

**Authorised Version No. 128**

**Sentencing Act 1991**

**No. 49 of 1991**

Authorised Version incorporating amendments as at  
16 January 2012

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**Authorised Version No. 128**

**Sentencing Act 1991**

**No. 49 of 1991**

Authorised Version incorporating amendments as at  
16 January 2012

**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 or 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repealed by  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

(1) In this Act—

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

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

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

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

*alcohol exclusion condition* means a condition that may be attached to a community correction order under section 48J(1);

S. 3(1) def. of  
*alcohol  
exclusion  
condition*  
inserted by  
No. 65/2011  
s. 3(1).

\* \* \* \* \*

S. 3(1) def. of  
*alcoholic*  
repealed by  
No. 43/2010  
s. 48(1)(a).

*approved drug and alcohol assessment agency* means a person or body approved under section 8I by the Secretary to the Department of Health for the purposes of Division 1B of Part 3;

S. 3(1) def. of  
*approved  
drug and  
alcohol  
assessment  
agency*  
inserted by  
No. 48/1997  
s. 25(1),  
amended by  
Nos 46/2008  
s. 287(a),  
65/2011  
s. 3(2).

s. 3

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**;

S. 3(1) def. of  
*authorised person*  
inserted by  
No. 30/2010  
s. 3(a),  
substituted by  
No. 65/2011  
s. 3(3).

*authorised person* means a person appointed by  
the Secretary under section 115E;

S. 3(1) def. of  
*Chief Commissioner of Police*  
inserted by  
No. 77/2010  
s. 3(a) (as  
amended by  
No. 9/2011  
s. 3).

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

*Chief Commissioner of Police* means the Chief  
Commissioner of Police appointed under the  
**Police Regulation Act 1958**;

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**;

Sentencing Act 1991  
No. 49 of 1991  
Part 1—Preliminary

s. 3

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S. 3(1) def. of *combined custody and treatment order* inserted by No. 48/1997 s. 4(a), repealed by No. 65/2011 s. 3(14)(a).

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S. 3(1) def. of *community-based order* repealed by No. 65/2011 s. 3(14)(b).

*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**;

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S. 3(1) def. of *community service condition* repealed by No. 65/2011 s. 3(14)(c).

*contravention* in relation to a provision of an order or a sentence includes a failure to comply with that provision;

S. 3(1) def. of *contravention* inserted by No. 30/2010 s. 3(a).

*contravention summons* means a summons issued under section 83AK(1)(a);

S. 3(1) def. of *contravention summons* inserted by No. 30/2010 s. 3(a), substituted by No. 65/2011 s. 3(4).

S. 3(1) def. of  
*curfew condition*  
inserted by  
No. 65/2011  
s. 3(1).

*curfew condition* means a condition that may be attached to a community correction order under section 48I(1);

S. 3(1) def. of  
*depositions*  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 110.1).

*depositions* has the same meaning as in the **Criminal Procedure Act 2009**;

S. 3(1) def. of  
*detention*  
inserted by  
No. 48/1997  
s. 4(b),  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.1(a)).

*detention*, in relation to an order or sentence of a court, means detention in a youth justice 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 of Public Prosecutions*  
inserted by  
No. 77/2010  
s. 3(a) (as  
amended by  
No. 9/2011  
s. 3).

*Director of Public Prosecutions* means the Director of Public Prosecutions appointed under the **Constitution Act 1975**;

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

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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**;

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

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

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).

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S. 3(1) def. of *drug-dependent person* repealed by No. 43/2010 s. 48(1)(a).

*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 of addiction* inserted by No. 42/1993 s. 60.

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

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

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  
*family violence intervention order*  
inserted by  
No. 30/2010  
s. 3(a).

*family violence intervention order* means—

- (a) a family violence intervention order within the meaning of section 11 of the **Family Violence Protection Act 2008**; or
- (b) one of the following orders made under the **Crimes (Family Violence) Act 1987** as in force immediately before its repeal—
  - (i) an intervention order made on grounds referred to in section 4 or 4A of that Act, and subsequently varied or extended under section 16 or 16A of that Act;
  - (ii) an intervention order made on grounds referred to in section 4 or 4A of that Act, and subsequently varied or extended under section 16 or 16A of that Act;
  - (iii) an interim intervention order made on grounds referred to in section 8 of that Act;

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;

***fine conversion order*** means an order made under section 55(1)(d);

S. 3(1) def. of *fine conversion order* inserted by No. 65/2011 s. 3(1).

***fine default unpaid community work order*** means an order made under section 62(10)(a) or section 62A;

S. 3(1) def. of *fine default unpaid community work order* inserted by No. 65/2011 s. 3(1).

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

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S. 3(1) def. of *home detention order* inserted by No. 53/2003 s. 3, substituted by No. 30/2010 s. 3(b), repealed by No. 48/2011 s. 12.

***hospital security order*** means—

S. 3(1) def. of *hospital security order* inserted by No. 69/2005 s. 3(1)(a).

(a) an order made under section 93A; or

(b) an order made under section 16A of the **Mental Health Act 1986**;

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

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

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<p>S. 3(1) def. of <i>inspector</i> repealed by No. 43/2010 s. 48(1)(a).</p>	*	*	*	*	*
<p>S. 3(1) def. of <i>instalment order</i> amended by No. 65/2011 s. 3(5).</p>	<p><i>instalment order</i> means an order made under Division 1 of Part 3B that a fine be paid by two or more instalments and includes such an order as varied under that Division;</p>				
<p>S. 3(1) def. of <i>intensive correction management order</i> inserted by No. 77/2010 s. 3(a) (as amended by No. 9/2011 s. 3), repealed by No. 65/2011 s. 3(13)(a).</p>	*	*	*	*	*
<p>S. 3(1) def. of <i>intensive correction management order (drug and alcohol)</i> inserted by No. 77/2010 s. 3(a) (as amended by No. 9/2011 s. 3), repealed by No. 65/2011 s. 3(13)(b).</p>	*	*	*	*	*

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S. 3(1) def. of *intensive correction management order (general)* inserted by No. 77/2010 s. 3(a) (as amended by No. 9/2011 s. 3), repealed by No. 65/2011 s. 3(13)(c).

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S. 3(1) def. of *intensive correction order* repealed by No. 65/2011 s. 3(14)(d).

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

*judicial monitoring condition* means a condition that may be attached to a community correction order under section 48K(1);

S. 3(1) def. of *judicial monitoring condition* inserted by No. 65/2011 s. 3(1).

*justice plan* means a plan requested under section 80(3)(c);

S. 3(1) def. of *justice plan* amended by Nos 46/1998 s. 7(Sch. 1), 23/2006 s. 226(a), substituted by No. 65/2011 s. 3(6).

S. 3(1) def. of *justice plan condition* inserted by No. 65/2011 s. 3(1).

*justice plan condition* means a condition that may be attached to—

- (a) a community correction order; or
- (b) an order releasing an offender on adjournment with or without recording a conviction—

under section 80(1);

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 *learner permit* inserted by No. 65/2011 s. 3(1).

*learner permit* has the same meaning as in the **Road Safety Act 1986**;

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), amended by No. 65/2011 s. 3(7).

*licence restoration report* means a report from an accredited agency on an applicant for an order under section 89(2) or section 89AE(1);

*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**;

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

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

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

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

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

*non-association condition* means a condition that  
may be attached to a community correction  
order under section 48F(1);

S. 3(1) def. of  
*non-  
association  
condition*  
inserted by  
No. 65/2011  
s. 3(1).

*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;

*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);

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

\* \* \* \* \*

S. 3(1) def. of  
*personal  
development  
condition*  
repealed by  
No. 65/2011  
s. 3(14)(e).

S. 3(1) def. of *personal safety intervention order* inserted by No. 53/2010 s. 221(Sch. item 10.1(a)).

*personal safety intervention order* means—

- (a) a personal safety intervention order within the meaning of the **Personal Safety Intervention Orders Act 2010**; or
- (b) an intervention order within the meaning of the **Stalking Intervention Orders Act 2008** (as in force immediately before its repeal); or
- (c) an order made under section 4 of the **Crimes (Family Violence) Act 1987** of a kind referred to in section 21A(5) of the **Crimes Act 1958**, both as in force immediately before their repeal;

S. 3(1) def. of *place or area exclusion condition* inserted by No. 65/2011 s. 3(1).

*place or area exclusion condition* means a condition that may be attached to a community correction order under section 48H(1);

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**;

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

**Regional Manager**, in relation to—

- (a) a drug treatment order; or
- (b) a community correction order; or
- (c) a fine default unpaid community work order—

S. 3(1) def. of *Regional Manager* amended by No. 2/2002 s. 4(2), substituted by No. 65/2011 s. 3(8).

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;

**residence restriction or exclusion condition**

means a condition that may be attached to a community correction order under section 48G(1);

S. 3(1) def. of *residence restriction or exclusion condition* inserted by No. 65/2011 s. 3(1).

**residential treatment facility** has the same meaning as it has in section 3(1) of the **Disability Act 2006**;

S. 3(1) def. of *residential treatment facility* inserted by No. 23/2006 s. 226(b).

S. 3(1) def. of  
*residential  
treatment  
order*  
inserted by  
No. 23/2006  
s. 226(b),  
amended by  
No. 65/2011  
s. 3(9).

*residential treatment order* means an order made  
under section 82AA(1);

S. 3(1) def. of  
*restricted  
involuntary  
treatment  
order*  
inserted by  
No. 69/2005  
s. 3(1)(a).

*restricted involuntary treatment order* means an  
order made under section 93;

S. 3(1) def. of  
*Secretary*  
inserted by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 65/2011  
s. 3(10).

*Secretary* means the Secretary to the Department  
of Justice;

S. 3(1) def. of  
*Secretary  
to the  
Department  
of Health*  
inserted by  
No. 29/2010  
s. 71(1).

*Secretary to the Department of Health* means the  
Department Head (within the meaning of the  
**Public Administration Act 2004**) of the  
Department of Health;

S. 3(1) def. of  
*secure  
custody  
facility*  
inserted by  
No. 2/2002  
s. 4(1),  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.1(b)).

*secure custody facility* means—  
(a) a prison as defined in section 3 of the  
**Corrections Act 1986**; or  
(b) a youth justice centre; or  
(c) any other place the Minister specifies  
under subsection (2);

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

*security resident* has the same meaning as it has in section 3(1) of the **Disability Act 2006**;

S. 3(1) def. of *security resident* substituted by No. 23/2006 s. 226(c).

*sentencing court*, in relation to an order made under this Act, means the court that made the order;

S. 3(1) def. of *sentencing court* inserted by No. 65/2011 s. 3(1).

*serious offence*, for the purposes of Subdivision (1A) of Division 2 of Part 3 (indefinite sentences) and Subdivision (3) of that Division (suspended sentences of imprisonment), means—

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), 82/2006 s. 7(1), 2/2006 s. 43(1) (as amended by No. 76/2006 s. 14(1)), 7/2008 s. 7(4)(a).

- (a) murder; or
- (b) manslaughter; or
- (baa) child homicide; 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;

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- (vi) section 45 (sexual penetration of child under the age of 16);
- \* \* \* \* \*
- (viii) section 47A (persistent sexual abuse of 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
- (da) an offence that, at the time it was committed, was a serious offence; 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 any of the preceding paragraphs;

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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).

*severe substance dependence* has the same meaning as in section 5 of the **Severe Substance Dependence Treatment Act 2010**;

S. 3(1) def. of *severe substance dependence* inserted by No. 43/2010 s. 48(1)(b).

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).

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S. 3(1) def. of *significant offence* inserted by No. 77/2010 s. 3(a) (as amended by No. 9/2011 s. 3).

*significant offence* means—

- (a) an offence against section 17 of the **Crimes Act 1958**, (causing serious injury recklessly) unless heard and determined summarily;
- (b) an offence against section 77 of the **Crimes Act 1958**, (aggravated burglary) unless heard and determined summarily;
- (c) an offence against section 197 of the **Crimes Act 1958**, where the offence is one of destroying or damaging property by fire (arson) unless heard and determined summarily;
- (d) an offence against section 197A of the **Crimes Act 1958**, (arson causing death);
- (e) an offence against section 71 of the **Drugs, Poisons and Controlled Substances Act 1981**, (trafficking in a large commercial quantity of a drug of dependence);
- (f) an offence against section 71AA of the **Drugs, Poisons and Controlled Substances Act 1981**, (trafficking in a

commercial quantity of a drug of  
dependence);

\* \* \* \* \*

S. 3(1) def. of  
*stalking  
intervention  
order*  
inserted by  
No. 30/2010  
s. 3(a),  
repealed by  
No. 53/2010  
s. 221(Sch.  
item 10.1(b)).

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

***supervision condition*** means a condition that may  
be attached to a community correction order  
under section 48E(1);

S. 3(1) def. of  
*supervision  
condition*  
substituted by  
No. 65/2011  
s. 3(11).

***treatment and rehabilitation condition*** means a  
condition that may be attached to a  
community correction order under  
section 48D(1);

S. 3(1) def. of  
*treatment and  
rehabilitation  
condition*  
inserted by  
No. 65/2011  
s. 3(1).

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S. 3(1) def. of  
*treatment  
centre*  
repealed by  
No. 43/2010  
s. 48(1)(a).

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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;

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S. 3(1) def. of  
*unpaid  
community  
work  
condition*  
inserted by  
No. 77/2010  
s. 3(a) (as  
amended by  
No. 9/2011  
s. 3),  
substituted by  
No. 65/2011  
s. 3(12).

*unpaid community work condition* means a  
condition that may be attached to a  
community correction order under  
section 48C(1);

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).

\* \* \* \* \*

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).

\* \* \* \* \*

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

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

*youth justice centre* has the same meaning as in the **Children, Youth and Families Act 2005**;

S. 3(1) def. of *youth justice centre* inserted by No. 48/2006 s. 42(Sch. item 32.1(c)).

*youth justice 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 justice centre;

S. 3(1) def. of *youth justice centre order* inserted by No. 48/2006 s. 42(Sch. item 32.1(c)).

*Youth Parole Board* means Youth Parole Board referred to in section 442 of the **Children, Youth and Families Act 2005**;

S. 3(1) def. of *Youth Parole Board* substituted by No. 48/2006 s. 42(Sch. item 32.1(d)).

*youth residential centre* has the same meaning as in the **Children, Youth and Families Act 2005**;

S. 3(1) def. of *youth residential centre* inserted by No. 48/1997 s. 4(e), substituted by No. 48/2006 s. 42(Sch. item 32.1(e)).

*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).

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S. 3(1) defs of  
*youth training  
centre* and  
*youth training  
centre order*  
inserted by  
No. 48/1997  
s. 4(e),  
repealed by  
No. 48/2006  
s. 42(Sch.  
32.1(f)).

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).

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

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(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 subsection (1).

(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 subsection (1).

#### 4 Application

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

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**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.

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

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

- (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

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

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

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

(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

**S. 5(2)(daaa)**  
inserted by  
No. 77/2009  
s. 3.

(daaa) whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated; and

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

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

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

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

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

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

- (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.

(2A) In sentencing an offender a court—

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

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

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

- (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;

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

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

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

(iii) that was derived or realised, or substantially derived or realised, directly or indirectly, from property referred to in subparagraph (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;
- (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 subsection (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 or interim 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;

S. 5(2BA)(a)  
amended by  
No. 21/2008  
s. 25(1).

\* \* \* \* \*

S. 5(2BA)(b)  
amended by  
No. 21/2008  
s. 25(1),  
repealed by  
No. 91/2009  
s. 219(Sch. 3  
item 2.1).

(2BB) For the purposes of subsection (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—

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

- (a) the conditions of the extended supervision order or interim 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(2BB)(a)  
amended by  
No. 21/2008  
s. 25(1).

(2BC) In sentencing an offender a court must not have regard to any consequences that may arise under the **Sex Offenders Registration Act 2004** or the **Working with Children Act 2005** from the imposition of the sentence.

S. 5(2BC)  
inserted by  
No. 34/2005  
s. 27,  
amended by  
No. 57/2005  
s. 50(1).

S. 5(2BD)  
inserted by  
No. 91/2009  
s. 219(Sch. 3  
item 2.2).

- (2BD) In sentencing an offender, a court—
- (a) must not have regard to the fact that the offender is subject to an order made under the **Serious Sex Offenders (Detention and Supervision) Act 2009** but, if relevant to the conditions of any sentence imposed by it, may have regard to the conditions (if any) imposed on that order and the terms of any current directions or instructions given by the Adult Parole Board under section 119, 120(2) or 121 of that Act;
  - (b) must not have regard to any possibility or likelihood of an application being made under that Act for an order in respect of the offender.

S. 5(2BE)  
inserted by  
No. 91/2009  
s. 219(Sch. 3  
item 2.2),  
amended by  
No. 65/2011  
s. 4(1).

- (2BE) For the purposes of subsection (2BD)(a), the court may request the Secretary to provide it with a report setting out—
- (a) the conditions of the supervision order or interim 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 119, 120(2) or 121 of that Act in relation to that order.

S. 5(2C)  
inserted by  
No. 60/1993  
s. 26,  
amended by  
Nos 35/1999  
s. 37(1)(a)(b),  
68/2009  
s. 97(Sch.  
item 110.2).

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

(2D) In having regard to the conduct of the offender under subsection (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 Part 5.5 of Chapter 5 of the **Criminal Procedure Act 2009**.

S. 5(2D) inserted by No. 60/1993 s. 26, substituted by No. 35/1999 s. 37(2), amended by Nos 68/2009 s. 97(Sch. item 110.3), 30/2010 s. 24.

(2E) An offender who pleads guilty to an offence after the determination by the Court of Appeal<sup>2</sup> of a question of law reserved under section 302(2) of the **Criminal Procedure Act 2009** 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), 68/2009 s. 97(Sch. item 110.4).

(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.

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S. 5(4A) inserted by No. 48/1997 s. 8(1), amended by No. 2/2002 s. 4(4), repealed by No. 65/2011 s. 4(2).

s. 6

S. 5(4B)  
inserted by  
No. 2/2002  
s. 4(5),  
amended by  
No. 65/2011  
s. 4(3).

(4B) 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 drug treatment order.

S. 5(5)  
amended by  
No. 65/2011  
s. 4(4).

(5) 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 a community correction order.

S. 5(6)  
amended by  
No. 65/2011  
s. 4(5).

(6) A court must not impose a community correction 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).

\* \* \* \* \*

## 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.

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**6AAA Sentence discount for guilty plea**

**S. 6AAA  
inserted by  
No. 8/2008  
s. 3.**

- (1) If—
- (a) in sentencing an offender, a court imposes a less severe sentence than it would otherwise have imposed because the offender pleaded guilty to the offence; and
  - (b) the sentence imposed on the offender is or includes—
    - (i) an order under Division 2 of Part 3; or
    - (ii) a fine exceeding 10 penalty units; or
    - (iii) an aggregate fine exceeding 20 penalty units—

the court must state the sentence and the non-parole period, if any, that it would have imposed but for the plea of guilty.

- (2) If an offender is sentenced for more than one offence in the same proceeding and subsection (1)(a) and (b) apply, the court must state, in respect of any total effective period of imprisonment—
- (a) the sentence; and
  - (b) the non-parole period, if any—
- that it would have imposed but for the plea of guilty and need not state those matters in respect of each offence.
- (3) In the case of a sentence other than a sentence referred to in subsection (1)(b), the court may state the sentence that it would have imposed but for the plea of guilty.

Sentencing Act 1991  
No. 49 of 1991  
Part 2—Governing Principles

**s. 6AAA**

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**S. 6AAA(4)**  
**amended by**  
**No. 22/2009**  
**s. 5.**

- (4) If the court makes a statement under this section, it must record or cause to be recorded (whether in writing or in another form) in respect of each offence and the total effective period of imprisonment, if any, the sentence and the non-parole period, if any, that it would have imposed but for the plea of guilty.
- (5) For the purposes of this section, an aggregate sentence imposed in respect of two or more offences is to be treated as a sentence imposed in respect of one offence.
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**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.

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**6AD Procedural requirements**

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

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

- (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—
  - (i) the Director of Public Prosecutions or a lawyer representing the Director; and
  - (ii) a lawyer representing Victoria Legal Aid, whether or not employed by Victoria Legal Aid, or a lawyer arranged by Victoria Legal Aid—

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

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

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

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

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

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

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

s. 6AF

S. 6AF  
inserted by  
No. 13/2003  
s. 4,  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.5).

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

Nothing in Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** 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.

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**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 justice centre;

S. 6B(2) def. of  
*serious arson offender*  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.2(a)).

s. 6B

S. 6B(2) def. of *serious drug offender* amended by No. 48/2006 s. 42(Sch. item 32.2(b)).

*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 justice centre;

S. 6B(2) def. of *serious sexual offender* amended by Nos 48/2006 s. 42(Sch. item 32.2(c)), 18/2008 s. 15.

*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 justice centre; or
- (ab) who has been convicted of an offence to which clause 1(a)(viii) of Schedule 1 applies for which he or she has been sentenced to a term of imprisonment or detention in a youth justice 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 justice centre;

S. 6B(2) def. of *serious violent offender* amended by No. 48/2006 s. 42(Sch. item 32.2(d)).

*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 justice 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 charges in the one indictment.

S. 6C(1)(d)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.6).

- (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 subsection (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) Division 2 of Part 5.8 of Chapter 5 of the **Criminal Procedure Act 2009** applies for the purposes of subsection (3) in relation to the proof of a previous conviction within the meaning of that section.

S. 6C(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.7).

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.

**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.

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

**6F Serious offender status to be noted on record**

- (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 2008** or the **Criminal Procedure Act 2009**, 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 178 of the **Evidence Act 2008** or in a criminal record filed under Division 2 of Part 5.8 of Chapter 5 of the **Criminal Procedure Act 2009**.

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

S. 6F(2)  
amended by  
Nos 68/2009  
s. 97(Sch.  
item 110.8),  
69/2009  
s. 54(Sch. Pt 1  
item 51.1).

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

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

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

## PART 2B—CONTINUING CRIMINAL ENTERPRISE OFFENDERS

### 6G Application of Part

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

### 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 subsection (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 2008** or the **Criminal Procedure Act 2009**, 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 178 of the **Evidence Act 2008** or in a criminal record filed under Division 2 of Part 5.8 of Chapter 5 of the **Criminal Procedure Act 2009**.

S. 6J(2)  
amended by  
Nos 68/2009  
s. 97(Sch.  
item 110.9),  
69/2009  
s. 54(Sch. Pt 1  
item 51.2).

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**PART 3—SENTENCES**

**Division 1—General**

**7 Sentences**

S. 7 (Heading)  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 110.10).  
S. 7  
amended by  
No. 19/1999  
s. 4 (ILA  
s. 39B(1)).

- (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),  
repealed by  
No. 65/2011  
s. 5(1).

\* \* \* \* \*

S. 7(1)(aab)  
inserted by  
No. 69/1997  
s. 5,  
amended by  
No. 69/2005  
s. 3(1)(b).

- (aab) subject to Part 5, record a conviction and order that the offender be detained and treated 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

S. 7(1)(b)  
repealed by  
No. 65/2011  
s. 5(2).

\* \* \* \* \*

S. 7(1)(ba)  
inserted by  
No. 30/2010  
s. 4,  
repealed by  
No. 48/2011  
s. 13.

\* \* \* \* \*

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- (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 justice centre; or
- (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
- (e) with or without recording a conviction, make a community correction 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.
- S. 7(1)(d)**  
amended by  
Nos 48/1997  
s. 8(2)(b)(i)(ii),  
48/2006  
s. 42(Sch.  
item 32.3).
- S. 7(1)(da)**  
inserted by  
No. 48/1997  
s. 8(2)(c).
- S. 7(1)(e)**  
amended by  
No. 65/2011  
s. 5(3).

S. 7(2)  
inserted by  
No. 19/1999  
s. 4,  
amended by  
No. 72/2004  
s. 38,  
substituted by  
No. 65/2011  
s. 5(4).

- (2) If the Magistrates' Court or County Court finds a person guilty of an offence, it may defer sentencing the person in accordance with section 83A.

## 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 contravention of sentence; or

S. 8(3)(b)(ii)  
amended by  
No. 65/2011  
s. 6.

- (iii) proceedings against the offender for a subsequent offence; or
- (iv) subsequent proceedings against the offender for the same offence.

### **Division 1A—Pre-sentence reports**

Pt 3 Div. 1A  
(Heading and  
ss 8A–8D)  
inserted by  
No. 65/2011  
s. 7.

#### **8A Court may order pre-sentence report**

S. 8A  
inserted by  
No. 65/2011  
s. 7.

- (1) If a court finds a person guilty of an offence, before passing sentence the court may order a pre-sentence report in respect of the offender and adjourn the proceeding to enable the report to be prepared.
- (2) A court must order a pre-sentence report if it is considering making a community correction order, a youth justice centre order or a youth residential centre 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 a community correction order, gain advice concerning the most appropriate condition or conditions to be attached to the order.
- (3) A court is not required to order a pre-sentence report under subsection (2) if it is considering making a community correction order with an unpaid community work condition of up to a maximum of 300 hours as the sole condition attached to the order.

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- (4) If a court orders a pre-sentence report, it must be prepared by—
- (a) the Secretary to the Department of Human Services if the court is considering making a youth justice centre order or a youth residential centre order; or
  - (b) the Secretary in any other case.
- (5) The author of a pre-sentence report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

S. 8B  
inserted by  
No. 65/2011  
s. 7.

### **8B 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) any alcohol, drug and any other substance history disclosed by the offender;
  - (e) the educational background of the offender;
  - (f) the employment history of the offender;
  - (g) the circumstances of any other offences of which the offender has been found guilty and which are known to the court;
  - (h) the extent to which the offender is complying with any sentence currently in force in respect of him or her;
  - (i) the financial circumstances of the offender;

- (j) the ability of the offender to pay a bond;
  - (k) any special needs of the offender;
  - (l) any other services that address the risk of recidivism from which the offender may benefit;
  - (m) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit;
  - (n) the relevance and appropriateness of any proposed condition;
  - (o) the capacity of the offender to perform unpaid community work for any proposed unpaid community work condition;
  - (p) the recommended duration of any intensive compliance period fixed under a community correction order;
  - (q) the appropriateness of confirming an existing order that applies to the offender;
  - (r) any other information that the author believes is relevant and appropriate.
- (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.

### **8C Distribution of pre-sentence 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

S. 8C  
inserted by  
No. 65/2011  
s. 7.

- (b) any legal practitioner representing the offender; and
- (c) if the court has so directed, the offender; and
- (d) any other person that the court considers appropriate.

S. 8D  
inserted by  
No. 65/2011  
s. 7.

### **8D 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 subsection (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 3 Div. 1B  
(Heading and  
ss 8E–8I)  
inserted by  
No. 65/2011  
s. 7.

### **Division 1B—Drug and alcohol reports**

S. 8E  
inserted by  
No. 65/2011  
s. 7.

### **8E Drug and alcohol assessment report**

- (1) If a court is considering making a community correction order the court may order a drug and alcohol assessment report if the court is satisfied that the offender had a drug or alcohol dependency that contributed to the offender's criminal behaviour.
- (2) If a court orders a drug and alcohol assessment report under subsection (1), it must be prepared by an approved drug and alcohol assessment agency.

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- (3) The purpose of a drug and alcohol assessment report is—
- (a) to assess whether the offender has a drug or alcohol dependency; and
  - (b) to make recommendations as to his or her suitability to undergo treatment and rehabilitation under a community correction order.
- (4) 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.
- (5) 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.

**8F Distribution of drug and alcohol assessment report**

S. 8F  
inserted by  
No. 65/2011  
s. 7.

- (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) any legal practitioner representing the offender; and
  - (c) if the court has so directed, the offender; and

- (d) any other person that the court considers appropriate.

S. 8G  
inserted by  
No. 65/2011  
s. 7.

### **8G Disputed drug and alcohol assessment 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 drug and alcohol assessment report.
- (2) If a notice is filed under subsection (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.

S. 8H  
inserted by  
No. 65/2011  
s. 7.

### **8H Drug and alcohol pre-release report**

- (1) A court must order a drug and alcohol pre-release report if—
  - (a) the sentencing court received a drug and alcohol assessment report under section 8E; and
  - (b) the court is satisfied that the offender has a drug or alcohol dependency; and
  - (c) the offender was sentenced to a term of imprisonment of not more than 3 months in addition to a community correction order to commence on the release of the offender from imprisonment.
- (2) A drug and alcohol pre-release report in respect of an offender must be prepared by an approved drug and alcohol assessment agency.

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- (3) A drug and alcohol pre-release report must specify any treatment for drug or alcohol dependency that the offender is to undergo during the period of the community correction order on release from custody.
  - (4) 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.
  - (5) 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 Secretary; and
    - (b) the offender; and
    - (c) any other person that the court considers appropriate.

**8I Approved drug and alcohol assessment agencies**

- (1) A person or body may apply to the Secretary to the Department of Health for approval as a drug and alcohol assessment agency for the purposes of this Division.
- (2) The Secretary to the Department of Health may approve an applicant under subsection (1) as a drug and alcohol assessment agency subject to any conditions, limitations or restrictions specified in the approval.
- (3) The Secretary to the Department of Health must specify the period during which an approval under subsection (2) continues in force.

S. 8I  
inserted by  
No. 65/2011  
s. 7.

Pt 3 Div. 1C  
(Heading and  
ss 8J–8S)  
inserted by  
No. 65/2011  
s. 7.

## Division 1C—Victim Impact Statements

S. 8J  
inserted by  
No. 65/2011  
s. 7.

### 8J Definitions

In this Division—

*dentist* means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law—
  - (i) to practise in the dentistry profession (other than as a student) and;
  - (ii) in the dentists division of that profession; or
- (b) a person entitled to practise dentistry in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, 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 under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student); or

- (b) a person entitled to practise medicine in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise;

*medical report* means a written statement made under section 8M(1);

*psychologist* means—

- (a) a person registered or qualified to be registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student); or
- (b) a person who is qualified or registered to practise psychology in a place out of Australia under an enactment of that place corresponding to the Health Practitioner Regulation National Law, whether or not the person does so practise.

*victim impact statement* means a statement made by a victim under section 8K(1);

**8K 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 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—

S. 8K  
inserted by  
No. 65/2011  
s. 7.

s. 8L

- (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.

S. 8L  
inserted by  
No. 65/2011  
s. 7.

### **8L Contents of victim impact statement**

- (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.
- (2) A victim impact statement may include photographs, drawings or poems and other material that relates to the impact of the offence on the victim or to any injury, loss or damage suffered by the victim as a direct result of the offence.
- (3) 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. 8M  
inserted by  
No. 65/2011  
s. 7.

### **8M Medical report**

- (1) A written statement on medical matters concerning the victim may be attached to the victim impact statement.
- (2) The written statement under subsection (1)—
  - (a) must be made and signed by a medical expert; and
  - (b) may include 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.

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**8N Distribution of written statement**

S. 8N  
inserted by  
No. 65/2011  
s. 7.

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.

**8O Examination of victim**

S. 8O  
inserted by  
No. 65/2011  
s. 7.

- (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 subsection (1) may be cross-examined and re-examined.

**8P Witnesses**

S. 8P  
inserted by  
No. 65/2011  
s. 7.

- (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 subsection (1) may be cross-examined and re-examined.

- (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. 8Q  
inserted by  
No. 65/2011  
s. 7.

### **8Q Reading aloud of victim impact statement**

- (1) A person who has made a victim impact statement may request that any part of that victim impact statement—
- (a) is read aloud or displayed in the course of the sentencing hearing by—
    - (i) the person making the request; or
    - (ii) a person chosen by the person making the request who consents and who is approved by the court for that purpose; or
  - (b) is read aloud in the course of the sentencing hearing by the prosecutor.
- (2) If a request is made under subsection (1) and the person specified in the request is available to do so during the course of the sentencing hearing, the court must ensure that any admissible parts of the victim impact statement that are—
- (a) identified in the request; and
  - (b) appropriate and relevant to sentencing—
- are read aloud or displayed by the person or persons specified in the request in open court in the course of the sentencing hearing.
- (3) For the purposes of subsection (2), the court may direct the person who made the request or the person chosen by that person as to which admissible parts of the victim impact statement are appropriate and relevant to sentencing.
- (4) 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.

**8R Alternative arrangements for reading aloud of victim impact statement**

S. 8R  
inserted by  
No. 65/2011  
s. 7.

- (1) On the application of the person who is to read aloud the victim impact statement at a sentencing hearing, on the application of the prosecutor or on its own motion, the court may direct that alternative arrangements be made for the reading aloud of a victim impact statement under section 8Q, including arrangements—
  - (a) permitting the victim impact statement to be read aloud from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;
  - (b) using screens to remove the person reading the victim impact statement from the direct line of vision of the offender;
  - (c) permitting a person, chosen by the person reading the victim impact statement and approved by the court for this purpose, to be beside the person reading the victim impact statement while it is read aloud, for the purpose of providing emotional support to the person reading the victim impact statement;
  - (d) permitting only persons specified by the court to be present while the victim impact statement is read aloud;
  - (e) requiring legal practitioners not to robe.
- (2) The court may, on the application of the person who is to read aloud the victim impact statement, on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1).

- (3) For the purposes of this section, the *reading aloud* of a victim impact statement includes the display of material included in the victim impact statement.

S. 8S  
inserted by  
No. 65/2011  
s. 7.

### **8S Alternative arrangements for examination**

- (1) On the application of a victim or other person who gives evidence under section 8O or 8P, on the application of the prosecutor or on its own motion, the court may direct that alternative arrangements be made for the examination and cross-examination of that person.
- (2) A direction made under subsection (1) may include—
- (a) permitting the person to be examined and cross-examined from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;
  - (b) using screens to remove the person from the direct line of vision of the offender;
  - (c) permitting a person, chosen by the person being examined and cross-examined and approved by the court for this purpose, to be beside the person being examined and cross-examined during the examination and cross-examination, for the purpose of providing emotional support for the person being examined and cross-examined;
  - (d) permitting only persons specified by the court to be present while the person is being examined and cross-examined;
  - (e) requiring legal practitioners not to robe;

- (f) requiring legal practitioners to be seated while examining or cross-examining the person.
- (3) The court may, on the application of a person who gives evidence under section 8O or 8P, on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1).

## **Division 2—Custodial orders**

### **Subdivision (1)—Imprisonment**

#### **9 Aggregate sentence of imprisonment<sup>3</sup>**

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

- (1) If an offender is convicted by a 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 all or any two or more of them.

**S. 9(1)**  
amended by  
**No. 50/2006**  
s. 38(1).

- (1A) Despite subsection (1), a court must not impose an aggregate sentence of imprisonment if—
- (a) the offender is a serious offender within the meaning of Part 2A and any of the offences of which the offender is convicted is a relevant offence within the meaning of that Part; or
- (b) the offences comprise at least one offence committed by the offender while released under a parole order and one offence committed at another time.

**S. 9(1A)**  
inserted by  
**No. 50/2006**  
s. 38(2).

s. 9

S. 9(2)  
amended by  
No. 50/2006  
s. 38(3).

(2) The term of an aggregate sentence of imprisonment imposed in accordance with subsection (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 court had imposed a separate sentence of imprisonment in respect of each of them.

S. 9(3)  
amended by  
No. 50/2006  
s. 38(4).

(3) If a 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. 9(4)  
inserted by  
No. 30/2010  
s. 5.

(4) If the Supreme Court or the County Court hears and determines charges for summary offences under section 242 or 243 of the **Criminal Procedure Act 2009** and imposes an aggregate sentence of imprisonment in respect of 2 or more of those offences, the court—

- (a) is not required to identify separate events giving rise to specific charges; and
- (b) is not required to announce—
  - (i) the sentences that would have been imposed for each offence had separate sentences been imposed; or
  - (ii) whether those sentences would have been imposed concurrently or cumulatively.

S. 9(5)  
inserted by  
No. 30/2010  
s. 5.

(5) Subsection (4) does not affect the requirements of section 6AAA.

\* \* \* \* \*

S. 10  
amended by  
No. 41/1993  
s. 6,  
expired by  
force of  
No. 49/1991  
s. 10(5).<sup>4</sup>

## 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
  - (b) a term of 2 years or more—

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

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.

- (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 subsection (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 subsection (1) or (2) must be in respect of the aggregate period of imprisonment

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

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  
Nos 45/1996  
s. 18(Sch. 2  
item 11.2),  
65/2011  
s. 8(1).

- (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 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 subsection 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

- (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
- (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).
- (3) The Supreme Court may fix a non-parole period under subsection (2) on the application of the offender or of the Secretary 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 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** *sentence* includes an order made under subsection (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.

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

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

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),  
65/2011  
s. 8(2).

S. 13(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.11).

#### 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.

\* \* \* \* \*

S. 14A  
inserted by  
No. 30/2010  
s. 6,  
repealed by  
No. 48/2011  
s. 14.

## 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 subsection (1).

## 16 Sentences—whether concurrent or cumulative<sup>5</sup>

- (1) Subject to subsection (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 justice centre or youth residential centre imposed on that person, whether before or at the same time as that term.

S. 16(1) substituted by No. 41/1993 s. 8(a), amended by Nos 48/1997 s. 17(1), 48/2006 s. 42(Sch. item 32.3).

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

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

- (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
- (c) on a serious offender within the meaning of Part 2A for a relevant offence within the meaning of that Part; or
- (d) on any person for an offence committed while released under a parole order<sup>6</sup>; or
- (e) on any person for an offence committed while released on bail in relation to another offence<sup>7</sup>.

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

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

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

- (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

S. 16(2)(a)  
amended by  
Nos 48/1997  
s. 17(1),  
48/2006  
s. 42(Sch.  
item 32.3).

- (a) cumulatively on any uncompleted sentence or sentences of imprisonment or detention in a youth justice 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,  
amended by  
No. 32/2006  
s. 92(1).

- (2A) A reference in subsection (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 Division 2 of Part 12 of the **Infringements Act 2006**.

S. 16(3)  
amended by  
Nos 41/1993  
s. 8(b),  
48/1997  
s. 17(1),  
48/2006  
s. 42(Sch.  
item 32.3).

- (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 justice 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).

\* \* \* \* \*

(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<sup>8</sup>.

S. 16(3B)  
inserted by  
No. 41/1993  
s. 8(c),  
substituted 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<sup>9</sup>.

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

(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.

S. 16A  
inserted by  
No. 87/2009  
s. 58.

### **16A Person may consent to imprisonment in respect of unpaid fines**

- (1) A person who has one or more warrants issued against him or her under section 62 and who is already in custody serving an uncompleted sentence of imprisonment may request, in writing, the sheriff to apply to the court for an order for that person to serve a period of imprisonment in default of payment of the outstanding fine or any instalment under an instalment order under any one or more warrants.
- (2) The Court may order that the person be imprisoned in accordance with section 16(2) for a term calculated in accordance with section 63.
- (3) If the Court makes an order under subsection (2), the Court may count the time served by the person from the date the person requested the sheriff to make an application under subsection (1) as time already served for the purposes of the term of imprisonment imposed on the person under subsection (2).
- (4) A court may make an order under subsection (2) whether or not the person is brought before the court.

### **17 Commencement of sentences<sup>10</sup>**

- (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 subsection (2) or (3).
- (5) If an offender to whom subsection (3) applies is in the period during which service of the sentence is suspended under that subsection imprisoned or detained in a youth justice 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.
- (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 justice 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

S. 17(5)  
amended by  
Nos 48/1997  
s. 17(1),  
48/2006  
s. 42(Sch.  
item 32.3).

S. 17(6)  
amended by  
Nos 48/1997  
s. 17(1),  
48/2006  
s. 42(Sch.  
item 32.3).

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) Subsection (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<sup>11</sup>**

S. 18(1)  
amended by  
Nos 48/1997  
s. 11(1),  
69/1997  
s. 6(1)(a)(b),  
10/1999  
s. 18(1),  
substituted by  
No. 82/2006  
s. 3(1).

- (1) If an offender is—
- (a) in respect of an offence sentenced to a term of imprisonment or to a period of detention in an approved mental health service under a hospital security order; or
  - (b) under section 31 ordered to serve the whole or part of a sentence or part sentence of imprisonment held in suspense—

any period during which he or she was held in custody in relation to—

- (c) proceedings for the offence referred to in paragraph (a) or proceedings arising from those proceedings; or

(d) proceedings under section 31—

including any period pending the determination of an appeal, must be reckoned as a period of imprisonment or detention already served under the sentence or restored sentence unless the sentencing court or the court fixing a non-parole period in respect of the sentence or the court making the order under section 31 otherwise orders.

\* \* \* \* \*

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), repealed by No. 30/2010 s. 7(a).

\* \* \* \* \*

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

(2) Subsection (1) does not apply—

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

S. 18(2) amended by Nos 53/2003 s. 4(2), 30/2010 s. 7(b).

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

Sentencing Act 1991  
No. 49 of 1991  
Part 3—Sentences

s. 18

<p>S. 18(2)(ba) inserted by No. 48/1997 s. 11(2)(a), repealed by No. 65/2011 s. 9.</p>	*		*		*		*		*
<p>S. 18(2)(bb) inserted by No. 30/2010 s. 7(c), repealed by No. 48/2011 s. 15.</p>	*		*		*		*		*
<p>S. 18(2)(c) amended by No. 48/1997 s. 11(2)(b).</p>							<p>(c) to a sentence of imprisonment that has been wholly suspended or to the suspended part of a partly suspended sentence of imprisonment; or</p>		
<p>S. 18(2)(ca) inserted by No. 10/1999 s. 18(3), repealed by No. 1/2000 s. 8(b).</p>	*		*		*		*		*
<p>S. 18(2)(d) inserted by No. 48/1997 s. 11(2)(b), amended by Nos 69/1997 s. 6(2)(b), 82/2006 s. 3(2).</p>							<p>(d) to a period of custody previously declared 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.</p>		
<p>S. 18(3) amended by Nos 53/2003 s. 4(3), 30/2010 s. 7(b).</p>							<p>(3) If an offender was held in custody in circumstances to which subsection (1) applies, then—</p> <p style="margin-left: 20px;">(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</p>		

(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 subsection (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).

\* \* \* \* \*

S. 18(4A)  
inserted by  
No. 53/2003  
s. 4(4),  
repealed by  
No. 30/2010  
s. 7(a).

(5) The person with custody of the record referred to in subsection (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 subsection.

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

\* \* \* \* \*

S. 18(5A)  
inserted by  
No. 53/2003  
s. 4(5),  
repealed by  
No. 30/2010  
s. 7(a).

(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 subsection (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. 18A**

S. 18(7)  
amended by  
Nos 53/2003  
s. 4(6),  
30/2010  
s. 7(d).

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

### **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 subsection (1)(a), the court must revoke any order made for the offender's release pending sentencing and remand him or her in custody.

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

### **18D Adjournment of sentencing**

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.

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

### **18E Hospital security orders**

- (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 93A applies if a person is found guilty of a serious offence and a court imposes an indefinite sentence in the same way it applies on any other finding of guilt but as if—
  - (a) section 93A(4) provided that the duration of the hospital security order was for an indefinite period;
  - (b) section 93A(6) 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;

S. 18E  
inserted by  
No. 41/1993  
s. 9.  
S. 18E  
(Heading)  
inserted by  
No. 69/2005  
s. 3(1)(c).

S. 18E(2)  
substituted by  
No. 69/2005  
s. 3(2).

**s. 18F**

- (c) in section 93A(7), the words "before the end of the period specified in a hospital security order" were omitted;
- (d) section 93A(7) referred to—
  - (i) an indefinite term instead of the unexpired portion of the hospital security order;
  - (ii) release under a re-integration program instead of release on parole.
- (3) A hospital security order made under section 93A (as applied by subsection (2) of this section) has effect for all purposes as an indefinite sentence.

S. 18E(3)  
inserted by  
No. 24/1994  
s. 6(1),  
amended by  
No. 69/2005  
s. 3(3)(a).

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;
- (ab) subject to Division 1C of Part 3, take into consideration any victim impact statement made, or other evidence given, under that Division;
- (b) subject to Division 1A of Part 3, take into consideration any pre-sentence report filed with the court;
- (c) have regard to any submissions on sentence made to it.

S. 18F(ab)  
inserted by  
No. 24/1994  
s. 6(2),  
amended by  
No. 65/2011  
s. 10(1).

S. 18F(b)  
amended by  
No. 65/2011  
s. 10(2).

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**18G Reasons for indefinite sentence**

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.

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

**18H Review of indefinite sentence**

- (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 subsection (1)(a) within the time specified in that subsection.
- (3) The court must cause a copy of an application by an offender under subsection (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 subsection (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. 18H  
inserted by  
No. 41/1993  
s. 9.

**s. 18I**

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),  
46/2008  
s. 287(b),  
29/2010  
s. 71(2),  
65/2011 s. 11.

- (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 Health, the Secretary to the Department of Human Services or the Secretary 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.

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**18K Disputed report**

- (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 subsection (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.

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

**18L Review hearing**

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. 18L  
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

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

- (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 subsection (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.

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**18O Appeal<sup>12</sup>**

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

(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(1)  
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(2)  
amended by  
No. 109/1994  
s. 34(14)(b).

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

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

(a) in the case of an appeal under subsection (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 subsection (2), confirm the order and dismiss the appeal or uphold the appeal and set aside the order made.

S. 18O(3)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.12).

(4) An indefinite sentence revives on the setting aside 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. 18O(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.13).

**18P Offender to be present during hearings**

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

(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).

s. 18P

S. 18P(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.14).

- (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 subsection (1).
- (3) Subsection (2) is additional to, and does not limit, the court's powers under section 332 of the **Criminal Procedure Act 2009**.
- (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).

\* \* \* \* \*

Pt 3 Div. 2  
Subdiv. (1B)  
(Heading and  
ss 18Q–18W)  
inserted by  
No. 48/1997  
s. 12,  
amended by  
Nos 10/1999  
s. 30, 19/1999  
ss 5, 6,  
68/2009  
s. 97(Sch.  
items 110.15–  
110.18),  
30/2010 s. 8,  
48/2011 s. 16,  
repealed by  
No. 65/2011  
s. 12.

**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.

s. 18Y

- (2) Nothing in subsection (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).

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

### **18Y Order only available at Drug Court**

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 subsection (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 suspended the sentence in whole or in part; and

S. 18Z(1)(d)(ii)  
substituted by  
No. 65/2011  
s. 13(1).

(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

\* \* \* \* \*

S. 18Z(2)(b)  
repealed by  
No. 65/2011  
s. 13(2).

(c) a sentence of the County Court or Supreme Court.

S. 18Z(2)(c)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.19).

(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.

s. 18ZA

- (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 sentence; or
  - (b) the offender has been previously sentenced to one or more terms of imprisonment.
- (5) Despite subsection (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. 18Z(4)(a)(ii) amended by No. 68/2009 s. 97(Sch. item 110.19).

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.

**18ZC The parts of a drug treatment order**

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

- (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)).

**s. 18ZE**

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

**18ZE Activation of custodial part of an order**

- (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.

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

**18ZF Core conditions**

- (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.

**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

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

- (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.

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S. 18ZGA  
inserted by  
No. 30/2010  
s. 10,  
repealed by  
No. 48/2011  
s. 17.

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**

- (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.
- (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

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

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

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.

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

### **18ZJ Rewards for complying with conditions**

- (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 subsection (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.

**18ZK Cancellation as a reward**

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

- (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 subsection (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.

**Notes**

- 1 If the offender commits an offence punishable on conviction by imprisonment for more than 12 months, see section 18ZN.
  - 2 Section 18ZE sets out how much of the custodial part of a drug treatment order can be activated.
  - 3 For *secure custody facility* see section 3(1).
- (2) In deciding which action to take under subsection (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 subsection (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 subsection (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 subsection (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**

- (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.

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

s. 18ZM

S. 18ZM(2)(b)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.3).

- (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 justice 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**

- (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—

(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

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

S. 18ZN(1)(a)  
amended by  
No. 35/2002  
s. 28(Sch.  
item 5.1).

offence, other than by making an order under section 7(1)(a).

**Notes**

- 1 Section 18ZE sets out how much of the custodial part of a drug treatment order can be activated.
  - 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 subsection (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 subsection (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.
- (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

S. 18ZN(3A)  
inserted by  
No. 30/2005  
s. 8(1).

- (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 not suspend the sentence in whole or in part; and

S. 18ZO(2)(b)  
substituted by  
No. 65/2011  
s. 14(1).

- (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 not suspend the sentence in whole or in part; and
- (c) the Drug Court does not order under subsection (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 subparagraph (i) or (ii) of that section.

S. 18ZO(3)(b)  
substituted by  
No. 65/2011  
s. 14(2).

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

### **18ZP Cancellation**

- (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 subsection 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 subsection (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 subsection (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.

- (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

S. 18ZP(4A)  
inserted by  
No. 30/2005  
s. 8(2).

(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.

#### **18ZQ Drug treatment order assessment reports**

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

(1) If the Drug Court is considering making a drug treatment order at any stage after an accused has indicated an intention to plead guilty to an offence, or has pleaded guilty to an offence, it must—

S. 18ZQ(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.20  
(a)).

(a) order a drug treatment order assessment report on the accused; and

S. 18ZQ(1)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.20  
(b)).

(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 accused is a suitable person to be subject to a drug treatment order; and

S. 18ZQ(2)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.21).

**s. 18ZQ**

(b) if so—

**S. 18ZQ  
(2)(b)(i)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.21).**

(i) to prepare a case management plan for the accused; and

(ii) to establish whether the facilities necessary to implement that plan exist and, if so, to identify those facilities; and

**S. 18ZQ  
(2)(b)(iii)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.21).**

(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 accused.

**S. 18ZQ(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.22).**

(3) If the Drug Court grants an accused bail on an adjournment under subsection (1) it must, for the purpose of facilitating the preparation of the report, impose a condition of bail requiring the accused 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.

**S. 18ZQ(4)  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 110.23).**

(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 accused and are readily ascertainable by the officer—

(a) the age of the accused;

(b) the social history and background of the accused;

- 
- (c) the medical and psychiatric history of the accused, including details of any treatment the accused has undergone for drug or alcohol dependency;
  - (d) the educational background of the accused;
  - (e) the employment history of the accused;
  - (f) the circumstances of any other offences of which the accused has been found guilty;
  - (g) the extent to which the accused—
    - (i) has complied with any sentence that is no longer in force in respect of the accused; and
    - (ii) is complying with any sentence currently in force in respect of the accused;
  - (h) the financial circumstances of the accused;
  - (i) the housing history and needs of the accused;
  - (j) any special needs of the accused;
  - (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 accused 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

S. 18ZQ(5)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.24).

s. 18ZR

S. 18ZQ(7)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.25).

(b) the legal practitioner of the accused; and

S. 18ZQ(7)(c)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.26).

(c) if the Drug Court directs the officer to do so,  
the accused.

(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.

S. 18ZQ(10)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.27).

(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 accused 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

S. 18ZR(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.28).

(1) On the hearing of an appeal under section 254 or 257 of the **Criminal Procedure Act 2009** against a sentence imposed 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 256(2) or 259(2) (as the case requires) of that Act.

- (2) Part 6.1 of Chapter 6 of the **Criminal Procedure Act 2009** applies with respect to appeals to the County Court against any sentence imposed by the Drug Court with the following modifications—

S. 18ZR(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.29).

- (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 Part 6.1 of Chapter 6 of the **Criminal Procedure Act 2009** an order under this Subdivision activating some or all of the custodial part of a drug treatment order is taken to be a sentence imposed by the Drug Court.

S. 18ZR(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.30).

- (4) Despite subsection (1), on the hearing of an appeal under section 254 or 257 of the **Criminal Procedure Act 2009** against a drug treatment order made by the Drug Court, the County Court may—

S. 18ZR(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.31  
(a)).

s. 18ZR

S. 18ZR(4)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.31  
(b)).

(a) re-instate the drug treatment order set aside by it under section 256(2)(a) or section 259(2)(a) of that Act (as the case requires); or

S. 18ZR(4)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.31  
(b)).

(b) if the appeal is against the custodial part of the drug treatment order, re-instate that part set aside by it under section 256(2)(a) or section 259(2)(a) of that Act (as the case requires) or vary the drug treatment order by increasing or reducing the length of the sentence of imprisonment.

S. 18ZR(5)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.32).

- (5) On the hearing of an appeal under section 254 or 257 of the **Criminal Procedure Act 2009** against a sentence imposed 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 subsection (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 subsection (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 subsection (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 256(2)(a) or section 259(2)(a) of the **Criminal Procedure Act 2009** (as the case requires) which the County Court can make.
- (9) If a matter is referred to the Drug Court under subsection (5) and the Drug Court makes a drug treatment order, the order has effect for the purposes of Part 6.1 of Chapter 6 of the **Criminal Procedure Act 2009** as if it were a sentence imposed by the County Court on the hearing of the appeal but for all other purposes has effect as an order of the Drug Court.

S. 18ZR(8)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.33).

S. 18ZR(9)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.34).

**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) Subsection (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.

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No. 49 of 1991  
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s. 18ZS

(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 subsection (2).

Pt 3 Div. 2  
Subdiv. 1D  
(Heading and  
ss 18ZT–  
18ZZR)  
inserted by  
No. 53/2003  
s. 5,  
amended by  
Nos 97/2005  
s. 182(Sch. 4  
item 45.1),  
52/2008 s. 265,  
68/2008 s. 82,  
13/2010  
s. 51(Sch.  
item 49.1),  
repealed by  
No. 30/2010  
s. 11.

\* \* \* \* \*

Pt 3 Div. 2  
Subdiv. (2)  
(Heading and  
ss 19–26)  
amended by  
Nos 41/1993  
s. 10(1)(2),  
45/1996  
s. 18(Sch. 2  
items 11.5–  
11.8),  
48/1997 ss 13,  
28(2),  
10/1999 s. 30,  
19/1999 s. 7,  
68/2009  
s. 97(Sch.  
items 110.35–  
110.38),  
30/2010 s. 12,  
48/2011 s. 18,  
repealed by  
No. 65/2011  
s. 15.

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Pt 3 Div. 2  
Subdiv. (2A)  
(Heading and  
ss 26L–26ZR)  
inserted by  
No. 30/2010  
s. 14,  
amended by  
No. 53/2010  
s. 221(Sch.  
items 10.2–  
10.5),  
repealed by  
No. 48/2011  
s. 19.

### Subdivision (3)—Suspended sentences of imprisonment

#### 27 Suspended sentence of imprisonment

(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(1)  
substituted by  
No. 48/1997  
s. 14(2).

(1A) In considering whether it is desirable in the circumstances to make an order suspending a sentence of imprisonment, a court must have regard to—

S. 27(1A)  
inserted by  
No. 82/2006  
s. 4(1).

(a) the need, considering the nature of the offence, its impact on any victim of the offence and any injury, loss or damage resulting directly from the offence, to ensure that the sentence—

- (i) adequately manifests the denunciation by the court of the type of conduct in which the offender engaged; and
- (ii) adequately deters the offender or other persons from committing offences of the same or a similar character; and
- (iii) reflects the gravity of the offence; and

- (b) any previous suspended sentence of imprisonment imposed on the offender and whether the offender breached the order suspending that sentence; and
- (c) without limiting paragraph (b), whether the offence was committed during the operational period of a suspended sentence of imprisonment; and
- (d) the degree of risk of the offender committing another offence punishable by imprisonment during the operational period of the sentence, if it were to be suspended.

S. 27(1B)  
inserted by  
No. 82/2006  
s. 4(1).

(1B) Nothing in subsection (1A) limits or affects Part 2.

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.

(2B) Despite subsection (1), a court must not make an order suspending the whole or a part of a sentence of imprisonment imposed on an offender for a serious offence or for a significant offence.

S. 27(2B) inserted by No. 82/2006 s. 4(2), substituted by No. 77/2010 s. 12(1) (as amended by No. 9/2011 s. 4).

**Note**

A suspended sentence may be available for a serious offence or for a significant offence committed before the commencement of section 12 of the **Sentencing Amendment Act 2010**.

\* \* \* \* \*

S. 27(2C) inserted by No. 82/2006 s. 4(2), repealed by No. 77/2010 s. 12(2) (as amended by No. 9/2011 s. 4).

(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

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No. 49 of 1991  
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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).

\* \* \* \* \*

S. 27(7)  
amended by  
No. 65/2011  
s. 16(1).

(7) If under section 83AR 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),  
amended by  
No. 65/2011  
s. 16(2).

(9) For the purpose of any proceedings under section 83AR, 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. 27A  
inserted by  
No. 30/2010  
s. 15,  
repealed by  
No. 48/2011  
s. 20.

\* \* \* \* \*

S. 28  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 51),  
repealed by  
No. 48/1997  
s. 14(6).

\* \* \* \* \*

## 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 83AR.

S. 29 amended by Nos 48/1997 s. 14(7), 65/2011 s. 17.

\* \* \* \* \*

S. 30 repealed by No. 48/1997 s. 14(6).

\* \* \* \* \*

S. 31 amended by Nos 48/1997 s. 15, 10/1999 s. 30, 82/2006 ss 5, 6, 68/2009 s. 97(Sch. items 110.39–110.43), 30/2010 s. 16, repealed by No. 65/2011 s. 18.

## Subdivision (4)—Youth justice centre orders and youth residential centre orders

Pt 3 Div. 2 Subdiv. (4) (Heading) amended by Nos 48/1997 s. 17(2), 48/2006 s. 42(Sch. item 32.4).

## 32 Youth justice centre or youth residential centre order<sup>13</sup>

S. 32 (Heading) inserted by No. 48/2006 s. 42(Sch. item 32.5).

(1) Subject to subsections (2A) and (2B), if a sentence involving confinement is justified in respect of a young offender a court may make a youth justice centre order or a youth residential centre order if it has received a pre-sentence report and—

S. 32(1) amended by Nos 48/1997 ss 16(2), 17(3), 48/2006 s. 42(Sch. item 32.6).

- 
- (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  
Nos 48/1997  
s. 17(3),  
48/2006  
s. 42(Sch.  
item 32.6).
- (2) In determining whether to make a youth justice centre order or a youth residential order, a court must have regard to—
- (a) the nature of the offence; and
- (b) the age, character and past history of the young offender.
- S. 32(2)(b)**  
amended by  
No. 48/1997  
s. 16(1).
- S. 32(2A)**  
inserted by  
No. 48/1997  
s. 16(3),  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.6).
- (2A) A court must not make a youth justice 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  
Nos 48/1997  
ss 16(4), 17(5),  
48/2006  
s. 42(Sch.  
item 32.7).
- (3) The maximum period for which a court may direct that a young offender be detained in a youth justice centre or youth residential centre is—
- (a) if the court is the Magistrates' Court—  
2 years; and
- S. 32(3)(a)**  
amended by  
No. 48/1997  
s. 16(5)(a).

- 
- (b) if the court is the County Court or the Supreme Court—3 years. **S. 32(3)(b) amended by No. 48/1997 s. 16(5)(b).**
- (4) Subsection (3) applies irrespective of how many offences the young offender is convicted of in the same proceeding. **S. 32(4) amended by No. 48/1997 s. 16(1).**
- (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 subsection (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<sup>14</sup>**

- (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).**

s. 34

S. 33(2)  
amended by  
No. 48/1997  
ss 16(7), 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)(a)  
amended by  
No. 48/1997  
s. 16(8).

- (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)(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<sup>15</sup>

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

- 
- (c) in any other case—on the day the young offender is apprehended under a warrant to detain in a youth justice centre or a youth residential centre issued in respect of the sentence.
- (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.
- (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.
- (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 subsection (2) or (3).
- (5) If a young offender to whom subsection (3) applies is in the period during which service of the sentence is suspended under that subsection 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(1)(c)**  
amended by  
Nos 48/1997  
ss 16(1), 17(8),  
48/2006  
s. 42(Sch.  
item 32.6.

**S. 34(2)**  
amended by  
No. 48/1997  
ss 16(4), 17(7).

**S. 34(3)**  
amended by  
No. 48/1997  
ss 16(4), 17(7).

**S. 34(4)**  
amended by  
No. 48/1997  
s. 17(7).

**S. 34(5)**  
amended by  
No. 48/1997  
ss 16(4), 17(7).

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) Subsection (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<sup>16, 17</sup>**

S. 35(1)  
amended by  
No. 48/1997  
ss 11(4), 16(4),  
17(7),  
substituted by  
No. 82/2006  
s. 3(3),  
amended by  
No. 65/2011  
s. 19.

- (1) If a young offender is—
- (a) in respect of an offence sentenced to a term of detention; or
  - (b) under section 83AR ordered to serve as detention in a youth justice centre or youth residential centre the whole or part of a sentence or part sentence of imprisonment held in suspense—

S. 35(1)(b)  
amended by  
Nos 82/2006  
s. 7(2),  
65/2011 s. 19.

any period during which he or she was held in custody in relation to—

- 
- (c) proceedings for the offence referred to in paragraph (a) or proceedings arising from those proceedings; or
- (d) proceedings under section 83AR —  
including any period pending the determination of an appeal, must be reckoned as a period of detention already served under the sentence or restored sentence unless the sentencing court or the court making the order under section 83AR otherwise orders.
- (2) Subsection (1) does not apply—
- (a) to a period of custody of less than one day;  
or
- (b) to a sentence of detention of less than one day; or
- (c) to a period of custody previously declared 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.
- (3) If a young offender was held in custody in circumstances to which subsection (1) applies, then—
- (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
- (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.

S. 35(1)(d)  
amended by  
No. 65/2011  
s. 19.

S. 35(2)(b)  
amended by  
No. 48/1997  
s. 11(5).

S. 35(2)(c)  
inserted by  
No. 48/1997  
s. 11(5),  
amended by  
Nos 69/1997  
s. 6(4),  
82/2006  
s. 3(4).

S. 35(3)  
amended by  
No. 48/1997  
s. 16(4).

S. 35(3)(a)  
amended by  
No. 48/1997  
s. 16(6).

s. 35

**S. 35(4)**  
amended by  
No. 48/1997  
ss 11(6), 16(4).

(4) If a young offender was held in custody in circumstances to which subsection (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(5)**  
amended by  
No. 48/1997  
s. 16(1).

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

**S. 35(6)**  
amended by  
No. 48/1997  
s. 16(7).

(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 subsection (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.

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

(8) An application under subsection (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.

Sentencing Act 1991  
No. 49 of 1991  
Part 3—Sentences

s. 35

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**Pt 3 Div. 3  
(Heading)  
repealed by  
No. 65/2011  
s. 20.**

Pt 3A  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

## PART 3A—SENTENCES—COMMUNITY CORRECTION ORDERS

Pt 3A Div. 1  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

### Division 1—Preliminary

S. 36  
amended by  
No. 48/1997  
ss 18, 19(1),  
28(1),  
substituted by  
No. 65/2011  
s. 21.

#### 36 Purpose of an order

The purpose of a community correction order is to provide a community based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender.

Pt 3A Div. 2  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

### Division 2—General

S. 37  
amended by  
No. 19/1999  
s. 8(1),  
substituted by  
No. 65/2011  
s. 21.

#### 37 Community correction order

A court may make a community correction order in respect of an offender if—

- (a) the offender has been convicted or found guilty of an offence punishable by more than 5 penalty units; and
- (b) the court has received a pre-sentence report (if required) and has had regard to any recommendations, information or matters identified in the report; and
- (c) the offender consents to the order.

**38 Period and commencement of a community correction order**

S. 38  
amended by  
No. 48/1997  
s. 28(2),  
substituted by  
No. 65/2011  
s. 21.

- (1) The period of a community correction order is the period determined by the court which must not exceed—
- (a) in the case of an order made by the Magistrates' Court, 2 years; or
  - (b) in the case of an order made by the County Court or the Supreme Court whichever is greater of—
    - (i) the maximum term of imprisonment for the offence; or
    - (ii) 2 years.
- (2) The court must—
- (a) fix the date on which a community correction order commences, which must not be more than 3 months after the order is made; or
  - (b) direct that the community correction order commences on the date that the offender is released from imprisonment in accordance with section 44.

**39 Intensive compliance period**

S. 39  
amended by  
No. 41/1993  
s. 11,  
substituted by  
No. 65/2011  
s. 21.

- (1) If the court is making a community correction order for a period of 6 months or longer, the court may fix a period (being part of the period for which the order is in force) as the intensive compliance period.

**Example**

Where a court is making a community correction order that has a period of, for example, 2 years, the intensive compliance period fixed by the court may be for a lesser period of, for example, 8 months.

- (2) A court that fixes an intensive compliance period under subsection (1) must determine that one or more conditions attached to a community correction order are to be completed within the intensive compliance period.
- (3) If—
- (a) a court is sentencing an offender in respect of two or more offences in the same proceeding; and
  - (b) the court makes separate community correction orders in respect of any two or more of the offences, the periods of which are cumulative; and
  - (c) the court fixes intensive compliance periods for the orders that are cumulative—
- the intensive compliance periods are to run cumulatively from the commencement of the first order and then the balance of the periods of the orders are to run cumulatively.

S. 40  
substituted by  
No. 65/2011  
s. 21.

**40 Community correction order may cover multiple offences**

- (1) If an offender is convicted or found guilty by a 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 make one community correction order in respect of those offences in place of separate orders in respect of all or any two or more of them.
- (2) A community correction order that is being made in respect of more than one offence must not exceed the maximum period for which a community correction order may be made under section 38.

#### 41 Presumption of concurrency

- (1) If a court makes separate community correction 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 correction order made in respect of an offender are, unless the court otherwise directs, concurrent with those of any other community correction order in force in respect of that offender.

S. 41  
substituted by  
No. 65/2011  
s. 21.

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S. 41A  
inserted by  
No. 30/2010  
s. 17,  
repealed by  
No. 48/2011  
s. 21.

#### 42 Unpaid community work where there are several orders

- (1) The number of hours of unpaid community work required to be performed under a relevant order must, unless otherwise directed by the court, be performed—
  - (a) cumulatively on those required to be performed under another relevant order that is in force in respect of the offender; and
  - (b) concurrently with any hours required to be performed under any other community correction order that is in force in respect of the offender—

S. 42  
substituted by  
No. 65/2011  
s. 21.

whether that other order was made before or at the same time as the first-mentioned order.

- (2) In this section, *relevant order* means a fine conversion order or fine default unpaid community work order.

s. 43

S. 43  
substituted by  
No. 65/2011  
s. 21.

#### **43 Fine and a community correction order**

A court may impose on an offender a fine authorised by law in addition to making a community correction order.

S. 44  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 11.9),  
substituted by  
No. 65/2011  
s. 21.

#### **44 Imprisonment and a community correction order**

- (1) Subject to subsection (2), a court may make a community correction order in respect of the offender in addition to sentencing the offender to a term of imprisonment of not more than 3 months, if the sentence of imprisonment is not suspended in whole or in part.
- (2) If a court is sentencing an offender for two or more offences in the same proceeding to two or more sentences of imprisonment, the court may not make any community correction order in respect of the offender if the aggregate of those terms of imprisonment is more than 3 months, whether or not the terms of imprisonment are to be served (in whole or in part) concurrently or cumulatively.
- (3) If a court makes a community correction order in respect of an offender in addition to a term of imprisonment, the community correction order commences on the release of the offender from imprisonment.

Pt 3A Div. 3  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

### **Division 3—Making a community correction order**

S. 45  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 11.10),  
substituted by  
No. 65/2011  
s. 21.

#### **45 Terms of a community correction order**

- (1) The following terms are attached to each community correction order—
  - (a) the offender must not commit, whether in or outside Victoria, during the period of the

- order, an offence punishable by imprisonment;
- (b) the offender must report to, and receive visits from the Secretary during the period of the order;
  - (c) the offender must report to the community corrections centre specified in the order within 2 clear working days after the order coming into force;
  - (d) the offender must notify the Secretary of any change of address or employment within 2 clear working days after the change;
  - (e) the offender must not leave Victoria except with the permission, either generally or in relation to a particular case, of the Secretary;
  - (f) the offender must comply with any direction given by the Secretary that is necessary for the Secretary to give to ensure that the offender complies with the order.
- (2) A direction may be given by the Secretary under subsection (1)(f) either orally or in writing.

**46 Power of the Secretary to give written directions**

There is attached to each community correction order the term that the offender must comply with any written direction given by the Secretary for or with respect to the following—

- (a) reporting to the Secretary; or
- (b) receiving visits from the Secretary; or
- (c) notifying the Secretary in writing of any change of address or employment; or
- (d) obtaining permission from the Secretary before leaving Victoria; or

S. 46  
amended by  
No. 19/1999  
s. 8(2),  
substituted by  
No. 65/2011  
s. 21.

- (e) if the order is subject to an unpaid community work condition, performing unpaid community work, including any written direction as to the place, date or time at which the work is to be performed; or
- (f) if the order is subject to a treatment and rehabilitation condition, participating in a treatment or rehabilitation program, including any written direction as to the place, date or time of the participation; or
- (g) if the order is subject to a treatment and rehabilitation condition, undergoing any drug or alcohol assessment or treatment, including any written direction as to—
  - (i) undergoing residential treatment or assessment; or
  - (ii) the place, date or time that the assessment or treatment must be undergone; or
- (h) if the order is subject to a treatment and rehabilitation condition, undergo any drug or alcohol testing, including any written direction as to the place, date or time that the test must be undergone; or
- (i) if the order is subject to a treatment and rehabilitation condition, undergoing any medical assessment or mental health assessment, including any written direction as to the place, date or time that the test must be undergone.

**Note**

It is an offence under section 83AF for an offender to contravene a written direction given by the Secretary.

**47 Court may attach conditions**

- (1) A court that is making a community correction order must attach at least one condition in accordance with subsection (2).
- (2) A court that is making a community correction order may—
  - (a) attach one or more conditions under Division 4; or
  - (b) attach a condition under Division 3 of Part 3B.

S. 47 amended by Nos 41/1993 s. 10(3)(4), 45/1996 s. 18(Sch. 2 item 11.11), 48/1997 s. 19(2)(3), 10/1999 s. 30, 10/2004 s. 15(Sch. 1 item 27.1), 68/2009 s. 97(Sch. items 110.44–110.48), substituted by No. 65/2011 s. 21.

**48 Residual condition**

- (1) A court that is making a community correction order may attach in addition to a condition attached in accordance with section 47 any other condition to the order that the court thinks fit, other than a condition about making restitution or the payment of compensation, costs or damages.
- (2) A condition attached under subsection (1) to a community correction order must not be about the subject matter of a condition under Division 4 or Division 3 of Part 3B.

S. 48 substituted by No. 65/2011 s. 21.

**48A Matters to be considered when attaching conditions**

The court must attach conditions to a community correction order in accordance with—

- (a) the principle of proportionality; and
- (b) the purposes for which a sentence may be imposed as set out in section 5; and
- (c) the purpose of a community correction order set out in section 36.

S. 48A inserted by No. 65/2011 s. 21.

s. 48B

Pt 3A Div. 4  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

S. 48B  
inserted by  
No. 65/2011  
s. 21.

S. 48C  
inserted by  
No. 65/2011  
s. 21.

## Division 4—Conditions

### 48B Definition

In this Division—

*family violence* has the same meaning as in the  
**Family Violence Protection Act 2008**;

*safety* means safety from family violence,  
physical or mental harm.

### 48C Unpaid community work condition

- (1) A court which is making a community correction order may attach a condition requiring an offender to perform unpaid community work.
- (2) The purpose for attaching an unpaid community work condition is to adequately punish the offender in the community.
- (3) The offender must perform the number of hours of unpaid community work specified by the court under an unpaid community work condition.
- (4) The total number of hours for which an offender may be required to perform unpaid community work under an unpaid community work condition must be determined by the court and must not exceed 600 hours.
- (5) The total number of hours of unpaid community work that the offender must perform in any 7 day period must not exceed 20.
- (6) An offender may perform an activity for up to 40 hours in a period of 7 days if he or she requests to do so and signs a written consent to performing the extra number of hours.

- (7) If a court attaches an unpaid community work condition as the sole condition under this Division of a community correction order for up to a maximum of 300 hours, the order expires on the satisfactory completion of those hours of work.
- (8) If an offender is or will be subject to more than one community correction order the court must not make a direction under this Act that causes the time limits that apply under all unpaid community work conditions under the orders to exceed the maximum time limits for the orders under section 38.
- (9) When attaching an unpaid community work condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

**48D Treatment and rehabilitation condition**

S. 48D  
inserted by  
No. 65/2011  
s. 21.

- (1) A court which is making a community correction order may attach a condition to the order that requires the offender to undergo treatment and rehabilitation specified by the court and directed by the Secretary unless otherwise directed by the court.
- (2) When attaching a treatment and rehabilitation condition the court must—
  - (a) have regard to the need to address the underlying causes of the offending;
  - (b) have regard to the recommendations, information and matters identified in the pre-sentence report in relation to the treatment and rehabilitation of the offender.
- (3) The treatment and rehabilitation that must be specified by the court in a treatment and rehabilitation condition must be any one or more of the following—

- 
- (a) any assessment and treatment (including testing) for drug abuse or dependency;
  - (b) any assessment and treatment (including testing) for alcohol abuse or dependency;
  - (c) any assessment and treatment (including testing) at a residential facility for—
    - (i) withdrawal from or rehabilitation for alcohol abuse or dependency; or
    - (ii) withdrawal from or rehabilitation for drug abuse or dependency;
  - (d) any medical assessment and treatment that may include general or specialist medical treatment or treatment in a hospital or residential facility;
  - (e) any mental health assessment and treatment that may include psychological, neuropsychological, psychiatric or treatment in a hospital or residential facility;
  - (f) any program that addresses factors related to his or her offending behaviour;
  - (g) any other treatment and rehabilitation that the court considers necessary and that is specified in the order that may include employment, educational, cultural and personal development programs that are consistent with the purpose of the treatment and rehabilitation condition.
- (4) For the purposes of subsection (1) the Secretary may give a direction to the offender—
- (a) to undergo the treatment and rehabilitation or kind of treatment and rehabilitation specified by the Secretary in the direction; and

- (b) in relation to any aspect of the treatment and rehabilitation that the Secretary has specified, a direction—
- (i) requiring the attendance of the offender at a specified location; and
  - (ii) requiring the participation of the offender in particular kinds of treatment or rehabilitation.

**48E Supervision condition**

S. 48E  
inserted by  
No. 65/2011  
s. 21.

- (1) A court which is making a community correction order may attach a condition to the order that the offender be supervised, monitored and managed as directed by the Secretary.
- (2) The court may attach a supervision condition for the purpose of addressing the need to ensure the compliance of the offender with the order.
- (3) When attaching a supervision condition the court must have regard to the information, matters and recommendations made in the pre-sentence report.
- (4) When attaching a supervision condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

**48F Non-association condition**

S. 48F  
inserted by  
No. 65/2011  
s. 21.

- (1) A court which is making a community correction order may attach a condition to the order directing that—
  - (a) the offender must not contact or associate with a person specified in the order; or

**Example**

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must not contact or associate with a co-offender or co-offenders.

- (b) the offender must not contact or associate with a class of person specified in the order.

**Example**

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not contact or associate with a member of a specified club or association.

- (2) When attaching a non-association condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a non-association condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

S. 48G  
inserted by  
No. 65/2011  
s. 21.

**48G Residence restriction or exclusion condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must—
- (a) reside at a place specified in the order; or

**Example**

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must reside at his or her current residential address.

- (b) not reside at a place specified in the order.

**Example**

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not reside at the residence of a co-offender.

- (2) When attaching a residence restriction or exclusion condition the court may—
  - (a) have regard to the risk the condition poses to the safety of any person who is likely to reside with the offender under the order; and
  - (b) have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a residence restriction or exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (4) An offender to whom a residence restriction or exclusion condition applies must not change his or her place of residence unless the community correction order to which the condition is attached has been varied under section 48M(2)(d) to specify the new place at which the offender must or must not reside.
- (5) The court must not attach a residence restriction or exclusion condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

**48H Place or area exclusion condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must not enter or remain in a specified place or area.

**Example**

The following are examples of directions that may be made under a condition attached under subsection (1)—

- (a) that the offender must not enter or remain in a specified sporting venue in Victoria;
- (b) that the offender must not enter or remain in the central business district of Melbourne.

S. 48H  
inserted by  
No. 65/2011  
s. 21.

**Note**

Exclusion from a place or area that is a licensed premises may be a condition of an order under section 48J, alcohol exclusion condition.

- (2) When attaching a place or area exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.
- (3) When attaching a place or area exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (4) The court must not attach a place or area exclusion condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

S. 48I  
inserted by  
No. 65/2011  
s. 21.

**48I Curfew condition**

- (1) A court which is making a community correction order may attach a condition to the order, directing that the offender must remain at the place specified in the order between specified hours of each day for the period specified in the order.

**Example**

An example of a direction that may be made under a condition attached under subsection (1) is a direction that the offender must remain at home between 9pm and 6am each day.

- (2) When attaching a curfew condition the court may—
  - (a) have regard to the risk the condition poses to the safety of any person who is likely to reside with the offender under the order;
  - (b) have regard to any effect the attaching of the condition may have on any employment of the offender.

- 
- (3) The offender must remain at a place specified by the court under a curfew condition for—
- (a) not less than 2 hours of each day; and
  - (b) not more than 12 hours of each day—
- for the period specified in the order which must not be more than 6 months.
- (4) The court must not attach a curfew condition that is inconsistent with a family violence intervention order or a personal safety intervention order.

**48J Alcohol exclusion condition**

S. 48J  
inserted by  
No. 65/2011  
s. 21.

- (1) A court which is making a community correction order may attach a condition directing that the offender comply with the restrictions in subsection (2).
- (2) For the purpose of subsection (1) and subject to subsection (3) the restrictions are as follows—
- (a) the offender must not enter or remain in any licensed premises characterised as a nightclub, bar, restaurant, cafe, reception centre or function centre; and
  - (b) the offender must not enter or remain in the location of any major event; and
  - (c) the offender must not enter or remain in a bar area of any licensed premises to which paragraph (a) or (b) does not apply; and
  - (d) the offender must not consume liquor in any licensed premises to which paragraph (a) or (b) does not apply.
- (3) When attaching an alcohol exclusion condition a court may specify a licensed premises to which the restrictions under subsection (2)(a), (b) or (c) do not apply.

- (4) The court may attach an alcohol exclusion condition to address the role of alcohol in the offending behaviour.
- (5) When attaching an alcohol exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.
- (6) When attaching an alcohol exclusion condition the court may specify whether the condition applies to the offender for a period of hours of each day or at all times.
- (7) When attaching an alcohol exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.
- (8) In this section—

*bar area* means an area within a licensed premises that is set aside for the service of liquor for consumption on that premises;

*licensed premises* has the same meaning as in the **Liquor Control Reform Act 1998**;

*liquor* has the same meaning as in the **Liquor Control Reform Act 1998**;

*major event* has the same meaning as in the **Liquor Control Reform Act 1998**.

#### **48K Judicial monitoring condition**

- (1) A court which is making a community correction order may attach a condition to the order directing that the offender be monitored by the court, if the court is satisfied that it is necessary for the court to review (during the course of the order) the compliance of the offender with the order.

S. 48K  
inserted by  
No. 65/2011  
s. 21.

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- (2) The court may make a direction for the following matters in a judicial monitoring condition—
    - (a) a time or times at which the offender must re-appear before the court for a review under section 48L of the compliance of the offender with the order; and
    - (b) any information, report or test that must or may be provided in the course of a review under section 48L.
  - (3) A direction in a judicial monitoring condition made by the court under subsection (2)(a) or (b) is not to be taken to empower the medical testing of the offender or the making of a medical report as to the offender without the consent of the offender.
  - (4) A judicial monitoring condition attached to an order remains in force for the period specified by the court in the order, or, if no period is specified in the order, for the period of the order.
  - (5) Any proceeding where an offender re-appears before the court for review in accordance with a judicial monitoring condition may be conducted by the court constituted by the judicial officer who made the order or by the court constituted by another judicial officer.

**48L Power of court on review under a judicial monitoring condition**

S. 48L  
inserted by  
No. 65/2011  
s. 21.

- (1) In any proceeding where an offender re-appears before a court for review of the offender's compliance with the order under a judicial monitoring condition—
  - (a) the court may require the offender, or may invite the offender to answer questions or produce information (including reports or the results of medical examinations or medical tests);

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- (b) the court may invite the offender's medical practitioner or any medical practitioner who has examined the offender to produce any medical report about the offender or the results of any medical test about the offender to the court;
- (c) the court may require or invite any of the following persons to provide information to the court either verbally or in any written form—
- (i) the Secretary;
  - (ii) the person or body who prosecuted the offender for the offence;
  - (iii) any other person the court considers appropriate.
- (2) In any proceeding where an offender re-appears before a court for review in accordance with the terms of a judicial monitoring condition the court—
- (a) may—
- (i) cancel the condition; or
  - (ii) vary the condition, including shortening or extending the condition; or
  - (iii) take no further action in relation to the condition; or
- (b) may give further directions as to—
- (i) the time or times at which the offender must re-appear before the court for other reviews under this section of the compliance of the offender with the order; and
  - (ii) any information, report or test that must or may be provided in the course of another review under this section.

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**Division 5—Variation etc. of order**

Pt 3A Div. 5  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

**48M Variation etc. of community correction order**

S. 48M  
inserted by  
No. 65/2011  
s. 21.

- (1) On an application under section 48N, the court which made a community correction order may decide to deal with the order under subsection (2), if the court is satisfied that—
  - (a) 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) the circumstances of the offender were wrongly stated or were not accurately presented to the court or to the author of a pre-sentence report or drug and alcohol report before the order was made; or
  - (c) the offender no longer consents to the order; or
  - (d) the rehabilitation and reintegration of the offender would be advanced by the making of the decision to deal with the order; or
  - (e) the continuation of the sentence is no longer necessary in the interests of the community or the offender.
- (2) If satisfied of a matter set out in subsection (1), the court may decide to deal with the order in one or more of the following ways—
  - (a) by confirming the order or a part of the order; or
  - (b) by cancelling the order and dealing 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; or

- (c) by cancelling the order and making no further order in respect of the offence or offences with respect to which the order was originally made; or
- (d) by varying the order; or
- (e) in relation to a condition of the order, by cancelling, suspending, varying or reducing the condition; or

**Example**

An example of a variation of a condition of the order that may be made under paragraph (e) is a reduction of the number of hours specified under an unpaid community work condition.

- (f) by attaching a new condition on the order; or
  - (g) in relation to a program that must be undertaken under the order, by cancelling, suspending, varying or reducing the program; or
  - (h) by imposing a new program that must be undertaken under the order.
- (3) The court must make a decision under subsection (2) on the basis of its assessment of the extent to which the offender has complied with the order.
  - (4) The Secretary must disclose any direction he or she has given under Division 3 of Part 3C to a court making an assessment under subsection (3).

S. 48N  
inserted by  
No. 65/2011  
s. 21.

**48N Application for variation etc. of a community correction order**

- (1) An application for the court to deal with a community correction order under section 48M may be made at any time while the order is in force by—

- 
- (a) a prescribed person or a member of a prescribed class of person; or
  - (b) the informant or police prosecutor (if the sentencing court was the Magistrates' Court); or
  - (c) the Director of Public Prosecutions; or
  - (d) the offender; or
  - (e) the Secretary.
- (2) Notice of an application under subsection (1) must be given—
- (a) to the offender, if the application is not made by the offender; and
  - (b) to the Director of Public Prosecutions; and
  - (c) to the informant or police prosecutor, if the sentencing court was the Magistrates' Court; and
  - (d) any prescribed person or a member of any prescribed class of person; and
  - (e) the Secretary.
- (3) 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.

**480 Suspension by Secretary**

- (1) The Secretary may—
- (a) if the offender is ill; or
  - (b) in other exceptional circumstances—
- suspend for a period the operation of a community correction order or any condition of the order.

S. 480  
inserted by  
No. 65/2011  
s. 21.

s. 48P

- (2) If the Secretary suspends the operation of an order or a condition of an order under subsection (1), the period of the suspension does not count in calculating the period for which the order is to remain in force or a condition is to be complied with.

Pt 3A Div. 6  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

#### **Division 6—Miscellaneous matters**

S. 48P  
inserted by  
No. 65/2011  
s. 21.

#### **48P 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 community correction order, the Secretary may direct the offender to report at another place or to another person.
- (2) An offender must report as directed under subsection (1) as if that place or person had been specified in the order.

S. 48Q  
inserted by  
No. 65/2011  
s. 21.

#### **48Q Order made by Court of Appeal**

For the purposes of any proceeding under Division 2 of Part 3C, a community correction order made by the Court of Appeal on an appeal must be taken to have been made by the court from whose decision the appeal was brought.

**PART 3B—SENTENCES—OTHER ORDERS**

Pt 3B  
(Heading)  
inserted by  
No. 65/2011  
s. 21.

**Division 1—Fines**

Pt 3 Div. 4  
(Heading)  
substituted as  
Pt 3B Div. 1  
(Heading) by  
No. 65/2011  
s. 22.

**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 subsection (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—
  - (a) providing for the forfeiture of the offender's property or the automatic forfeiture of the offender's property by operation of law; or

S. 50(3)(a)  
amended by  
No. 108/1997  
s. 156(e).

(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 subsection (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

- (1) 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.
- (2) If the Supreme Court or the County Court hears and determines charges for summary offences under section 242 or 243 of the **Criminal Procedure Act 2009** and proposes to impose an aggregate fine in respect of 2 or more of those offences, the court—
- (a) is not required to identify separate events giving rise to specific charges; and
  - (b) is not required to announce—
    - (i) the sentences that would have been imposed for each offence had separate sentences been imposed; or

S. 51  
amended by  
No. 30/2010  
s. 19 (ILA  
s. 39B(1)).

S. 51(2)  
inserted by  
No. 30/2010  
s. 19.

(ii) whether those sentences would have been imposed concurrently or cumulatively.

(3) Subsection (2) does not affect the requirements of section 6AAA.

S. 51(3)  
inserted by  
No. 30/2010  
s. 19.

## 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 subsection (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.

S. 55  
amended by  
No. 69/1997  
s. 7(1) (ILA  
s. 39B(1)).

## 55 Application by person fined

(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

S. 55(1)  
amended by  
No. 69/1997  
s. 8(1)(a).

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- (b) an order that the fine be paid by instalments;  
or
- (c) an order for the variation of the terms of an  
instalment order; or
- (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, an 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) An offender may not apply under subsection  
(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 section 68(1) of,  
the **Infringements Act 2006**.
- (3) An offender on whom a fine referred to in  
subsection (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 an 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).
- (4) On an application under subsection (3), the  
Magistrates' Court may—
- (a) make one or more orders of a kind referred  
to in subsection (1); or
- (b) confirm any order then in force.
- S. 55(1)(c)  
amended by  
No. 41/1993  
s. 12.
- 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),  
65/2011  
s. 23(1).
- S. 55(2)  
inserted by  
No. 69/1997  
s. 7(1),  
amended by  
No. 32/2006  
s. 92(2).
- S. 55(3)  
inserted by  
No. 69/1997  
s. 7(1),  
amended by  
No. 65/2011  
s. 23(2).
- S. 55(4)  
inserted by  
No. 69/1997  
s. 7(1).

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**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 subsection 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 subsection (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 subsection (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 subsection (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),  
substituted by  
No. 65/2011  
s. 24(1).

- (1) If a natural person defaults in the payment of a fine or of any instalment under an instalment order for a period of more than one month, the sentencing court or the proper officer may issue a warrant to arrest the person.

S. 62(1A)  
inserted by  
No. 65/2011  
s. 24(1).

- (1A) The court or proper officer must not issue a warrant under subsection (1) if an order has been made by the sentencing court under section 62A.

- (2) A warrant to arrest issued under subsection (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 subsection (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.

- (2B) A warrant issued in accordance with subsection (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 subsection (2A) and directed to the sheriff had been issued in paper form under subsection (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 subsection (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 subsection (3).

S. 62(2B)  
inserted by  
No. 69/1997  
s. 9.

(5) A warrant endorsed or issued by the sheriff in accordance with subsection (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.

(7) A warrant under this section must not be executed if, within 7 days after a demand is made on the person in default by a person authorised to execute the warrant—

(a) the fine or instalment and all warrant costs are paid; or

(b) the person in default has obtained an instalment order or time to pay order; or

(c) an order has been made by the sentencing court under section 62A.

S. 62(7)  
amended by  
Nos. 41/1993  
s. 15(1),  
69/1997  
s. 8(3),  
10/2004  
s. 15(Sch. 1  
item 27.4),  
substituted by  
No. 65/2011  
s. 24(2).

(7A) In making an order in accordance with subsection (7)(a) or (b), the court or the proper officer may include any warrant costs in the amount of the fine.

S. 62(7A)  
inserted by  
No. 41/1993  
s. 15(2).

(8) The person making the demand under subsection (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.

S. 62(9)  
repealed by  
No. 65/2011  
s. 24(3).

\* \* \* \* \*

(10) Subject to subsection (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—

**S. 62(10)**  
amended by  
Nos 41/1993  
s. 13(b)(i)(ii),  
69/1997  
s. 8(4).

- (a) with the consent of the offender, make an order requiring the offender to perform unpaid community work, as directed by the Regional Manager for the community corrections centre specified in the order, 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(10)(a)**  
substituted by  
No. 65/2011  
s. 24(4).

(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(10AA)**  
inserted by  
No. 69/1997  
s. 8(5),  
amended by  
No. 10/2004  
s. 15(Sch. 1  
item 27.5).

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 subsection (10) in the offender's absence and make any order under that subsection 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 subsection (10) in the offender's absence and make any order under that subsection 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 subsection (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 subsection (10) unless it is satisfied that no other order under that subsection is appropriate in all the circumstances of the case.

S. 62(13)  
inserted by  
No. 69/1997  
s. 7(2),  
amended by  
No. 32/2006  
s. 92(3),  
substituted by  
No. 65/2011  
s. 24(5).

(13) Subsections (1A) and (7)(c) do not apply where a fine has been 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 the **Infringements Act 2006**.

**62A Power to make fine default unpaid community work order**

S. 62A  
inserted by  
No. 65/2011  
s. 25.

- (1) For the purposes of section 62(1) and (7), if the amount of a fine or an instalment remaining unpaid by a natural person is not more than an amount equivalent to the value of 100 penalty units, the sentencing court for the person in default may make an order requiring the person to perform unpaid community work, as directed by the Regional Manager for the community corrections centre specified in the order, for a number of hours fixed in accordance with section 63(2).
- (2) An order under subsection (1) may be made on application of the person in default.

**63 Terms of imprisonment or hours of unpaid work**

- (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.
- (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.
- (3) The minimum and maximum number of hours set out in subsection (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

S. 63(1)  
amended by  
No. 10/2004  
s. 15(Sch. 1  
item 27.6(a)  
(i)(ii)).

S. 63(2)  
amended by  
Nos 69/1997  
s. 8(6),  
10/2004  
s. 15(Sch. 1  
item 27.6(b)  
(i)(ii)).

S. 63(3)  
inserted by  
No. 41/1993  
s. 14,  
amended by  
No. 65/2011  
s. 26.

s. 63A

or she is then in default and to which the proceeding under section 62(10) or section 62A(1) 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.

S. 63A  
inserted by  
No. 65/2011  
s. 27.

**63A Contravention of fine conversion order or fine default unpaid community work order**

- (1) Part 3C, with the modifications set out in this section, applies to a contravention of a fine conversion order as if—
- (a) in that Part (other than sections 83AE and 83AF) a reference to "community correction order" were a reference to "fine conversion order"; and
  - (b) the penalty at the foot of section 83AD(1) were—  
"Penalty: Level 10 fine."
- (2) Part 3C, with the modifications set out in this section, applies to a contravention of a fine default unpaid community work order as if—
- (a) in that Part (other than sections 83AE and 83AF) a reference to "community correction order" were a reference to "fine default unpaid community work order"; and

(b) the penalty at the foot of section 83AD(1) were—

"Penalty: Level 10 fine."

- (3) In sentencing a person for a contravention of a fine conversion order or a fine default unpaid community work order, if the court considers that the orders that it may make under Part 3C in respect of the order are not adequate because—
- (a) of the nature of the offence; and
  - (b) of the characteristics of the offender; and
  - (c) the offender has intentionally refused 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.

**63B Part payment of fine to reduce unpaid community work**

S. 63B  
inserted by  
No. 65/2011  
s. 27.

- (1) If at any time while a fine conversion order or a fine default unpaid community work order is in force, part of the amount then remaining unpaid is paid as required in subsection (2), 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.
- (2) An amount being paid under subsection (1) must be paid, in accordance with the regulations, to the Secretary by or on behalf of the person required to perform unpaid community work.

#### **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 subsection (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 subsection (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**

- (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

S. 65(1)  
amended by  
No. 41/1993  
s. 15(3).

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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 subsection (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 subsection (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 subsection (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 subsection (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 infringement enforcement procedure**

This Division does not apply to the use of the procedures for the enforcement of infringement penalties under the **Infringements Act 2006**.

S. 69  
substituted by  
No. 32/2006  
s. 93.

## **Division 2—Dismissals, discharges and adjournments**

Pt 3 Div. 5  
(Heading)  
substituted as  
Pt 3B Div. 2  
(Heading) by  
No. 65/2011  
s. 28.

### **Subdivision (1)—General**

## **70 Purpose of orders under this Division**

- (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;

S. 70  
amended by  
No. 48/1997  
s. 20(1).

- (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 subsection (1) must have as conditions—

S. 72(2)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.49).

- (a) that the offender attends 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 conditions attached by the court.
- (3) Subject to Division 3 of Part 3B, a court may attach a justice plan 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 subsection (1) may be called on to attend 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 subsection (4) must be served on the offender not less than 4 days before the time specified in it for the attendance.
- (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.

S. 72(2)(c)  
amended by  
No. 65/2011  
s. 29(1).

S. 72(3)  
amended by  
Nos 48/1997  
s. 28(1),  
65/2011  
s. 29(2).

S. 72(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.50).

S. 72(5)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.51).

### **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 subsection (1) must have as conditions—
  - (a) that the offender attends 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.
- (3) Subject to Division 3 of Part 3B, a court may attach a justice plan 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 subsection (1) may be called on to attend 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 subsection (4) must be served on the offender not less than 4 days before the time specified in it for the attendance.

S. 75(2)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.52).

S. 75(3)  
amended by  
Nos 48/1997  
s. 28(1),  
65/2011 s. 30.

S. 75(4)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.53).

S. 75(5)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.54).

- (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 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 subsection, 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

Pt 3B Div. 2  
Subdiv. (4)  
(Heading)  
amended by  
No. 65/2011  
s. 31.

(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 subsection (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.

**S. 78(2)  
substituted by  
No. 65/2011  
s. 32.**

- (2) A court, in determining how to deal with an offender under subsection (1) must take into account the extent to which the offender has complied with the order.
- (3) An application under subsection (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 subsection (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.

\* \* \* \* \*

S. 79  
amended by  
Nos 48/1997  
s. 21,  
10/1999 s. 30,  
68/2009  
s. 97(Sch.  
items 110.55–  
110.58),  
repealed by  
No. 65/2011  
s. 33.

### Division 3—Intellectually disabled offenders

Pt 3 Div. 6  
(Heading)  
substituted as  
Pt 3B Div. 3  
(Heading) by  
No. 65/2011  
s. 34.

#### 80 Justice plan condition

S. 80  
amended by  
Nos 48/1997  
ss 14(8), 28(1),  
46/1998  
s. 7(Sch. 1),  
23/2006 s. 227,  
substituted by  
No. 65/2011  
s. 35.

- (1) A court that is considering—
- (a) making a community correction order; or
  - (b) releasing an offender on adjournment with or without recording a conviction—
- may attach a condition to the order directing that the offender participate in the services specified in the plan prepared under subsection (3)(c).
- (2) In attaching a condition under subsection (1) the court must—
- (a) consider the plan and the other information requested under subsection (3); and
  - (b) have regard to those objectives and principles specified in Part 2 of the **Disability Act 2006**.
- (3) A court which is considering making an order attaching a justice plan condition may request—
- (a) a pre-sentence report under Division 1A of Part 3; and

- (b) a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006**; and
  - (c) a plan of available services designed to reduce the likelihood of the offender committing further offences and that is in accordance with the objectives and principles of Part 2 of the **Disability Act 2006**.
- (4) When attaching a justice plan condition, the condition may apply for a period of up to 2 years, as specified by the court or the period of the sentence (whichever is the shorter).
- (5) If a court attaches a justice plan condition it must cause a copy of the order to be supplied to the Secretary to the Department of Human Services.

### 81 Review of justice plan by Secretary

S. 81(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
65/2011  
s. 36(1)(2).

- (1) The Secretary to the Department of Human Services must review a justice plan—

S. 81(1)(a)  
amended by  
Nos 48/1997  
s. 28(2),  
65/2011  
s. 36(3).

- (a) not later than one year after the imposing of the order to which the justice plan condition is attached under section 80 and thereafter at intervals not exceeding one year; or
- (b) as directed by the court at the time of sentencing—

until the condition of the sentence ceases to have effect.

S. 81(2)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
65/2011  
s. 36(4).

- (2) The Secretary to the Department of Human Services may review a justice plan if an application is made to him or her to do so by—
- (a) the offender; or

(b) if the sentence is a community correction order, the Secretary; or

S. 81(2)(b) amended by No. 45/1996 s. 18(Sch. 2 item 11.12), substituted by No. 65/2011 s. 36(5).

(c) if the sentence is a an order under Subdivision (2) or (3) of Division 2, a prescribed person or a member of a prescribed class of persons.

S. 81(2)(c) amended by Nos 48/1997 s. 14(9), 65/2011 s. 36(6).

## 82 Review of justice plan condition by sentencing court

S. 82 (Heading) inserted by No. 65/2011 s. 37.

(1) If on an application under this subsection the court which attached a justice plan condition to an order under section 80(1) is satisfied—

S. 82(1) amended by Nos 23/2006 s. 228(1), 65/2011 s. 38(1)(2)(a).

(a) that the offender is no longer willing to comply with the condition; or

S. 82(1)(a) amended by No. 65/2011 s. 38(2)(a).

(b) that the needs of the offender are not being met by the condition; or

S. 82(1)(b) amended by No. 65/2011 s. 38(2)(a).

(c) that the offender has failed without reasonable excuse to comply with the condition; or

S. 82(1)(c) amended by No. 65/2011 s. 38(2)(a).

(d) that the condition is no longer appropriate—  
it may confirm, vary or cancel the condition.

S. 82(1)(d) amended by No. 65/2011 s. 38(2)(b).

(2) An application under subsection (1) may be made at any time while the justice plan condition is in force by—

S. 82(2) amended by No. 65/2011 s. 38(3).

Sentencing Act 1991  
No. 49 of 1991  
Part 3B—Sentences—Other Orders

s. 82

S. 82(2)(b)  
amended by  
Nos 45/1996  
s. 18(Sch. 2  
item 11.13),  
65/2011  
s. 38(4)(a).

- (a) the offender; or
- (b) if the sentence is a community correction order, the Secretary; or

S. 82(2)(c)  
amended by  
Nos 48/1997  
s. 14(9),  
65/2011  
s. 38(4)(b).

- (c) if the sentence is an order under Subdivision (2) or (3) of Division 2, a prescribed person or a member of a prescribed class of persons; or

S. 82(2)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 23/2006  
s. 228(2),  
amended by  
No. 65/2011  
s. 38(4)(c).

- (d) the Secretary to the Department of Human Services.

(3) Notice of an application under subsection (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.

S. 82(5)  
amended by  
No. 65/2011  
s. 38(5).

(5) If the court cancels the justice plan condition, it may cancel the sentence and, subject to subsection (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.

**82AA Residential treatment order**

S. 82AA  
inserted by  
No. 65/2011  
s. 39.

- (1) A court may make an order directing that the offender be detained for a period of up to 5 years in a specified residential treatment facility to receive specified treatment if—
- (a) the offender has been found guilty of a serious offence; or
  - (b) the offender has been found guilty of an offence against section 39 of the **Crimes Act 1958** (indecent assault).
- (2) If a court is considering making a residential treatment order the court may request—
- (a) a pre-sentence report in accordance with Division 1A of Part 3; and
  - (b) a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006**; and
  - (c) a plan of available services.
- (3) A court may only make a residential treatment order if the Secretary to the Department of Human Services has specified—
- (a) that the person is suitable for admission to a residential treatment facility; and

s. 82A

(b) in the plan of available services, that services are available in a residential treatment facility.

(4) If a court makes a residential treatment order it must cause a copy of the order to be supplied to the Secretary to the Department of Human Services.

S. 82A  
inserted by  
No. 23/2006  
s. 229.

**82A Review of residential treatment order by sentencing court**

S. 82A(1)  
amended by  
No. 65/2011  
s. 40(1).

(1) If on an application under this subsection the court which imposed a residential treatment order under section 82AA is satisfied—

- (a) that the offender is not complying with the residential treatment order; or
- (b) that the needs of the offender are not being met by the residential treatment order; or
- (c) that the residential treatment order is no longer appropriate—

it may confirm, vary or cancel the residential treatment order.

(2) An application under subsection (1) may be made at any time while the residential treatment order is in force by—

- (a) the offender; or
- (b) the Secretary; or

S. 82A(2)(b)  
substituted by  
No. 65/2011  
s. 40(2).

S. 82A(2)(c)  
substituted by  
No. 65/2011  
s. 40(3).

- (c) the Secretary to the Department of Human Services.

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- (3) Notice of an application under subsection (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 residential treatment order, it may cancel the sentence and, subject to subsection (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) or 82A(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

S. 83  
amended by  
No. 23/2006  
s. 230.

s. 83A

- (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.

Pt 3 Div. 7  
(Heading)  
substituted as  
Pt 3B Div. 4  
(Heading) by  
No. 65/2011  
s. 41.

#### **Division 4—Deferral of sentencing in the Magistrates' Court or County 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 or County Court finds a person guilty of an offence and—

S. 83A(1)  
amended by  
No. 77/2010  
s. 21(1)  
(a)(d)(e).

S. 83A(1)(a)  
amended by  
No. 72/2004  
s. 39,  
repealed by  
No. 77/2010  
s. 21(1)(b).

\* \* \* \* \*

(b) the court is of the opinion that sentencing should, in the interests of the offender, be deferred; and

S. 83A(1)(b)  
amended by  
No. 77/2010  
s. 21(1)(c).

(c) the offender agrees to a deferral of sentencing—

the court may defer sentencing the offender for a period not exceeding 12 months.

(1A) The court may defer sentencing the offender under subsection (1) for any one or more of the following purposes—

S. 83A(1A)  
inserted by  
No. 77/2010  
s. 21(2).

(a) to allow the offender's capacity for and prospects of rehabilitation to be assessed;

(b) to allow the offender to demonstrate that rehabilitation has taken place;

(c) to allow the offender to participate in a program or programs aimed at addressing the underlying causes of the offending;

(d) to allow the offender to participate in a program or programs aimed at addressing the impact of the offending on the victim;

(e) for any other purpose that the court considers appropriate having regard to the offender and the circumstances of the case.

(1B) In making an order deferring a sentence under subsection (1), the court may determine the date at which the offender must re-appear before the court for a review of the order.

S. 83A(1B)  
inserted by  
No. 77/2010  
s. 21(2).

(1C) Dates fixed under subsection (1B) must be between the date on which the order deferring the sentence is made and the date to which the proceeding has been adjourned.

S. 83A(1C)  
inserted by  
No. 77/2010  
s. 21(2).

(1D) On the review of an order deferring a sentence under this section, the court may—

S. 83A(1D)  
inserted by  
No. 77/2010  
s. 21(2).

(a) take no further action; or

Sentencing Act 1991  
No. 49 of 1991  
Part 3B—Sentences—Other Orders

**s. 83A**

(b) cancel the order deferring the sentence and proceed to sentence the offender, as if the matter were an adjourned hearing to which subsection (3) applies.

**S. 83A(1E)**  
inserted by  
No. 77/2010  
s. 21(2).

(1E) In making an order deferring a sentence under subsection (1), the court may order that any review of the order under subsection (1B) be dealt with by the court constituted by the person who made the order deferring the sentence.

**S. 83A(2)**  
amended by  
No. 77/2010  
s. 21(3)(a).

(2) If the Magistrates' Court or County Court defers sentencing an offender, it—

**S. 83A(2)(a)**  
amended by  
No. 77/2010  
s. 21(3)(b).

(a) must adjourn the proceeding for a period of up to 12 months; and

**S. 83A(2)(b)**  
amended by  
Nos. 68/2009  
s. 97(Sch.  
item 110.59),  
77/2010  
s. 21(3)(c).

(b) may release the offender on his or her undertaking to attend before the 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.

**S. 83A(3)**  
amended by  
No. 77/2010  
s. 21(4).

(3) On the adjourned hearing, the court must, in determining the appropriate sentence for an offender, have regard to—

(a) the offender's behaviour during the period of deferral; and

**S. 83A(3)(b)**  
amended by  
No. 65/2011  
s. 42.

(b) subject to section 8D, any pre-sentence report ordered under subsection (2)(c); and

(c) any other relevant matter.

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- (4) If an offender is found guilty of an offence during a period of deferral under this section, the court may—
- (a) re-list the adjourned proceeding on a day earlier than the day to which it was adjourned under subsection (2)(a); and
  - (b) on the adjourned hearing make any order that the court could have made if it had not deferred sentencing.
- (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 adjourned hearing.
- (6) Nothing in this section removes any requirement imposed on the Magistrates' Court or County 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.
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**PART 3C—SENTENCES—CONTRAVENTION OF SENTENCE**

**Division 1—Offences**

Pt 3C  
(Heading and  
ss 83AB–  
83AT)  
inserted by  
No. 65/2011  
s. 43.

**83AB Contravention of suspended sentence**

- (1) If an offender who is subject to a suspended sentence order is convicted or found guilty of an offence punishable by imprisonment, being an offence committed during the period of the order, the offender is guilty of an offence and liable to a penalty not exceeding 3 months imprisonment.
- (2) In this section *suspended sentence order* means an order under section 27 suspending the whole or a part of a sentence to a term of imprisonment.

S. 83AB  
inserted by  
No. 65/2011  
s. 43.

**83AC Contravention of order for release on adjournment**

An offender who is subject to an order under section 72 or 75 for release on the adjournment of the proceeding must not contravene that order, unless the offender has a reasonable excuse.

Penalty: Level 10 fine.

S. 83AC  
inserted by  
No. 65/2011  
s. 43.

**83AD Contravention of community correction order**

- (1) An offender who is subject to a community correction order must not contravene that order, unless the offender has a reasonable excuse.  
Penalty: 3 months imprisonment.
- (2) A proceeding is not able to be brought against a person for an offence under subsection (1) in relation to conduct of that person in respect of which that person has been acquitted, convicted or found guilty of an offence under section 83AE or 83AF.

S. 83AD  
inserted by  
No. 65/2011  
s. 43.

**83AE Particular contraventions of directions of Secretary**

S. 83AE  
inserted by  
No. 65/2011  
s. 43.

- (1) An offender who is subject to a community correction order and who is attending at a place under a direction given by the Secretary in compliance with section 45(1)(f), must not leave that place unless—
- (a) the offender has first obtained the permission of the Secretary; or
  - (b) the offender has a reasonable excuse.

Penalty: Level 11 fine.

- (2) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f), must, unless the offender has a reasonable excuse, notify the Secretary if he or she is unable to attend as required—
- (a) at least 24 hours before the offender is due to attend the location if the offender has at least 24 hours notice of that inability; or
  - (b) immediately on becoming unable to attend if the offender did not have at least 24 hours notice of his or her inability to attend at the location.

Penalty: Level 11 fine.

- (3) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f), must attend at the place on the required day and time unless—
- (a) the offender has obtained the permission of the Secretary not to attend; or
  - (b) the offender has a reasonable excuse.

Penalty: Level 11 fine.

- (4) An offender who is subject to a community correction order and who is required to attend at a place under a direction given by the Secretary in compliance with section 45(1)(f) must produce a medical certificate, as soon as is practicable, if the offender has not attended because of illness.

Penalty: Level 11 fine.

- (5) An offender who is subject to a community correction order who is required to attend at a community corrections centre under the order must not enter an unauthorised area of the community corrections centre without the permission of the Secretary.

Penalty: Level 11 fine.

- (6) In this section—

*unauthorised area* means an area designated by the Secretary to be an unauthorised area.

- (7) A proceeding is not able to be brought against a person for an offence under this section in relation to conduct of that person in respect of which that person has been acquitted, convicted or found guilty of an offence under section 83AD or 83AF.

S. 83AF  
inserted by  
No. 65/2011  
s. 43.

**83AF Offence to fail to obey a written direction of Secretary**

- (1) An offender who is subject to a community correction order must not contravene a written direction of the Secretary that is given under section 46 unless that person has a reasonable excuse.

Penalty: Level 11 fine.

- (2) A proceeding is not able to be brought against a person for an offence under subsection (1) in relation to conduct of that person in respect of which that person has been acquitted, convicted or

found guilty of an offence under section 83AD or 83AE.

### **Division 2—Bringing a proceeding**

#### **83AG Bringing of proceeding for offence**

S. 83AG  
inserted by  
No. 65/2011  
s. 43.

- (1) An offender may be proceeded against for an offence under section 83AB, 83AC or 83AD on a charge-sheet.

#### **Note**

Chapter 2 and Chapter 3 of the **Criminal Procedure Act 2009** apply to a criminal proceeding against an offender for an offence under section 83AE or 83AF.

- (2) A charge-sheet must be filed under subsection (1) in the sentencing court by—
- (a) the Director of Public Prosecutions; or
  - (b) a prescribed person; or
  - (c) the informant or police prosecutor; or
  - (d) a member of a prescribed class of person; or
  - (e) the Secretary—
- as the case requires.

#### **83AH Time for bringing proceeding**

S. 83AH  
inserted by  
No. 65/2011  
s. 43.

- (1) A proceeding for an offence under section 83AB, 83AC or 83AD must be commenced—
- (a) if the contravention is constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 6 months after the person is convicted or found guilty of the later offence, subject to subsection (2); or
  - (b) if the contravention is not constituted by the offender committing another offence punishable by imprisonment while the order

s. 83AI

is in force, within 1 year after the order ceasing to be in force.

- (2) A proceeding for an offence under section 83AB, 83AC or 83AD to which subsection (1)(a) applies must not be commenced more than 2 years after the order ceases to be in force.

S. 83AI  
inserted by  
No. 65/2011  
s. 43.

**83AI Proceeding where offender before a court**

- (1) If an offender has been convicted or found guilty of an offence (the *first offence*) the fact that the offender has been so convicted or found guilty constitutes a contravention of an order under this Act, and the offender is present before a court for the prosecution of the first offence, if a charge-sheet for an offence under section 83AB, 83AC or 83AD has been filed, the court may do either of the following—
- (a) proceed to hear the proceeding for that offence; or
  - (b) if it is not the sentencing court in relation to the order (in accordance with the regulations) transfer the proceeding for the offence under section 83AB, 83AC or 83AD to the sentencing court.
- (2) For the purpose of transferring a proceeding under subsection (1)(b) the court may, if the offender is not being held in custody in relation to the other offence or for any other reason, grant bail to the offender conditioned for, or remand the offender in custody, pending his or her attendance at the sentencing court.

S. 83AJ  
inserted by  
No. 65/2011  
s. 43.

**83AJ Proceeding where offender not before a court**

- (1) If an offender has been convicted or found guilty of an offence (the *first offence*) the fact that the offender has been so convicted or found guilty constitutes a contravention of an order under this Act, and the offender has not been dealt with

under section 83AI, a person who is entitled to file the charge-sheet in relation to that offence may apply to a registrar of the Magistrates' Court at any venue of that Court for the issue of—

- (a) a contravention summons; or
- (b) a warrant to arrest—

in order to compel the attendance of the offender at the sentencing court.

- (2) An application under subsection (1) may be made by the applicant in person or by post and at any venue of the Magistrates' Court.

**83AK Issue of contravention summons or warrant to arrest**

S. 83AK  
inserted by  
No. 65/2011  
s. 43.

- (1) On an application under section 83AJ, the registrar must, if satisfied that there are reasonable grounds to believe that the offender has committed an offence under section 83AB, 83AC or 83AD issue—
  - (a) a summons to answer to the commission of the offence; or
  - (b) a warrant to arrest.
- (2) A registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that—
  - (a) it is probable that the offender will not answer a contravention summons; or
  - (b) the offender has absconded, is likely to abscond or is avoiding service of a contravention summons that has been issued; or
  - (c) a warrant is required or authorised for other good cause.

s. 83AL

S. 83AL  
inserted by  
No. 65/2011  
s. 43.

**83AL Power to amend a contravention summons or warrant to arrest**

Section 50 of the **Magistrates' Court Act 1989** applies to a contravention summons or warrant to arrest issued under section 83AK as if the reference in that section—

- (a) to a warrant were a reference to a contravention summons or warrant issued under section 83AK; and
- (b) to the court were a reference to the court which imposed the order which is the subject of the offence.

S. 83AM  
inserted by  
No. 65/2011  
s. 43.

**83AM Form of contravention summons**

A contravention summons—

- (a) must direct the offender to attend at the proper venue of the Magistrates' Court or, if the order was imposed by the Supreme Court or the County Court, at that court, on a specified date and at a specified time to answer to the commission of the offence; and
- (b) may be served in any manner in which a summons to answer to a charge may be served under section 16 of the **Criminal Procedure Act 2009**.

S. 83AN  
inserted by  
No. 65/2011  
s. 43.

**83AN Extension of return date for summons**

On the application of the person who applied for the issue of the contravention summons at any time before it is served, the date specified in the contravention summons for the offender to attend court (the *return date*) may be extended without cause—

- (a) before the return date; or

(b) within one month after the return date—  
by a registrar at the venue of the Magistrates' Court at which the summons was issued on one occasion and thereafter may be extended—

(c) before the current return date; or

(d) within one month after the current return date—

by such a registrar if he or she is satisfied by evidence on oath or by affidavit that reasonable efforts have been made to serve the summons.

**83AO Service of contravention summons**

Service of a contravention summons may be proved in any manner in which service of a summons to answer to a charge may be proved under section 399 of the **Criminal Procedure Act 2009**.

S. 83AO  
inserted by  
No. 65/2011  
s. 43.

**83AP Issue of warrant to arrest on failure to comply with bail or summons**

- (1) If an offender does not attend before a court—
- (a) in accordance with his or her undertaking of bail granted under section 83AI(2); or
  - (b) in answer to a contravention summons which has been served in accordance with this section—

the court may issue a warrant to arrest the offender.

- (2) A warrant to arrest authorised to be issued under this section is to be issued in accordance with Part 4 of the **Magistrates' Court Act 1989** and that Part applies to such a warrant with any necessary modifications.

S. 83AP  
inserted by  
No. 65/2011  
s. 43.

s. 83AQ

S. 83AQ  
inserted by  
No. 65/2011  
s. 43.

**83AQ Unrepresented accused**

- (1) If the offender is unrepresented on his or her first attendance before the court in answer to bail granted or a contravention summons or warrant issued, under this Part, the court must—
  - (a) ask the offender whether he or she has sought legal advice; and
  - (b) if satisfied that the offender has not had a reasonable opportunity to obtain legal advice, grant an adjournment if so requested by the offender.
- (2) If the court before which an offender attends in answer to bail granted, or a contravention summons or warrant issued, under this Part is satisfied that the offender does not have a knowledge of the English language that is sufficient to enable the offender to understand, or participate in, the proceeding, it must not hear and determine the proceeding without a competent interpreter interpreting it.

S. 83AR  
inserted by  
No. 65/2011  
s. 43.

**83AR Powers of court on finding of guilt for contravention of order as to suspended sentence**

- (1) If the court finds a person guilty of an offence under section 83AB in respect of a suspended sentence order the court must (in addition to sentencing the offender for the offence)—
  - (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

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- after the date of the order under this subsection; or
- (d) make no order with respect to the suspended sentence.
- (2) Despite anything to the contrary in subsection (1), if the court finds the offender guilty as mentioned in that subsection it must exercise the power referred to in subsection (1)(a) unless it is of the opinion that it would be unjust to do so because exceptional circumstances have arisen since the order suspending the sentence was made.
- (3) 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.
- (4) Despite anything to the contrary in this section, if, in the case of an offender who is under 21 years of age at the time the finding is made under subsection (1), the court restores the whole or part of the sentence or part sentence held in suspense, it may order the offender to serve it as detention in a youth justice centre or youth residential centre.
- (5) Section 32 applies to an order under subsection (4) as if it were a youth justice centre order or a youth residential centre order and as if the reference in section 32(1) to a pre-sentence report were a reference to a pre-sentence report that deals with the matter of the contravention of the suspended sentence.
- (6) 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.

- (7) 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.

S. 83AS  
inserted by  
No. 65/2011  
s. 43.

**83AS Powers of the court on finding of guilt for contravention of community correction order**

- (1) If a court finds a person guilty of an offence under section 83AD (in addition to sentencing the offender for the offence) the court must—
- (a) vary the order in any manner set out in section 48M(2)(c), (d), (e), (f), (g) or (h); 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 subsection (2), deal with the offender for the offence with respect to which the order was made in any manner in which the court could deal with the offender as if it had just found him or her guilty of that offence; or
  - (d) cancel the order and make no further order with respect to the offence with respect to which the order was originally made.
- (2) A court, in determining how to deal with an offender under subsection (1), must take into account the extent to which the offender has complied with the order.
- (3) The Secretary must disclose any direction he or she has given under Division 3 of Part 3C to a court making an assessment under subsection (2).

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**83AT Powers of the court on finding of guilt for  
contravention of order for release on adjournment**

S. 83AT  
inserted by  
No. 65/2011  
s. 43.

- (1) If in a proceeding for an offence under section 83AC, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—
- (a) deal with the order under section 78, as if an application had been made under that section; 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, deal with the offender for the offence 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
  - (d) make no further order with respect to the offence in respect of which the original order was made.
- (2) A court, in determining how to deal with an offender under subsection (1), must take into account the extent to which the offender has complied with the order.
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s. 83B

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## PART 3D—SUPERANNUATION ORDERS

Pt 3A  
(Heading)  
renumbered  
as Pt 3D  
(Heading) by  
No. 65/2011  
s. 44.

Pt 3A  
(Heading and  
ss 83B–83K)  
inserted by  
No. 65/2004  
s. 3.

S. 83B  
inserted by  
No. 65/2004  
s. 3.

### 83B Purpose of Part

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.

S. 83C  
inserted by  
No. 65/2004  
s. 3.

### 83C Application of Part

- (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**

(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 heard and determined 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* of an offender means—

- (a) a person who is in a registered relationship with the offender; or
- (b) 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) a university within the meaning of the **Education and Training Reform Act 2006** that is a body politic and is governed by a council, some of the

S. 83D  
inserted by  
No. 65/2004  
s. 3.

S. 83D(1)  
def. of  
*authorised  
person*  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.60).

S. 83D(1)  
def. of  
*domestic  
partner*  
substituted by  
No. 12/2008  
s. 73(1)(Sch. 1  
item 56.1).

S. 83D(1)  
def. of  
*excluded  
public body*  
amended by  
No. 24/2006  
s. 6.1.2(Sch. 7  
item 35(a)).

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;

S. 83D(1)  
def. of  
***public body***  
amended by  
No. 24/2006  
s. 6.1.2(Sch. 7  
item 35(b)).

- (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 institute within the meaning of the **Education and Training Reform Act 2006**;
- (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;

*public sector employee* means a person who is, or was, at the time that he or she committed the relevant offence—

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),  
24/2006  
s. 6.1.2(Sch. 7  
item 35(c)).

- (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 **Education and Training Reform Act 2006**;
- (h) employed under the **Education and Training Reform Act 2006**;
- (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;

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***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

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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 subsection (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 subsection (1), a reference to an Act specified in those definitions includes a reference to any corresponding previous enactment and to any corresponding subsequent enactment.
- (4) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the

S. 83D(4)  
inserted by  
No. 12/2008  
s. 73(1)(Sch. 1  
item 56.2).

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**Relationships Act 2008** as may be relevant  
in a particular case.

**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 VIII B 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 subsection (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 subsection (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 VIII B 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 subsection (2); and

s. 83G

- (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 subsection (2), upon the determination of the appeal.
- (2) If the conviction is set aside 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 subsection (3) takes effect as if it had been made under section 83F.

S. 83G(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.61).

### **83H Provisions applying to a superannuation order**

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.

S. 83H  
inserted by  
No. 65/2004  
s. 3.

### **83I Powers of an authorised person to require information**

- (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

S. 83I  
inserted by  
No. 65/2004  
s. 3.

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 subsection (1).

Penalty: 10 penalty units.

- (3) It is sufficient compliance with a request under subsection (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**

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. 83J  
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.

S. 83K  
inserted by  
No. 65/2004  
s. 3.

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**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 subsection (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 subsection (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 subsection (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 subsection (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 subsection (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 in the committal proceeding.

S. 84(8)(b) substituted by No. 68/2009 s. 97(Sch. item 110.62).

S. 84(8)(c) repealed by No. 68/2009 s. 97(Sch. item 110.62).

\* \* \* \* \*

(9) References in this section to—

- (a) stealing must be construed in accordance with subsections (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

- (1) Subject to section 30 of the **Confiscation Act 1997**, an order made under subsection (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 subsection (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.

S. 85(1) amended by No. 108/1997 s. 156(f).

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**Division 2—Compensation**

**Subdivision (1)—Compensation for pain and suffering etc.**

Pt 4 Div. 2  
Subdiv. 1  
(Heading and  
ss 85A–85M)  
inserted by  
No. 54/2000  
s. 21.

**85A Definitions**

S. 85A  
inserted by  
No. 54/2000  
s. 21.

(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 subsection (1).

S. 85B  
inserted by  
No. 54/2000  
s. 21.

### 85B Compensation order

- (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 subsection (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 subsection (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 charge, any other occurrence of the same offence involved in the course of conduct of which the charge 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. 85B(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.63).

**85C Application for compensation order**

S. 85C  
inserted by  
No. 54/2000  
s. 21.

- (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 subsection (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.

S. 85D  
inserted by  
No. 54/2000  
s. 21.

#### **85D Extension of time for making application**

- (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 subsection (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 subsection (1) without giving the offender a reasonable opportunity to be heard on the matter.

S. 85E  
inserted by  
No. 54/2000  
s. 21.

#### **85E Proceeding on an application**

- (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.

**85F Court must not refuse to hear and determine application except in certain circumstances**

S. 85F inserted by No. 54/2000 s. 21.

(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 accused; or

S. 85F(1)(b) amended by No. 68/2009 s. 97(Sch. item 110.64).

(c) the available documents—

together with admissions made by or on behalf of any person in connection with the application.

(2) In subsection (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 in the committal proceeding;  
or

S. 85F(2)(b) substituted by No. 68/2009 s. 97(Sch. item 110.65).

\* \* \* \* \*

S. 85F(2)(c) repealed by No. 68/2009 s. 97(Sch. item 110.65).

- (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.

S. 85G  
inserted by  
No. 54/2000  
s. 21.

### **85G Evidence**

- (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.

S. 85H  
inserted by  
No. 54/2000  
s. 21.

### **85H Court may take financial circumstances of offender into account**

- (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.

**85I Court must reduce compensation by amount of any award under Victims of Crime Assistance Act 1996**

S. 85I  
inserted by  
No. 54/2000  
s. 21.

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.

**85J Court to give reasons for its decision**

S. 85J  
inserted by  
No. 54/2000  
s. 21.

- (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 subsection (1) does not invalidate the decision made by it on the application.

**85K Costs of proceeding**

S. 85K  
inserted by  
No. 54/2000  
s. 21.

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.

s. 85L

S. 85L  
inserted by  
No. 54/2000  
s. 21.

### **85L Right to bring civil proceedings unaffected**

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.

S. 85M  
inserted by  
No. 54/2000  
s. 21.

### **85M Enforcement of order**

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.

Pt 4 Div. 2  
Subdiv. 2  
(Heading)  
inserted by  
No. 54/2000  
s. 21.

### **Subdivision (2)—Compensation for property loss.**

### **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 subsection (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 subsection (1) only because it has been unable to find out the financial circumstances of the offender.
- (4) In making an order under subsection (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 subsection (1)—
- (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 or (if the sentencing court was the Magistrates' Court) the informant or police prosecutor.
- (6) Nothing in subsection (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(5)(a) amended by Nos 81/1996 s. 74(1)(b), 54/2000 s. 22(2)(b).

S. 86(5)(b)(ii) amended by No. 69/1997 s. 10(a)–(c).

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 subsection (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 in the committal proceeding; or
- \* \* \* \* \*
- (d) any victim impact statement made to the court for the purpose of assisting it in determining sentence.

S. 86(9)(b)  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 110.66).

S. 86(9)(c)  
amended by  
No. 19/1999  
s. 11,  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 110.66).

S. 86(9)(d)  
inserted by  
No. 19/1999  
s. 11,  
amended by  
No. 54/2000  
s. 22(2)(d).

Sentencing Act 1991  
No. 49 of 1991  
Part 4—Orders in Addition to Sentence

s. 87

\* \* \* \* \*

**S. 86(9A)–(9C)**  
inserted by  
No. 81/1996  
s. 74(2),  
repealed by  
No. 54/2000  
s. 22(2)(e).

(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(9D)**  
inserted by  
No. 19/1999  
s. 12(2).

(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.

**S. 86(10)**  
amended by  
Nos 81/1996  
s. 74(3),  
54/2000  
s. 22(2)(f).

(11) References in this section to property include references to a motor vehicle.

**87 Enforcement of compensation order**

**S. 87**  
amended by  
Nos 108/1997  
s. 156(g),  
19/1999  
s. 12(3).

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.

s. 87A

Pt 4 Div. 2A  
(Heading and  
ss 87A, 87B)  
inserted by  
No. 81/1996  
s. 75.

**Division 2A—Recovery of assistance paid under Victims of  
Crime Assistance Act 1996**

S. 87A  
inserted by  
No. 81/1996  
s. 75.

**87A Recovery of assistance paid under Victims of Crime  
Assistance Act 1996**

(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 subsection (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 subsection (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 subsection (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 subsection (1) only because it has been unable to find out the financial circumstances of the offender.
- (6) An offender may appear on the hearing of an application under subsection (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 subsection (1) (including an order that has been previously varied) in any manner that the court thinks fit.

**S. 87A(6)**  
amended by  
**No. 18/2005**  
s. 18(Sch. 1  
item 97.2).

\* \* \* \* \*

**S. 87A(8)**  
repealed by  
**No. 54/2000**  
s. 23(3).

s. 87B

S. 87B  
inserted by  
No. 81/1996  
s. 75.

**87B Enforcement of order under section 87A**

- (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.

Pt 4 Div. 2B  
(Heading and  
ss 87C–87N)  
inserted by  
No. 80/2001  
s. 4.

**Division 2B—Recovery of costs incurred by emergency service agencies**

S. 87C  
inserted by  
No. 80/2001  
s. 4.

**87C Definitions**

In this Division—

*cost recovery order* means an order under section 87D(1);

*emergency* includes an apparent emergency;

*emergency service agency* means—

- (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

S. 87C def. of  
*emergency  
service  
agency*  
amended by  
No. 51/2005  
s. 58(7).

- (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;

*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

S. 87C def. of *emergency service worker* amended by No. 51/2005 s. 58(8).

- 
- (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;

**government agency** has the same meaning as in the **Victoria State Emergency Service Act 2005**;

S. 87C def. of *government agency* amended by No. 51/2005 s. 58(8).

**statement of costs** means a statement referred to in section 87H(2)(d).

#### **87D Cost recovery order**

S. 87D inserted by No. 80/2001 s. 4.

- (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 subsection (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.

s. 87E

S. 87E  
inserted by  
No. 80/2001  
s. 4.

### **87E Application for cost recovery order**

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.

S. 87F  
inserted by  
No. 80/2001  
s. 4.

### **87F Extension of time for making application**

- (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 subsection (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 subsection (1) without giving the offender a reasonable opportunity to be heard on the matter.

S. 87G  
inserted by  
No. 80/2001  
s. 4.

### **87G How offender may appear on an application**

In a proceeding on an application for a cost recovery order the offender—

- (a) may appear personally; or
- (b) may be represented—

S. 87G(b)(i)  
amended by  
No. 18/2005  
s. 18(Sch. 1  
item 97.2).

- (i) by a lawyer; or

- (ii) with the leave of the court, by any other person.

**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 accused; or

(c) the available documents—

together with admissions made by or on behalf of any person in connection with the application.

(2) In subsection (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 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. 87H  
inserted by  
No. 80/2001  
s. 4.

S. 87H(1)(b)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.67).

S. 87H(2)(b)  
substituted by  
No. 68/2009  
s. 97(Sch.  
item 110.68).

S. 87H(2)(c)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 110.68).

s. 87I

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.

#### **87K Court to give reasons for its decision**

S. 87K  
inserted by  
No. 80/2001  
s. 4.

- (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 subsection (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.

s. 87M

S. 87M  
inserted by  
No. 80/2001  
s. 4.

### 87M Right to bring civil proceedings unaffected

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.

S. 87N  
inserted by  
No. 80/2001  
s. 4.

### 87N Enforcement of order

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

S. 87P  
inserted by  
No. 1/2002  
s. 11.

### 87P Interpretation

(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) Subsection (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**

- (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)  
amended by  
Nos 57/1998  
s. 26(1),  
59/2004  
s. 9(1)(c).

s. 89

S. 89(1)(c)  
amended by  
Nos 59/2004  
s. 9(1)(a),  
93/2009  
s. 49(1).

(c) an offence under section 318 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel) by the offender; or

S. 89(1)(d)  
inserted by  
No. 59/2004  
s. 9(1)(b),  
amended by  
No. 93/2009  
s. 49(1).

(d) an offence under section 319 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel) by the offender—

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 subsection (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 subsection (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 subsection (2) to the Chief Commissioner of Police and the registrar at the proper venue of the Magistrates' Court.

(3A) If—

- (a) a person applies under subsection (2) for an order as to the issue of a driver licence; and
- (b) the court referred to in subsection (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 subsection (3B).

**Note**

In some cases, the court is not required to have regard to the report referred to in subsection (3B)(a): see section 89A(3)(a).

S. 89(3A)  
inserted by  
No. 57/1998  
s. 26(2).

Note to  
s. 89(3A)  
inserted by  
No. 1/2002  
s. 12(a).

(3B) A person to whom paragraphs (a) and (b) of subsection (3A) apply must obtain from an accredited agency—

- (a) at least 12 months before applying for the order under subsection (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**

In some cases, the person is not required to obtain the report referred to in paragraph (a): see section 89A(3)(a).

S. 89(3B)  
inserted by  
No. 57/1998  
s. 26(2).

Note to  
s. 89(3B)  
inserted by  
No. 1/2002  
s. 12(b).

(3C) If a person applies under subsection (2) for an order and there was no finding referred to in subsection (3A)(b), the Magistrates' Court may request a licence restoration report from an accredited agency.

S. 89(3C)  
inserted by  
No. 57/1998  
s. 26(2).

**S. 89(3D)**  
inserted by  
No. 57/1998  
s. 26(2).

(3D) On an application under subsection (2) the court may, in exceptional circumstances, reduce the period of 12 months referred to in subsection (3B)(a).

**S. 89(3E)**  
inserted by  
No. 57/1998  
s. 26(2).

- (3E) On an application under subsection (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 subsection (3B)(b) or (3C) and any report obtained under subsection (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.

(3F) Nothing in subsection (3E) prevents the application of Part 3.10 of the **Evidence Act 2008** to a proceeding under subsection (2).

S. 89(3F)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 51.3).

(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.

**89A Direction to impose alcohol interlock condition**

S. 89A  
inserted by  
No. 1/2002  
s. 13.

(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

s. 89A

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 subsection (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 subsection (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**—

subsection (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

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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.

**89B Removal of alcohol interlock condition**

S. 89B  
inserted by  
No. 1/2002  
s. 13.

(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.

S. 89B(1)  
amended by  
No. 110/2004  
s. 45(2).

(2) The specified period must be—

(a) in the case of a direction under section 89A(2), at least 6 months after the condition is imposed; or

S. 89B(2)(a)  
substituted by  
No. 110/2004  
s. 45(1).

(b) in any other case, at least 4 years after the condition is imposed.

S. 89B(2)(b)  
amended by  
No. 81/2006  
s. 7(1).

(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.

S. 89B(3)  
amended by  
No. 49/2004  
s. 44.

(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—

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- (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 subsection (4).
- (6) Nothing in subsection (5) prevents the application of Part 3.10 of the **Evidence Act 2008** to making a determination under that subsection.

S. 89B(6)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 51.4).

**89C Appeals against direction or period specified in direction**

S. 89C  
inserted by  
No. 1/2002  
s. 13.

- (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 254 of the **Criminal Procedure Act 2009** 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

S. 89C(1)  
amended by  
Nos 110/2004  
s. 45(2),  
68/2009  
s. 97(Sch.  
item 110.69).

S. 89C(1)(b)  
amended by  
Nos 110/2004  
s. 45(3)(a)(b),  
81/2006  
s. 7(2).

condition if that period is more than  
4 years—

as if the direction were a sentence of a kind  
referred to in section 254 of the **Criminal  
Procedure Act 2009**.

- (2) That Act applies with respect to the appeal with  
any necessary modifications.

S. 89D  
inserted by  
No. 1/2002  
s. 13.

### **89D Offences and immobilisation orders**

- (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  
subsection (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.

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- (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 subsection (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 subsection (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 subsection (4) may be made subject to specified conditions.

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- (6) The court may make an order under subsection (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 subsection (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.
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**PART 4A—IDENTITY CRIME CERTIFICATES**

Pt 4A  
(Heading and  
ss 89E–89H)  
inserted by  
No. 22/2009  
s. 6.

**89E Definitions**

S. 89E  
inserted by  
No. 22/2009  
s. 6.

In this Part—

*identification information* has the same meaning as in section 192A of the **Crimes Act 1958**;

*identity crime offence* means an offence a necessary element of which consists of the use of identification information (that is not identification information that relates to the offender);

*victim*, in relation to an identity crime offence, means a person whose identification information has been used, without that person's consent, in connection with the commission of the offence.

**89F Court may issue certificate to victim of identity crime**

S. 89F  
inserted by  
No. 22/2009  
s. 6.

- (1) If a court finds a person guilty of an identity crime offence the court may issue a certificate to a person who is a victim of the offence setting out that the person is a victim of the offence.
- (2) The court may issue a certificate under subsection (1) on its own motion or on application—
  - (a) by the victim; or
  - (b) 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

s. 89G

- (c) by the person who prosecuted the identity crime offence, or another person on that person's behalf.

S. 89G  
inserted by  
No. 22/2009  
s. 6.

### **89G Contents of certificate**

A certificate issued under section 89F—

- (a) must set out—
- (i) the identity crime offence to which the certificate relates; and
  - (ii) the name of the victim; and
- (b) may set out any other matter the court considers relevant.

S. 89H  
inserted by  
No. 22/2009  
s. 6.

### **89H Process for dealing with application**

- (1) In any proceeding dealing with an application for a certificate under this Part, the court—
- (a) is not required to have regard to the rules of evidence; and
  - (b) may inform itself in any way that it thinks fit.
- (2) In any proceeding dealing with an application for a certificate under this Part, the court may direct that notice be given to the person who prosecuted the identity crime offence to appear at the hearing of the application to provide assistance to the court in relation to the application.
- (3) A person to whom notice is given under subsection (2) may appoint another person to appear on that person's behalf at the hearing.

**PART 5—MENTALLY ILL OFFENDERS**

**Pt 5 (Heading)**  
substituted by  
No. 69/2005  
s. 3(3)(b).

**90 Assessment orders**

**S. 90**  
amended by  
Nos 98/1995  
s. 64(2)(a),  
69/2005  
s. 4(1)(b)(c)(2)  
(ILA s. 39B(1)).

- (1) If on the trial or hearing of a person for an offence—
- (a) the person is found guilty; and
  - (b) the court is of the opinion that—
    - (i) the person appears to be mentally ill; and
    - (ii) the person's mental illness may require treatment and that treatment may be obtained by the person being detained in an approved mental health service; and
    - (iii) because of the person's mental illness, involuntary treatment of the person is necessary 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
  - (c) the court has received advice in writing from the authorised psychiatrist of the approved mental health service in which the person is proposed to be detained stating that there are facilities or services available at that service for the assessment of the person's suitability

**S. 90(1)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.70).

**S. 90(b)**  
amended by  
No. 98/1995  
s. 64(2),  
substituted by  
No. 69/2005  
s. 4(1)(a).

**S. 90(c)**  
amended by  
No. 98/1995  
s. 64(2)(d),  
substituted by  
No. 69/2005  
s. 4(1)(a).

for a restricted involuntary treatment order or a hospital security order—

the court may make an order (an assessment order) under which the person is 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 a restricted involuntary treatment order or a hospital security order.

- (2) An assessment order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.

S. 90(2)  
inserted by  
No. 69/2005  
s. 4(2).

S. 91  
amended by  
Nos 98/1995  
s. 64(3)(d),  
69/2005  
s. 4(3)(b)(4)  
(ILA s. 39B(1)).

## 91 Diagnosis, assessment and treatment orders

- (1) If on the trial or hearing 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—
    - (i) the person appears to be mentally ill; and
    - (ii) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to an order under this section; and
    - (iii) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in

S. 91(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.71).

S. 91(b)  
amended by  
No. 98/1995  
s. 64(3),  
substituted by  
No. 69/2005  
s. 4(3)(a).

the person's physical or mental condition or otherwise) or for the protection of members of the public; and

- (c) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service in which the person is proposed to be detained—
- (i) recommending the making of the order; and
  - (ii) stating that there are facilities or services available at that service for the diagnosis, assessment and treatment of the person—

S. 91(c) amended by No. 98/1995 s. 64(3)(d), substituted by No. 69/2005 s. 4(3)(a).

the court may make an order (a diagnosis, assessment and treatment order) under which the person is 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.

- (2) A diagnosis, assessment and treatment order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.

S. 91(2) inserted by No. 69/2005 s. 4(4).

## 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)—

S. 92(a)  
amended by  
No. 69/2005  
s. 4(5).

(a) may make a restricted involuntary treatment order or a hospital security order; or

S. 92(b)  
amended by  
No. 30/2010  
s. 26.

(b) may impose 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.

S. 93  
amended by  
Nos 98/1995  
s. 64(4)(5),  
48/1997 s. 22,  
69/1997 s. 11,  
substituted by  
No. 69/2005  
s. 5.

### 93 Restricted involuntary treatment orders

S. 93(1)  
amended by  
No. 30/2010  
s. 27.

(1) Instead of imposing sentence on a person found guilty of an offence (other than an offence that is a serious offence for the purposes of Subdivision (1A) of Division 2 of Part 3), a court may make a restricted involuntary treatment order for the person if—

- (a) 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—
- (i) the person appears to be mentally ill; and
  - (ii) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to a restricted involuntary treatment order; and

- 
- (iii) because of the person's mental illness, involuntary treatment of the person is necessary 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
- (b) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service at which the person is proposed to be treated—
- (i) recommending the making of the order; and
- (ii) stating that there are facilities or services available at that service for the treatment of the person.
- (2) In determining whether or not to make a restricted involuntary treatment order for a person, the court must consider the person's current mental condition, his or her medical, psychiatric and forensic history and his or her social circumstances.
- (3) A restricted involuntary treatment order must specify the duration of the order, which must not exceed 2 years.
- (4) A restricted involuntary treatment order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.

**Note**

- 1 Under section 15A of the **Mental Health Act 1986**, a restricted community treatment order may be made at any time for a person who is subject to a restricted involuntary treatment order.

- 2 A person subject to a restricted involuntary treatment order or a restricted community treatment order may be discharged under the **Mental Health Act 1986** from the order by the Mental Health Review Board or the chief psychiatrist.

S. 93A  
inserted by  
No. 69/2005  
s. 5.

### 93A Hospital security orders

- (1) A court may make a hospital security order for a person who is found guilty of an offence, by way of sentence, if—
- (a) 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—
- (i) the person appears to be mentally ill; and
  - (ii) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to a hospital security order; and
  - (iii) because of the person's mental illness, the detention and treatment of the person in an approved mental health service is necessary 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
- (b) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service in which the person is proposed to be detained and treated—
- (i) recommending the making of the order; and

- 
- (ii) stating that there are facilities or services available in that service for the treatment of the person.
- (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) In determining whether or not to make a hospital security order for a person, the court must consider the person's current mental condition, his or her medical, psychiatric and forensic history and his or her social circumstances.
- (4) A hospital security order must specify the duration of the order, which must not exceed the period of imprisonment to which the person would have been sentenced had the order not been made.

**Note**

See section 18E, which provides for indefinite hospital security orders.

- (5) A hospital security order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.
- (6) 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.
- (7) If at any time before the end of the period specified in a hospital security order an order is made under section 44 or 45 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.

**Note**

Under section 16A of the **Mental Health Act 1986**, a person who is serving a sentence in a prison under subsection (7) may be transferred to an approved mental health service under his or her hospital security order.

**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—

(a) to the approved mental health service named in the order; and

(b) from the approved mental health service to the court in connection with the exercise by the court of its powers under section 92.

(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.

(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(1)(a)  
amended by  
No. 98/1995  
s. 64(6).

S. 94(1)(b)  
amended by  
No. 98/1995  
s. 64(6).

S. 94(2)  
amended by  
No. 98/1995  
s. 64(6).

S. 94(3)  
inserted by  
No. 26/1997  
s. 54.

S. 94(4)  
inserted by  
No. 26/1997  
s. 54.

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**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.

Sentencing Act 1991

No. 49 of 1991

Part 6—Making of Sentencing and Other Orders

s. 95A

Pt 6 Div. 1A  
(Heading and  
ss 95A–95E)  
inserted by  
No. 24/1994  
s. 7,  
amended by  
Nos 19/1999  
ss 13, 14,  
26/1999 s. 107  
(Sch. item 8)  
(as amended  
by No.  
27/2000  
s. 40(c)),  
41/2000  
s. 102(Sch.  
item 6),  
15/2005  
ss 4, 5,  
97/2005  
s. 182(Sch. 4  
item 45.2),  
13/2010  
s. 51(Sch.  
item 49.2),  
18/2010  
ss 7–9,  
repealed by  
No. 65/2011  
s. 45.

\* \* \* \* \*

Pt 6 Div. 2  
(Heading and  
ss 96–99)  
amended by  
Nos 45/1996  
s. 18(Sch. 2  
item 11.14),  
48/1997  
ss 14(10),  
17(9)(10), 23,  
46/1998  
s. 7(Sch. 1),  
48/2006  
s. 42(Sch.  
item 32.8),  
repealed by  
No. 65/2011  
s. 46.

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Sentencing Act 1991  
No. 49 of 1991  
Part 6—Making of Sentencing and Other Orders

s. 100

\* \* \* \* \*

Pt 6 Div. 2A  
(Heading and  
ss 99A–99E)  
inserted by  
No. 48/1997  
s. 24,  
amended by  
Nos 29/2010  
s. 71(3),  
43/2010  
s. 48(2),  
repealed by  
No. 65/2011  
s. 47.

\* \* \* \* \*

Pt 6 Div. 2B  
(Heading and  
ss 99F–99J)  
inserted by  
No. 53/2003  
s. 6,  
amended by  
Nos 52/2008  
s. 266,  
68/2008 s. 83,  
30/2010 s. 28,  
43/2010  
s. 48(2),  
53/2010  
ss 221(Sch.  
item 10.6),  
224,  
repealed by  
No. 48/2011  
s. 22.

**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—

(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 indicted; and

S. 100(1)(a)  
amended by  
Nos 48/1997  
s. 25(2),  
68/2009  
s. 97(Sch.  
item 110.72).

(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 subsection (1) must be signed by—

(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.

S. 100(2)(a)  
amended by  
Nos 43/1994  
s. 56(Sch.  
item 6.1),  
36/1995  
s. 13(1).

- (5) An order made under subsection (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 subsection (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.
- (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 subsection (7) unless each conviction in respect of which it has been taken into account has been 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.

S. 100(7)  
amended by  
No. 48/1997  
s. 25(2).

S. 100(8)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.73).

- (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

S. 101(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.74).

- (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 or hearing 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—

S. 101(3)(a)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.75).

(a) release the person to be sentenced on the person giving an undertaking conditioned for that person's attendance 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.

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- (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) Subsection (2) applies where on the trial or hearing 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 imposed on it; and
- (b) the judge or magistrate who presided at the trial or hearing 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 impose sentence within a reasonable time.
- (2) If this subsection 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 imposing of sentence and may give judgment or impose sentence.
- (3) In all cases where it is possible so to do the judge or magistrate referred to in subsection (1)(b) must be consulted before judgment is given or sentence is imposed under subsection (2).
- (4) Non-compliance with subsection (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 subsection (1)(b) to give judgment or impose sentence within a reasonable time must be decided by the Chief Justice of the Supreme
- S. 102(1) amended by No. 68/2009 s. 97(Sch. item 110.76).
- S. 102(1)(a) amended by No. 30/2010 s. 25(a).
- S. 102(1)(b) amended by Nos 68/2009 s. 97(Sch. item 110.76), 30/2010 s. 25(b).
- S. 102(2) amended by No. 30/2010 s. 25(b)(c).
- S. 102(3) amended by No. 30/2010 s. 25(a).
- S. 102(5) amended by No. 30/2010 s. 25(b).

**s. 102**

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.

**S. 102(6)**  
amended by  
Nos 68/2009  
s. 97(Sch.  
item 110.76),  
30/2011  
s. 25(b).

(6) If on the trial or hearing of an offence—

(a) a verdict of guilty has been found or a plea of guilty has been received; and

**S. 102(6)(b)**  
amended by  
No. 30/2010  
s. 25(a)(c).

(b) all steps preliminary to the giving of judgment or the imposing of sentence have been taken but no judgment or sentence has been given or imposed—

any other judge of the Supreme Court or the County Court or magistrate (as the case requires) may give the judgment or impose the sentence determined by the judge or magistrate who presided at the trial or hearing or received the plea (as the case requires).

**S. 102(7)**  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.77).

(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 imposing of sentence and may give judgment or impose sentence.

**S. 102(8)**  
amended by  
Nos 68/2009  
s. 97(Sch.  
item 110.78),  
30/2010  
s. 25(a).

(8) A judgment given or sentence imposed under subsection (2), (6) or (7) has for all purposes the same effects and consequences as if it had been given or imposed by the judge or magistrate who presided at the trial or hearing 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.

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**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 subsection (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 subsection.
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**PART 7—CORRECTION OF SENTENCES**

**104 Correction of sentences by Supreme Court**

S. 104(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.79).

- (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 setting aside 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 subsection (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) Subsections (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 subsections to a conviction or sentence included a reference to such an order.

**104A Power to correct clerical mistakes, etc.**

S. 104A  
inserted by  
No. 48/1997  
s. 26.

- (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 subsection (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 subsection (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.

**s. 104A**

- (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 subsection (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.

Pt 8 (Heading)  
repealed by  
No. 68/2009  
s. 97(Sch.  
item 110.80).

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S. 105  
repealed by  
No. 7/2009  
s. 432 (as  
amended by  
No. 68/2009  
s. 54(r)).

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**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, Youth and Families Act 2005**, as the case requires.

S. 107(1)(b)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 32.9).

(2) An undertaking under subsection (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 subsection (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 subsection (1)(a) must be released from custody.
- (5) If at any time during the period of an undertaking under subsection (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 subsection (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 subsection (5).
- (8) A registrar of the Magistrates' Court may sign any warrant that may be necessary for the purpose of subsection (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 subsection (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 subsection (5).

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- (10) If the Magistrates' Court recommitts 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.

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s. 108A

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**PART 9A—SENTENCING ADVISORY COUNCIL**

Pt 9A  
(Heading and  
ss 108A–  
108P)  
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. 108A  
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.

S. 108B  
inserted by  
No. 13/2003  
s. 6.

- (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 subsections (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.

s. 108E

- (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 11, and not more than 14, 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;

S. 108F(1)  
amended by  
No. 9/2011  
s. 6(1).

- (c) one must be a person who is a member of a victim of crime support or advocacy group;
  - (ca) one must be a person who is involved in the management of a victim of crime support group or advocacy group and who is a victim of crime or a representative of victims of crime; S. 108F(1)(ca) inserted by No. 9/2011 s. 6(2).
  - (cb) one must be a member of the police force who is actively engaged in criminal law enforcement duties and who is of the rank of senior sergeant or below; S. 108F(1)(cb) inserted by No. 9/2011 s. 6(2).
  - (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**

- (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.

S. 108G inserted by No. 13/2003 s. 6.

s. 108H

S. 108H  
inserted by  
No. 13/2003  
s. 6.

**108H Terms and conditions of office of directors**

- (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.
- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director in respect of the office of director.

S. 108H(2)  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 181.3),  
80/2006  
s. 26(Sch.  
item 95).

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 subsection (2); or
  - (c) if he or she is removed from office under subsection (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.

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**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. 108J  
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.

S. 108K  
inserted by  
No. 13/2003  
s. 6.

**108L Meetings of the Board**

- (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.

S. 108L  
inserted by  
No. 13/2003  
s. 6.

s. 108M

S. 108M  
inserted by  
No. 13/2003  
s. 6.

### 108M Staff

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<sup>18</sup>**

- (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**

<i>Column 1</i>	<i>Column 2</i>
<i>Level</i>	<i>Maximum Term of Imprisonment</i>
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.

Sentencing Act 1991  
No. 49 of 1991  
Part 10—Miscellaneous Provisions

s. 109

**TABLE 2**

<i>Column 1</i>	<i>Column 2</i>
<i>Level</i>	<i>Maximum Fine</i>
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(2)  
Table 2  
substituted by  
No. 69/1997  
s. 12.**

(3) Subject to subsection (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 maximum fine of the number of penalty units that is 10 times more than the maximum number of months of imprisonment that may be imposed.

**S. 109(3)  
amended by  
Nos 48/1997  
s. 28(4),  
69/1997  
ss 13(1),  
14(1), 15,  
substituted by  
No. 65/2011  
s. 48(1).**

(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(3A)  
inserted by  
No. 69/1997  
s. 14(2).**

\* \* \* \* \*

**S. 109(4)  
amended by  
Nos 41/1993  
s. 16, 48/1997  
s. 28(5),  
69/1997  
ss 13(2),  
14(3), 15,  
repealed by  
No. 65/2011  
s. 48(2).**

s. 109A

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.

**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.

S. 111  
amended by  
No. 48/1997  
s. 30.

**112 Classification of offences as indictable or summary**

- (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, subsection (1) applies even if only one of those ways is referred to in that subsection.

S. 112(1)  
substituted by  
No. 48/1997  
s. 28(6),  
amended by  
No. 69/1997  
s. 16.

**112A Maximum fine for indictable offence heard and determined summarily**

- (1) If a person is found guilty by the Magistrates' Court in a summary hearing of an indictable offence, the maximum fine that the Court may impose on the person is 500 penalty units.

S. 112A  
inserted by  
No. 7/2009  
s. 433 (as  
amended by  
No. 68/2009  
s. 54(s)).

- (2) Subsection (1) is subject to any contrary intention in any Act other than this Act.

**113 Maximum term of imprisonment for indictable offence heard and determined summarily**

S. 113(1)  
amended by  
Nos 48/1997  
s. 28(7),  
68/2009  
s. 97(Sch.  
item 110.81).

- (1) If a person is convicted by the Magistrates' Court in a summary hearing of an indictable offence under section 28(1) of the **Criminal Procedure Act 2009**, the maximum term of imprisonment to which the Court may sentence the offender is 2 years.

- (2) Subsection (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**

- (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.

S. 113A(1)  
amended by  
No. 69/1997  
s. 17.

S. 113B  
inserted by  
No. 48/1997  
s. 31.

**113B Maximum cumulative term of imprisonment imposable by Magistrates' Court**

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.

(1A) Despite subsection (1), if a body corporate is found guilty by the Magistrates' Court in a summary hearing of an indictable offence, the maximum fine that the Court may impose on the body corporate is 2500 penalty units.

S. 113D(1A)  
inserted by  
No. 7/2009  
s. 434 (as  
amended by  
No. 68/2009  
s. 54(t)).

(1B) Subsection (1A) is subject to any contrary intention in any Act other than this Act.

S. 113D(1B)  
inserted by  
No. 7/2009  
s. 434 (as  
amended by  
No. 68/2009  
s. 54(t)).

(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.

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**114 Effect of alterations in penalties<sup>19</sup>**

- (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.

**115B Delegation**

S. 115B  
inserted by  
No. 65/2011  
s. 68.

- (1) The Secretary may, by instrument, delegate any power or duty of the Secretary under—
- (a) Part 3A of this Act or the regulations except this power of delegation to—
    - (i) any officer within the meaning of Part 5 or Part 9 of the **Corrections Act 1986**; or
    - (ii) the Commissioner, within the meaning of the **Corrections Act 1986**; or
    - (iii) a prescribed person or prescribed class of person; or
  - (b) Division 3 of Part 3C of this Act or the regulations except this power of delegation to a person employed in the Department of Justice under Part 3 of the **Public Administration Act 2004** at a level of Grade 6 or higher.
- (2) A delegation under subsection (1) may be to a person or class of persons.

s. 116

Pt 11  
(Heading)  
substituted by  
No. 65/2011  
s. 50.

**PART 11—REGULATIONS AND GENERAL MATTERS**

**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, repealed by No. 48/2011 s. 23.

S. 116(1)(b) repealed by No. 65/2011 s. 51(a).

\*            \*            \*            \*            \*

S. 116(1)(c) amended by No. 65/2011 s. 51(b).

(c) the commencement of community correction 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

S. 116(1)(d) amended by No. 65/2011 s. 51(c).

(d) the payment of fines by or on behalf of a person required to perform unpaid community work under a fine conversion order or fine default unpaid community work order; and

S. 116(1)(e) repealed by No. 65/2011 s. 51(d).

\*            \*            \*            \*            \*

- (f) contraventions of sentence and applications for variation of sentence; and
- (fa) proceedings for contravention of sentence; and
- (fb) any matter relating to reviews by the court of decisions of the Secretary under Division 3 of Part 3C; 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.

S. 116(1)(f) amended by Nos 68/2009 s. 97(Sch. item 110.82), 30/2010 s. 29, substituted by No. 65/2011 s. 51(e).

S. 116(1)(fa) inserted by No. 65/2011 s. 51(e).

S. 116(1)(fb) inserted by No. 65/2011 s. 51(e).

\* \* \* \* \*

S. 116(3)(4) repealed by No. 10/1999 s. 31(4)(c).

**116A Transitional provisions**

Schedule 3 has effect.

S. 116A inserted by No. 65/2011 s. 52.

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 subsections (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**.

**117B Transitional provisions—Miscellaneous Acts (Omnibus Amendments) Act 1996**

S. 117B  
inserted by  
No. 10/2005  
s. 4(Sch. 2  
item 2).

- (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.

- (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.
- (3D) For the purposes of subsection (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 subsection (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**.

S. 118(3C)  
inserted by  
No. 69/1997  
s. 19.

S. 118(3D)  
inserted by  
No. 69/1997  
s. 19.

- (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 subsection (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.

S. 120  
inserted by  
No. 57/1998  
s. 27.

### 120 Transitional provisions (1998 amendments)

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**

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.

S. 121  
inserted by  
No. 10/1999  
s. 19,  
substituted by  
No. 1/2000  
s. 9.

**122 Transitional provisions—Sentencing (Amendment)  
Act 1999**

- (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

S. 122  
inserted by  
No. 19/1999  
s. 15.

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**.

S. 123  
inserted by  
No. 99/2000  
s. 16.

#### **123 Transitional provision—Magistrates' Court (Infringements) Act 2000**

- (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 subsection (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.

S. 123  
inserted by  
No. 54/2000  
s. 24,  
re-numbered  
as s. 124 by  
No. 2/2002  
s. 6.

#### **124 Transitional provisions—Victims of Crime Assistance (Amendment) Act 2000**

- (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 subsection (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.

**125 Transitional provisions—Sentencing (Emergency Service Costs) Act 2001**

S. 125  
inserted by  
No. 80/2001  
s. 5.

- (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 subsection (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

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 subsection (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 subsection (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 subsection (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.

**127 Transitional provision—Crimes (Property Damage and Computer Offences) Act 2003**

S. 127  
inserted by  
No. 10/2003  
s. 14.

- (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 subsection (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.

**127A Transitional provisions—Corrections and Sentencing Acts (Home Detention) Act 2003**

S. 127A  
inserted by  
No. 53/2003  
s. 8.

- (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.

**128 Transitional provision—Sentencing (Amendment) Act 2003**

S. 128  
inserted by  
No. 13/2003  
s. 5.

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—

s. 129

- (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.

S. 131  
inserted by  
No. 69/2005  
s. 6.

**131 Transitional provision—Sentencing and Mental Health Acts (Amendment) Act 2005**

- (1) This Act, as in force immediately before the commencement day, continues to apply on and after that day to a person who, immediately before that day, was the subject of a hospital order made under section 93(1)(d) as in force before that day.
- (2) Subsection (1) ceases to have effect 2 years after the commencement day and consequently the person ceases to be an involuntary patient at that time, unless he or she has been discharged from the hospital order earlier.

(3) A hospital security order in force under section 93(1)(e) immediately before the commencement day is taken, on and after that day, to be a hospital security order made under section 93A for the remainder of its duration.

(4) In this section—

*commencement day* means the day on which section 6 of the **Sentencing and Mental Health Acts (Amendment) Act 2005** comes into operation.

**132 Transitional provision—Courts Legislation (Jurisdiction) Act 2006**

S. 132  
inserted by  
No. 50/2006  
s. 39.

The amendments made to this Act by section 38 of the **Courts Legislation (Jurisdiction) Act 2006** apply to the sentencing of a person for an offence on or after the commencement of that section, irrespective of when the offence was committed or the finding of guilt was made.

**133 Transitional provisions—Sentencing (Suspended Sentences) Act 2006**

S. 133  
inserted by  
No. 82/2006  
s. 8.

(1) The amendments of this Act made by section 3, 5 or 6(1) of the **Sentencing (Suspended Sentences) Act 2006** apply to an order made under section 31 of this Act on or after the commencement of that section of that Act consequent on a finding of guilt of an offence made on or after that commencement, irrespective of when that offence was committed.

(2) The amendments of this Act made by section 4(1) or 4(2) of the **Sentencing (Suspended Sentences) Act 2006** apply to a sentence imposed on or after the commencement of that section of that Act in respect of an offence alleged to have been committed on or after that commencement.

- (3) For the purposes of subsections (1) and (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of a provision of the **Sentencing (Suspended Sentences) Act 2006**, the offence is alleged to have been committed before that commencement.

S. 134  
inserted by  
No. 56/2007  
s. 22.

**134 Transitional provision—Working with Children Act 2005**

- (1) The amendments made to this Act by the **Working with Children Act 2005** only apply to the sentencing of a person on or after the commencement of that Act in respect of an offence alleged to have been committed on or after that commencement.
- (2) For the purpose of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Working with Children Act 2005**, the offence is alleged to have been committed before that commencement.

S. 135  
inserted by  
No. 8/2008  
s. 18.

**135 Transitional provision—Criminal Procedure Legislation Amendment Act 2008**

Section 6AAA as inserted by section 3 of the **Criminal Procedure Legislation Amendment Act 2008** applies to a sentence imposed on or after the commencement of section 3 of that Act if the plea hearing commences on or after that commencement.

S. 136  
inserted by  
No. 18/2008  
s. 16.

**136 Transitional provision—Justice Legislation Amendment (Sex Offences Procedure) Act 2008**

- (1) The amendment made to this Act by section 15 of the **Justice Legislation Amendment (Sex Offences Procedure) Act 2008** applies to a sentence imposed in respect of an offence alleged

to have been committed on or after that commencement.

- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 15 of the **Justice Legislation Amendment (Sex Offences Procedure) Act 2008**, the offence is alleged to have been committed before that commencement.

**137 Transitional provision—Crimes Amendment (Identity Crime) Act 2009**

S. 137  
inserted by  
No. 22/2009  
s. 7.

- (1) Section 6AAA, as amended by section 5 of the **Crimes Amendment (Identity Crime) Act 2009**, applies to a sentence imposed on or after the commencement of section 5 of that Act irrespective of when the sentencing hearing commenced.
- (2) An application may be made under section 89F in relation to an identity crime offence (within the meaning of section 89E) committed before the commencement of section 6 of the **Crimes Amendment (Identity Crime) Act 2009**.

**138 Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009**

S. 138  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 51.5).

Sections 89(3F) and 89B(6) do not apply to a hearing that commenced before the day the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** and that—

- (a) continued on or after that day; or
- (b) was adjourned until that day or a day after that day.

S. 138  
inserted by  
No. 68/2009  
s. 97(Sch.  
item 110.83),  
renumbered  
as s. 139 by  
No. 7/2010  
s. 14(1).

### 139 Transitional provision—**Criminal Procedure Act 2009**

- (1) Subject to subsection (2), the maximum fine set out in section 112A, as inserted by section 433 of the **Criminal Procedure Act 2009**, applies to a sentence imposed on or after the commencement of section 433 of that Act, irrespective of when the criminal proceeding commenced and irrespective of when the Magistrates' Court determined to grant a summary hearing.
- (2) If—
  - (a) the maximum fine set out in section 112A is greater than the maximum fine that applies to the summary hearing of an indictable offence immediately before the commencement of section 433 of the **Criminal Procedure Act 2009**; and
  - (b) before the commencement of section 433 of that Act, the Magistrates' Court determined to grant a summary hearing of a charge for the offence—

the maximum fine for the offence immediately before that commencement applies.
- (3) Subject to subsection (4), the maximum fine set out in section 113D(1A) and (1B), as inserted by section 434 of the **Criminal Procedure Act 2009**, applies to a sentence imposed on or after the commencement of section 434 of that Act, irrespective of when the criminal proceeding commenced and irrespective of when the Magistrates' Court determined to grant a summary hearing.
- (4) If—
  - (a) the maximum fine set out in section 113D(1A) is greater than the maximum fine that applies to the summary hearing of an

indictable offence immediately before the commencement of section 434 of the **Criminal Procedure Act 2009**; and

- (b) before the commencement of section 434 of that Act, the Magistrates' Court determined to grant a summary hearing of a charge for the offence—

the maximum fine for the offence immediately before that commencement applies.

**140 Transitional provision—Sentencing Amendment Act 2009**

S. 138  
inserted by  
No. 77/2009  
s. 4,  
renumbered  
as s. 140 by  
No. 7/2010  
s. 14(2).

Section 5(2)(daaa) as inserted by section 3 of the **Sentencing Amendment Act 2009** applies to a sentence imposed on or after the commencement of that Act, irrespective of when the offence was committed.

**141 Transitional provision—Justice Legislation Amendment Act 2010**

S. 141  
inserted by  
No. 30/2010  
s. 23.

- (1) Section 9 as amended by section 5 of the **Justice Legislation Amendment Act 2010** applies to the sentencing of a person for an offence on or after the commencement of section 5 of that Act, irrespective of when the offences were committed or the findings of guilt were made.
- (2) Section 14A applies to the sentencing of a person on or after the commencement of section 6 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.
- (3) Section 18SA applies to the sentencing of a person on or after the commencement of section 8 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.

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- (4) An order may be made under section 18WJ of this Act on or after the commencement of section 9 of the **Justice Legislation Amendment Act 2010** consequent on a finding of a contravention made on or after that commencement, irrespective of when that contravention was committed.
  - (5) Section 18ZGA applies to the sentencing of a person on or after the commencement of section 10 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.
  - (6) Section 21A applies to the sentencing of a person on or after the commencement of section 12 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.
  - (7) An order may be made under section 26J on or after the commencement of section 13 of the **Justice Legislation Amendment Act 2010** consequent on a finding of a contravention made on or after that commencement, irrespective of when that contravention was committed.
  - (8) An order may be made under section 26ZK on or after the commencement of section 14 of the **Justice Legislation Amendment Act 2010** consequent on a finding of a contravention made on or after that commencement, irrespective of when that contravention was committed.
  - (9) Section 27A applies to the sentencing of a person on or after the commencement of section 15 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.

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- (10) Section 41A applies to the sentencing of a person on or after the commencement of section 17 of the **Justice Legislation Amendment Act 2010**, irrespective of when the offence was committed or the finding of guilt was made.
- (11) An order may be made under section 47J on or after the commencement of section 18 of the **Justice Legislation Amendment Act 2010** consequent on a finding of a contravention made on or after that commencement, irrespective of when that contravention was committed.
- (12) Section 51 as amended by section 19 of the **Justice Legislation Amendment Act 2010** applies to the sentencing of a person for an offence on or after the commencement of section 19 of that Act, irrespective of when the offences were committed or the findings of guilt were made.
- (13) An order may be made under section 79J on or after the commencement of section 22 of the **Justice Legislation Amendment Act 2010** consequent on a finding of a contravention made on or after that commencement, irrespective of when that contravention was committed.

**141A Transitional provision—Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011**

S. 141A  
inserted by  
No. 48/2011  
s. 24.

- (1) In this section—

*2011 Act* means the **Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011**;

*old home detention order* means a home detention order within the meaning of section 3 as in force before the commencement of section 19 of the 2011 Act, being an order in force immediately before that commencement.

- (2) Despite the commencement of section 19 of the 2011 Act, an old home detention order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.
- (3) Despite the commencement of section 25 of the 2011 Act, section 131 of the **Personal Safety Intervention Orders Act 2010**, as in force before that commencement, is taken to continue to apply on and from that commencement in relation to an old home detention order.
- (4) Despite the commencement of section 27 of the 2011 Act, sections 17(8), 24(da) and 176AA of the **Family Violence Protection Act 2008**, as in force before that commencement, are taken to continue to apply on and from that commencement in relation to an old home detention order.

S. 142  
inserted by  
No. 18/2010  
s. 10.

**142 Transitional provision—Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010**

This Act as amended by sections 7, 8 and 9 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010** applies to a sentencing hearing of a person for an offence irrespective of when the offence was committed, provided the sentencing hearing commences after those sections come into operation.

**143 Transitional provision—Sentencing Amendment Act 2010**

(1) In this section—

*2010 Act* means the **Sentencing Amendment Act 2010**;

\* \* \* \* \*

S. 143 inserted by No. 77/2010 s. 27 (as amended by No. 9/2011 s. 5).

S. 143(1) def. of *old combined custody and treatment order* repealed by No. 65/2011 s. 53(1)(a).

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S. 143(1) def. of *old intensive correction order* repealed by No. 65/2011 s. 53(1)(b).

*old serious suspended sentence order* means an order made under Subdivision 3 of Division 2 of Part 3 as in force before the commencement of section 12 of the 2010 Act as to the suspending of a sentence of imprisonment on an offender for a serious offence, being such an order in force immediately before that commencement.

*old significant suspended sentence order* means an order made under Subdivision 3 of Division 2 of Part 3 as in force before the commencement of section 12 of the 2010 Act as to the suspending of a sentence of imprisonment on an offender for a significant offence, being such an order in force immediately before that commencement.

Sentencing Act 1991  
No. 49 of 1991  
Part 12—Transitionals

s. 143

Heading preceding s. 143(2) repealed by No. 65/2011 s. 53(2).	*	*	*	*	*
S. 143(2) repealed by No. 65/2011 s. 53(3).	*	*	*	*	*
Heading preceding s. 143(3) repealed by No. 65/2011 s. 53(4).	*	*	*	*	*
S. 143(3) repealed by No. 65/2011 s. 53(5).	*	*	*	*	*
Heading preceding s. 143(4) repealed by No. 65/2011 s. 53(6).	*	*	*	*	*
S. 143(4) repealed by No. 65/2011 s. 53(7).	*	*	*	*	*

### Suspended sentences

- (5) Despite the commencement of section 12 of the 2010 Act, an old serious suspended sentence order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

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- (6) The amendment of this Act made by section 12 of the 2010 Act, does not apply where a finding of guilt is made in relation to a serious offence committed before the commencement of that section, irrespective of whether the finding of guilt is made, before, on or after that commencement.
  - (7) For the purposes of subsection (6), if a serious offence is alleged to have been committed between two dates, one before and one after the commencement of section 12 of the 2010 Act, the offence is taken to be alleged to have been committed before that commencement.
  - (8) Despite the commencement of section 12 of the 2010 Act, an old significant suspended sentence order is taken to continue in force on and from that commencement as if this Act as in force before that commencement continued to apply to it.
  - (9) The amendment of this Act made by section 12 of the 2010 Act, does not apply where a finding of guilt is made in relation to a significant offence committed before the commencement of that section, irrespective of whether the finding of guilt is made before, on or after that commencement.
  - (10) For the purposes of subsection (9), if a significant offence is alleged to have been committed between two dates, one before and one after the commencement of section 12 of the 2010 Act, the offence is taken to be alleged to have been committed before that commencement.

S. 144  
inserted by  
No. 9/2011  
s. 7.

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**144 Transitional provision—Sentencing Further  
Amendment Act 2011**

On and from the commencement of section 6 of the **Sentencing Further Amendment Act 2011** the Sentencing Advisory Council is taken to be the same body as it was immediately before that commencement, despite any changes to the board of directors and no decision, matter or thing is to be affected because of those changes.

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**SCHEDULES**

**SCHEDULE 1**

**SERIOUS OFFENDER OFFENCES**

**1 Sexual offences**

This clause applies to the following offences—

(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);

(ia) section 38A (compelling sexual penetration) if the person against whom the offence is committed is a child;

(ii) section 39 (indecent assault);

(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  
amended by  
Nos 43/1994  
s. 56(Sch.  
item 6.2),  
36/1995  
s. 13(2),  
substituted by  
No. 48/1997  
s. 34.

Sch. 1 cl. 1(a)  
amended by  
No. 69/1997  
s. 21.

Sch. 1  
cl. 1(a)(ia)  
inserted by  
No. 2/2006  
s. 43(2)(a).

Sch. 1  
cl. 1(a)(ii)  
substituted by  
No. 57/2005  
s. 50(2)(a).

Sch. 1  
cl. 1(a)(v)  
amended by  
No. 67/2000  
s. 10(2)(a)(i).

Sentencing Act 1991  
No. 49 of 1991

Sch. 1

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);

Sch. 1  
cl. 1(a)(viii)  
amended by  
No. 2/2006  
s. 43(2)(b).

(viii) section 47A(1) (persistent sexual abuse of child under the age of 16);

Sch. 1  
cl. 1(a)(viii a)  
inserted by  
No. 57/2005  
s. 50(2)(b).

(viii a) section 48(1) (sexual penetration of a 16 or 17 year old child);

Sch. 1  
cl. 1(a)(viii b)  
inserted by  
No. 57/2005  
s. 50(2)(b),  
amended by  
No. 18/2008  
s. 17.

(viii b) section 49(1) (indecent act with 16 or 17 year old child);

(ix) section 49A(1) (facilitating sexual offences against children);

Sch. 1  
cl. 1(a)(x)  
amended by  
No. 2/2006  
s. 43(2)(c).

(x) section 51 (sexual offences against persons with a cognitive impairment by providers of medical or therapeutic services);

Sch. 1  
cl. 1(a)(xi)  
amended by  
No. 2/2006  
s. 43(2)(d).

(xi) section 52 (sexual offences against persons with a cognitive impairment by providers of special programs);

(xii) section 53 (administration of drugs, etc.);

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- |   |  |
|---|--|
| (xiia) section 54 (occupier etc. permitting unlawful sexual penetration);             | Sch. 1<br>cl. 1(a)(xiia)<br>inserted by<br>No. 57/2005<br>s. 50(2)(c).   |
| (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 a child);                           | Sch. 1<br>cl. 1(a)(xvi)<br>amended by<br>No. 2/2006<br>s. 43(2)(e) (as<br>amended by<br>No. 76/2006<br>s. 14(2)(a)). |
| (xvia) section 60AB(2), (3) or (4) (sexual servitude);                                | Sch. 1<br>cl. 1(a)(xvia)<br>inserted by<br>No. 20/2004<br>s. 9.  |
| (xvib) section 60AC (aggravated sexual servitude);                                    | Sch. 1<br>cl. 1(a)(xvib)<br>inserted by<br>No. 20/2004<br>s. 9.  |
| (xvic) section 60AD (deceptive recruiting for commercial sexual services);            | Sch. 1<br>cl. 1(a)(xvic)<br>inserted by<br>No. 20/2004<br>s. 9.  |
| (xvid) section 60AE (aggravated deceptive recruiting for commercial sexual services); | Sch. 1<br>cl. 1(a)(xvid)<br>inserted by<br>No. 20/2004<br>s. 9.  |
| (xvie) section 59(1) (bestiality);  | Sch. 1<br>cl. 1(a)(xvie)<br>inserted by<br>No. 57/2005<br>s. 50(2)(d).   |

Sentencing Act 1991  
No. 49 of 1991

Sch. 1

Sch. 1  
cl. 1(a)(xvif)  
inserted by  
No. 57/2005  
s. 50(2)(d).

(xvif) section 60 (soliciting acts of sexual penetration or indecent acts);

Sch. 1  
cl. 1(a)(xvig)  
inserted by  
No. 57/2005  
s. 50(2)(d).

(xvig) section 68(1) (production of child pornography);

Sch. 1  
cl. 1(a)(xviih)  
inserted by  
No. 57/2005  
s. 50(2)(d).

(xviih) section 69 (procurement of minor for child pornography);

Sch. 1  
cl. 1(a)(xvii)  
inserted by  
No. 57/2005  
s. 50(2)(d).

(xvii) section 70(1) (possession of child pornography);

Sch. 1  
cl. 1(a)(xviij)  
inserted by  
No. 57/2005  
s. 50(2)(d).

(xviij) section 70AC (sexual performance involving a minor);

(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

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section 5 of the **Crimes (Amendment) Act 2000**;

- (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(ac) inserted by No. 67/2000 s. 10(2)(b).
- (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**:
- Sch. 1 cl. 1(b) amended by No. 69/1997 s. 21.
- (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);

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- (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);
  - (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);

Sch. 1 cl. 1(d)  
amended by  
No. 69/1997  
s. 21.

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- (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);
- (da) an offence against section 57A of the **Classification (Publications, Films and Computer Games) (Enforcement) Act 1995** (publication or transmission of child pornography);
- (db) an offence against any of the following sections of the **Sex Work Act 1994**:
- (i) section 5(1) (causing or inducing a child to take part in sex work);
- (ii) section 6(1) (obtaining payment for sexual services provided by a child);
- (iii) section 7(1) (agreement for provision of sexual services by a child);
- (iv) section 11(1) (allowing child to take part in sex work);
- Sch. 1 cl. 1(da) inserted by No. 57/2005 s. 50(2)(e).
- Sch. 1 cl. 1(db) inserted by No. 57/2005 s. 50(2)(e), amended by No. 63/2010 s. 81(Sch. item 10(a)).
- Sch. 1 cl. 1(db)(i) amended by No. 63/2010 s. 81(Sch. item 10(b)).
- Sch. 1 cl. 1(db)(iv) amended by No. 63/2010 s. 81(Sch. item 10(b)).

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Sch. 1 cl. 1(dc)  
inserted by  
No. 57/2005  
s. 50(2)(e).

- (dc) an offence against any of the following sections of the Crimes Act 1914 of the Commonwealth:
- (i) section 50BA(1) (sexual intercourse with child under 16);
  - (ii) section 50BB(1) (inducing child under 16 to engage in sexual intercourse);
  - (iii) section 50BC(1) (sexual conduct involving child under 16);
  - (iv) section 50BD(1) (inducing child under 16 to be involved in sexual conduct);
  - (v) section 50DA(1) (benefiting from offence against Part IIIA);
  - (vi) section 50DB(1) (encouraging offences against Part IIIA);

Sch. 1  
cl. 1(dd)  
inserted by  
No. 57/2005  
s. 50(2)(e).

- (dd) an aggravated offence against any of the following sections of the Criminal Code of the Commonwealth:
- (i) section 270.6 (sexual servitude offences);
  - (ii) section 270.7 (deceptive recruiting for sexual services);

**Note**

The Criminal Code of the Commonwealth is contained in the Schedule to the Criminal Code Act 1995 of the Commonwealth.

Sch. 1 cl. 1(de)  
inserted by  
No. 57/2005  
s. 50(2)(e).

- (de) an offence against section 233BAB(5) or 233BAB(6) of the Customs Act 1901 of the Commonwealth (special offence relating to tier 2 goods) where the goods are goods covered by section 233BAB(1)(h) of that Act;

- (df) an offence against any of the following sections of the Criminal Code of the Commonwealth:
- (i) section 271.4 (trafficking in children) or section 271.7 (domestic trafficking in children) in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that section;
  - (ii) section 474.19(1) (using a carriage service for child pornography material);
  - (iii) section 474.20(1) (possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service);
  - (iv) section 474.22(1) (using a carriage service for child abuse material);
  - (v) section 474.23(1) (possessing, controlling, producing, supplying or obtaining child abuse material through a carriage service);
  - (vi) section 474.26 (using a carriage service to procure persons under 16 years of age);
  - (vii) section 474.27 (using a carriage service to "groom" persons under 16 years of age);
- (dg) an offence that, at the time it was committed, was an offence to which this clause applied;

Sch. 1 cl. 1(df)  
inserted by  
No. 57/2005  
s. 50(2)(e).

Sch. 1  
cl. 1(dg)  
inserted by  
No. 2/2006  
s. 43(2)(f) (as  
amended by  
No. 76/2006  
s 14(2)(b)).

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Sch. 1 cl. 1(f)  
amended by  
No. 57/2005  
s. 50(2)(f).

Sch. 1 cl. 1(g)  
inserted by  
No. 57/2005  
s. 50(2)(g).

- (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);
- (g) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (f).

## 2 Violent offences

This clause applies to the following offences—

Sch. 1 cl. 2(baa)  
inserted by  
No. 7/2008  
s. 7(4)(b).

Sch. 1 cl. 2(ba)  
inserted by  
No. 77/2005  
s. 8(4)(b).

Sch. 1 cl. 2(c)  
amended by  
No. 69/1997  
s. 21.

- (a) murder;
- (b) manslaughter;
- (baa) child homicide;
- (ba) defensive homicide;
- (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);
  - (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);
  - (g) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (f).

Sch. 1 cl. 2(d)  
amended by  
No. 69/1997  
s. 21.

Sch. 1 cl. 2(f)  
amended by  
No. 57/2005  
s. 50(3)(a).

Sch. 1 cl. 2(g)  
amended by  
No. 57/2005  
s. 50(3)(b).

### 3 Serious violent offences

This clause applies to the following offences—

Sch. 1 cl. 3(b)  
amended by  
No. 69/1997  
s. 21.

- (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**:

- (i) section 16 (causing serious injury intentionally);
- (ii) section 19A (intentionally causing a very serious disease);
- (iii) section 20 (threats to kill);

Sch. 1 cl. 3(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 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 35B (making demand with threat to kill or injure or endanger life);

Sch. 1 cl. 3(d)  
amended by  
No. 57/2005  
s. 50(4)(a).

- (d) an offence of conspiracy to commit, incitement to commit or attempting to commit an offence referred to in paragraphs (a) to (c);

Sch. 1 cl. 3(e)  
inserted by  
No. 57/2005  
s. 50(4)(b).

- (e) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (d).

#### 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**:

- |  |   |
|--|---|
| (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<br>cl. 4(a)(i)<br>substituted by<br>No. 61/2001<br>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<br>cl. 4(a)(ii)<br>substituted by<br>No. 61/2001<br>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<br>cl. 4(a)(iii)<br>substituted by<br>No. 61/2001<br>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<br>cl. 4(a)(iv)<br>substituted by<br>No. 61/2001<br>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<br>cl. 4(a)(v)<br>substituted by<br>No. 61/2001<br>s. 14(1).   |

**Sch. 1**

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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;
- (ac) an offence of attempting to commit an offence referred to in paragraph (ab)(i);

Sch. 1 cl. 4(ac)  
inserted by  
No. 35/2002  
s. 28(Sch.  
item 5.2).

**Sch. 1**

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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. 29/2011  
s. 3(Sch. 1  
item 84(b)).

(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)  
inserted by  
No. 57/2005  
s. 50(5) (as  
amended by  
No. 93/2005  
s. 16).

(c) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences referred to in paragraphs (a) to (ba).

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Sch. 1 cl. 4(ba)  
inserted by  
No. 93/2005  
s. 15(2),  
repealed by  
No. 29/2011  
s. 3(Sch. 1  
item 84(a)).

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);
  - (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).

Sch. 1  
cl. 5(a)(iii)  
inserted by  
No. 10/2003  
s. 13.

Sch. 1A

Sch. 1A  
inserted by  
No. 108/1997  
s. 149.

SCHEDULE 1A

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.
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. 1A cl. 2  
amended by  
No. 87/2004  
s. 24(b).

- 
4. An offence against section 111A, 111B or 111C of the **Fisheries Act 1995** where the quantity of fish in respect of which the offence is committed is not less than 5 times the commercial quantity (within the meaning of that Act).
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Sch. 1A cl. 4  
inserted by  
No. 68/2010  
s. 70(4).

Sch. 2

**SCHEDULE 2**

**FORMS FOR USE WHERE OTHER OFFENCES TAKEN INTO  
ACCOUNT IN SENTENCING**

**PART A**

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,  
amended by  
No. 68/2009  
s. 97(Sch.  
item 110.84).

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 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*)

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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

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<i>Number</i>	<i>Place where offence committed</i>	<i>Date of offence</i>	<i>Description of offence (with particulars)</i>
1			
2			
3			
4			
etc.			

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Sch. 3  
amended by  
No. 81/1991  
s. 10(Sch.  
item 3.1),  
repealed by  
No. 48/1997  
s. 34, new  
Sch. 3  
inserted by  
No. 65/2011  
s. 54.

SCHEDULE 3

Section 116A

TRANSITIONAL PROVISIONS

PART 1—DEFINITIONS

1 Definitions

In this Schedule—

*old combined custody and treatment order* means a combined custody and treatment order within the meaning of section 3(1) as in force before the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement;

*old community-based order* means a community-based order within the meaning of section 3(1) as in force before the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement;

*old intensive correction order* means an intensive correction order within the meaning of section 3(1) as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, being an order in force immediately before that commencement.

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**PART 2—SENTENCING AMENDMENT (COMMUNITY  
CORRECTION REFORM) ACT 2011**

**2 Combined custody and treatment orders**

Subject to clause 7 and despite the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old combined custody and treatment order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

**3 Intensive correction orders**

Subject to clause 9 and despite the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old intensive correction order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

**4 Community-based orders**

Subject to clause 10 and despite the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011**, an old community-based order is taken to continue in force on and from that commencement as if this Act, as in force before that commencement, continued to apply to it.

**5 Community correction orders**

Section 37 as inserted by section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011** applies to a sentence imposed on or after the commencement of that Act, irrespective of when the offence was committed or the finding of guilt was made.

## 6 Contravention—Suspended sentences

- (1) Part 3C applies to a suspended sentence order that is made on or after the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (2) Part 3C applies to a contravention of a pre-existing suspended sentence order that occurs on or after the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (3) In this clause—

*pre-existing suspended sentence order* means a suspended sentence order made before the commencement of section 18 of the **Sentencing Amendment (Community Correction Reform) Act 2011**;

*suspended sentence order* means an order made under section 27.

## 7 Contravention—Old combined custody and treatment orders

- (1) An offender who is subject to an old combined custody and treatment order must not, unless that person has a reasonable excuse, contravene that order.  
Penalty: 3 months imprisonment.
- (2) Subclause (1) does not apply to a contravention of an old combined custody and treatment order that occurs before the commencement of section 12 of **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).

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- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old combined custody and treatment order, the court finds the person guilty of the offence the court, in addition to sentencing the offender for that offence, must—
- (a) confirm the order that was contravened; or
  - (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 or part of the sentence that was to be served in the community.
- (5) The court must make an order under subclause (4)(b), unless the court is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.
- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court makes an order under subclause (4)(b), the term of imprisonment which the offender must serve in custody must be served—
- (a) immediately or, if the offender is still serving the original custodial part of the sentence, immediately on 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.

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## 8 Contravention—pre-existing home detention orders

- (1) An offender who is subject to a pre-existing home detention order must not, unless that person has a reasonable excuse, commit a serious contravention of that order.

Penalty: 3 months imprisonment.

- (2) This clause does not apply to a contravention of a pre-existing home detention order—

(a) that occurs before the commencement of section 43 of the **Sentencing Amendment (Community Correction Reform) Act 2011**; or

(b) a contravention of a home detention order that is not a serious contravention.

- (3) Subject to this clause, Part 3C applies to an offence under this clause as if any reference in that Part to an offence under section 83AD were a reference to an offence under this clause.

- (4) If in a proceeding for an offence under this clause, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—

(a) confirm the order that was contravened; or

(b) 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 on which the contravention occurred.

- (5) The court must make an order under subclause (4)(b), unless the court is of the opinion that it would be unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.

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- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court, under subclause (4)(b), orders the offender to serve in prison the unexpired portion of the term of imprisonment, the offender must serve the term of imprisonment—
- (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.

- (8) In this clause—

*pre-existing home detention order* means a home detention order made before the commencement of section 43 of the **Sentencing Amendment (Community Correction Reform) Act 2011**;

*serious contravention* means—

- (a) a contravention that compromises the safety and security of the community, any person residing with the offender or the offender's family; or
- (b) a contravention that involves the commission of an offence; or
- (c) a contravention that involves non-compliance with an order made under section 84 or 86(1); or
- (d) a contravention that occurs after repeated failure to comply with the conditions of the order; or
- (e) a contravention of a core condition of the home detention order set out in section 26U(d) or (e) (as in force before

their repeal by the **Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011**).

**9 Contravention—Old intensive correction orders**

- (1) An offender who is subject to an old intensive correction order must not, unless that person has a reasonable excuse, contravene that order.

Penalty: 3 months imprisonment.

- (2) Subclause (1) does not apply to a contravention of an old intensive correction order that occurs before the commencement of section 15 of **Sentencing Amendment (Community Correction Reform) Act 2011**.

- (3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).

- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old intensive correction order, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—

- (a) confirm the order that was contravened; or  
(b) 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.

- (5) If the person has been found guilty of a contravention of the old intensive correction order that was constituted, in whole or in part, by another offence punishable by imprisonment, the court must make an order under subclause (4)(b), unless the court is of the opinion that it would be

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unjust to do so in view of any exceptional circumstances which have arisen since the order that was contravened was made.

- (6) If the court decides not to exercise the power under subclause (4)(b) it must state its reasons for doing so in writing.
- (7) If the court, under subclause (4)(b), orders the offender to serve in prison the unexpired portion of the term of imprisonment, the offender must serve the term of imprisonment—
  - (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.

#### **10 Contravention—Old community-based orders**

- (1) An offender who is subject to an old community-based order must not, unless that person has a reasonable excuse, contravene that order.  
Penalty: 3 months imprisonment.
- (2) Subclause (1) does not apply to a contravention of an old community-based order that occurs before the commencement of section 21 of **Sentencing Amendment (Community Correction Reform) Act 2011**.
- (3) Subject to subclause (4), Part 3C applies to an offence under subclause (1) as if any reference in that Part to an offence under section 83AD were a reference to an offence under subclause (1).
- (4) If in a proceeding for an offence under subclause (1) for a contravention of an old community-based order, the court finds the person guilty of the offence the court must (in addition to sentencing the offender for the offence)—

- (a) confirm the order that was contravened; or
  - (b) cancel the order (if it is still in force) and, whether or not it is still in force, deal with the offender for the offence or offences with respect to which the order was made as if the court has just found him or her guilty of that offence or those offences.
- (5) In determining how to deal with an offender following the cancellation by it of an old community-based order, the court—
- (a) must take into account the extent to which the offender complied with the order before its cancellation; and
  - (b) in imposing any new sentencing order on the offender, must have regard to the conditions of the old community-based order.

**11 Presumption of concurrency, old orders and community correction orders**

- (1) The conditions of a community correction order made in respect of an offender are concurrent with the conditions of any old sentencing order made in respect of the offender, unless the court orders otherwise.
- (2) In this clause *old sentencing order* means—
  - (a) an old combined custody and treatment order;
  - (b) an old community-based order;
  - (c) an old intensive correction order.

**12 Offences occurring on more than one date**

- (1) An offence under clause 7(1), 8(1) or (2), 9(1) or 10 is taken not to have been committed if the conduct that would be the subject of any alleged offence has occurred between two dates, one of which is before the commencement of the clause

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and the other of which is after the commencement of the clause.

- (2) The provisions of this Act as in force before the commencement of section 12 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old combined custody and treatment order, are taken to continue to apply in respect of a breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for that purpose the breach is taken to have been committed before that commencement.
- (3) The provisions of this Act as in force before the commencement of section 21 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old community-based order, are taken to continue to apply in respect of a breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for that purpose the breach is taken to have been committed before that commencement.
- (4) The provisions of this Act as in force before the commencement of section 15 of the **Sentencing Amendment (Community Correction Reform) Act 2011** in relation to an offence under this Act for the breach of an old intensive correction order, are taken to continue to apply in respect of a breach of such an order which is alleged to have been committed between two dates, one of which occurs before that commencement and the other of which occurs after that commencement, and for

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that purpose the breach is taken to have been committed before that commencement.

### 13 Time for bringing proceeding

- (1) A proceeding for an offence under clause 7(1), 8(1) or (2), 9(1) or 10(1) must be commenced—
  - (a) if the contravention is constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 6 months after the person is convicted or found guilty of the later offence, subject to subclause (2); or
  - (b) if the contravention is not constituted by the offender committing another offence punishable by imprisonment while the order is in force, within 1 year after the order ceases to be in force.
- (2) A proceeding to which subclause (1)(a) applies must not be commenced more than 2 years after the order ceases to be in force.

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repealed by  
No. 48/1997  
s. 34.

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## 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

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**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**

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**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**

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**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**

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**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**

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**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**

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**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**

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**Working with Children Act 2005, No. 57/2005** (as amended by No. 93/2005)

*Assent Date:* 13.9.05  
*Commencement Date:* S. 50 on 3.4.06: Government Gazette 30.3.06 p. 615  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing and Mental Health Acts (Amendment) Act 2005, No. 69/2005**

*Assent Date:* 11.10.05  
*Commencement Date:* Ss 3–6 on 1.10.06: s. 2(3)  
*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**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 45) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Crimes (Sexual Offences) Act 2006, No. 2/2006** (as amended by No. 76/2006)

*Assent Date:* 7.3.06  
*Commencement Date:* S. 43 on 1.12.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Disability Act 2006, No. 23/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* Ss 226–230 on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Education and Training Reform Act 2006, No. 24/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 6.1.2(Sch. 7 item 35) on 1.7.07: Government Gazette 28.6.07 p. 1304  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

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**Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006**

*Assent Date:* 13.6.06  
*Commencement Date:* Ss 92, 93 on 1.7.06: Government Gazette 29.6.06  
p. 1315  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006,  
No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 32) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Courts Legislation (Jurisdiction) Act 2006, No. 50/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* Ss 38, 39 on 16.8.06: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,  
No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 95) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Road Legislation (Projects and Road Safety) Act 2006, No. 81/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 7 on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Sentencing (Suspended Sentences) Act 2006, No. 82/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 8 on 11.10.06: s. 2(1); ss 3–6(1), 7(1) on 1.11.06:  
s. 2(4); ss 6(2)(3), 7(2) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Working With Children Amendment Act 2007, No. 56/2007**

*Assent Date:* 7.11.07  
*Commencement Date:* S. 22 on 3.4.06: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Sentencing Act 1991**

**Crimes Amendment (Child Homicide) Act 2008, No. 7/2008**

*Assent Date:* 18.3.08  
*Commencement Date:* S. 7(4) on 19.3.08: s. 2  
*Current State:* This information relates only to the provision/s  
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**Criminal Procedure Legislation Amendment Act 2008, No. 8/2008**

*Assent Date:* 18.3.08  
*Commencement Date:* Ss 3, 18 on 1.7.08: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Relationships Act 2008, No. 12/2008**

*Assent Date:* 15.4.08  
*Commencement Date:* S. 73(1)(Sch. 1 item 56) on 1.12.08: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Justice Legislation Amendment (Sex Offences Procedure) Act 2008, No. 18/2008**

*Assent Date:* 13.5.08  
*Commencement Date:* Ss 15–17 on 1.7.08: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Justice Legislation Amendment Act 2008, No. 21/2008**

*Assent Date:* 2.6.08  
*Commencement Date:* S. 25(1) on 3.6.08: Special Gazette (No. 148) 3.6.08 p. 1  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Public Health and Wellbeing Act 2008, No. 46/2008**

*Assent Date:* 2.9.08  
*Commencement Date:* S. 287 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Family Violence Protection Act 2008, No. 52/2008**

*Assent Date:* 23.9.08  
*Commencement Date:* Ss 265, 266 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Stalking Intervention Orders Act 2008, No. 68/2008**

*Assent Date:* 18.11.08  
*Commencement Date:* Ss 82, 83 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)**

*Assent Date:* 10.3.09  
*Commencement Date:* Ss 432–434 on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

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**Crimes Amendment (Identity Crime) Act 2009, No. 22/2009**

*Assent Date:* 17.6.09  
*Commencement Date:* Ss 5–7 on 1.10.09: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 110) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 1 item 51) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing Amendment Act 2009, No. 77/2009**

*Assent Date:* 1.12.09  
*Commencement Date:* 2.12.09: s. 2  
*Current State:* All of Act in operation

**Justice Legislation Miscellaneous Amendments Act 2009, No. 87/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* S. 58 on 17.12.09: Government Gazette 17.12.09 p. 3338  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Serious Sex Offenders (Detention and Supervision) Act 2009, No. 91/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* S. 219(Sch. 3 item 2) on 1.1.10: Government Gazette 24.12.09 p. 3397  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009**

*Assent Date:* 15.12.09  
*Commencement Date:* S. 49(1) on 17.12.09: Government Gazette 17.12.09 p. 3339  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Crimes Legislation Amendment Act 2010, No. 7/2010**

*Assent Date:* 16.3.10  
*Commencement Date:* S. 14 on 17.3.10: s. 2  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

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**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 51(Sch. item 49) on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010, No. 18/2010**

*Assent Date:* 18.5.10  
*Commencement Date:* Ss 7–10 on 1.1.11: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Health and Human Services Legislation Amendment Act 2010, No. 29/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* S. 71 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Justice Legislation Amendment Act 2010, No. 30/2010**

*Assent Date:* 8.6.10  
*Commencement Date:* S. 5 on 26.6.10: Government Gazette 24.6.10 p. 1274; ss 3, 4, 6–8, 10–12, 14, 15, 17, 23, 24, 28, 29 on 1.1.11: Government Gazette 28.10.10 p. 2583; ss 16, 19, 25–27 on 1.1.12: s. 2(5); ss 9, 13, 18, 20–22 never proclaimed, repealed by No. 65/2011 s. 99  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Severe Substance Dependence Treatment Act 2010, No. 43/2010**

*Assent Date:* 10.8.10  
*Commencement Date:* S. 48 on 1.3.11: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Personal Safety Intervention Orders Act 2010, No. 53/2010**

*Assent Date:* 7.9.10  
*Commencement Date:* S. 224 on 1.12.10: Government Gazette 14.10.10 p. 2405; s. 221(Sch. item 10) on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010**

*Assent Date:* 28.9.10  
*Commencement Date:* S. 81(Sch. item 10) on 1.11.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

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**Confiscation Amendment Act 2010, No. 68/2010**

*Assent Date:* 12.10.10  
*Commencement Date:* S. 70(4) on 1.11.10: Government Gazette 28.10.10 p. 2583  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing Amendment Act 2010, No. 77/2010** (as amended by No. 9/2011)

*Assent Date:* 19.10.10  
*Commencement Date:* Ss 3(a), 12, 27 on 1.5.11: Special Gazette (No. 125) 19.4.11 p. 1; s. 21 on 1.1.12: s. 2(2); ss 3(b)–(e), 4–11, 13–20, 22–26 never proclaimed, repealed by No. 65/2011 ss 71–92  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing Further Amendment Act 2011, No. 9/2011**

*Assent Date:* 12.4.11  
*Commencement Date:* Ss 6, 7 on 1.1.12: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Statute Law Revision Act 2011, No. 29/2011**

*Assent Date:* 21.6.11  
*Commencement Date:* S. 3(Sch. 1 item 84) on 22.6.11: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011, No. 48/2011**

*Assent Date:* 22.9.11  
*Commencement Date:* Ss 12–24 on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 4  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

**Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011**

*Assent Date:* 22.11.11  
*Commencement Date:* Ss 3(13), 53 on 23.11.11: s. 2(1); s. 5(4) on 1.1.12: s. 2(2); ss 3(1)–(12)(14), 4, 5(1)–(3), 6–48, 50–52, 54, 68 on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
*Current State:* This information relates only to the provision/s amending the **Sentencing Act 1991**

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### 3. Explanatory Details

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 subsection (1) it must reduce the proposed sentence in accordance with subsection (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.

<sup>5</sup> 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.

<sup>6</sup> 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 subsection, the court will be required to order cumulation of the sentence unless there are exceptional circumstances.

<sup>7</sup> S. 16(1A)(e): See note 6.

<sup>8</sup> S. 16(3B): See note 6.

<sup>9</sup> S. 16(3C): See note 6.

<sup>10</sup> S. 17: See note 5.

<sup>11</sup> 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.

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Section 11(2)(a) clarified that such declarations cannot be made in respect of intensive correction orders.

Section 11(2)(b) inserted a new subsection (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**.

<sup>12</sup> S. 18O: See note 2.

<sup>13</sup> S. 32: See note 5.

<sup>14</sup> S. 33: See note 5.

<sup>15</sup> S. 34: See note 5.

<sup>16</sup> S. 35: See note 5.

<sup>17</sup> S. 35: See note 11.

<sup>18</sup> 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.

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<sup>19</sup> 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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 18 Causing injury intentionally	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 18 Causing injury recklessly	Level 7 imprisonment (5 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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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 Subsection (1) with a child etc. Subsection (2) with an under 18 child etc. of de facto spouse Subsection (3) with father or mother etc. where offender is 18 or older Subsection (4) with sister or brother etc.	Level 2 imprisonment (20 years) Level 2 imprisonment (20 years) Level 6 imprisonment (7½ years) Level 6 imprisonment (7½ years)	Level 2 imprisonment (25 years) Level 2 imprisonment (25 years) Level 6 imprisonment (5 years) Level 6 imprisonment (5 years)
Section 45 Sexual penetration of child under 10	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 46 Sexual penetration of child 10–16 Subsection (1)(a) under care, supervision or authority Subsection (1)(b) any other case	Level 3 imprisonment (15 years)  Level 5 imprisonment (10 years)	Level 4 imprisonment (15 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 Subsection (1) Sexual penetration of person with impaired mental functioning by medical or therapeutic service provider Subsection (2) Indecent act with person with impaired mental functioning by medical or therapeutic service provider	Level 7 imprisonment (5 years)  Level 8 imprisonment (3 years)	Level 5 imprisonment (10 years)  Level 6 imprisonment (5 years)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 52 Subsection (1) Sexual penetration by worker of resident in residential facilities  Subsection (2) Indecent act by worker of resident in residential facilities	Level 7 imprisonment (5 years)  Level 8 imprisonment (3 years)	Level 5 imprisonment (10 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  (b) where child is aged between 13–17	  Level 5 imprisonment (10 years)  Level 7 imprisonment (5 years)	  Level 4 imprisonment (15 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 Subsection (1) Procuring sexual penetration by threats or intimidation  Subsection (2) Procuring sexual penetration by fraud	Level 6 imprisonment (7½ years)  Level 7 imprisonment (5 years)	Level 5 imprisonment (10 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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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 Subsection(1) Child stealing Subsection (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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Subsection (2) where force or violence etc. is used	Level 3 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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 83 False accounting	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 83A Falsification of documents Subsection (1)–(5B)	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Subsection (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 <ul style="list-style-type: none"> <li>• corporation</li> <li>• person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (1200 Penalty Units) Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 178 Giving or receiving false or misleading receipt or account <ul style="list-style-type: none"> <li>• corporation</li> <li>• person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (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 <ul style="list-style-type: none"> <li>• corporation</li> <li>• person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (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 <ul style="list-style-type: none"> <li>• corporation</li> <li>• other person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	<b>corporation;</b> level 5 fine (1200 Penalty Units) <b>person;</b> Level 5 imprisonment (10 years) and/or level 5 fine (1200 Penalty Units)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 181 Aiding and abetting offences within or outside Victoria <ul style="list-style-type: none"> <li>• corporation</li> <li>• other person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (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 <ul style="list-style-type: none"> <li>• corporation</li> <li>• other person</li> </ul>	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (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 <ul style="list-style-type: none"> <li>Subsection (1) damaging property</li> <li>Subsection (2) damaging property intending to endanger another's life</li> <li>Subsection (3) damaging property for gain</li> <li>Subsection (7) Arson</li> </ul>	Level 6 imprisonment (7½ years) Level 4 imprisonment (12½ years) Level 5 imprisonment (10 years) Level 4 imprisonment (12½ years)	Level 5 imprisonment (10 years) Level 4 imprisonment (15 years) Level 5 imprisonment (10 years) Level 4 imprisonment (15 years)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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 Subsection (1)	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Subsection (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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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 subsections (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)
Section 316(2) Unlawful oaths for other offences	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 317 Offences connected with explosive substances		
Subsection (2)	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Subsection (3)	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Subsection (4)	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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)
Section 321C Penalties for conspiracy; Subsection (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
Subsection (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)
Subsection (1)(ba) to commit murder or treason or piratical acts	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Subsection (1)(d) to commit a summary offence	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Subsection (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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
<p>Section 321I Penalties for incitement</p> <p>Subsection (1)(a) to commit an offence with a prescribed maximum</p> <p>Subsection (1)(b) to commit an offence where the penalty is imprisonment for a term the maximum length of which is not prescribed</p> <p>Subsection (1)(ba) to commit murder or treason or piratical acts</p> <p>Subsection (1)(d) to commit a summary offence</p>	<p>Liable to the maximum prescribed for the offence</p> <p>Level 7 imprisonment (5 years)</p> <p>Level 1 imprisonment (Life)</p> <p>Level 8 imprisonment (3 years)</p>	<p>Liable to the maximum prescribed for the substantive offence</p> <p>Level 4 imprisonment (15 years)</p> <p>Life</p> <p>Level 6 imprisonment (5 years)</p>
<p>Subsection (2) to commit an offence against a law in force only in a place outside Victoria—</p> <p>(a) punishable by a term of imprisonment</p> <p>(b) in any other case</p>	<p>Level 7 imprisonment (5 years)</p> <p>Level 7 fine (600 Penalty Units)</p>	<p>Liable to the maximum prescribed as if the incitement was to commit an offence against the laws of Victoria</p> <p>Level 7 fine (600 Penalty Units)</p>
Section 321P Penalties for attempt		See item 94 of Schedule 1

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 325 Subsection (4)(a) where the principal offence is punishable by Level 1 imprisonment Subsection (4)(b) in any other case	Level 2 imprisonment (20 years)  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	Level 3 imprisonment (20 years)  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)
Section 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)
Section 456AA Requirement to give name and address	Level 13 fine (5 penalty units)	Level 13 fine (5 penalty units)
Section 456E Offence by an employee or member of a law enforcement agency	Level 10 fine (1200 penalty units)	Level 10 fine (1200 penalty units)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
Section 464O Destruction of records	Level 12 fine (10 penalty units)	Level 12 fine (10 penalty units)
Section 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**

<b>OFFENCE</b>	<b>PRESCRIBED MAXIMUM PENALTY</b>
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**

<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
<b>Crimes (Confiscation of Profits) Act 1986</b> Section 41Q Money laundering	10 years imprisonment	Level 3 imprisonment (20 years)
<b>Drugs, Poisons and Controlled Substances Act 1981</b> Section 71 Trafficking in a drug of dependence— (a) commercial quantity (b) any other case	25 years imprisonment and not more than 2500 penalty units  15 years imprisonment and/or 1000 penalty units	Level 2 imprisonment (25 years) and not more than 2500 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) (b) any other case	1 year imprisonment and/or 20 penalty units  15 years imprisonment and/or 1000 penalty units	Level 8 imprisonment (1 year) and/or 20 penalty units  Level 4 imprisonment (15 years) and/or 1000 penalty units
Section 73 Possession of a drug of dependence— (a) small quantity (b) not for a purpose related to trafficking (c) any other case	5 penalty units  1 year imprisonment and/or 30 penalty units  5 years imprisonment and/or 400 penalty units	5 penalty units  Level 8 imprisonment (1 year) and/or 30 penalty units  Level 6 imprisonment (5 years) and/or 400 penalty units

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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
<b>Legal Practice Act 1996</b> 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)
<b>Prisoners (Interstate Transfer) Act 1983</b> Section 33(1) Escape from custody	7 years imprisonment	Level 6 imprisonment (5 years)
<b>Prostitution Control Act 1994</b> 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)

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<b>OFFENCE</b>	<b>PREVIOUSLY PRESCRIBED MAXIMUM PENALTY</b>	<b>NEW PRESCRIBED MAXIMUM PENALTY</b>
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