrates' Court must not deal with him or her under sub-section (5) unless he or she has been served with a notice to attend on the hearing of the proceeding.

(7) The Magistrates' Court may order that a warrant to arrest be issued against a person who gave an undertaking if he or she does not attend before the Court on the hearing of the proceeding under sub-section (5).

(8) A registrar of the Magistrates' Court may sign any warrant that may be necessary for the purpose of sub-section (5) and the period of imprisonment after committal begins on the day of the committal, if the person is then before the court, and if not, on the day of his or her subsequent arrest.

(9) A person who gives an undertaking under sub-section (1)(a) is discharged from the original sentence at the end of the period of the undertaking if an order has not been made under sub-section (5).

(10) If the Magistrates' Court recommits a person to prison under this section, the **Corrections Act 1986** applies as if the person had just been convicted by that Court and sentenced to be imprisoned for a term equal to the unexpired term of the original sentence.

(11) A fine imposed under this section must be taken for all purposes to be a fine payable on a conviction of an offence.

108. Penalties for offences may be remitted

The Governor may—

(a) remit in whole or in part any sum of money which is imposed under any Act as a penalty or forfeiture; and

(b) order the discharge from prison of any person who is imprisoned for non-payment of any sum of money so imposed—

although that sum is in whole or in part payable to a party other than the Crown.

Pt 9A (Heading and ss 108A–108P) inserted by No. 13/2003 s. 6.

PART 9A—SENTENCING ADVISORY COUNCIL

S. 108A inserted by No. 13/2003 s. 6.

108A. Definitions

In this Part—

"Board" means board of directors of the Council;

"chairperson" means chairperson of the Board;

"Council" means Sentencing Advisory Council established under section 108B;

"director" means chairperson or other director of the Council;

"guideline judgment" has the same meaning as in Part 2AA.

S. 108B inserted by No. 13/2003 s. 6.

108B. Establishment of Sentencing Advisory Council

(1) The Sentencing Advisory Council is established.

(2) The Council—

(a) is a body corporate with perpetual succession;

(b) has an official seal;

(c) may sue and be sued in its corporate name;

(d) subject to section 108D, may acquire, hold and dispose of personal property;

(e) subject to section 108D, may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) All courts must take judicial notice of the official seal of the Council affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The official seal of the Council must be kept in such custody as the Council directs and must not be used except as authorised by it.

108C. Functions of the Council

S. 108C inserted by No. 13/2003 s. 6.

(1) The functions of the Council are—

(a) to state in writing to the Court of Appeal its views in relation to the giving, or review, of a guideline judgment;

(b) to provide statistical information on sentencing, including information on current sentencing practices, to members of the judiciary and other interested persons;

(c) to conduct research, and disseminate information to members of the judiciary and other interested persons, on sentencing matters;

(d) to gauge public opinion on sentencing matters;

(e) to consult, on sentencing matters, with government departments and other interested persons and bodies as well as the general public;

(f) to advise the Attorney-General on sentencing matters.

(2) The Council may perform its functions, and exercise its powers, within or outside Victoria.

108D. Powers of the Council

S. 108D inserted by No. 13/2003 s. 6.

(1) Subject to sub-sections (2) and (3), the Council has power to do all things necessary or convenient to be done for, or in connection with, performing its functions.

(2) The Council does not have power to acquire, hold or dispose of real property.

(3) The Council must not, without the prior written approval of the Attorney-General—

(a) acquire any personal property, right or privilege for a consideration of more than $50 000 or any higher amount prescribed for the purposes of this paragraph; or

(b) dispose of any personal property, right or privilege that has a value, or for a consideration, of more than $50 000 or any higher amount prescribed for the purposes of this paragraph.

S. 108E inserted by No. 13/2003 s. 6.

108E. Delegation

The Council, by instrument under its official seal, may delegate to—

(a) a director; or

(b) the chief executive officer of the Council; or

(c) an employee referred to in section 108M(2)—

any function or power of the Council, other than the function under section 108C(1)(a) or this power of delegation.

S. 108F inserted by No. 13/2003 s. 6.

108F. Board of directors

(1) There shall be a board of directors of the Council consisting of not less than 9, and not more than 12, directors of whom—

(a) two must be people who have, in the opinion of the Attorney-General, broad experience in community issues affecting courts;

(b) one must have experience as a senior member of the academic staff of a tertiary institution;

(c) one must be a person who is a member of a victim of crime support or advocacy group;

(d) one must be a person who, in the opinion of the Attorney-General, is a highly experienced prosecution lawyer;

(e) one must be a person who, in the opinion of the Attorney-General, is a highly experienced defence lawyer;

(f) the remainder must have experience in the operation of the criminal justice system.

(2) Directors are appointed by the Governor in Council on the nomination of the Attorney-General.

(3) The Board—

(a) is responsible for the management of the affairs of the Council; and

(b) may exercise the powers of the Council.

108G. Chairperson

S. 108G inserted by No. 13/2003 s. 6.

(1) The Governor in Council may, on the recommendation of the Attorney-General, appoint a director to be chairperson of the Board.

(2) The chairperson may resign that office by notice in writing signed by the chairperson and delivered to the Attorney-General.

108H. Terms and conditions of office of directors

S. 108H inserted by No. 13/2003 s. 6.

(1) A director holds office—

(a) subject to section 108I, for the term (not exceeding 3 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and

(b) on any other terms and conditions, not inconsistent with this Part, that are specified in his or her instrument of appointment.

S. 108H(2) substituted by No. 108/2004 s. 117(1) (Sch. 3 item 181.3).

(2) The **Public Administration Act 2004** does not apply to a director in respect of the office of director.

S. 108I inserted by No. 13/2003 s. 6.

108I. Vacancies and removal of directors from office

(1) A director's office becomes vacant—

(a) on the expiry of his or her term of office; or

(b) if he or she resigns from office under sub-section (2); or

(c) if he or she is removed from office under sub-section (3); or

(d) if he or she is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.

(2) A director may resign from office by notice in writing signed by him or her and delivered to the Attorney-General.

(3) The Governor in Council may remove a director from office if of the opinion that the director has failed to comply with any term or condition of appointment.

S. 108J inserted by No. 13/2003 s. 6.

108J. Travelling and other allowances

A director is entitled to be paid the travelling and other allowances that are fixed from time to time in respect of him or her by the Governor in Council.

S. 108K inserted by No. 13/2003 s. 6.

108K. Validity of acts or decisions

An act or decision of the Board is not invalid merely because of—

(a) a defect or irregularity in, or in connection with, the appointment of a director; or

(b) a vacancy in the membership of the Board.

108L. Meetings of the Board

S. 108L inserted by No. 13/2003 s. 6.

(1) The chairperson must convene as many meetings of the Board as he or she considers necessary for the efficient conduct of its affairs.

(2) The chairperson must preside at any meeting of the Board at which he or she is present.

(3) If the chairperson is absent, a director elected by the directors present must preside.

(4) The quorum for a meeting of the Board at any time is 3 less than the total appointed membership of the Board at that time.

(5) A question arising at a meeting of the Board is determined by a majority of the votes of the members present and voting on the question.

(6) The person presiding has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.

(7) Subject to this Part, the Board may regulate its own procedure.

108M. Staff

S. 108M inserted by No. 13/2003 s. 6.

S. 108M(1) amended by No. 108/2004 s. 117(1) (Sch. 3 item 181.4).

(1) A chief executive officer of the Council must be employed under Part 3 of the **Public Administration Act 2004**.

S. 108M(2) amended by No. 108/2004 s. 117(1) (Sch. 3 item 181.4).

(2) Subject to the Council's budget, as many other employees as are necessary to enable the Council to perform its functions may be employed under Part 3 of the **Public Administration Act 2004**.

S. 108N inserted by No. 13/2003 s. 6.

108N. Appointment of consultants

(1) The Council may engage persons with suitable qualifications and experience as consultants to the Council either in an honorary capacity or for remuneration.

(2) The remuneration of consultants shall be determined by the Council having regard to its budget.

S. 108O inserted by No. 13/2003 s. 6.

108O. Control on expenditure

Money must only be spent by the Council in defraying expenses incurred by it in performing its functions, including paying any remuneration, salaries or allowances payable to directors, staff or consultants.

S. 108P inserted by No. 13/2003 s. 6.

108P. Parliamentary requirement for information

(1) The Council must comply with any information requirement lawfully made of it by a House of the Parliament or a Parliamentary Committee within the meaning of the **Parliamentary Committees Act 1968**.

(2) In this section **"information requirement"** means a requirement to give information of a specified kind within a specified period relating to—

(a) the performance by the Council of its functions; or

(b) the exercise by the Council of its powers; or

(c) the Council's expenditure or proposed expenditure.

PART 10—MISCELLANEOUS PROVISIONS

109. Penalty scale[19]

(1) An offence that is described in an Act, subordinate instrument or local law as being an offence of a level specified in column 1 of Table 1 or as being punishable by imprisonment of a level specified in that column is, unless the contrary intention appears, punishable by a term of imprisonment not exceeding that specified opposite it in column 2 of the Table.

S. 109(1) Table 1 substituted by No. 48/1997 s. 27.

TABLE 1

Column 1	*Column* 2
Level	*Maximum Term of Imprisonment*
1	Life
2	25 years
3	20 years
4	15 years
5	10 years
6	5 years
7	2 years
8	1 year
9	6 months

(2) An offence that is described in an Act, subordinate instrument or local law as being an offence of a level specified in column 1 of Table 2 or as being punishable by a fine of a level specified in that column is, unless the contrary intention appears, punishable by a fine not exceeding that specified opposite it in column 2 of the Table.

S. 109(2) Table 2 substituted by No. 69/1997 s. 12.

TABLE 2

Column 1	*Column 2*
Level	*Maximum Fine*
1	—
2	3000 penalty units
3	2400 penalty units
4	1800 penalty units
5	1200 penalty units
6	600 penalty units
7	240 penalty units
8	120 penalty units
9	60 penalty units
10	10 penalty units
11	5 penalty units
12	1 penalty unit.

S. 109(3) amended by No. 69/1997 ss 14(1), 15.

(3) Subject to sub-section (3A), an offence that is punishable by a term of imprisonment (other than life) is, unless the contrary intention appears, punishable (in addition to or instead of imprisonment) by—

(a) a maximum fine of the number of penalty units that is 10 times more than the maximum number of months imprisonment that may be imposed; or

(b) a community-based order with a community service condition attached requiring, in the case of an offence punishable by a term of imprisonment specified in column 1 of Table 3, a number of hours of unpaid community work not exceeding that specified opposite it in column 2 of the Table to be performed over the period specified in column 2.

S. 109(3) Table 3 substituted by No. 48/1997 s. 28(4), amended by No. 69/1997 s. 13(1)(a)(b).

TABLE 3

Column 1	*Column* 2
Term of Imprisonment	*Unpaid Community Work*
More than 2 years	500 hours over a 2 year period
2 years	375 hours over a 1½ year period
1 years or more but less than 2	250 hours over a 1 year period
6 months or more but less than 1 year	125 hours over a 6 month period
Less than 6 months	50 hours over a 3 month period.

(c) both such a fine and community-based order as are referred to in paragraphs (a) and (b).

S. 109(3A) inserted by No. 69/1997 s. 14(2).

(3A) An offence that is punishable by level 2 imprisonment is, unless the contrary intention appears, punishable (in addition to but not instead of imprisonment) by a level 2 fine if the offender is not a body corporate.

S. 109(4) amended by No. 69/1997 ss 14(3), 15.

(4) An offence that is punishable by a fine (including an offence referred to in sub-section (3A)) is, unless the contrary intention appears, punishable (in addition to or instead of a fine) by a community-based order with a community service condition attached requiring, in the case of an offence punishable by a fine specified in column 1 of Table 4, a number of hours of unpaid community work not exceeding that specified opposite it in column 2 of the Table to be performed over the period specified in column 2.

S. 109(4) Table 4 amended by No. 41/1993 s. 16, substituted by No. 48/1997 s. 28(5), amended by No. 69/1997 s. 13(2)(a)(b).

TABLE 4

Column 1	*Column* 2
Fine	*Unpaid Community Work*
More than 240 penalty units	500 hours over a 2 year period
240 penalty units	375 hours over a 1½ year period
120 penalty units or more but less than 240	250 hours over a 1 year period
60 penalty units or more but less than 120	125 hours over a 6 month period
10 penalty units or more but less than 60	50 hours over a 3 month period.

S. 109A inserted by No. 48/1997 s. 29.

109A. Operation of penalty provisions

If an offence is described in a provision of an Act, subordinate instrument or local law as being an offence of a specified level or as being punishable by imprisonment or a fine of a specified level and there is included in that provision a description in years or months or both of the term of imprisonment, or in penalty units or dollars of the amount of the fine, by which that offence is punishable, that description—

(a) is inserted for convenience of reference only and does not affect the operation of the penalty provision as expressed in terms of levels; and

(b) must be disregarded if it is inconsistent with that penalty provision—

unless the contrary intention appears.

S. 110 substituted by No. 10/2004 s. 13.

110. Meaning of penalty units

(1) If in an Act or subordinate instrument (except a local law made under Part 5 of the **Local Government Act 1989**) there is a statement of a number (whether whole, decimal or fractional) of what are called "penalty units", that statement must, unless the context otherwise requires, be construed as stating a number of dollars equal to the product obtained by multiplying the number of penalty units by the amount fixed from time to time by the Treasurer under section 5(3) of the **Monetary Units Act 2004**.

(2) If in a local law made under Part 5 of the **Local Government Act 1989** there is a statement of a number (whether whole, decimal or fractional) of what are called "penalty units", that statement must, unless the context otherwise requires, be construed as stating a number of dollars equal to the product obtained by multiplying $100 by that number of penalty units.

S. 111 amended by No. 48/1997 s. 30.

111. Location and effect of penalty provisions

A penalty set out at the foot of a provision of an Act, subordinate instrument or local law must, unless the context otherwise requires, be construed as indicating that a contravention (whether by act or omission) of the provision is an offence against the Act, subordinate instrument or local law punishable on a finding of guilt (with or without recording a conviction as required by section 7) by a penalty not exceeding that set out.

112. Classification of offences as indictable or summary

S. 112(1) substituted by No. 48/1997 s. 28(6), amended by No. 69/1997 s. 16.

(1) An offence that is described in a provision of an Act (other than the **Crimes Act 1958** or the **Wrongs Act 1958**), subordinate instrument or local law as being level 1, 2, 3, 4, 5 or 6 or as being punishable by level 1, 2, 3, 4, 5 or 6 imprisonment or fine or both is, unless the contrary intention appears, an indictable offence.

(2) Any other offence under an Act (other than the **Crimes Act 1958** or the **Wrongs Act 1958**), subordinate instrument or local law is, unless the contrary intention appears, a summary offence.

(3) If an offence is described as being punishable in more than one way or in one of two or more ways, sub-section (1) applies even if only one of those ways is referred to in that sub-section.

113. Maximum term of imprisonment for indictable offence heard and determined summarily

S. 113(1) amended by No. 48/1997 s. 28(7).

(1) If a person is convicted by the Magistrates' Court in a summary hearing of an indictable offence under section 53(1) of the **Magistrates' Court Act 1989**, the maximum term of imprisonment to which the Court may sentence the offender is 2 years.

(2) Sub-section (1) is subject to any contrary intention appearing in any Act other than this Act.

S. 113A inserted by No. 48/1997 s. 31.

113A. Maximum term of imprisonment for summary offence

S. 113A(1) amended by No. 69/1997 s. 17.

(1) If a person is convicted of a summary offence punishable, but for this section, by a term of imprisonment of more than 2 years, the maximum term of imprisonment to which a court may sentence the offender in respect of that offence is 2 years.

(2) This section has effect despite anything to the contrary in any Act.

113B. Maximum cumulative term of imprisonment imposable by Magistrates' Court

S. 113B inserted by No. 48/1997 s. 31.

The Magistrates' Court must not impose on any person in respect of several offences committed at the same time cumulative sentences of imprisonment to take effect in succession for a term exceeding in the whole 5 years unless that term is expressly provided by an Act.

113C. Maximum term of imprisonment where none prescribed

S. 113C inserted by No. 48/1997 s. 31.

If a person is convicted of an offence against an enactment punishable by imprisonment but the maximum term of imprisonment is not prescribed anywhere, the maximum term of imprisonment to which a court may sentence the offender in respect of that offence is 2 years.

113D. Increased maximum fine for body corporate

S. 113D inserted by No. 69/1997 s. 18.

(1) If a body corporate is found guilty of an offence against the **Crimes Act 1958** and the court has power to fine the body corporate, it may, unless the contrary intention appears, impose on the body corporate a fine not greater than 5 times the amount of the maximum fine that could be imposed by the court on a natural person found guilty of the same offence committed at the same time.

(2) This section has effect despite anything to the contrary in this Act and despite the prescription of a maximum fine for the offence applicable to all offenders.

114. Effect of alterations in penalties[20]

(1) If an Act (including this Act) or subordinate instrument increases the penalty or the maximum or minimum penalty for an offence, the increase applies only to offences committed after the commencement of the provision effecting the increase.

(2) If an Act (including this Act) or subordinate instrument reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to offences committed before the commencement of the provision effecting the reduction for which no penalty had been imposed at that commencement.

115. Old offences relevant in determining previous convictions

(1) A finding of guilt or conviction of an old offence counts as a finding of guilt or conviction of a new offence for the purpose of determining whether or not a person has previously been found guilty or convicted of the new offence.

(2) For the purposes of this section—

(a) an old offence is an offence under a repealed statutory provision which is constituted by the same acts, omissions, matters, circumstances or things as an offence (the new offence) under an Act or subordinate instrument which substantially re-enacts (whether in the same language or not) the repealed statutory provision; and

(b) a repealed statutory provision is an Act or provision of an Act that has been repealed or a subordinate instrument or provision of a subordinate instrument that has been revoked.

(3) This section applies—

(a) even if the new offence differs from the old offence in—

(i) its penalty; or

(ii) the procedure applicable to its prosecution; or

(iii) its classification; or

(iv) its name;

(b) unless the contrary intention appears in the Act or subordinate instrument that creates the new offence.

PART 11—REGULATIONS

116. Regulations

(1) The Governor in Council may make regulations for or with respect to—

S. 116(1)(a) repealed by No. 10/1999 s. 31(4)(b), new s. 116(1)(a) inserted by No. 53/2003 s. 7.

(a) any matter relating to home detention; and

(b) prescribing programs for the purposes of section 21; and

(c) the commencement of community-based orders, the matters to be specified in those orders, the supply of copies of those orders to specified persons and the obligations of persons subject to those orders; and

(d) the payment of fines by or on behalf of a person required to perform unpaid community work under a community-based order; and

(e) the matters to be specified in intensive correction orders, the supply of copies of those orders to specified persons and the obligations of persons subject to those orders; and

(f) applications for variation or breach of a sentencing order; and

(g) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or limited application; and

(b) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and

(c) may impose a level 12 fine for a contravention of the regulations.

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S. 116(3)(4) repealed by No. 10/1999 s. 31(4)(c).

Pt 12 (Heading) amended by No. 48/1997 s. 32(2).

PART 12—TRANSITIONALS

117. Transitional provisions

(1) This Act applies to any sentence imposed after the commencement of this section, irrespective of when the offence was committed.

(2) A person in respect of whom a sentence is in force immediately before the commencement of this section continues to be subject to the requirements of that sentence in all respects as if this Act had not been passed but that sentence may be cancelled or varied and any failure to comply with it may be dealt with under this Act as if it were a sentence imposed after the commencement of this section.

(3) The regulations may contain provisions of a transitional nature consequent on the enactment of this Act.

(4) For the purposes of this section a sentence imposed by an appellate court after the commencement of this section on setting aside a sentencing order made before that commencement must be taken to have been imposed at the time the original sentencing order was made.

S. 117A inserted by No. 10/2005 s. 4(Sch. 2 item 2).

117A. Transitional provisions—Sentencing (Amendment) Act 1993

(1) The amendments made to this Act by any provision of section 4, 5, 6, 8, 9, 10(2) or 10(4) of the **Sentencing (Amendment) Act 1993** apply to a proceeding for an offence that is commenced after the commencement of that provision, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

(2) The amendments made to this Act by any provision of sections 10 (other than sub-sections (2) and (4)) to 16 of the **Sentencing (Amendment) Act 1993**, apply to any sentence, whether imposed before or after the commencement of that provision.

(3) The re-enactment by this section of section 26 of the **Sentencing (Amendment) Act 1993** does not affect the operation of any Act enacted after the **Sentencing (Amendment) Act 1993**.

S. 117B inserted by No. 10/2005 s. 4(Sch. 2 item 2).

117B. Transitional provisions—Miscellaneous Acts (Omnibus Amendments) Act 1996

(1) This Act, as amended by section 20 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies to a proceeding for an offence that is commenced after the commencement of section 20 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996**, irrespective of when the offence was committed.

(2) In sentencing an offender in such a proceeding, the amendment made by section 20 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** applies for the purposes of the definition of "serious sexual offender" in section 3(1) of this Act (as in force on the commencement of section 20 of the **Miscellaneous Acts (Omnibus**

Amendments) Act 1996) irrespective of when the conviction for an offence against section 47 of the **Crimes Act 1958** was recorded.

(3) The re-enactment by this section of section 21 of the **Miscellaneous Acts (Omnibus Amendments) Act 1996** does not affect the operation of any Act enacted after the **Miscellaneous Acts (Omnibus Amendments) Act 1996**.

S. 118 substituted by No. 48/1997 s. 33.

118. Transitional provisions (1997 amendments)

(1) The amendments of this Act made by a provision of section 5, 9, 11, 12, 14, 16 to 18, 26, 30 or 31 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to a sentence imposed, or judgment given, after the commencement of that provision, irrespective of when the offence was committed.

(2) The amendments of this Act made by a provision of section 6 or 10 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to a proceeding for an offence that is commenced after the commencement of that provision, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

(3) The amendments of this Act made by a provision of section 13, 15, 19 or 21 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to a failure to comply with a sentencing order that is alleged to have occurred after the commencement of that provision, irrespective of when the sentencing order was made.

S. 118(3A) inserted by No. 69/1997 s. 19.

(3A) The amendment of section 68 of the **Crimes Act 1958** made by item 45(a) of Schedule 1 to the **Sentencing and Other Acts (Amendment) Act 1997** effecting a change from summary to indictable in the nature of an offence against that

section applies only to offences alleged to have been committed after the commencement of that Schedule.

S. 118(3B) inserted by No. 69/1997 s. 19.

(3B) The amendment of section 70D(1) of the **Crimes Act 1958** made by item 51 of Schedule 1 to the **Sentencing and Other Acts (Amendment) Act 1997** effecting a change from indictable to indictable triable summarily in the nature of an offence against that section applies to a proceeding for an offence that is commenced after the commencement of that Schedule, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

S. 118(3C) inserted by No. 69/1997 s. 19.

(3C) The amendments of sections 91 and 343 of the **Crimes Act 1958** made by items 67(a) and 99 of Schedule 1 to the **Sentencing and Other Acts (Amendment) Act 1997** effecting a change from indictable to summary in the nature of an offence against those sections apply to a proceeding for an offence that is commenced after the commencement of that Schedule, irrespective of when the offence to which the proceeding relates is alleged to have been committed.

S. 118(3D) inserted by No. 69/1997 s. 19.

(3D) For the purposes of sub-section (3A), if an offence is alleged to have been committed between two dates and Schedule 1 to the **Sentencing and Other Acts (Amendment) Act 1997** commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that Schedule.

(4) A person in respect of whom a suspended sentence imposed under section 28 is in force immediately before the commencement of section 14(5) continues to be subject to the requirements of that sentence in all respects as if the **Sentencing and Other Acts (Amendment) Act 1997** had not been passed and that sentence may

be cancelled or varied and any failure to comply with it may be dealt with under this Act as in force immediately before that commencement despite anything to the contrary in this section.

(5) A person referred to in sub-section (4) may continue to be dealt with under the **Alcoholics and Drug-dependent Persons Act 1968** as in force immediately before the commencement of section 67 of the **Sentencing and Other Acts (Amendment) Act 1997**.

(6) For the purposes of this section a sentence imposed by an appellate court on setting aside a sentencing order must be taken to have been imposed at the time the original sentencing order was made.

S. 119 repealed by No. 48/1997 s. 33, new s. 119 inserted by No. 69/1997 s. 20.

119. Transitional provisions (Sentencing (Amendment) Act 1997)

(1) An amendment of this Act made by a provision of section 4, 6, 7 or 8 of the **Sentencing (Amendment) Act 1997** applies to a sentence imposed after the commencement of that provision, irrespective of when the offence was committed and, for this purpose, a sentence imposed by an appellate court on setting aside a sentencing order must be taken to have been imposed at the time the original sentencing order was made.

(2) An amendment of this Act made by a provision of section 14, 15 or 18 of the **Sentencing (Amendment) Act 1997** applies only to offences alleged to have been committed after the commencement of that provision.

(3) For the purposes of sub-section (2), if an offence is alleged to have been committed between two dates and the provision of the **Sentencing (Amendment) Act 1997** effecting the amendment commences on a date between those two dates, the offence is alleged to have been committed before the commencement of that provision.

120. Transitional provisions (1998 amendments)

S. 120 inserted by No. 57/1998 s. 27.

The amendments of this Act made by a provision of section 26 of the **Road Safety (Amendment) Act 1998** do not apply to a person who applies for an order within 18 months after the commencement of that provision.

121. Transitional provision—Courts and Tribunals Legislation (Amendment) Act 2000

S. 121 inserted by No. 10/1999 s. 19, substituted by No. 1/2000 s. 9.

The amendments of this Act made by section 8 of the **Courts and Tribunals Legislation (Amendment) Act 2000** apply in relation to any application for leave to appeal determined on or after the commencement of that section, whether notice of the application was given before or after that commencement.

122. Transitional provisions—Sentencing (Amendment) Act 1999

S. 122 inserted by No. 19/1999 s. 15.

(1) An amendment of this Act made by a provision of section 5, 6, 7 or 8 of the **Sentencing (Amendment) Act 1999** applies to a sentence imposed after the commencement of that provision, irrespective of when the offence was committed and, for this purpose, a sentence imposed by an appellate court on setting aside a sentencing order must be taken to have been imposed at the time the original sentencing order was made.

(2) Section 83A applies to any finding of guilt made after the commencement of section 9 of the **Sentencing (Amendment) Act 1999**, irrespective of when the offence was committed.

(3) The amendment of section 86 of this Act made by a provision of section 10 or 12(2) of the **Sentencing (Amendment) Act 1999** applies to an application made under that section of this Act after the commencement of that provision, irrespective of when the offence was committed or the finding of guilt made or conviction recorded.

(4) The amendment of this Act made by section 11 of the **Sentencing (Amendment) Act 1999** applies to an application under section 86 of this Act heard or determined after the commencement of that section of that Act, irrespective of when the offence was committed or the finding of guilt made or conviction recorded or the application made.

(5) The amendment of section 87 of this Act made by section 12(3) of the **Sentencing (Amendment) Act 1999** applies to an order made under section 86(1) of this Act after the commencement of that section of that Act.

(6) Section 95BA and the amendments made to this Act by section 14 apply to a victim impact statement made to a court after the commencement of sections 13 and 14 of the **Sentencing (Amendment) Act 1999**.

123. Transitional provision—Magistrates' Court (Infringements) Act 2000

S. 123 inserted by No. 99/2000 s. 16.

(1) The amendment of section 16 of this Act made by section 15 of the **Magistrates' Court (Infringements) Act 2000** applies to any person who begins a term of imprisonment on or after the commencement of section 15 of the **Magistrates' Court (Infringements) Act 2000**, irrespective of when the term of imprisonment was imposed.

(2) For the purposes of sub-section (1), a person can only begin a term of imprisonment if, immediately before the term of imprisonment began, the person was not serving any other term of imprisonment imposed on him or her.

124. Transitional provisions—Victims of Crime Assistance (Amendment) Act 2000

S. 123 inserted by No. 54/2000 s. 24, re-numbered as s. 124 by No. 2/2002 s. 6.

(1) The amendment of this Act made by a provision of section 21 or 22 of the **Victims of Crime Assistance (Amendment) Act 2000** applies to an application under section 86 of this Act for compensation for pain and suffering made before the commencement of that provision but heard or determined after that commencement, irrespective of when the offence was committed or the finding of guilt made or conviction recorded.

(2) An application to which sub-section (1) applies must be heard and determined as if it were an application made under Subdivision (1) of Division 2 of Part 4.

(3) Subject to Subdivision (1) of Division 2 of Part 4, an application may be made under that Subdivision after the commencement of section 21 of the **Victims of Crime Assistance (Amendment) Act 2000**, irrespective of whether the offence was committed or the finding was

made or the conviction was recorded before or after that commencement.

(4) The amendment of this Act made by a provision of section 23 of the **Victims of Crime Assistance (Amendment) Act 2000** applies only to an application under section 87A(1) of this Act made after the commencement of that provision.

S. 125 inserted by No. 80/2001 s. 5.

125. Transitional provisions—Sentencing (Emergency Service Costs) Act 2001

(1) The amendment of this Act made by section 4 of the **Sentencing (Emergency Service Costs) Act 2001** applies only to offences alleged to have been committed on or after the commencement of that Act.

(2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Sentencing (Emergency Service Costs) Act 2001**, the offence is alleged to have been committed before that commencement.

S. 126 inserted by No. 2/2002 s. 7.

126. Transitional provisions—Sentencing (Amendment) Act 2002

Subdivision (1C) of Division 2 of Part 3 applies to the sentencing of a person for an offence, irrespective of when the offence was committed.

S. 126B inserted by No. 1/2002 s. 14.

126B. Application of amendment made by the Road Safety (Alcohol Interlocks) Act 2002

S. 126B(1) substituted by No. 49/2004 s. 45(1).

(1) Subject to sub-section (1A), on and from the commencement of Part 9 of the **Transport Legislation (Miscellaneous Amendments) Act 2004**, section 89A applies to offences, irrespective of when they were committed including (for the avoidance of doubt) whether they were committed before, on or after the commencement of

section 14 of the **Road Safety (Alcohol Interlocks) Act 2002**.

S. 126B(1A) inserted by No. 49/2004 s. 45(2).

(1A) The application of section 89A to an offence continues as provided by sub-section (1), as in force immediately before the commencement of Part 9 of the **Transport Legislation (Miscellaneous Amendments) Act 2004** for the purposes of any application under section 89(2) for an order as to the issue of a driver licence made before that commencement.

S. 126B(1B) inserted by No. 49/2004 s. 45(2).

(1B) The amendment of section 80B(3) made by section 44 of the **Transport Legislation (Miscellaneous Amendments) Act 2004** has effect only with respect to applications made for the removal of an alcohol interlock condition more than 28 days after the commencement of Part 9 of that Act.

(2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement, the offence is alleged to have been committed before that commencement.

S. 127 inserted by No. 10/2003 s. 14.

127. Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003

(1) The amendment of this Act made by section 13 of the **Crimes (Property Damage and Computer Offences) Act 2003** applies only to offences alleged to have been committed on or after the commencement of that Act.

(2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Property Damage and Computer Offences) Act 2003**, the offence is alleged to have been committed before that commencement.

S. 127A inserted by No. 53/2003 s. 8.

127A. Transitional provisions—Corrections and Sentencing Acts (Home Detention) Act 2003

(1) An amendment of this Act made by a provision of sections 3, 4, 5, 6 and 7 of the **Corrections and Sentencing Acts (Home Detention) Act 2003** applies to a sentence imposed after the commencement of that provision, irrespective of when the offence was committed.

(2) For the purposes of this section, a sentence imposed by an appellate court on setting aside a sentencing order must be taken to have been imposed at the time the original sentencing order was made.

S. 128 inserted by No. 13/2003 s. 5.

128. Transitional provision—Sentencing (Amendment) Act 2003

Part 2AA applies in relation to appeals heard by the Court of Appeal on or after the commencement of section 4 of the **Sentencing (Amendment) Act 2003** irrespective of when—

(a) the notice of appeal or notice of application for leave to appeal was given; or

(b) the offence is alleged to have been committed.

S. 129 inserted by No. 72/2004 s. 40.

129. Transitional provision—Children and Young Persons (Age Jurisdiction) Act 2004

An amendment made to this Act by a provision of the **Children and Young Persons (Age Jurisdiction) Act 2004** applies to a proceeding for an offence commenced on or after the commencement of that provision, regardless of when the offence is alleged to have been committed.

S. 130 inserted by No. 15/2005 s. 6.

130. Transitional provision—Sentencing (Further Amendment) Act 2005

An amendment made to this Act by a provision of the **Sentencing (Further Amendment) Act 2005** applies to a proceeding for an offence commenced on or after the commencement of that provision, regardless of when the offence is alleged to have been committed.

SCHEDULES

Sch. 1 amended by Nos 43/1994 s. 56(Sch. item 6.2), 36/1995 s. 13(2), substituted by No. 48/1997 s. 34.

SCHEDULE 1

SERIOUS OFFENDER OFFENCES

1. Sexual offences

This clause applies to the following offences—

Sch. 1 cl. 1(a) amended by No. 69/1997 s. 21.

(a) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:

(i) section 38 (rape);

(ii) section 39 (indecent assault) if—

(A) immediately before or during or immediately after the commission of the offence and at, or in the vicinity of, the place where the offence was committed, the offender inflicted serious personal violence on the victim or did an act which was likely seriously and substantially to degrade or humiliate the victim, whether or not the serious personal violence or that act constituted or formed part of the indecent assault; or

(B) the offender was aided or abetted by another person who was present; or

(C) the victim was under 16 years of age at the time of the commission of the offence;

(iii) section 40 (assault with intent to rape);

(iv) section 44(1), (2) or (4) (incest) but not section 44(4) if both people are aged 18 or older and each consented (as defined in section 36 of the **Crimes Act 1958**) to engage in the sexual act;

(v) section 45(1) (sexual penetration of child under the age of 16);

Sch. 1 cl. 1(a)(v) amended by No. 67/2000 s. 10(2)(a)(i).

*   *   *   *   *

Sch. 1 cl. 1(a)(vi) repealed by No. 67/2000 s. 10(2)(a)(ii).

(vii) section 47(1) (indecent act with child under the age of 16);

(viii) section 47A(1) (sexual relationship with child under the age of 16);

(ix) section 49A(1) (facilitating sexual offences against children);

(x) section 51 (sexual offences against people with impaired mental functioning);

(xi) section 52 (sexual offences against residents of residential facilities);

(xii) section 53 (administration of drugs, etc.);

(xiii) section 55 (abduction or detention);

(xiv) section 56 (abduction of child under the age of 16);

(xv) section 57 (procuring sexual penetration by threats or fraud);

(xvi) section 58 (procuring sexual penetration of child under the age of 16);

(xvia) section 60AB(2), (3) or (4) (sexual servitude);

Sch. 1 cl. 1(a)(xvia) inserted by No. 20/2004 s. 9.

(xvib) section 60AC (aggravated sexual servitude);

Sch. 1 cl. 1(a)(xvib) inserted by No. 20/2004 s. 9.

Sch. 1 cl. 1(a)(xvic) inserted by No. 20/2004 s. 9.

(xvic) section 60AD (deceptive recruiting for commercial sexual services);

Sch. 1 cl. 1(a)(xvid) inserted by No. 20/2004 s. 9.

(xvid) section 60AE (aggravated deceptive recruiting for commercial sexual services);

(xvii) section 76 (burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;

(xviii) section 77 (aggravated burglary) in circumstances where the offender entered the building or part of the building as a trespasser with intent to commit a sexual or indecent assault;

Sch. 1 cl. 1(ab) inserted by No. 67/2000 s. 10(2)(b).

(ab) an offence against section 45(1) (sexual penetration of child under the age of 10) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;

Sch. 1 cl. 1(ac) inserted by No. 67/2000 s. 10(2)(b).

(ac) an offence against section 46(1) (sexual penetration of child aged between 10 and 16) (as amended) of the **Crimes Act 1958** inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed by section 5 of the **Crimes (Amendment) Act 2000**;

Sch. 1 cl. 1(b) amended by No. 69/1997 s. 21.

(b) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991** and repealed on 1 January 1992 by section 3 of the **Crimes (Rape) Act 1991**:

(i) section 40 (rape);

(ii) section 41 (rape with aggravating circumstances);

(iii) section 43 (indecent assault with aggravating circumstances);

(c) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) inserted in the **Crimes Act 1958** on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980** and repealed on 5 August 1991 by section 3 of the **Crimes (Sexual Offences) Act 1991**:

Sch. 1 cl. 1(c) amended by No. 69/1997 s. 21.

(i) section 44(1) (indecent assault);

(ii) section 44(2) (indecent assault with aggravating circumstances);

(iii) section 45(1) (rape);

(iv) section 45(2) (attempted rape);

(v) section 45(2) (assault with intent to commit rape);

(vi) section 45(3) (rape with aggravating circumstances);

(vii) section 45(4) (attempted rape with aggravating circumstances);

(viii) section 45(4) (assault with intent to commit rape with aggravating circumstances);

(ix) section 47(1) (sexual penetration of child under the age of 10);

(x) section 47(2) (attempted sexual penetration of child under the age of 10);

(xi) section 47(2) (assault with intent to take part in act of sexual penetration with child under the age of 10);

(xii) section 48(1) (sexual penetration of child aged between 10 and 16);

(xiii) section 48(2) (attempted sexual penetration of child aged between 10 and 16);

(xiv) section 48(2) (assault with intent to take part in act of sexual penetration with child aged between 10 and 16);

(xv) section 50(1) (gross indecency with child under the age of 16);

(xvi) section 51 (sexual penetration of mentally ill or intellectually defective person);

(xvii) section 51 (attempted sexual penetration of mentally ill or intellectually defective person);

(xviii) section 51 (assault with intent to take part in act of sexual penetration with mentally ill or intellectually defective person);

(xix) section 52 (incest) but not section 52(4) or (5) if both people are aged 18 or older and each consented to taking part in the act of sexual penetration;

(xx) section 54 (procuring persons by threats or fraud);

(xxi) section 55 (administration of drugs, etc.);

(xxii) section 56 (abduction and detention);

(xxiii) section 61 (unlawful detention for purposes of sexual penetration);

Sch. 1 cl. 1(d) amended by No. 69/1997 s. 21.

(d) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 1 March 1981 by section 5 of the **Crimes (Sexual Offences) Act 1980**:

(i) section 44(1) (rape);

(ii) section 44(2) (rape with mitigating circumstances);

(iii) section 45 (attempted rape);

(iv) section 45 (assault with intent to rape);

(v) section 46 (unlawfully and carnally knowing and abusing a girl under the age of 10);

(vi) section 47 (attempting to unlawfully and carnally know and abuse girl under the age of 10);

(vii) section 47 (assault with intent to unlawfully and carnally know and abuse girl under the age of 10);

(viii) section 48(1) (unlawfully and carnally knowing and abusing girl aged between 10 and 16);

(ix) section 48(2) (attempting to unlawfully and carnally know and abuse girl aged between 10 and 16);

(x) section 48(2) (assault with intent to unlawfully and carnally know and abuse girl aged between 10 and 16);

(xi) section 52 (incest) but not section 52(3) or (4) if the woman or girl is the sister of the offender and both are aged 18 or older and the carnal knowledge or attempt or assault with intent to have unlawful carnal knowledge was or was made with the consent of the sister;

(xii) section 54 (carnal knowledge of female mentally ill or intellectually defective person);

(xiii) section 54 (attempted carnal knowledge of female mentally ill or intellectually defective person);

(xiv) section 54 (assault with intent to carnally know female mentally ill or intellectually defective person);

(xv) section 55(1) (indecent assault);

(xvi) section 55(3) (felonious indecent assault);

(xvii) section 57(1) or (2) (procuring defilement of woman by threats or fraud or administering drugs);

(xviii) section 62 (forcible abduction of woman);

(xix) section 68(1) (buggery);

(xx) section 68(3A) or (3B) (indecent assault on male person);

(xxi) section 69(1) (act of gross indecency with girl under the age of 16);

(e) any of the following common law offences:

(i) rape;

(ii) attempted rape;

(iii) assault with intent to rape;

(f) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (e).

2. Violent offences

This clause applies to the following offences—

(a) murder;

(b) manslaughter;

Sch. 1 cl. 2(ba) inserted by No. 77/2005 s. 8(4)(b).

(ba) defensive homicide;

Sch. 1 cl. 2(c) amended by No. 69/1997 s. 21.

(c) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:

(i) section 16 (causing serious injury intentionally);

(ii) section 17 (causing serious injury recklessly);

(iii) section 19A (intentionally causing a very serious disease);

(iv) section 20 (threats to kill);

(v) section 21 (threats to inflict serious injury);

(vi) section 63A (kidnapping);

Sch. 1 cl. 2(d) amended by No. 69/1997 s. 21.

(d) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:

(i) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);

(ii) section 19A (inflicting grievous bodily harm);

(iii) section 20 (attempting to choke, etc, in order to commit an indictable offence);

(iv) section 35B (making demand with threat to kill or injure or endanger life);

(e) the common law offence of kidnapping;

(f) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (e).

3. Serious violent offences

This clause applies to the following offences—

(a) murder;

(b) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following sections of the **Crimes Act 1958**:

Sch. 1 cl. 3(b) amended by No. 69/1997 s. 21.

(i) section 16 (causing serious injury intentionally);

(ii) section 19A (intentionally causing a very serious disease);

(iii) section 20 (threats to kill);

(c) an offence against, or for which the penalty or the maximum or minimum penalty is fixed by, any of the following provisions (as amended) of the **Crimes Act 1958** repealed on 24 March 1986 by section 8(2) of the **Crimes (Amendment) Act 1985**:

Sch. 1 cl. 3(c) amended by No. 69/1997 s. 21.

(i) section 17 (intentionally causing grievous bodily harm or shooting, etc. with intention to do grievous bodily harm or to resist or prevent arrest);

(ii) section 35B (making demand with threat to kill or injure or endanger life);

(d) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (c).

4. Drug offences

This clause applies to the following offences—

(a) an offence against any of the following sections of the **Drugs, Poisons and Controlled Substances Act 1981**:

Sch. 1 cl. 4(a)(i) substituted by No. 61/2001 s. 14(1).

(i) section 71 (trafficking in a quantity of a drug or drugs of dependence that is not less than the large commercial quantity applicable to that drug or those drugs);

Sch. 1 cl. 4(a)(ii) substituted by No. 61/2001 s. 14(1).

(ii) section 71AA (trafficking in a quantity of a drug or drugs of dependence that is not less than the commercial quantity applicable to that drug or those drugs);

Sch. 1 cl. 4(a)(iii) substituted by No. 61/2001 s. 14(1).

(iii) section 72 (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the large commercial quantity applicable to that narcotic plant);

Sch. 1 cl. 4(a)(iv) substituted by No. 61/2001 s. 14(1).

(iv) section 72A (cultivation of a narcotic plant in a quantity of a drug of dependence, being a narcotic plant, that is not less than the commercial quantity applicable to that narcotic plant);

Sch. 1 cl. 4(a)(v) substituted by No. 61/2001 s. 14(1).

(v) section 79(1) or 80(3)(a) (conspiracy) where the conspiracy is to commit an offence against section 71, 71AA, 72 or 72A of that Act or an offence under a law in force in a place outside Victoria that is a corresponding law in relation to section 71, 71AA, 72 or 72A of that Act;

Sch. 1 cl. 4(a)(vi) inserted by No. 61/2001 s. 14(1).

(vi) section 80(1) or 80(3)(b) (aiding and abetting, etc) in circumstances where the offence aided, abetted, counselled, procured, solicited or incited is an offence against section 71, 71AA, 72 or 72A of that Act or an offence under a law in force in a place outside Victoria that is a corresponding law in relation to section 71, 71AA, 72 or 72A of that Act;

Sch. 1 cl. 4(a)(vii) inserted by No. 61/2001 s. 14(1).

(vii) section 80(4) (preparatory act) where the offence to which the act relates is an offence under a law in force in a place outside Victoria that is a corresponding law in relation to section 71, 71AA, 72 or 72A of that Act;

Sch. 1 cl. 4(ab) inserted by No. 35/2002 s. 28(Sch. item 5.2).

(ab) an offence against any of the following provisions of the **Drugs, Poisons and Controlled Substances Act 1981** as in force immediately before the commencement of the **Drugs, Poisons and Controlled Substances (Amendment) Act 2001**—

(i) section 71 (trafficking in a drug of dependence) in circumstances where the offence is committed in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;

(ii) section 72 (cultivation of narcotic plants) in circumstances where the offence is committed in relation to a quantity of a drug of dependence, being a narcotic plant, that is not

less than the commercial quantity applicable to that narcotic plant;

(iii) section 79(1) or 80(3)(a) (conspiracy) in circumstances where the conspiracy is to commit an offence against section 71 of that Act in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence or an offence under a law in force in a place outside Victoria that is a corresponding law in relation to that section in relation to that quantity;

(iv) section 80(1) or 80(3)(b) (aiding and abetting etc.) in circumstances where the offence that is aided, abetted, counselled, procured, solicited or incited is an offence against section 71 of that Act in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence or an offence under a law in force in a place outside Victoria that is a corresponding law in relation to that section in relation to that quantity;

(v) section 80(4) (preparatory act) in circumstances where the offence to which the act relates is an offence under a law in force in a place outside Victoria that is a corresponding law in relation to section 71 of that Act in relation to a quantity of a drug of dependence that is not less than the commercial quantity applicable to that drug of dependence;

Sch. 1 cl. 4(ac) inserted by No. 35/2002 s. 28(Sch. item 5.2).

(ac) an offence of attempting to commit an offence referred to in paragraph (ab)(i);

Sch. 1 cl. 4(b) amended by No. 93/2005 s. 15(1)(a)(b).

(b) an offence against section 233B(1) of the Customs Act 1901 of the Commonwealth (narcotic goods) as in force immediately before the commencement of the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 of the Commonwealth, in the circumstances referred to in the following sections of that Act as in force immediately before that commencement:

(i) section 235(2)(c)(i) (commercial quantity);

(ii) section 235(2)(c)(ii)(A) (trafficable quantity and previous conviction involving trafficable quantity);

(iii) section 235(2)(c)(ii)(B) (trafficable quantity and previous finding that offender had committed offence involving trafficable quantity without conviction recorded);

(iv) section 235(2)(d)(i) (trafficable quantity of narcotic goods other than cannabis);

Sch. 1 cl. 4(ba) inserted by No. 93/2005 s. 15(2).

(ba) an offence against section 307.1, 307.2, 307.5, 307.6, 307.8 or 307.9 of the Criminal Code of the Commonwealth;

Sch. 1 cl. 4(c) repealed by No. 61/2001 s. 14(2).

*　　　*　　　*　　　*　　　*

5. Arson offences

This clause applies to the following offences—

(a) an offence against any of the following sections of the **Crimes Act 1958**:

(i) section 197 (destroying or damaging property) in circumstances where the offence is charged as arson;

(ii) section 197A (arson causing death);

Sch. 1 cl. 5(a)(iii) inserted by No. 10/2003 s. 13.

(iii) section 201A (intentionally or recklessly causing a bushfire);

(b) the common law offence of arson;

(c) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraph (a) or (b).

SCHEDULE 1A

Sch. 1A inserted by No. 108/1997 s. 149.

CONTINUING CRIMINAL ENTERPRISE OFFENCES

1. An offence against any of the following provisions of the **Crimes Act 1958**:

   (a) section 74(1) (theft) where the value of the property stolen is $50 000 or more;

   (b) section 75(1) (robbery) where the value of the property stolen is $50 000 or more;

   (c) section 75A(1) (armed robbery) where the value of the property stolen is $50 000 or more;

   (d) section 81(1) (obtaining property by deception) where the value of the property obtained is $50 000 or more;

   (e) section 82(1) (obtaining financial advantage by deception) where the value of the financial advantage obtained is $50 000 or more;

   (f) section 83(1) (false accounting) where the potential gain or loss is $50 000 or more;

   (g) section 88(2) (handling stolen goods) where the value of the goods handled is $50 000 or more;

   (h) section 197(1), (2) or (3) (destroying or damaging property) where the value of the property destroyed or damaged is $50 000 or more.

Sch. 1A item 2 amended by No. 87/2004 s. 24(b).

2. Any Schedule 2 offence within the meaning of the **Confiscation Act 1997** where the value of the property in respect of which the offence is committed is $50 000 or more.

3. The common law offence of conspiracy to defraud where the property, financial advantage or economic loss in respect of which the offence is committed is $50 000 or more.

Sch. 2 amended by No. 8/1991 s. 20(3) (as amended by No. 49/1991 s. 119(2)), substituted by No. 48/1997 s. 34.

SCHEDULE 2

FORMS FOR USE WHERE OTHER OFFENCES TAKEN INTO ACCOUNT IN SENTENCING

PART A

To

Charged with (1)
(2)
(3)
(4)

Before the Court at

MEMORANDUM FOR THE ACCUSED'S INFORMATION

(1) The list on the back of this form gives particulars of other alleged offences with which you are charged.

(2) If you are convicted on the charge(s) set out above you may, before sentence is passed, ask to be allowed to admit all or any of the other offences listed on the back of this form and to have them taken into account by the court in passing sentence on you.

(3) If at your request any of the other offences listed on the back are taken into account by the court, then—

(a) this does not amount to a conviction in respect of the other offences taken into account;

(b) the sentence that may be imposed on you by the court for each offence of which you have in fact been convicted cannot exceed the maximum that might have been imposed for it if there had been no taking into account of other offences listed on the back.

(4) No further proceedings may be taken against you in respect of any other offences taken into account at your request unless your conviction for the offence(s) above is quashed or set aside.

(5) If any proceedings are taken against you in respect of any offence that you have asked to have taken into account your admission of that offence cannot be used as evidence against you in those proceedings.

Signature of (*member of police force*) or (*Associate Crown Prosecutor*) or (*Crown Prosecutor*) or (*Director of Public Prosecutions*)

Date

Signature of accused acknowledging receipt of a copy of this document

Date

PART B

CERTIFICATE

In sentencing for the offence(s) of

1

2

3

this day the court has taken into account the following offences alleged against and admitted by the accused, that is to say the offences numbered on the back of this form.

Dated

Signature of (*Judge*)

or

(*Magistrate*)

PART C

Number	*Place where offence committed*	*Date of offence*	*Description of offence (with particulars)*
1			
2			
3			
4			
etc.			

Sch. 3 amended by No. 81/1991 s. 10(Sch. item 3.1), repealed by No. 48/1997 s. 34.

*   *   *   *   *

Sch. 4 repealed by No. 48/1997 s. 34.

*   *   *   *   *

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 19 March 1991

Legislative Council: 30 May 1991

The long title for the Bill for this Act was "A Bill to revise and restate the sentencing powers of courts, to provide sentencing principles to be applied by courts in sentencing offenders, to repeal the **Penalties and Sentences Act 1985**, to vary the penalties that may be imposed in respect of offences under the **Crimes Act 1958**, to make consequential amendments to various Acts and for other purposes.".

The **Sentencing Act 1991** was assented to on 25 June 1991 and came into operation on 22 April 1992: Government Gazette 15 April 1992 page 898.

2. Table of Amendments

This Version incorporates amendments made to the **Sentencing Act 1991** by Acts and subordinate instruments.

Crimes (Sexual Offences) Act 1991, No. 8/1991 (as amended by No. 49/1991)

Assent Date:	16.4.91
Commencement Date:	S. 20(3) on 5.8.91: Government Gazette 24.7.91 p. 2026
Current State:	This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Rape) Act 1991, No. 81/1991

Assent Date:	3.12.91
Commencement Date:	Ss 7, 8 on 16.4.91: s. 2(2); ss 1–4, 6, 9, 10 on 1.1.92: Government Gazette 18.12.91 p. 3486; s. 5 on 1.2.92: Government Gazette 22.1.92 p. 114
Current State:	All of Act in operation

Crimes (Confiscation of Profits) (Amendment) Act 1991, No. 90/1991

Assent Date:	10.12.91
Commencement Date:	All of Act (*except* ss 26, 37) on 1.9.92; ss 26, 37 on 6.12.92: Government Gazette 12.8.92 p. 2179
Current State:	All of Act in operation

Sentencing (Amendment) Act 1993, No. 41/1993

Assent Date:	1.6.93
Commencement Date:	Ss 1, 2 on 1.6.93: s. 2(1); rest of Act (*except* ss 13, 15) on 15.8.93; ss 13, 15 on 1.11.93: Government Gazette 12.8.93 p. 2244
Current State:	All of Act in operation

Health and Community Services (General Amendment) Act 1993, No. 42/1993

Assent Date:	1.6.93
Commencement Date:	S. 60 on 21.8.94: Government Gazette 18.8.94 p. 2240
Current State:	This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Criminal Trials) Act 1993, No. 60/1993

Assent Date:	8.6.93
Commencement Date:	Ss 1–3 on 8.6.93: s. 2(1); s. 27 on 21.6.93: Special Gazette (No. 40) 17.6.93 p. 1; rest of Act on 1.7.93: Government Gazette 1.7.93 p. 1735
Current State:	All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date:	17.5.94
Commencement Date:	Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State:	All of Act in operation

Sentencing (Victim Impact Statement) Act 1994, No. 24/1994
Assent Date: 17.5.94
Commencement Date: Ss 1–3 on 17.5.94: s. 2(1); ss 4–9 on 31.5.94: Government Gazette 26.5.94 p. 1265
Current State: All of Act in operation

Public Prosecutions Act 1994, No. 43/1994
Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3) on 7.6.94: s. 2(1); rest of Act on 1.7.94: s. 2(3)
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994
Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Public Prosecutions (Amendment) Act 1995, No. 36/1995
Assent Date: 6.6.95
Commencement Date: 6.6.95
Current State: All of Act in operation

Mental Health (Amendment) Act 1995, No. 98/1995
Assent Date: 5.12.95
Commencement Date: Ss 1, 2 on 5.12.95: s. 2(1); s. 60 on 26.5.96: Government Gazette 9.5.96 p. 1099; rest of Act on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State: All of Act in operation

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996
Assent Date: 2.7.96
Commencement Date: Pt 9 (ss 19–21) on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Corrections (Amendment) Act 1996, No. 45/1996
Assent Date: 26.11.96
Commencement Date: S. 18(Sch. 2 items 11.1–11.15) on 6.2.97: Government Gazette 6.2.97 p. 257
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Victims of Crime Assistance Act 1996, No. 81/1996
Assent Date: 17.12.96
Commencement Date: Ss 74, 75 on 1.7.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Police and Corrections (Amendment) Act 1997, No. 26/1997
Assent Date: 20.5.97
Commencement Date: S. 54 on 22.5.97: Government Gazette 22.5.97 p. 1131
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing and Other Acts (Amendment) Act 1997, No. 48/1997
Assent Date: 11.6.97
Commencement Date: Ss 3, 4(b)–(e), 5–7, 8(2)(b)(c), 10, 11, 13(1), 14, 16–18, 19(1), 20, 22, 25, 27–34 on 1.9.97: s. 2(2); ss 9, 13(2)–(4), 15, 19(2)(3), 21, 26 on 20.11.97: Government Gazette 20.11.97 p. 3169; ss 4(a), 8(1)(2)(a), 12, 23, 24 on 15.12.97: Government Gazette 11.12.97 p. 3365
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Amendment) Act 1997, No. 69/1997
Assent Date: 18.11.97
Commencement Date: Ss 17, 19, 21 on 1.9.97: s. 2(2); ss 4–6, 9–16, 18, 20 on 18.11.97: s. 2(1); ss 7, 8 on 11.12.97: Government Gazette 11.12.97 p. 3365
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Confiscation Act 1997, No. 108/1997
Assent Date: 23.12.97
Commencement Date: Ss 148, 149, 156 on 1.7.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998
Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Road Safety (Amendment) Act 1998, No. 57/1998
Assent Date: 13.10.98
Commencement Date: Ss 26, 27 on 1.5.99: Government Gazette 18.3.99 p. 665
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Magistrates' Court (Amendment) Act 1999, No. 10/1999
Assent Date: 11.5.99
Commencement Date: Ss 30, 31(4) on 11.5.99: s. 2(1); ss 18(1)–(3), 19 on 1.7.99: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Amendment) Act 1999, No. 19/1999
Assent Date: 18.5.99
Commencement Date: S. 16 on 18.5.99: s. 2(1); ss 4–15 on 1.1.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Dental Practice Act 1999, No. 26/1999 (as amended by No. 27/2000)
Assent Date: 1.6.99
Commencement Date: S. 107(Sch. item 8) on 1.7.00: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Criminal Trials) Act 1999, No. 35/1999
Assent Date: 8.6.99
Commencement Date: S. 37 on 1.9.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Courts and Tribunals Legislation (Amendment) Act 2000, No. 1/2000
Assent Date: 28.3.00
Commencement Date: Ss 8, 9 on 29.3.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Psychologists Registration Act 2000, No. 41/2000
Assent Date: 6.6.00
Commencement Date: S. 102(Sch. item 6) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000
Assent Date: 12.9.00
Commencement Date: Ss 21–24 on 1.1.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Amendment) Act 2000, No. 67/2000
Assent Date: 21.11.00
Commencement Date: 22.11.00 s. 2
Current State: All of Act in operation

Magistrates' Court (Infringements) Act 2000, No. 99/2000
Assent Date: 12.12.00
Commencement Date: Ss 15, 16 on 1.7.01: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Corrections (Custody) Act 2001, No. 45/2001
Assent Date: 27.6.01
Commencement Date: S. 45 on 1.3.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Drugs, Poisons and Controlled Substances (Amendment) Act 2001, No. 61/2001
Assent Date: 23.10.01
Commencement Date: S. 14 on 1.1.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Emergency Service Costs) Act 2001, No. 80/2001
Assent Date: 4.12.01
Commencement Date: 5.12.01: s. 2
Current State: All of Act in operation

Road Safety (Alcohol Interlocks) Act 2002, No. 1/2002
Assent Date: 26.3.02
Commencement Date: Ss 11–14 on 13.5.02: Government Gazette 2.5.02 p. 789
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Amendment) Act 2002, No. 2/2002
Assent Date: 26.3.02
Commencement Date: Ss 4–7 on 2.5.02: Government Gazette 2.5.02 p. 789
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Criminal Justice Legislation (Miscellaneous Amendments) Act 2002, No. 35/2002
Assent Date: 18.6.02
Commencement Date: S. 28(Sch. item 5.1) on 2.5.02: s. 2(2); s. 28(Sch. item 5.2) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Property Damage and Computer Offences) Act 2003, No. 10/2003
Assent Date: 6.5.03
Commencement Date: Ss 13, 14 on 7.5.03: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Amendment) Act 2003, No. 13/2003
Assent Date: 6.5.03
Commencement Date: Ss 4–6 on 1.7.04: s. 2(3)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Corrections and Sentencing Acts (Home Detention) Act 2003, No. 53/2003
Assent Date: 16.6.03
Commencement Date: Ss 3–8 on 1.1.04: s. 2(5)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Confiscation (Amendment) Act 2003, No. 63/2003
Assent Date: 30.9.03
Commencement Date: S. 50 on 1.12.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Monetary Units Act 2004, No. 10/2004
Assent Date: 11.5.04
Commencement Date: Ss 13, 15(Sch. 1 item 27) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Justice Legislation (Sexual Offences and Bail) Act 2004, No. 20/2004
Assent Date: 18.5.04
Commencement Date: S. 9 on 19.5.04: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Transport Legislation (Miscellaneous Amendments) Act 2004, No. 49/2004
Assent Date: 16.6.04
Commencement Date: Ss 43–45 on 17.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Dangerous Driving) Act 2004, No. 59/2004
Assent Date: 12.10.04
Commencement Date: S. 9 on 13.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Superannuation Orders) Act 2004, No. 65/2004
Assent Date: 12.10.04
Commencement Date: S. 3 on 13.10.04: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Children and Young Persons (Age Jurisdiction) Act 2004, No. 72/2004
Assent Date: 9.11.04
Commencement Date: Ss 38–40 on 1.7.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Major Crime Legislation (Seizure of Assets) Act 2004, No. 87/2004
Assent Date: 23.11.04
Commencement Date: S. 24 on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Public Administration Act 2004, No. 108/2004
Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 181) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Transport Legislation (Amendment) Act 2004, No. 110/2004
Assent Date: 21.12.04
Commencement Date: S. 45 on 22.12.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Serious Sex Offenders Monitoring Act 2005, No. 1/2005
Assent Date: 1.3.05
Commencement Date: S. 48 on 26.5.05: Government Gazette 26.5.05 p. 1069
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Statute Law Revision Act 2005, No. 10/2005
Assent Date: 27.4.05
Commencement Date: S. 4(Sch. 2 item 2) on 28.4.05: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sentencing (Further Amendment) Act 2005, No. 15/2005
Assent Date: 10.5.05
Commencement Date: Ss 3–6 on 11.5.05: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005
Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 97) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Magistrates' Court (Judicial Registrars and Court Rules) Act 2005, No. 19/2005
Assent Date: 24.5.05
Commencement Date: S. 11(2) on 25.5.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Parliamentary Administration Act 2005, No. 20/2005
Assent Date: 24.5.05
Commencement Date: S. 52(3) on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Courts Legislation (Miscellaneous Amendments) Act 2005, No. 30/2005
Assent Date: 21.6.05
Commencement Date: S. 8 on 22.6.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Sex Offenders Registration (Amendment) Act 2005, No. 34/2005
Assent Date: 21.6.05
Commencement Date: S. 27 on 1.8.05: Government Gazette 28.7.05 p. 1642
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Victoria State Emergency Service Act 2005, No. 51/2005
Assent Date: 24.8.05
Commencement Date: S. 58(7)(8) on 1.11.05: Government Gazette 20.10.05 p. 2308
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Crimes (Homicide) Act 2005, No. 77/2005

Assent Date: 22.11.05
Commencement Date: S. 8(4) on 23.11.05: s. 2
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date: 29.11.05
Commencement Date: S. 15 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Sentencing Act 1991**

3. Explanatory Details

[1] S. 5(2AA):

Section 5 of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 inserted two new guidelines into section 5 of the **Sentencing Act 1991**.

Section 5(2AA)(a) is declaratory of the common law position that the court must not have regard in sentencing an offender to any possibility or likelihood that the length of time actually spent in custody by the offender will be affected by executive action of any kind. Such executive action would include any action which the Adult Parole Board might take in respect of a sentence.

Section 5(2AA)(b) directs the court, when considering sentencing an offender, not to have regard to any sentencing practices which arose out of the application of section 10 of the **Sentencing Act 1991**.

Section 10(1) was in the following terms:

> "When sentencing an offender to a term of imprisonment a court must consider whether the sentence it proposes would result in the offender spending more time in custody, only because of the abolition of remission entitlements by section 3 (1) of the **Corrections (Remissions) Act 1991**, than he or she would have spent had he or she been sentenced before the commencement of that section for a similar offence in similar circumstances."

If section 10(1) applied, section 10(2) required the court to reduce the sentence it would otherwise have passed by one third. Section 10 of the **Sentencing Act 1991** sunsetted on 22 April 1997. The sunset clause was in the following terms:

> "It is intended that the expiry of this section will not of itself have any effect on sentencing practices and that after the expiry a court will, as required by section 5(2)(b), have regard to sentencing practices current immediately before then as if this section had not expired."

In *R v Boucher* [1995] 1 VR 110, section 10 was interpreted to apply only to offences where the maximum penalty had remained unaltered by the **Sentencing Act 1991**. The court took the view that Parliament had already taken into account the abolition of remissions when formulating the new penalties. This led to inconsistent and anomalous sentencing practices, which had the effect of distorting the scale of effective maximum penalties.

Section 5(2AA)(b) requires the court to disregard any sentencing practices which developed from the application of section 10 of the **Sentencing Act 1991**. This is intended to include the principles expressed in *Boucher's* case.

[2] S. 5(2E): Section 29 of the **Constitution (Court of Appeal) Act 1994**, No. 109/1994 reads as follows:

29. Proceedings before Full Court

(1) The **Constitution Act 1975**, the **Supreme Court Act 1986** and the **Crimes Act 1958** and any other Act amended by this Act as respectively in force immediately before the commencement of this section continue to apply, despite the enactment of this Act, to a proceeding the hearing of which by the Full Court of the Supreme Court commenced before the commencement of this section.

(2) If the Court of Appeal so orders, anything required to be done by the Supreme Court in relation to or as a consequence of a proceeding after the Full Court has delivered judgment in that proceeding, may be done by the Court of Appeal.

[3] S. 9:

Section 9 of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 inserted a new section 9 into the **Sentencing Act 1991** to provide the Magistrates' Court with the power to impose an aggregate sentence of imprisonment in certain circumstances. The power to impose an aggregate sentence is founded on a proper joinder of the charges before the court. (See for example the **Crimes Act 1958**, Rule 2, Sixth Schedule). A similar power is contained in section 51 of the **Sentencing Act 1991** in respect of fines. The power is not limited to sentencing for summary offences, but applies to any proceedings in the Magistrates' Court, including indictable offences being tried summarily.

[4] S. 10 (*expired*): S. 10 was in operation from 22 April 1992 until 22 April 1997. Section 10, as in force before 22 April 1997, reads as follows:

10. Court must take abolition of remissions into account

(1) When sentencing an offender to a term of imprisonment a court must consider whether the sentence it proposes would result in the offender spending more time in custody, only because of the abolition of remission entitlements by section 3(1) of the **Corrections (Remissions) Act 1991**, than he or she would have spent had he or she been sentenced before the commencement of that section for a similar offence in similar circumstances.

(2) If the court considers that the sentence it proposes would have the result referred to in sub-section (1) it must reduce the proposed sentence in accordance with sub-section (3).

(3) In applying this section a court—

(a) must assume that an offender sentenced before the commencement of section 3(1) of the **Corrections (Remissions) Act 1991** would have been entitled to maximum remission entitlements; and

(b) must not reduce a sentence by more than is necessary to ensure that the actual time spent in custody by an offender sentenced after that commencement is not greater, only because of the abolition of remissions, that it would have been if the offender had been sentenced before that commencement for a similar offence in similar circumstances.

(4) For the purposes of this section—

(a) **"remission entitlements"** are entitlements to remission under section 60 of the **Corrections Act 1986** or regulation 97 of the Corrections Regulations 1988; and

(b) **"term of imprisonment"** includes—

(i) a term that is suspended wholly or partly; and

(ii) any non-parole period fixed in respect of the term.

S. 10(4A) inserted by No. 41/1993 s. 6.

(4A) This section does not apply to the Supreme Court or the County Court when sentencing a serious sexual offender for a sexual offence or a violent offence or a serious violent offender for a serious violent offence.

(5) This section expires on the fifth anniversary of the day on which it comes into operation.

(6) It is intended that the expiry of this section will not of itself have any effect on sentencing practices and that after the expiry a court will, as required by section 5(2)(b), have regard to sentencing practices current immediately before then as if this section had not expired.

[5] S. 16:

Sections 16 and 17 of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 concerned Youth Training Centre orders and Youth Residential Centre orders. These sections amended various sections of the **Sentencing Act 1991** to insert consistent terminology, for example, the use of "young offender" throughout the Act. The amendments also clarified that, in sentencing a young offender, the Supreme and County courts may impose up to a maximum of 3 years detention. Section 32 has also been amended to enable the court to order detention in a Youth Residential Centre in respect of young offenders who at the time of being sentenced are under 15 years of age.

The amendments clarified that the provisions of the **Sentencing Act 1991** are paramount when courts other than the Children's Court are sentencing a young offender, who is defined in section 3 as being an offender who at the time of being sentenced is under the age of 21 years. For an example of the difficulties which the courts have had in interpreting the interrelationship of the provisions of the **Children and Young Persons Act 1989** and the **Sentencing Act 1991** when sentencing children, see the case of *R v Hill* [1996] 2 VR 496.

[6] S. 16(1A)(d):

Section 10 of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 amended section 16 of the Principal Act to deal with the sentencing of offenders who commit offences while on parole or bail.

New section 16(3B) of the **Sentencing Act 1991** requires a sentence of imprisonment imposed on an offender for an offence committed while on parole to be served cumulatively on any period of imprisonment which that offender may be required to serve in custody on cancellation of the parole order, unless otherwise directed by the court because of the existence of exceptional circumstances.

In *R v Kuru* (1995) 78 A Crim R 447 the Victorian Court of Appeal held that an offender is not to be regarded as actually serving a sentence when released on parole. Accordingly, there was no sentence in existence upon which another sentence could be ordered to be served cumulatively. Under the new sub-section, the court will be required to order cumulation of the sentence unless there are exceptional circumstances.

[7] S. 16(1A)(e): See note 6.

[8] S. 16(3B): See note 6.

[9] S. 16(3C): See note 6.

[10] S. 17: See note 5.

[11] S. 18:

Section 11 of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 amended section 18 of the **Sentencing Act 1991** by extending the circumstances in which a declaration pursuant to section 18(1) may be made. Section 18 of the **Sentencing Act 1991** provides a mechanism for recognising the period of time an offender has been held in custody prior to sentence, as well as for treating such terms as a period of imprisonment already served under the sentence. The aim of the amendments was to enable section 18 declarations to be made in as many cases as possible. It is no longer necessary for the time held in custody to be exclusively referable to the offence for which the offender is being sentenced before a declaration pursuant to section 18(1) of the Act is made. See, for example, the case of *R v Renzella,* unreported, Court of Appeal (Vic.) 6/9/1996.

Section 11(2)(a) clarified that such declarations cannot be made in respect of intensive correction orders.

Section 11(2)(b) inserted a new sub-section (d) into section 18 to clarify that the offender should not receive a benefit for pre-sentence detention more than once for any specific period of pre-sentence custody.

Section 11(3) amended section 18(4) of the Act to remove the inconsistent requirement referred to in *R v McGrath,* unreported, Court of Criminal Appeal (Vic.) 15/9/1992**.** When a court imposes a sentence of imprisonment, in circumstances in which section 18(1) of the Act applies, it must make a declaration concerning whether any period of time is to be reckoned as a period of imprisonment served as part of the sentence imposed. When a sentence of imprisonment is imposed it is not normally reduced by the amount of pre-sentence imprisonment. Therefore any period of pre-sentence imprisonment which should be reckoned as part of that sentence which has been served, should be declared as served.

Corresponding amendments have been made to the provisions governing sentences of detention imposed on young offenders in section 35 of the **Sentencing Act 1991**.

[12] S. 18O: See note 2.

[13] S. 32: See note 5.

[14] S. 33: See note 5.

[15] S. 34: See note 5.

[16] S. 35: See note 5.

[17] S. 35: See note 11.

[18] S. 96: See note 5.

[19] S. 109: Section 36(2) prevents a court from making a community-based order in addition to imposing a sentence of imprisonment of more than 3 months.

[20] S. 114: The following Table sets out the alterations in the maximum penalties for offences under the **Crimes Act 1958**, No. 6231/1958.
The alterations were made by section 60 (Schedule 1) of the **Sentencing and Other Acts (Amendment) Act 1997**, No. 48/1997 and came into operation on 1 September 1997:

TABLE INDICATING THE PREVIOUSLY PRESCRIBED MAXIMUM PENALTY FOR AN OFFENCE AND THE NEW PRESCRIBED MAXIMUM PENALTY FOR AN OFFENCE

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 3 Murder (common law)	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 3A Murder (Crimes Act)	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 5 Manslaughter	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 6 Infanticide	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 6B(1A) Suicide pact manslaughter	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 6B(2) Inciting, aids or abets suicide	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 6B(2) Being party to a suicide pact	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 9A(1) Treason	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 9A(2) Knowingly receiving or assisting a person guilty of treason	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 10 Child destruction	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 16 Causing serious injury intentionally	Level 4 imprisonment (12½ years)	Level 3 imprisonment (20 years)
Section 17 Causing serious injury recklessly	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 18 Causing injury intentionally Section 18 Causing injury recklessly	Level 6 imprisonment (7½ years) Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years) Level 6 imprisonment (5 years)
Section 19(1) Administering a substance to another	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 19A Intentionally causing a very serious disease	25 years imprisonment	Level 2 imprisonment (25 years)
Section 20 Threats to kill	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 21 Threats to inflict serious injury	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 21A Stalking	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 22 Conduct endangering life	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 23 Conduct endangering persons	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 24 Negligently causing serious injury	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 25 Setting traps to kill	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 26 Setting traps to cause serious injury	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 27 Extortion with threat to kill	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Section 28 Extortion with threat to destroy property	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 29 Using firearm to resist arrest	Level 5 imprisonment or Level 5 fine (10 years or 1200 Penalty Units)	Level 5 imprisonment (10 years) or Level 5 fine (1200 penalty units)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 30 Threatening injury to prevent arrest	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 31 Assaults	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 32 Performing female genital mutilation	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 33 Taking a person from the State to perform female genital mutilation	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years
Section 38 Rape	25 years imprisonment	Level 2 imprisonment (25 years)
Section 39 Indecent assault	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 40 Assault with intent to rape	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 44 Incest		
Sub-section (1) with a child etc.	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Sub-section (2) with an under 18 child etc. of de facto spouse	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Sub-section (3) with father or mother etc. where offender is 18 or older	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Sub-section (4) with sister or brother etc.	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 45 Sexual penetration of child under 10	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 46 Sexual penetration of child 10–16		
Sub-section (1)(a) under care, supervision or authority	Level 3 imprisonment (15 years)	Level 4 imprisonment (15 years)
Sub-section (1)(b) any other case	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 47 Indecent act with child under 16	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 47A Sexual relationship with child under 16	Maximum penalty for the relevant offence	Level 2 imprisonment (25 years)
Section 48 Sexual penetration of a 16 or 17 year old child (under care, supervision or authority)	Level 8 imprisonment (3 years)	Level 5 imprisonment (10 years)
Section 49 Indecent act with 16 year old child	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 49A Facilitating sexual offences against children	Level 2 imprisonment (20 years)	Level 3 imprisonment (20 years)
Section 51		
Sub-section (1) Sexual penetration of person with impaired mental functioning by medical or therapeutic service provider	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Sub-section (2) Indecent act with person with impaired mental functioning by medical or therapeutic service provider	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 52 Sub-section (1) Sexual penetration by worker of resident in residential facilities	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Sub-section (2) Indecent act by worker of resident in residential facilities	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 53 Administering drug for sexual penetration	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 54 Occupier, etc. inducing or knowingly allowing unlawful sexual penetration		
(a) where child is aged under 13	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
(b) where child is aged between 13–17	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 55 Abduction or detention for sexual penetration	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 56 Abduction of child under 16 for sexual penetration	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 57 Sub-section (1) Procuring sexual penetration by threats or intimidation	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Sub-section (2) Procuring sexual penetration by fraud	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 58 Procuring sexual penetration of child under 16	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 59 Bestiality	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 60 Soliciting acts of sexual penetration or indecent acts	Level 10 imprisonment or Level 10 fine (1 year or 120 Penalty Units)	Level 8 imprisonment (1 year) or Level 11 fine (60 Penalty Units)
Section 60A Sexual offence while armed with an offensive weapon	Level 8 imprisonment (3 years)	Level 7 imprisonment (2 years)
60B Loitering near schools etc.	Level 10 imprisonment or Level 11 fine (1 year or 60 Penalty Units)	Level 8 imprisonment (1 year)
Section 63 Sub-section(1) Child stealing Sub-section (2) Takes, decoys or entices away a child	 Level 6 imprisonment (7½ years) Level 7 imprisonment (5 years)	 Level 6 imprisonment (5 years) Level 6 imprisonment (5 years)
Section 63A Kidnapping	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Section 64 Bigamy	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 65 Abortion (attempt to procure)	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 66 Supplying or procuring anything to be employed in abortion	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 67 Concealing birth of a child	Level 11 imprisonment (6 months)	6 months
Section 68 Production of child pornography	Level 9 imprisonment (2 years)	Level 5 imprisonment (10 years)
Section 69 Procuring of minor for child pornography	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 70 Possession of child pornography	Level 10 imprisonment (1 year)	Level 7 imprisonment (2 years)
Section 70A Piracy with violence	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 70B Piratical acts	Level 1 imprisonment (Life)	Level 3 imprisonment (20 years)
Section 70C Trading etc. with pirates	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 70D Being found on board piratical vessel and unable to prove non-complicity	Level 11 imprisonment (6 months)	Level 6 imprisonment (5 years)
Section 74 Theft	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 75 Robbery	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 75A Armed robbery	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Section 76 Burglary	Level 4 imprisonment (12½ years)	Level 5 imprisonment (10 years)
Section 77 Aggravated burglary	Level 3 imprisonment (15 years)	Level 2 imprisonment (25 years)
Section 78 Removal of articles from places open to the public	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 80(1) Unlawfully taking control of an aircraft Sub-section (2) where force or violence etc. is used	Level 4 imprisonment (12½ years) Level 3 imprisonment (15 years)	Level 4 imprisonment (15 years) Level 3 imprisonment (20 years)
Section 81 Obtaining property by deception	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 82 Obtaining financial advantage by deception	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 83 False accounting	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 83A Falsification of documents		
Sub-section (1)–(5B)	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Sub-section (5C)	Level 9 imprisonment (2 years)	Level 6 imprisonment (5 years)
Section 85 False statements by company directors etc.	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 86 Suppression etc. of documents	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 87 Blackmail	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 88 Handling stolen goods	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 89 Advertising rewards for return of goods stolen or lost	Level 13 fine (5 Penalty Units)	Level 13 fine (5 Penalty Units)
Section 91 Going equipped for stealing etc.	Level 8 imprisonment (3 years)	Level 7 imprisonment (2 years)
Section 176 Receipt or solicitation of secret commission by an agent		
• corporation	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
• person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 178 Giving or receiving false or misleading receipt or account		
• corporation	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
• person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 179 Gift or receipt of secret commission in return for advice given		
• corporation	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
• person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 180 Secret commission to trustee in return for substituted appointment		
• corporation	Level 5 fine (1200 Penalty Units)	**corporation**; level 5 fine (1200 Penalty Units)
• other person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	**person**; Level 5 imprisonment (10 years) and/or level 5 fine (1200 Penalty Units)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 181 Aiding and abetting offences within or outside Victoria		
• corporation	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
• other person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 182 Liability of directors etc. acting without authority		
• corporation	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
• other person	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or level 5 fine (1200 Penalty Units)
Section 191(1) Fraudulently inducing persons to invest money	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 197 Destroying or damaging property		
Sub-section (1) damaging property	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Sub-section (2) damaging property intending to endanger another's life	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Sub-section (3) damaging property for gain	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Sub-section (7) Arson	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 197A Arson causing death	not applicable	Level 2 imprisonment (25 years)
Section 198 Threats to destroy or damage property	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 199 Possessing anything with intent to destroy or damage property	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 206 Rioters demolishing buildings		
Sub-section (1)	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Sub-section (2)	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 207 Forcible entry	Level 10 imprisonment and/or Level 10 fine (1 year and/or 120 Penalty Units)	Level 8 imprisonment (1 year)
Section 225 Conveying water into a mine	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 228 Removing etc. piles of sea banks	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 232 Placing things on railways to obstruct or overturn engine etc.	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 233 Obstructing engine, carriage etc. on railway	Level 9 imprisonment (2 years)	Level 7 imprisonment 2 years
Section 244 Altering signals or exhibiting false ones	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 245 Removing buoy etc	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 246A Endangering safe operation of an aircraft	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 246B Setting fire etc. to aircraft	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Section 246C Endangering safety of aircraft	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 246D (1) Dangerous goods on aircraft	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 246E Threats to safety of aircraft	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 247 False statements	Level 9 imprisonment (2 years)	Level 6 imprisonment (5 years)
Section 248 sub-sections (1)–(3) Contamination of goods	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years)
Section 314 Perjury	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 316(1) Unlawful oaths to commit treason, murder etc.	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
316(2) Unlawful oaths for other offences	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 317 Offences connected with explosive substances		
Sub-section (2)	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Sub-section (3)	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Sub-section (4)	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 317A Bomb hoaxes	Level 7 imprisonment and/or Level 7 fine (5 years and/or 600 Penalty Units)	Level 6 imprisonment (5 years)
Section 318 Culpable driving causing death	Level 3 imprisonment and/or Level 3 fine (15 years and/or 1800 Penalty Units)	Level 3 imprisonment (20 years)
321C Penalties for conspiracy;		
Sub-section (1)(a) to commit an offence with a prescribed maximum	Liable to the maximum prescribed for the substantive offence	Liable to the maximum prescribed for the substantive offence
Sub-section (1)(b) to commit an offence where the penalty is imprisonment for a term the maximum length of which is not prescribed	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years) (for common law offences)
Sub-section (1)(ba) to commit murder or treason or piratical acts	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Sub-section (1)(d) to commit a summary offence	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Sub-section (2) to commit an offence against a law in force only in a place outside Victoria—		
(a) punishable by a term of imprisonment	Level 7 imprisonment (5 years)	Liable to the maximum prescribed as if the conspiracy was to commit an offence against the laws of Victoria
(b) in any other case	Level 7 fine (600 Penalty Units)	Level 7 fine (600 Penalty Units)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 321I Penalties for incitement		
Sub-section (1)(a) to commit an offence with a prescribed maximum	Liable to the maximum prescribed for the offence	Liable to the maximum prescribed for the substantive offence
Sub-section (1)(b) to commit an offence where the penalty is imprisonment for a term the maximum length of which is not prescribed	Level 7 imprisonment (5 years)	Level 4 imprisonment (15 years)
Sub-section (1)(ba) to commit murder or treason or piratical acts	Level 1 imprisonment (Life)	Life
Sub-section (1)(d) to commit a summary offence	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Sub-section (2) to commit an offence against a law in force only in a place outside Victoria—		
(a) punishable by a term of imprisonment	Level 7 imprisonment (5 years)	Liable to the maximum prescribed as if the incitement was to commit an offence against the laws of Victoria
(b) in any other case	Level 7 fine (600 Penalty Units)	Level 7 fine (600 Penalty Units)
Section 321P Penalties for attempt		See item 94 of Schedule 1

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 325 Sub-section (4)(a) where the principal offence is punishable by Level 1 imprisonment	Level 2 imprisonment (20 years)	Level 3 imprisonment (20 years)
Sub-section (4)(b) in any other case	imprisonment for a term not more than 60 months nor more than ½ the length of the longest term which may be imposed on first conviction for the principal offence	imprisonment for a term not more than 60 months nor more than ½ the length of the longest term which may be imposed on first conviction for the principal offence
Section 326 Concealing offences for benefit	Level 10 imprisonment (1 year)	Level 8 imprisonment (1 year)
Section 343 Obstruction	Level 11 fine	Level 11 fine
Section 357(3) Failing or refusing to comply with a warrant to discharge a person from imprisonment	5 Penalty Units	5 Penalty Units
Section 415(1A) Issue of warrant when witness does not appear	Level 13 fine (5 Penalty Units)	Level 13 fine (5 Penalty Units)
443A Failing to comply with an undertaking to the Director of Public Prosecutions	Level 12 fine (10 penalty units)	Level 12 fine (10 penalty units)
456AA Requirement to give name and address	Level 13 fine (5 penalty units)	Level 13 fine (5 penalty units)
456E Offence by an employee or member of a law enforcement agency	Level 10 fine (1200 penalty units)	Level 10 fine (1200 penalty units)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
464O Destruction of records	Level 12 fine (10 penalty units)	Level 12 fine (10 penalty units)
464ZG Destruction of identifying information	Level 10 imprisonment or Level 10 fine	Level 10 imprisonment or Level 10 fine
Section 479A Rescuing of a prisoner from lawful custody	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 479B Aiding a prisoner in escaping	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 479C Escape and related offences	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)

Maximum penalties introduced for common law offences for which no statutory maximum penalty had previously been fixed

OFFENCE	PRESCRIBED MAXIMUM PENALTY
Affray	Level 6 imprisonment (5 years)
Attempting to pervert the course of justice	Level 2 imprisonment (25 years)
Breach of Prison	Level 6 imprisonment (5 years)
Bribery of Public official	Level 5 imprisonment (10 years)
Common assault	Level 6 imprisonment (5 years)
Conspiracy to cheat and defraud	Level 4 imprisonment (15 years)
Conspiracy to defraud	Level 4 imprisonment (15 years)
Criminal defamation	Level 5 imprisonment (10 years)
Embracery	Level 4 imprisonment (15 years)
False imprisonment	Level 5 imprisonment (10 years)
Kidnapping	Level 2 imprisonment (25 years)
Misconduct in public office	Level 5 imprisonment (10 years)
Perverting the course of justice	Level 2 imprisonment (25 years)
Public Nuisance	Level 6 imprisonment (5 years)
Riot	Level 5 imprisonment (10 years)
Rout	Level 6 imprisonment (5 years)
Unlawful assembly	Level 6 imprisonment (5 years)

Amendments to the maximum penalties of other Acts

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Crimes (Confiscation of Profits) Act 1986		
Section 41Q Money laundering	10 years imprisonment	Level 3 imprisonment (20 years)
Drugs, Poisons and Controlled Substances Act 1981		
Section 71 Trafficking in a drug of dependence—		
(a) commercial quantity	25 years imprisonment and not more than 2500 penalty units	Level 2 imprisonment (25 years) and not more than 2500 penalty units
(b) any other case	15 years imprisonment and/or 1000 penalty units	Level 4 imprisonment (15 years) and/or 1000 penalty units
Section 72 Cultivation of a narcotic plant		
(a) not for any purpose related to trafficking)	1 year imprisonment and/or 20 penalty units	Level 8 imprisonment (1 year) and/or 20 penalty units
(b) any other case	15 years imprisonment and/or 1000 penalty units	Level 4 imprisonment (15 years) and/or 1000 penalty units
Section 73 Possession of a drug of dependence		
(a) small quantity	5 penalty units	5 penalty units
(b) not for a purpose related to trafficking	1 year imprisonment and/or 30 penalty units	Level 8 imprisonment (1 year) and/or 30 penalty units
(c) any other case	5 years imprisonment and/or 400 penalty units	Level 6 imprisonment (5 years) and/or 400 penalty units

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 78 Conspiring	same penalty and punishment as if the offender committed the offence	same penalty and punishment as if the offender committed the offence
Legal Practice Act 1996		
Section 188 Solicitor defalcation	10 years imprisonment	Level 4 imprisonment (15 years)
Section 263 Improperly destroying property	3 years imprisonment	Level 6 imprisonment (5 years)
Prisoners (Interstate Transfer) Act 1983		
Section 33(1) Escape from custody	7 years imprisonment	Level 6 imprisonment (5 years)
Prostitution Control Act 1994		
Section 5 Causing or inducing child to take part in prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 6 Obtaining payment for sexual services provided by a child	7 years imprisonment	Level 4 imprisonment (15 years)
Section 7 Agreement for provision of sexual services by a child	7 years imprisonment	Level 4 imprisonment (15 years)
Section 8 Forcing person into or to remain in prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 9 Forcing person to provide financial support out of prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 10 Living on earnings of prostitute	4 years imprisonment	Level 6 imprisonment (5 years)

OFFENCE	**PREVIOUSLY PRESCRIBED MAXIMUM PENALTY**	**NEW PRESCRIBED MAXIMUM PENALTY**
Section 11 Allowing child to take part in prostitution	4 years imprisonment	Level 5 imprisonment (10 years)
Section 22(1) and (3) Prostitution service providers to be licensed	3 years imprisonment and/or 360 penalty units	Level 6 imprisonment (5 years) and/or 360 penalty units

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