

Queensland

Penalties and Sentences Act 1992

Current as at 29 October 2026

Amendments not yet in force
There are amendments for this title that have been enacted but have not yet commenced. The following amendments that have not commenced are not incorporated in this reprint but are annotated on the website for information—2017 Act No. 13.

These annotations were incorporated on 1 January 2026. See the List of legislation in the Legislative history for uncommenced amendments enacted after this date.

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Queensland

Penalties and Sentences Act 1992

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Penalties and Sentences Act 1992

An Act to consolidate and amend the law relating to sentencing of offenders and to impose a levy on offenders on sentence

Preamble

1 Society is entitled to protect itself and its members from harm.

2 The criminal law and the power of courts to impose sentences on offenders represent important ways in which society protects itself and its members from harm.

3 Society may limit the liberty of members of society only to prevent harm to itself or other members of society.

4 Society is entitled to recover from offenders funds to help pay for the cost of law enforcement and administration.

Part 1 Preliminary

1 Short title

This Act may be cited as the *Penalties and Sentences Act 1992*.

3 Purposes

The purposes of this Act include—

(a) collecting into a single Act general powers of courts to sentence offenders; and

(b) providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, and, in appropriate circumstances, ensuring that

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protection of the Queensland community is a paramount consideration; and

(c) encouraging particular offenders to cooperate with law enforcement agencies in proceedings or investigations about major criminal offences; and

(d) promoting consistency of approach in the sentencing of offenders; and

(e) providing fair procedures—

(i) for imposing sentences; and

(ii) for dealing with offenders who contravene the conditions of their sentence; and

(f) providing sentencing principles that are to be applied by courts; and

(g) making provision so that offenders are not imprisoned for non-payment of fines without the opportunity of obtaining a fine option order; and

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

(i) generally reforming the sentencing laws of Queensland; and

(j) providing for the imposition of an offender levy.

4 Definitions

In this Act—

approved form means a form approved by the chief executive for the relevant purpose.

approved provider, for part 3, division 1, see section 15F.

attend, for part 3, division 1, see section 15B.

Attorney-General, for part 2A, see section 15AA.

authorised corrective services officer see section 4A.

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authorised officer, for part 9C, means the director of public prosecutions, a deputy director of public prosecutions, or a lawyer appointed to assist the director of public prosecutions in the performance of the functions of the director of public prosecutions under part 9C.

banning order, for part 3B, see section 43I.

benefit, for part 9D, see section 161N.

board guidelines means guidelines under the *Corrective Services Act 2006*, section 242E.

category A offence see section 161F.

category B offence see section 161F.

category C offence see section 161F.

chief executive officer of Legal Aid Queensland, for part 2A, see section 15AA.

commissioner, for part 9D, see section 161N.

community based order means any community service order, graffiti removal order, intensive correction order or probation order.

community justice group, for an offender, means—

(a) a community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, division 1, for the offender's community; or

(b) a group of persons within the offender's community, other than a department of government, that is involved in the provision of any of the following—

(i) information to a court about Aboriginal or Torres Strait Islander offenders;

(ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;

(iii) other activities relating to local justice issues; or

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(c) a group of persons made up of elders or other respected persons of the offender's community.

community service has the same meaning as in the *Corrective Services Act 2006*.

community service order means a community service order in force under part 5, division 2.

control order, for part 9D, see section 161N.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court.

core conditions, of the rehabilitation part of a treatment order, see section 151R(1).

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corresponding control order, for part 9D, see section 161N.

council means the Queensland Sentencing Advisory Council established under section 198.

court—

(a) for part 2A—see section 15AA; or

(b) for part 8A—see section 151B; or

(c) for part 9D, division 3, subdivision 5—see section 161ZV.

criminal organisation see section 161O.

Crown prosecutor includes—

(a) the Attorney-General; and

(b) the director of public prosecutions; and

(c) another person, other than a police officer, appearing for the State.

current parole eligibility date, for part 9, division 3, see section 160.

current parole release date, for part 9, division 3, see section 160.

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custodial part, of a treatment order, see section 151N(2).

DAAR condition, for part 3, division 1, see section 19(2B).

dangerous prisoners application means an application under the *Dangerous Prisoners (Sexual Offenders) Act 2003* for a continuing detention order, interim detention order, supervision order or interim supervision order.

director of public prosecutions, for part 2A, see section 15AA.

disqualifying offence, for part 3, division 1, see section 15E.

domestic violence offence see the Criminal Code, section 1.

drug and alcohol treatment order, for part 8A, see section 151B.

drug assessment and education session, for part 3, division 1, see section 15B.

drug diversion condition, for part 3, division 1, see section 19(2A).

drug diversion court, for part 3, division 1, see section 15B.

eligible drug offence, for part 3, division 1, see section 15D.

eligible drug offender, for part 3, division 1, see section 15C.

eligible offence, for part 8A, see section 151B.

exposed, for a child in relation to domestic violence, see the *Domestic and Family Violence Protection Act 2012*, section 10.

fine, for part 4, division 2, see section 52.

fine option order means a fine option order made under part 4, division 2.

finite sentence, for part 10, see section 173(1)(b).

finite term, for a provision about a finite sentence, means the term of the sentence.

graffiti offence means—

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(a) an offence against the Criminal Code, section 469 that is punishable under section 469, clause 9; or

(b) an offence against the *Summary Offences Act 2005*, section 17(1).

graffiti removal order means a graffiti removal order in force under part 5A.

graffiti removal service means—

(a) the removal of graffiti; or

(b) work related or incidental to the work mentioned in paragraph (a); or

(c) other work related to or incidental to the clean up of public places whether or not it relates to the removal of graffiti.

guideline judgment means a judgment that—

(a) is declared to be a guideline judgment by the Court of Appeal; and

(b) contains guidelines to be taken into account by courts in sentencing offenders, being guidelines applying—

(i) generally; or

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

(iii) to a particular offence, or class of offence, including under a Commonwealth Act; or

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

(v) to a particular class of offender.

guideline judgment for an offence under a Commonwealth Act, for part 2A, see section 15AA.

guideline proceeding, for part 2A, see section 15AA.

harm, for part 10B, see section 179I.

honorary member, of an organisation, for part 9D, see section 161N.

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impose, a term of imprisonment on an offender for an offence, for part 9, division 3, see section 160.

indefinite sentence, for part 10, see section 162.

intensive correction order means an intensive correction order in force under part 6.

licence, for part 3B, see section 43G.

licensed premises, for part 3B, see section 43G.

licensee, for part 3B, see section 43G.

major criminal offence see section 161S(5).

most serious related offence see section 161G.

nominal sentence, for part 10, see section 162.

non-contact order means a non-contact order in force under part 3A.

offender means a person who is convicted of an offence, whether or not a conviction is recorded.

offender levy see section 179C.

offender's community means the offender's Aboriginal or Torres Strait Islander community, whether it is—

(a) an urban community; or

(b) a rural community; or

(c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

office holder, of an organisation, for part 9D, see section 161N.

operational period—

(a) for a term of imprisonment suspended under section 144(1)—means the period stated under section 144(5) in relation to the term; or

(b) for the custodial part of a treatment order under part 8A—see section 151B.

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original order—

(a) for part 3, division 3AA—see section 33AA(a); or

(b) for part 4, division 2—see section 52.

parole means parole under a parole order granted under the *Corrective Services Act 2006*.

parole eligibility date, for an offender, for part 9, division 3, see section 160.

parole release date, for an offender, for part 9, division 3, see section 160.

participant, in a criminal organisation, see section 161P.

penalty includes any fine, compensation, restitution or other amount of money but does not include an offender levy.

period of imprisonment means the unbroken duration of imprisonment that an offender is to serve for 2 or more terms of imprisonment, whether—

(a) ordered to be served concurrently or cumulatively; or

(b) imposed at the same time or different times;

and includes a term of imprisonment.

police banning notice, for part 3B, see section 43G.

prescribed offence—

(a) for part 5, division 2, subdivision 2—see section 108A; or

(b) for part 9D—see section 161N.

prison means a prison within the meaning of the *Corrective Services Act 2006*.

probation order means a probation order in force under part 5, division 1.

proper officer means—

(a) for an order made or certificate issued by the Supreme Court—the sheriff; or

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(b) for an order made or certificate issued by the District Court—any registrar; or

(c) for an order made or certificate issued by a Magistrates Court—any clerk of the court.

proper officer of the court, for an offender levy, for part 10A, see section 179B.

property includes electricity.

prosecutor, for section 12A and parts 3A, 3B and 9D, means—

(a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or

(b) otherwise—a Crown prosecutor.

prospective member, of an organisation, for part 9D, see section 161N.

public place—

(a) for part 3B, see section 43G; or

(b) for part 5, division 2, subdivision 2, see section 108A.

qualifying offence, for part 10, see section 162.

Queensland board means the Parole Board Queensland established under the *Corrective Services Act 2006*.

Queensland driver licence see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

registered corresponding control order, for part 9D, see section 161N.

registrar, for part 9D, division 3, subdivision 5, see section 161ZV.

rehabilitation part, of a treatment order, see section 151Q(2).

re-integration program means a program under the *Corrective Services Act 2006* that is designed to assist an offender to re-integrate into the community, and includes parole.

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related offences see section 161G.

remove, in relation to graffiti, includes the following—

(a) repair;

(b) conceal;

(c) cover;

(d) attempt to remove.

Example—

painting over graffiti

respondent, for part 9D, division 3, subdivision 5, see section 161ZY(1)(b).

review, a guideline judgment, for part 2A, see section 15AA.

review team, for part 8A, see section 151B.

senior police officer, for part 9D, see section 161N.

sentence—

(a) means a penalty or imprisonment ordered to be paid or served, or another order made, by a court after an offender is convicted, whether or not a conviction is recorded; and

(b) for part 10A—includes an order made by a court to deal with the offender for an offence instead of passing sentence.

serious child sex offence see section 161D.

serious criminal activity, for part 9D, see section 161N.

serious drug offence means a category A offence, category B offence or category C offence.

serious drug offence certificate see section 161G.

serious harm means any detrimental effect of a serious nature on a person's emotional, physical or psychological wellbeing, whether temporary or permanent.

serious organised crime circumstance of aggravation see section 161Q.

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serious violent offence means a serious violent offence of which an offender is convicted under section 161A.

severe substance use disorder, for part 8A, see section 151B.

sexual offence, for part 9, division 3, see section 160.

SPE Act means the *State Penalties Enforcement Act 1999*.

SPER means the State Penalties Enforcement Registry established under the SPE Act.

suitability assessment report, for part 8A, see section 151B.

term of imprisonment means the duration of imprisonment imposed for a single offence and includes—

(a) the imprisonment an offender is serving, or is liable to serve—

(i) for default in payment of a single fine; or

(ii) for failing to comply with a single order of a court; and

(b) for an offender on whom a finite sentence has been imposed, any extension under section 174B(6) of the offender's finite term.

treatment order, for part 8A, see section 151B.

treatment order agency, for part 8A, see section 151B.

treatment program, for part 8A, see section 151B.

unpaid service means—

(a) community service required to be performed under a community service order; or

(b) graffiti removal service required to be performed under a graffiti removal order.

unperformed graffiti removal service, for an offender, means graffiti removal service that the offender—

(a) is required to perform under a graffiti removal order; and

(b) has not performed.

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unperformed unpaid service, for an offender, means unpaid service that the offender—

(a) is required to perform under a community service order or a graffiti removal order; and

(b) has not performed.

victim, for part 10B, see section 179I.

victim impact statement, for part 10B, see section 179I.

4A Meaning of *authorised corrective services officer*

(1) An ***authorised corrective services officer*** means a person who—

(a) is—

(i) a corrective services officer under the *Corrective Services Act 2006*; or

(ii) an employee of a person or body engaged under that Act, section 272; and

(b) is authorised by the chief executive (corrective services) for the relevant purpose.

(2) In this section—

chief executive (corrective services) does not include an engaged service provider under the *Corrective Services Act 2006*.

5 Meaning of penalty unit

(1) The value of a penalty unit is—

(a) for the SPE Act or an infringement notice, other than an infringement notice for an offence against a law mentioned in paragraph (b), (c) or (d)—

(i) the amount prescribed under section 5A; or

(ii) if no amount is prescribed—$110; or

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(b) for a local law, or an infringement notice for an offence against a local law, made by a local government prescribed under a regulation—$75; or

(c) for a local law, or an infringement notice for an offence against a local law made by a local government to which paragraph (b) does not apply or made under clause 35 of the Alcan agreement—

(i) the amount prescribed under section 5A; or

(ii) if no amount is prescribed—$110; or

(d) for the *Work Health and Safety Act 2011*, the *Electrical Safety Act 2002*, the *Safety in Recreational Water Activities Act 2011* or an infringement notice for an offence against any of those Acts—$100; or

(e) in any other case, for this Act or another Act—

(i) the amount prescribed under section 5A; or

(ii) if no amount is prescribed—$110.

(2) If an Act expresses a penalty or other matter as a number (whether whole or fractional) of penalty units, the monetary value of the penalty or other matter is the number of dollars obtained by multiplying the value of a penalty unit by the number of penalty units.

(2A) However, if the monetary value of the penalty obtained under subsection (2) for an infringement notice is not a multiple of $1, the amount is rounded down to the nearest multiple of $1.

Example—

If the prescribed amount of a penalty unit under subsection (1)(a)(i) is $115.25 and an infringement notice prescribes a fine of 3 penalty units, the monetary value of the fine is $345, rounded down from $345.75.

(3) If an order of a court expresses a penalty or other matter as a monetary value, the number of penalty units is to be calculated by dividing the monetary value by the value of a penalty unit as at the time the order is made.

(4) For the purposes of this or another Act a reference to a penalty of a specified number of penalty units is a reference to a fine of that number of penalty units.

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Example—

'Maximum penalty—10 penalty units' means the offender is liable to a maximum fine of 10 penalty units.

(5) In this section—

Alcan agreement means the agreement made under the *Alcan Queensland Pty. Limited Agreement Act 1965*.

infringement notice means an infringement notice under the SPE Act.

5A Prescribed value of particular penalty unit

(1) A regulation may prescribe the same monetary value of a penalty unit for section 5(1)(a)(i), (c)(i) and (e)(i).

(2) The amount prescribed must not be more than the amount last prescribed under this section increased by—

(a) if, on or before 31 March in a year in which the regulation is made, the Treasurer publishes in the gazette a percentage change to the amount last prescribed—that percentage; or

(b) otherwise—3.5%.

Examples—

1 On 31 March 2015, the Treasurer publishes a 3% change in the value of a penalty unit. On 30 June 2015 the amount of the penalty unit is $115. The amount prescribed by regulation on 1 July 2015 may be $118.45.

2 The Treasurer has not, on or before 31 March 2015, published a percentage change in the value of a penalty unit. On 30 June 2015, the amount of the penalty unit is $115. The amount prescribed by regulation on 1 July 2015 may be $119.

(3) If the amount worked out under subsection (2) is not a multiple of 5 cents, the amount must be rounded down to the nearest multiple of 5 cents.

(4) For subsection (2), if an amount has not been prescribed under this section, the amount last prescribed is taken to be $110.

(5) A regulation may only prescribe 1 increase for an amount for a financial year.

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6 Application to children and certain courts

This Act does not apply to—

(a) a child; or

(b) a Childrens Court;

except to the extent allowed by the *Youth Justice Act 1992*.

7 Sentences under this Act are sentences for purposes of the Criminal Code, ch 67

For the purposes of the Criminal Code, chapter 67, a sentence under this Act is taken to be a sentence imposed on conviction whether or not a conviction is recorded.

8 Construction of references to court that made order

(1) A reference in this Act to the court that made a community based order or fine option order or an original order within the meaning of section 52 includes—

(a) if the order was made by the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or

(b) if the order was made by a District Court—any sittings of a District Court in its criminal jurisdiction at any place in Queensland; or

(c) if the order was made by a Magistrates Court—any Magistrates Court sitting at any place in Queensland; or

(d) if the order was made by a Wardens Court—any Wardens Court sitting at any place in Queensland.

(2) Subsection (1) applies even though the judge, magistrate, warden or justices constituting the court did not make the order in the first place.

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8A Delegation of powers by proper officer

(1) A proper officer may delegate the proper officer's powers under this Act to an officer of the public service (an ***officer***) mentioned in subsection (2) if the officer is a justice.

(2) If the proper officer is—

(a) the sheriff—the powers may be delegated to an officer employed in the sheriff's office or Magistrates Court registry; or

(b) the registrar—the powers may be delegated to an officer employed in the District Court registry or Magistrates Court registry; or

(c) the clerk of the court—the powers may be delegated to an officer employed in the Magistrates Court registry.

Part 2 Governing principles

9 Sentencing guidelines

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

(a) to punish the offender to an extent or in a way that is just in all the circumstances; or

(b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or

(c) to deter the offender or other persons from committing the same or a similar offence; or

(ca) to recognise the harm done by the offender to a victim of the offence; or

(d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or

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

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(f) a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).

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

(a) principles that—

(i) a sentence of imprisonment should only be imposed as a last resort; and

(ii) a sentence that allows the offender to stay in the community is preferable; and

(b) the maximum and any minimum penalty prescribed for the offence; and

(c) the nature of the offence and how serious the offence was, including—

(i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K; and

(ii) the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and

(d) the extent to which the offender is to blame for the offence; and

(e) any damage, injury or loss caused by the offender; and

(f) the offender's character, antecedents, age and intellectual capacity; and

(fa) the hardship that any sentence imposed would have on the offender, having regard to the offender's characteristics, including age, disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality; and

(fb) regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—

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(i) a person with whom the offender is in a family relationship and for whom the offender is the primary caregiver; and

(ii) a person with whom the offender is in an informal care relationship; and

(iii) if the offender is pregnant—the child of the pregnancy; and

(g) the presence of any aggravating or mitigating factor concerning the offender; and

(ga) without limiting paragraph (g), whether the offender was a participant in a criminal organisation—

(i) at the time the offence was committed; or

(ii) at any time during the course of the commission of the offence; and

(gb) without limiting paragraph (g), the following—

(i) whether the offender is a victim of domestic violence;

(ii) whether the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender;

(iii) the offender's history of being abused or victimised; and

(h) the prevalence of the offence; and

(i) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and

(j) time spent in custody by the offender for the offence before being sentenced; and

(k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and

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(l) sentences already imposed on the offender that have not been served; and

(m) sentences that the offender is liable to serve because of the revocation of orders made under this or another Act for contraventions of conditions by the offender; and

(n) if the offender is the subject of a community based order—the offender's compliance with the order as disclosed in an oral or written report given by an authorised corrective services officer; and

(o) if the offender is on bail and is required under the offender's undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender's successful completion of the program or course; and

(oa) if the offender is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; and

(p) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—

(i) the offender's relationship to the offender's community; or

(ii) any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the offender; or

(iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

(pa) the principle that the court should not refuse to make a community based order for the offender merely because of—

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(i) a physical, intellectual or psychiatric disability of the offender; or

(ii) the offender's sex, educational level or religious beliefs; and

(q) anything else prescribed by this Act to which the court must have regard; and

(r) any other relevant circumstance.

(2A) However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—

(a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or

(b) that resulted in physical harm to another person.

(3) In sentencing an offender to whom subsection (2A) applies, the court must have regard primarily to the following—

(a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;

(b) the need to protect any members of the community from that risk;

(c) the personal circumstances of any victim of the offence;

(d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;

(e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;

(f) any disregard by the offender for the interests of public safety;

(g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;

(h) the antecedents, age and character of the offender;

(i) any remorse or lack of remorse of the offender;

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(j) any medical, psychiatric, prison or other relevant report in relation to the offender;

(k) anything else about the safety of members of the community that the sentencing court considers relevant.

(3A) Subsections (3B) to (3D)—

(a) apply in sentencing an offender for an offence of a sexual nature if the offender is determined to be of good character; but

(b) apply in relation to the offender's good character only to the extent the good character is based on 1 or more of the following—

(i) a character reference for the offender;

(ii) the offender's standing in the community;

(iii) the offender's contributions to the community.

(3B) The court may treat the offender's good character as a mitigating factor only if the good character is relevant to the court's consideration of—

(a) the offender's prospects of rehabilitation; or

(b) the risk of the offender reoffending.

(3C) However, the court may decide not to treat the offender's good character as a mitigating factor, having regard to the nature of the offence and how serious the offence was, including—

(a) any physical, mental or emotional harm done to the victim of the offence; and

(b) the vulnerability of the victim.

(3D) If subsection (4) also applies in sentencing the offender, subsections (3B) and (3C) are subject to subsection (6A).

(4) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years or a child exploitation material offence—

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(a) the court must have regard to the sentencing practices, principles and guidelines applicable when the sentence is imposed rather than when the offence was committed; and

(b) the principles mentioned in subsection (2)(a) do not apply; and

(c) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.

(5) For subsection (4)(c), in deciding whether there are exceptional circumstances, a court may have regard to the closeness in age between the offender and the child.

(6) In sentencing an offender to whom subsection (4) applies, the court must have regard primarily to—

(a) the effect of the offence on the child; and

(b) the age of the child; and

(c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; and

(d) the need to protect the child, or other children, from the risk of the offender reoffending; and

(e) any relationship between the offender and the child; and

(f) the need to deter similar behaviour by other offenders to protect children; and

(g) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and

(h) the offender's antecedents, age and character; and

(i) any remorse or lack of remorse of the offender; and

(j) any medical, psychiatric, prison or other relevant report relating to the offender; and

(k) anything else about the safety of children under 16 the sentencing court considers relevant.

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(6A) However, for subsection (6)(h), if the offender is determined to be of good character, the court must not treat the good character as a mitigating factor if it assisted the offender in committing the offence.

(7) In sentencing an offender for a child exploitation material offence, the court must have regard primarily to—

(a) for an offence other than an offence against the Criminal Code, section 228I or 228J—the nature of any material describing or depicting a child that the offence involved, including the apparent age of the child and any activity shown; and

(aa) for an offence against the Criminal Code, section 228I or 228J—the nature of the doll, robot or other object representing or portraying a child that the offence involved, including the apparent age of the child; and

(ab) the offender's conduct or behaviour in relation to the material, doll, robot or other object that the offence involved; and

(ac) any relationship between the offender and the child the subject of the material, or represented or portrayed by the doll, robot or other object, that the offence involved; and

(b) the need to deter similar behaviour by other offenders to protect children; and

(c) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and

(d) the offender's antecedents, age and character; and

(e) any remorse or lack of remorse of the offender; and

(f) any medical, psychiatric, prison or other relevant report relating to the offender; and

(g) anything else about the safety of children under 16 the sentencing court considers relevant.

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(7AA) However, for subsection (7)(d), if the offender is determined to be of good character, the court must not treat the good character as a mitigating factor if it assisted the offender in committing the offence.

(7A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender under part 9D, division 2.

(8) If required by the court for subsection (2)(p), the representative must advise the court whether—

(a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or

(b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.

(9) In sentencing an offender, a court must not have regard to the following—

(a) the offender levy imposed under section 179C;

(b) whether or not the offender—

(i) may become, or is, the subject of a dangerous prisoners application; or

(ii) may become subject to an order because of a dangerous prisoners application.

(9A) Voluntary intoxication of an offender by alcohol or drugs is not a mitigating factor for a court to have regard to in sentencing the offender.

(9B) In determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor.

(9BA) In determining the appropriate sentence for an offender convicted of an offence against the Criminal Code, section 349 or 352 committed against a child of 16 or 17

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years, the court must treat the child's age as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

(9BB) For subsection (9BA), in deciding whether there are exceptional circumstances, the court may have regard to the closeness in age between the offender and the child.

(9C) In determining the appropriate sentence for an offender convicted of a relevant serious offence committed in relation to a pregnant person that resulted in destroying the life of the person's unborn child, the court must treat the destruction of the unborn child's life as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

(10) In determining the appropriate sentence for an offender who has 1 or more previous convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to—

(a) the nature of the previous conviction and its relevance to the current offence; and

(b) the time that has elapsed since the conviction.

(10A) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.

Examples of exceptional circumstances—

1 the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender

2 the offence is manslaughter under the Criminal Code, section 304B

(10B) In determining the appropriate sentence for an offender who is a victim of domestic violence, the court must treat as a mitigating factor—

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(a) the effect of the domestic violence on the offender, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case; and

(b) if the commission of the offence is wholly or partly attributable to the effect of the domestic violence on the offender—the extent to which the commission of the offence is attributable to the effect of the violence.

(10C) In determining the appropriate sentence for an offender convicted of a domestic violence offence that was committed against a child when the offender was an adult, the court must treat the fact that it is an offence against a child as an aggravating factor.

(10D) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that either of the following circumstances apply as an aggravating factor—

(a) during the commission of the offence a child was exposed to domestic violence;

(b) the offence committed was also—

(i) a contravention of any of the following under the *Domestic and Family Violence Protection Act 2012*—

(A) a domestic violence order;

(B) a police protection notice;

(C) release conditions;

(D) an interstate order;

(E) a New Zealand order; or

(ii) a contravention of another order of a court or of an injunction.

(10E) Subsection (10F) applies if—

(a) the court is sentencing an offender to whom subsection (2A) applies; and

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(b) the offender committed the offence while the other person mentioned in subsection (2A) was performing, or because the person had performed, the functions of the person's office or employment.

(10F) In determining the appropriate sentence for the offender, the court must treat the fact that the offender committed the offence while the other person was performing, or because the person had performed, the functions of the person's office or employment as an aggravating factor, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case.

(10G) A reference in subsection (10E) or (10F) to a person performing the functions of the person's office or employment includes a reference to a person performing work—

(a) in a relationship of employment; or

(b) under a contract for services; or

(c) under an appointment; or

(d) on a voluntary or unpaid basis.

(11) Despite subsection (10), the sentence imposed must not be disproportionate to the gravity of the current offence.

(12) In this section—

actual term of imprisonment means a term of imprisonment served wholly or partly in a corrective services facility.

child exploitation material offence means any of the following offences—

(a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28 if the objectionable computer game is a child abuse computer game under the Act;

(b) an offence against any of the following provisions of the *Classification of Films Act 1991*—

(i) section 41(3) or 42(3) or (4);

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(ii) section 43 if the offence involves a child abuse publication under the Act;

(c) an offence against the Criminal Code, section 228A, 228B, 228C, 228D, 228DA, 228DB, 228DC, 228I or 228J.

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

family relationship has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 19.

informal care relationship has the meaning given by the *Domestic and Family Violence Protection Act 2012*, section 20.

relevant serious offence means an offence against—

(a) the following provisions of the Criminal Code—

(i) sections 302 and 305;

(ii) sections 303 and 310;

(iii) section 320;

(iv) section 323;

(v) section 328A;

(vi) section 339; and

(b) the *Transport Operations (Road Use Management) Act 1995*, section 83.

10 Court's reasons to be stated and recorded

(1) If a court imposes a sentence of imprisonment, including a suspended sentence of imprisonment, it must—

(a) state in open court its reasons for the sentence; and

(b) cause the reasons to be—

(i) recorded in the transcript that is to be kept in the registry with the indictment; or

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(ii) recorded in writing and kept in the office of the clerk of the court with the charge sheet; and

(c) if the chief executive (corrective services) requests a copy of the reasons—cause a copy of the reasons to be forwarded to the chief executive (corrective services).

(2) A sentence is not invalid merely because of the failure of the court to state its reasons as required by subsection (1)(a), but its failure to do so may be considered by an appeal court if an appeal against sentence is made.

(3) The court need not comply with subsection (1)(b) if the reasons are recorded under the *Recording of Evidence Act 1962*.

11 Matters to be considered in determining offender's character

(1) In determining the character of an offender, a court may consider—

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

(b) the history of domestic violence orders made or issued against the offender, other than orders made or issued when the offender was a child; and

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

(d) such other matters as the court considers are relevant.

(2) If oral submissions are to be made to, or evidence is to be brought before, the court about the history of domestic violence orders made or issued against the offender, the sentencing judge or magistrate may close the court for that purpose.

(3) In this section—

domestic violence order means—

(a) any of the following under the *Domestic and Family Violence Protection Act 2012*—

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(i) a domestic violence order;

(ii) a police protection direction;

(iii) a police protection notice;

(iv) an interstate order;

(v) an order that corresponds to an interstate order made under a repealed law of another State;

(vi) a New Zealand order; or

(b) a domestic violence order under the repealed *Domestic and Family Violence Protection Act 1989*.

12 Court to consider whether or not to record conviction

(1) A court may exercise a discretion to record or not record a conviction as provided by this Act.

(2) In considering whether or not to record a conviction, a court must have regard to all circumstances of the case, including—

(a) the nature of the offence; and

(b) the offender's character and age; and

(c) the impact that recording a conviction will have on the offender's—

(i) economic or social wellbeing; or

(ii) chances of finding employment.

(3) Except as otherwise expressly provided by this or another Act—

(a) a conviction without recording the conviction is taken not to be a conviction for any purpose; and

(b) the conviction must not be entered in any records except—

(i) in the records of the court before which the offender was convicted; and

(ii) in the offender's criminal history but only for the purposes of subsection (4)(b).

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(3A) Despite subsection (3)(b), the conviction may be entered in a record kept by a department, a prosecuting authority or the offender's legal representative if it is necessary for the legitimate performance of the functions of the department, prosecuting authority or legal representative.

(4) A conviction without the recording of a conviction—

(a) does not stop a court from making any other order that it may make under this or another Act because of the conviction; and

(b) has the same result as if a conviction had been recorded for the purposes of—

(i) appeals against sentence; and

(ii) proceedings for variation or contravention of sentence; and

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

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

(5) If the offender is convicted of a subsequent offence, the court sentencing the offender may disregard a conviction that was ordered not to be recorded but which, under subsection (3)(b)(ii), is entered in the offender's criminal history.

(6) If—

(a) a court—

(i) convicts an offender of an offence; and

(ii) does not record a conviction; and

(iii) makes a probation order or community service order for the offender; and

(b) the offender is subsequently dealt with by a court for the same offence in any way in which it could deal with the offender if the offender had just been convicted by or before it of the offence;

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the conviction for the offence must be recorded by the second court.

(7) Despite subsection (6), the second court is not required to record the conviction for the offence if—

(a) the offender is the subject of a community service order or probation order; and

(b) the reason the court is dealing with the offender for the same offence is because the offender has applied for a revocation of the community service order or probation order; and

(c) the offender has not breached the community service order or probation order.

12A Convictions for offences relating to domestic violence

(1) Subsections (2) to (4) apply if—

(a) a complaint or an indictment for a charge for an offence states the offence is also 1 of the following offences (each a ***relevant domestic violence offence***)—

(i) a domestic violence offence;

(ii) a domestic violence offence committed against a child;

(iii) a domestic violence offence that exposed a child to domestic violence; and

(b) the offender is convicted of the offence.

(2) If a conviction is recorded in relation to the offence, it must also be recorded as a conviction for a relevant domestic violence offence.

Example—

An indictment for a charge for an offence states the offence is also a domestic violence offence committed against a child. The offender is convicted of the offence. If a conviction is recorded in relation to the offence, it must also be recorded as a conviction for 'a domestic violence offence committed against a child'.

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(3) If no conviction is recorded in relation to the offence, the offence must be entered in the offender's criminal history as a relevant domestic violence offence.

(4) However, a matter must not be recorded or entered under subsection (2) or (3) in relation to the offence if the court makes an order to the effect it is not satisfied the offence is also a relevant domestic violence offence.

Note—

See the *Evidence Act 1977*, section 132C, which provides for the sentencing judge or magistrate in any sentencing procedure in a criminal proceeding to act on allegations of fact.

(5) If a court convicts an offender of an offence for which a matter must be recorded or entered under subsection (2) or (3) or of an offence against the *Domestic and Family Violence Protection Act 2012*, part 7, the prosecution may apply to the court for an order that an offence, stated in the application, of which the offender has previously been convicted (a ***previous offence***)—

(a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a relevant domestic violence offence; or

(b) otherwise—be entered in the offender's criminal history as a relevant domestic violence offence.

(6) The application—

(a) may be made in writing or orally; and

(b) must include enough information to allow the court to make a decision about whether it is appropriate to make the order.

(7) The court may ask the prosecutor for further information for it to decide whether to make an order under subsection (8).

(8) If, after considering the application, the court is satisfied a previous offence is a relevant domestic violence offence, the court must order that the offence—

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(a) for a previous offence for which a conviction was recorded—also be recorded as a conviction for a relevant domestic violence offence; or

(b) otherwise—be entered in the offender's criminal history as a relevant domestic violence offence.

(9) Each of the following persons is not compellable as a witness in proceedings before the court to decide the application—

(a) a person against whom the relevant domestic violence offence was committed;

(b) for a relevant domestic violence offence that exposed a child to domestic violence—the child.

(10) If a court is satisfied an error has been made in recording or entering an offence as a relevant domestic violence offence, the court may, on an application or its own initiative, correct the error.

(11) For this section, proof that an offence is a relevant domestic violence offence lies on the prosecutor.

(12) To remove any doubt, it is declared that this section does not require a matter to be recorded or entered in an offender's traffic history under the *Transport Operations (Road Use Management) Act 1995*.

13 Guilty plea to be taken into account

(1) In imposing a sentence on an offender who has pleaded guilty to an offence, a court—

(a) must take the guilty plea into account; and

(b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.

(2) A reduction under subsection (1)(b) may be made having regard to the time at which the offender—

(a) pleaded guilty; or

(b) informed the relevant law enforcement agency of his or her intention to plead guilty.

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(3) When imposing the sentence, the court must state in open court that it took account of the guilty plea in determining the sentence imposed.

(4) A court that does not, under subsection (2), reduce the sentence imposed on an offender who pleaded guilty must state in open court—

(a) that fact; and

(b) its reasons for not reducing the sentence.

(5) A sentence is not invalid merely because of the failure of the court to make the statement mentioned in subsection (4), but its failure to do so may be considered by an appeal court if an appeal against sentence is made.

13A Cooperation with law enforcement authorities to be taken into account—undertaking to cooperate

(1) This section applies for a sentence that is to be reduced by the sentencing court because the offender has undertaken to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding.

(2) Before the sentencing proceeding starts, a party to the proceeding—

(a) must advise the relevant officer—

(i) that the offender has undertaken to cooperate with law enforcement agencies; and

(ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and

(b) may give to the relevant officer copies of any proposed written submissions mentioned in paragraph (a)(ii).

(3) After the offender is invited to address the court—

(a) the offender's written undertaking to cooperate with law enforcement agencies must be handed up to the court; and

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(b) any party may hand up to the court written submissions relevant to the reduction of sentence.

(4) The undertaking must be in an unsealed envelope addressed to the sentencing judge or magistrate.

(5) If oral submissions are to be made to, or evidence is to be brought before, the court relevant to the reduction of sentence, the court must be closed for that purpose.

(6) The penalty imposed on the offender must be stated in open court.

(7) After the imposition of the penalty, the sentencing judge or magistrate must—

(a) close the court; and

(b) state in closed court—

(i) that the sentence is being reduced under this section; and

(ii) the sentence it would otherwise have imposed; and

(c) cause the following to be sealed and placed on the court file with an order that it may be opened only by an order of the court, including on an application to reopen the sentencing proceedings under section 188(2)—

(i) the written undertaking;

(ii) a record of evidence or submissions made relevant to the reduction of sentence and the sentencing remarks made under paragraph (b).

(8) The sentencing judge or magistrate may make an order prohibiting publication of all or part of the proceeding or the name and address of any witness on his or her own initiative or on application.

(9) In deciding whether to make an order under subsection (8), the judge or magistrate may have regard to—

(a) the safety of any person; and

(b) the extent to which the detection of offences of a similar nature may be affected; and

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(c) the need to guarantee the confidentiality of information given by an informer.

(10) A person who contravenes an order made under subsection (8) commits an offence.

Maximum penalty—

(a) for an order made by a judge—5 years imprisonment; or

(b) for an order made by a magistrate—3 years imprisonment.

(11) In this section—

relevant officer means—

(a) for a proceeding before the Supreme or District Court—the sentencing judge's associate; or

(b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

13B Cooperation with law enforcement authorities to be taken into account—cooperation given

(1) This section applies for a sentence if—

(a) the sentence is to be reduced by the sentencing court because the offender has significantly cooperated with a law enforcement agency in its investigations about an offence or a confiscation proceeding; and

(b) section 13A does not apply for the sentence.

(2) For subsection (1), an offender has not significantly cooperated with a law enforcement agency in its investigations about an offence only because the offender has admitted guilt for the offence.

(3) Before the sentencing proceeding starts, a party to the proceeding—

(a) must advise the relevant officer—

(i) that the offender has significantly cooperated with a law enforcement agency; and

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(ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and

(b) may give the relevant officer copies of any proposed written submissions mentioned in paragraph (a)(ii).

(4) After the offender is invited to address the court—

(a) an affidavit, provided by a person representing the law enforcement agency, must be handed up to the court; and

(b) any party may hand up to the court written submissions relevant to the reduction of sentence.

(5) The affidavit must—

(a) state the nature, extent and usefulness of the cooperation given to the law enforcement agency by the offender; and

(b) be in an unsealed envelope addressed to the sentencing judge or magistrate.

(6) If oral submissions are to be made to, or evidence is to be brought before, the court about the cooperation or the reduction of sentence, the court must be closed for that purpose.

(7) The penalty imposed on the offender must be stated in open court.

(8) After the imposition of the penalty, the sentencing judge or magistrate must cause the following to be sealed and placed on the court file with an order that it may be opened only by an order of the court—

(a) the affidavit;

(b) a record of evidence or submissions made relevant to the reduction of sentence;

(c) a record of the sentencing remarks relevant to the reduction of sentence, as opposed to the sentence imposed.

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(9) The sentencing judge or magistrate may make an order prohibiting publication of all or part of the proceeding or the name and address of any witness on his or her own initiative or on application.

(10) In deciding whether to make an order under subsection (9), the judge or magistrate may have regard to—

(a) the safety of any person; and

(b) the extent to which the detection of offences of a similar nature may be affected; and

(c) the need to guarantee the confidentiality of information given by an informer.

(11) A person who contravenes an order made under subsection (9) commits an offence.

Maximum penalty—

(a) for an order made by a judge—5 years imprisonment; or

(b) for an order made by a magistrate—3 years imprisonment.

(12) In this section—

relevant officer means—

(a) for a proceeding before the Supreme or District Court—the sentencing judge's associate; or

(b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

14 Preference must be given to compensation for victims

If a court considers—

(a) that it is appropriate—

(i) to make an order for compensation (whether under this or another Act); and

(ii) to impose a fine or make another order for payment of an amount of money; and

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(b) that the offender can not pay both the compensation and the fine or amount;

the court must give preference to making an order for compensation, but may also impose a sentence other than that of imprisonment.

15 Information or submissions for sentence

(1) In imposing a sentence on an offender, a court may receive any information, including a report mentioned in the *Corrective Services Act 2006*, section 344, or a sentencing submission made by a party to the proceedings, that it considers appropriate to enable it to impose the proper sentence.

(1A) Also, without limiting subsection (1), in imposing a sentence on an offender, a court may receive any information, or a sentencing submission made by a party to the proceedings, that the court considers appropriate to enable it to decide—

(a) whether it may make a control order for the offender under part 9D, division 3; or

(b) the appropriate conditions of a control order it must, or may, make for the offender under part 9D, division 3.

(2) An authorised corrective services officer must not, in any information or report, recommend that a fine option order or community based order should not be made for an offender merely because of—

(a) any physical, intellectual or psychiatric disability of the offender; or

(b) the offender's sex, educational level or religious beliefs.

(3) In this section—

sentencing submission, made by a party, means a submission stating the sentence, or range of sentences, the party considers appropriate for the court to impose.

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15A Audiovisual link or audio link may be used to sentence

(1) The court may allow anything that must or may be done in relation to the sentencing of an offender to be done over an audiovisual link or audio link, if the court considers use of the link is in the interests of justice.

(2) However, the court may not make an order under subsection (1) if facilities mentioned in subsection (5)(a) are not available at the court or the place where the offender is present.

(3) For subsection (1), in deciding whether use of an audio link is in the interests of justice, the court must have regard to the desirability of sentencing an offender over an audiovisual link, rather than an audio link, if an audiovisual link is available.

(4) For sections 10(1) and 13(3) or (4), anything done, for an offender's sentencing, over an audiovisual link or audio link between the offender and the court sitting in open court is taken to be done in open court.

(5) If an offender is sentenced over an audiovisual link or audio link and the offender's representative in the proceeding is at the place where the court is sitting—

(a) the court and the place where the offender is present must make facilities available for private communication between the offender and the offender's representative; and

(b) a communication between the offender and the offender's representative is as confidential and inadmissible in any proceeding as it would be if it took place between the offender and the offender's representative while in each other's presence.

(6) Subsection (5)(b) does not limit any other protection applying to the communication.

(7) The provisions of the *Evidence Act 1977* relating to the use of an audiovisual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

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Part 2A Guideline judgments

15AA Definitions for pt 2A

In this part—

Attorney-General includes the nominee of the Attorney-General.

chief executive officer of Legal Aid Queensland includes the nominee of the chief executive officer of Legal Aid Queensland.

court means the Court of Appeal.

director of public prosecutions includes the nominee of the director of public prosecutions.

guideline judgment for an offence under a Commonwealth Act means a guideline judgment to the extent it relates to an offence under a Commonwealth Act.

guideline proceeding means—

(a) that part of a proceeding relating to the giving or review of a guideline judgment under section 15AD; or

(b) a proceeding, or part of a proceeding, under section 15AE on an application for the giving or review of a guideline judgment under that section.

review, a guideline judgment, means—

(a) confirm the guideline judgment; or

(b) vary the guideline judgment; or

(c) revoke the guideline judgment; or

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

15AB Powers of court to give or review guideline judgments

(1) The court may give or review a guideline judgment—

(a) on its own initiative under section 15AD; or

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(b) on an application under section 15AE.

(2) However—

(a) a guideline judgment for an offence under a Commonwealth Act may be given or reviewed only in a proceeding where the guideline judgment relates to a matter in the proceeding; and

(b) the court must comply with section 15AC.

15AC Limitations for guideline judgments

(1) A guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, must be consistent with Queensland law.

(2) A guideline judgment for an offence under a Commonwealth Act must—

(a) be consistent with Commonwealth law; and

(b) set out non-binding considerations to guide the future exercise of discretion and not purport to establish a rule of binding effect; and

(c) articulate principles to underpin the determination of a particular sentence and not state the expected decisions in a future proceeding.

15AD Guideline judgments on own initiative

(1) The court may, on its own initiative—

(a) give or review a guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, in a proceeding and whether or not the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining the proceeding; and

(b) pronounce the guideline judgment separately or by inclusion in any judgment the court considers appropriate.

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(2) The court may, on its own initiative—

(a) give or review a guideline judgment for an offence under a Commonwealth Act in a proceeding and only if the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining the proceeding; and

(b) pronounce the guideline judgment only by inclusion in the judgment for the proceeding.

15AE Guideline judgments on application

(1) The following persons may apply to the court for a guideline judgment to be given or reviewed—

(a) the Attorney-General;

(b) the director of public prosecutions;

(c) the chief executive officer of Legal Aid Queensland.

(2) For subsection (1), the application is not required to be an application in a proceeding.

(3) Also, on an appeal after a person is convicted, the person may apply to the court for review of a guideline judgment to the extent it contains a guideline that is relevant in the circumstances.

(4) The application may include submissions in support of the application.

(5) The court may, on an application under this section—

(a) give or review a guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, whether or not this is necessary for the purpose of determining a proceeding; and

(b) pronounce the guideline judgment separately or by inclusion in any judgment the court considers appropriate.

(6) The court may, on an application under this section—

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(a) give or review a guideline judgment for an offence under a Commonwealth Act only if the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining a proceeding in relation to the offence; and

(b) pronounce the guideline judgment only by inclusion in the judgment for the proceeding.

15AF Right of appearance in a guideline proceeding

(1) The following persons may appear in a guideline proceeding—

(a) the Attorney-General;

(b) the director of public prosecutions;

(c) the chief executive officer of Legal Aid Queensland.

(2) Also, for a guideline proceeding in which the court is giving or reviewing a guideline judgment relevant to an appeal before the court against the sentence of a convicted person, the convicted person may appear in the guideline proceeding.

(3) Without limiting subsection (1) or (2), a person who may appear under subsection (1) or (2) may—

(a) oppose or support the giving or reviewing of the guideline judgment by the court; and

(b) make submissions in relation to the framing of the guidelines to be contained in the guideline judgment; and

(c) inform the court of any relevant pending appeal against sentence; and

(d) assist the court in relation to any relevant matter.

15AG Powers of Attorney-General or director of public prosecutions

(1) Nothing in the *Director of Public Prosecutions Act 1984* or any Act or law prevents, or in any way limits, the exercise of a

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power conferred on the director of public prosecutions under section 15AE or 15AF.

(2) Without limiting subsection (1), in exercising a power conferred on the director of public prosecutions under this section, the director is not, despite the *Director of Public Prosecutions Act 1984*, section 10, responsible to, or subject to the direction of, the Attorney-General.

(3) Nothing in any Act or law prevents, or in any way limits, the performance of a function conferred on the Attorney-General under section 15AE or 15AF.

15AH Relevant considerations before giving or reviewing guideline judgment

If the court is considering giving or reviewing a guideline judgment, the court must consider—

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

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

15AI Procedural requirements if court decides to give or review guideline judgment

(1) This section applies if the court decides to give or review a guideline judgment.

(2) The court must—

(a) for any guideline proceeding—notify the following persons of their right to appear before the court in the guideline proceeding—

(i) the Attorney-General;

(ii) the director of public prosecutions;

(iii) the chief executive officer of Legal Aid Queensland; and

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(b) if the court is giving or reviewing a guideline judgment relevant to an appeal before the court against the sentence of a convicted person—notify the convicted person.

15AJ Discretion of court preserved

(1) Nothing in this part—

(a) limits any power or jurisdiction of the court to give or review a judgment providing guidance on matters relating to sentencing that the court has apart from this part; or

(b) requires the court to give or review a guideline judgment if it considers giving or reviewing a guideline judgment inappropriate.

(2) If, on an application under section 15AE, the court decides not to give or review a guideline judgment, the court must give reasons for its decision.

15AK Use of evidence in giving or reviewing guideline judgments

Nothing in the Criminal Code, section 671B limits the evidence or other matters the court may take into consideration in giving or reviewing a guideline judgment and the court may inform itself in the way it considers appropriate.

Example of matter court may consider—

any written views of the council about giving or reviewing a guideline judgment

15AL Relationship between guideline judgments and other sentencing matters

A guideline in a guideline judgment—

(a) is additional to anything else required under part 2; and

(b) does not limit or otherwise affect any requirement under that part.

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Part 3 Releases, restitution and compensation

Division 1 Orders to release certain offenders

Subdivision 1 Interpretation

15B Definitions for div 1

In this division—

approved provider see section 15F.

attend, for a drug assessment and education session, means attend all of the session.

DAAR condition see section 19(2B).

disqualifying offence see section 15E.

drug assessment and education session, for an offender, means a single session provided by an approved provider involving assessment of the offender's drug use, drug education and identification of any appropriate treatment options for the offender.

drug diversion condition see section 19(2A).

drug diversion court means a court prescribed under a regulation for this definition.

eligible drug offence see section 15D.

eligible drug offender see section 15C.

15C Meaning of *eligible drug offender*

(1) An ***eligible drug offender*** is a person charged with an eligible drug offence who has pleaded guilty to the offence.

(2) The person is not an ***eligible drug offender*** if—

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(a) a charge against the person for a disqualifying offence is pending in a court; or

(b) the person has, at any time, been convicted of a disqualifying offence; or

(c) 2 diversion alternatives have previously been given to the person.

(3) For subsection (2)(b), a conviction of a disqualifying offence does not include a conviction in relation to which the rehabilitation period has expired, and not been revived, under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

(4) For subsection (2)(c)—

(a) a diversion alternative has been given to the person if—

(i) a court has made an order in relation to the person under section 19(1)(b) that includes a drug diversion condition; or

(ii) the offender has, at any time, agreed to an offer under the *Police Powers and Responsibilities Act 2000*, section 379AA to participate in a drug diversion assessment program; or

(iii) the person has been given a prescribed diversion alternative under a law of another State or the Commonwealth; and

(b) for counting the number of diversion alternatives given to the person, a diversion alternative—

(i) is counted even if it was given for an offence committed before the diversion alternative counted as the first diversion alternative was given; and

(ii) is not counted if it was given on the same day as the diversion alternative counted as the first diversion alternative was given.

(5) In this section—

conviction see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

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prescribed diversion alternative means circumstances prescribed under a regulation for this definition that are similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

rehabilitation period see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

revived see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

15D Meaning of *eligible drug offence*

(1) An ***eligible drug offence*** is—

(a) an offence by a person against the *Drugs Misuse Act 1986*, section 9 of unlawfully having possession of a dangerous drug if—

(i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and

(ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the person's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

Example—

Assume the charge mentioned prescribed drugs X and Y. The prescribed quantity in relation to X is 1.0g and the prescribed quantity in relation to Y is 0.2g. The person had—

- 0.2g of a preparation containing X and Y; and
- 0.7g of a preparation containing X; and
- 0.1g of an admixture containing Y.

The total quantity of the preparations in the person's possession containing X is 0.9g (0.2 + 0.7) which is not more than the prescribed quantity in relation to X (1.0g).

The total quantity of the preparation and admixture in the person's possession containing Y is 0.3g (0.2 + 0.1) which

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is more than the prescribed quantity in relation to Y (0.2g).

Subsection (1)(a)(ii) is not satisfied.

(iii) the court considers each dangerous drug mentioned in the charge was for the person's personal use; or

(b) an offence against the *Drugs Misuse Act 1986*, section 10(1), if the court considers the possession of each thing mentioned in the charge was related to its personal use by the person in connection with the commission of the offence; or

(c) an offence against the *Drugs Misuse Act 1986*, section 10(2), (4) or (4A).

(2) In this section—

dangerous drug see the *Drugs Misuse Act 1986*, section 4.

prescribed dangerous drug means a dangerous drug prescribed under a regulation for this definition.

prescribed quantity means a quantity prescribed under a regulation for this definition.

15E Meaning of *disqualifying offence*

(1) A ***disqualifying offence*** is—

(a) an offence of a sexual nature; or

(b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9, other than an offence dealt with, or to be dealt with, summarily; or

(c) an indictable offence involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code—

- section 335
- section 340(1)(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the person or of any other person

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- section 340(1)(b).

Note—

Under the *Acts Interpretation Act 1954*, schedule 1—

indictable offence includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland.

(2) A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.

(3) A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.

(4) In this section—

offence of a sexual nature means an offence defined in the Criminal Code, section 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.

15F Meaning of *approved provider*

(1) An ***approved provider*** is an entity approved by the chief executive (health) by gazette notice to provide drug assessment and education sessions.

(2) In this section—

chief executive (health) means the chief executive of the department in which the *Medicines and Poisons Act 2019* is administered.

Subdivision 2 Orders

16 Court may make order under this division if it does not record conviction

Subject to section 20(2), if a court makes an order under section 19, it must not record a conviction.

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17 Making of order

(1) If a court considers that it is appropriate that no punishment or only a nominal punishment should be imposed on an offender, the court may make an order under section 19.

(2) Despite subsection (1), a drug diversion court may make an order under section 19(1)(b) that includes a drug diversion condition if the matters mentioned in section 19(2A)(b) and (c) are satisfied.

18 Matters to which court must have regard

Before making an order under section 19, the court must have regard to—

(a) the offender's character, age, health and mental condition; and

(b) the nature of the offence; and

(c) circumstances (if any) under which the offence was committed that make the offence less serious than what it would be if it had been committed under other circumstances; and

(d) anything else to which the court considers it proper to have regard.

19 Order of court

(1) The court may make an order—

(a) releasing the offender absolutely; or

(b) that the offender be released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that the offender must—

(i) be of good behaviour; and

(ii) appear for conviction and sentence if called on at any time during such period (not longer than 3 years) as is stated in the order.

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(2) In making an order under subsection (1)(b), the court may impose any additional conditions that it considers appropriate.

(2A) Without limiting subsection (2), the court may impose a condition that the offender must participate in a drug assessment and education session by a stated date (a ***drug diversion condition***) if—

(a) the court is a drug diversion court; and

(b) the offender is an eligible drug offender; and

(c) the offender consents to participating in a drug assessment and education session.

(2B) Also, without limiting subsection (2) or (2A), if the offender consents to completing a DAAR course, the court may impose a condition (a ***DAAR condition***) that the offender complete a DAAR course by a stated day.

(3) If a court makes an order under subsection (1), the court may also make any other order for payment of compensation or restitution that the court could have made had the offender been convicted.

(4) In this section—

DAAR course see the *Bail Act 1980*, section 11AB(6).

Note—

DAAR stands for Drug and Alcohol Assessment Referral. See the *Bail Act 1980*, section 11AB(6), definition *DAAR*.

20 Contravention of order

(1) If a court that makes an order under section 19(1)(b), or a court of like jurisdiction, is satisfied that the offender has contravened a condition of the offender's recognisance, the court may—

(a) forfeit the recognisance; and

(b) issue a warrant directed to all police officers to arrest and bring the offender before the court.

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(1A) Also, without limiting subsection (1), if the offender contravenes a relevant condition of the offender's recognisance, the proper officer of the court may bring the offender back before the court by giving notice to the offender that the proceeding for the offence is to be heard by the court on a stated day.

(2) When the offender appears before the court, whether under the warrant issued under subsection (1)(b) or under a notice given under subsection (1A), the court may—

(a) record a conviction and sentence the offender for the offence with which the offender was originally charged; or

(b) make any other order that the court could have made;

as if the offender had not been released on recognisance.

(3) In this section—

relevant condition means—

(a) a drug diversion condition; or

(b) a DAAR condition.

21 Termination of recognisance

A recognisance entered into under this division is terminated—

(a) at the end of its period; or

(b) if it is forfeited under section 20(1)(a); or

(c) if the offender appears before the court under section 20(2); or

(d) if a court orders that it is terminated;

whichever is the first to happen.

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Division 2 Recognisances for property related offences

22 Court may make order under this division if it does not record conviction

Subject to section 27(2), if a court acts under this division, it must not record a conviction.

23 When court may act under this division

If an offender is convicted of an offence relating to property and the court considers it appropriate to do so, the court may act under this division.

24 Adjournment and release of offender if recognisance entered into

(1) A court may—

(a) adjourn the sentencing of the offender to a time and place ordered by the court; and

(b) release the offender if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the condition that the offender must appear before the court—

(i) to be sentenced at the time and place ordered by the court; or

(ii) if called on before the time ordered by the court for the purposes of section 25.

(2) The adjournment under subsection (1)(a) must not be longer than 6 months after the offender is convicted.

25 Offender may be called on to do certain things

The offender may be called on with a view to the offender taking steps to—

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(a) restore property, to which the offence relates, to the person aggrieved by the offence; or

(b) reinstate property to the satisfaction of the court or the person aggrieved by the offence; or

(c) compensate the person aggrieved by the offence for damage caused to the person's property; or

(d) comply in all respects with any other order the court may make.

26 Offender may be called on for sentence

(1) If it is made to appear to the court that convicted the offender, or a court of like jurisdiction, that the offender should be called on to appear and be sentenced for the relevant offence before the time ordered under section 24(1)(a), the court may direct that the offender be called on to appear to be sentenced at a time and place ordered by the court.

(2) In sentencing the offender, the court may have regard to whether the offender has taken the steps mentioned in section 25 that are appropriate to the offender's case.

27 Offender failing to appear under recognisance or when called

(1) If the offender—

(a) fails to appear at the time and place ordered under section 24(1)(a); or

(b) is called on under section 24(1)(b)(ii) or 26(1) and fails to appear at the time and place called on or ordered by the court;

the court, or a court of like jurisdiction, may—

(c) forfeit the recognisance; and

(d) issue a warrant directed to all police officers to arrest and bring the offender before the court.

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(2) When the offender appears before the court that issued the warrant under subsection (1)(d), the court may—

(a) record a conviction and sentence the offender for the offence for which the offender was originally charged; or

(b) make any other order that the court could have made;

as if the offender had not been released on recognisance.

28 Termination of recognisance

A recognisance entered into under this division is terminated if the offender—

(a) appears at the time and place ordered under section 24(1)(a); or

(b) is called on under section 24(1)(b)(ii) or 26(1);

whichever is the first to happen.

Division 3 Release on entering into recognisance

29 Court may act under this division whether or not it records conviction

A court may act under this division whether or not it records a conviction.

30 Recognisance—conviction on indictment

(1) An offender convicted on indictment may, in addition to, or instead of, any sentence to which the offender is liable, be ordered—

(a) to be released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, conditioned that the offender

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keep the peace and be of good behaviour for a period fixed by the court; and

(b) to be imprisoned until the recognisance mentioned in paragraph (a) is entered into.

(2) Imprisonment ordered under subsection (1)(b)—

(a) must not be longer than 1 year; and

(b) together with any other imprisonment that is ordered for the offence, must not be longer than the longest term of imprisonment for which the offender might be sentenced to be imprisoned without fine.

31 Recognisance—summary conviction

An offender convicted summarily may, instead of being sentenced to punishment to which the offender is liable, be released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that the offender keep the peace and be of good behaviour for a period (not longer than 1 year) fixed by the court.

32 Recognisance instead of imposing any other sentence

(1) Subject to section 98, if an offender is convicted, the court may, instead of imposing another sentence, release the offender if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that—

(a) the offender must appear before the court to be sentenced at a future sittings of the court or if called on within a period stated by the court; and

(b) the offender must in the meantime keep the peace and be of good behaviour.

(2) In making an order under subsection (1), the court may impose any additional conditions that it considers appropriate.

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33 Termination of recognisance

A recognisance entered into under this division is terminated—

(a) at the end of its period; or

(b) if the offender keeps the peace and is of good behaviour for the period fixed by the court; or

(c) if required by the recognisance, the offender appears as required by the recognisance to be sentenced; or

(d) if the offender fails to appear as required by section 32(1)(a).

33A Failing to obey condition of recognisance

(1) If the court is satisfied that the offender has failed to obey a condition of the recognisance, the court may forfeit the recognisance and issue a warrant to arrest the offender.

(2) The warrant is to be directed to all police officers to arrest and bring the offender before the court or a court of like jurisdiction.

(3) The court before which the offender is brought may—

(a) sentence the offender for the offence with which the offender was originally charged; or

(b) make another order that the court could lawfully have made if the offender had not been released on recognisance.

Division 3AA Offenders failing to enter into recognisances before leaving court

33AA Application of division

This division applies if—

(a) a court makes an order under section 19(1)(b), 24(1)(b), 30(1)(a), 31 or 32(1) that an offender be released if the

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offender enters into a recognisance (the ***original order***); and

(b) the offender leaves the precincts of the court without entering into the recognisance.

33AB Proper officer of court may give offender notice

(1) The proper officer of the court may give the offender a written notice that—

(a) requires the offender, by a stated date, to attend the registry of the court at a stated place to enter into the recognisance; and

(b) informs the offender that, if the offender fails to comply with the requirement, a warrant may be issued to arrest the offender and bring the offender before the court to be dealt with according to law.

(2) The notice must be given to the offender—

(a) personally; or

(b) by post to the address of the offender last known to the proper officer of the court; or

(c) electronically, including, for example, by email.

33AC Court may issue warrant

(1) This section applies if the court is satisfied—

(a) the offender has been given a notice under section 33AB; and

(b) the offender has failed to comply with the notice.

(2) The court may issue a warrant directed to all police officers to arrest the offender and bring the offender before the court, or a court of like jurisdiction, to be dealt with according to law.

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33AD Orders for offender appearing before court

(1) This section applies if the offender is arrested under a warrant issued under section 33AC and either of the following applies—

(a) the offender is brought before a court under the warrant or a warrant issued under another Act;

(b) the offender is granted bail under the *Bail Act 1980*, section 7 and appears before a court in accordance with the bail.

(2) The court may—

(a) confirm the original order; or

(b) revoke the original order and sentence the offender for the offence with which the offender was originally charged.

(3) If the court revokes the original order under subsection (2)(b) and a conviction has not previously been recorded for the offence mentioned in that subsection, the court may also record a conviction for the offence.

33AE Orders for particular offender failing to appear before court

(1) This section applies if—

(a) the original order is made on the hearing of a complaint of a simple offence under the *Justices Act 1886*; and

(b) the offender—

(i) is arrested under a warrant issued under section 33AC; and

(ii) is granted bail under the *Bail Act 1980*, section 7; and

(iii) fails to appear before a court in accordance with the bail.

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(2) The court may, in the absence of the offender, revoke the original order and sentence the offender for the offence with which the offender was originally charged.

(3) If the court revokes the original order under subsection (2) and a conviction has not previously been recorded for the offence mentioned in that subsection, the court may also record a conviction for the offence.

(4) In sentencing the offender under subsection (2), the court may not—

(a) impose a term of imprisonment on the offender; or

(b) order that any licence, registration, certificate, permit or other authority held by the offender under any Act be cancelled or suspended; or

(c) order that the offender be disqualified from holding or obtaining any licence, registration, certificate, permit or other authority under any Act.

33AF Evidentiary provision

(1) For section 33AC(1)(a), a document purporting to be a copy of a notice given to the offender under section 33AB and endorsed with a certificate purporting to be signed by a relevant officer stating the matters mentioned in subsection (2) is evidence—

(a) that the notice was given to the offender as stated in the certificate; and

(b) if the notice was given to the offender in the way mentioned in section 33AB(2)(b)—that the address appearing on the notice is the address of the offender last known to the proper officer of the court.

(2) The matters are—

(a) the document is a copy of a notice given to the offender under section 33AB; and

(b) the notice was given to the offender in a stated way mentioned in section 33AB(2); and

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(c) if the notice was given to the offender in a way mentioned in section 33AB(2)(a) or (c)—the date the notice was given to the offender; and

(d) if the notice was given to the offender in the way mentioned in section 33AB(2)(b)—

(i) the document was posted to the address appearing on the notice, which was the address of the offender last known to the proper officer of the court; and

(ii) in the ordinary course of post, the notice would be delivered on the date stated in the endorsement.

(3) For section 33AC(1)(b), a certificate purporting to be signed by the proper officer of the court stating that the offender has not complied with a notice given to the offender under section 33AB is evidence the offender has not complied with the notice.

(4) In this section—

relevant officer, in relation to a notice given to an offender under section 33AB, means—

(a) if the notice was given to the offender in the way mentioned in section 33AB(2)(a)—the person who served the notice personally on the offender; or

(b) otherwise—the proper officer of the court.

Division 3A Provisions relating to forfeited recognisances

33B Order for payment of amount under forfeited recognisance

(1) A court must, on the forfeiture of a recognisance, order—

(a) that the offender or surety liable to pay an amount stated in the recognisance pay the amount to the proper officer

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of the court immediately or within the time or by the instalments stated in the order; or

(b) that the proper officer of the court is, under the SPE Act, section 34, to give particulars of the amount undertaken by the surety to be paid on the forfeiture of the recognisance to SPER for registration under that section.

(2) If the court makes an order under subsection (1)(a), the court may also order that the offender or surety be imprisoned for the term, of not more than 2 years, stated in the order if the offender or surety defaults in paying the amount.

33C Variation or revocation of order forfeiting recognisance

(1) If a court orders an offender or a surety to pay an amount under section 33B, the offender or surety may apply in the approved form to the court that made the order or, for a Magistrates Court, any magistrate for an order revoking or varying the order.

(2) The application—

(a) may only be made on the ground that having regard to all the circumstances it would be against the interests of justice to require the person to pay the amount ordered to be paid; and

(b) must be made within 28 days after the relevant recognisance is forfeited or the longer time the court allows for payment of the amount; and

(c) must briefly state the circumstances relied on; and

(d) must be filed with the proper officer of the court and served, at least 14 days before the date set for the hearing of the application on the complainant or, for a recognisance entered into after an indictment is presented, whoever of the following is relevant—

(i) the State crown solicitor;

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(ii) for an offence against a law of the Commonwealth, the Australian Government Solicitor in Queensland.

(3) Despite subsection (2)(b), if the recognisance was forfeited in the absence of an offender, the application must be made within 28 days after the order comes to the notice of the applicant.

(4) At any time after the application is filed, the applicant may apply to the court for a stay of proceedings to which the application relates.

(5) The court may grant the stay and do any of the following—

(a) direct the return of any unenforced warrant;

(b) postpone the issue of a warrant;

(c) stay the enforcement of any warrant until the application is decided.

(6) Also, the court may hear the application earlier than 14 days after service of the application if the parties consent to the earlier hearing.

(7) The court must decide the application and may—

(a) vary the order; or

(b) revoke the order; or

(c) refuse the application.

Division 4 Orders for restitution and compensation

34 Court may act under this division whether or not it records conviction

A court may act under this division whether or not it records a conviction.

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35 Order for restitution or compensation

(1) The court may order that the offender—

(a) make restitution of property—

(i) in relation to which the offence was committed; or

(ii) taken in the course of, or in connection with, the commission of the offence; and

(b) pay compensation to a person for any loss or destruction of, damage caused to, or unlawful interference with, property—

(i) in relation to which the offence was committed; or

(ii) in the course of, or in connection with, the commission of the offence; and

(c) pay compensation for personal injury suffered by a person (whether or not the person is the victim against whom the offence was committed) because of the commission of the offence.

(2) An order may be made under subsection (1) in addition to any other sentence to which the offender is liable.

(3) If an offence is taken into account under section 189 in imposing sentence on an offender for another offence, the court may make an order under subsection (1).

(4) If a court makes an order under subsection (1) because of subsection (3), then, despite section 189(8), the offender has the same right of appeal as if the court had convicted the offender of the offence in relation to which the order was made.

36 What order may state

(1) An order made under section 35(1) may state—

(a) the amount to be paid by way of restitution or compensation; and

(b) the person to whom the restitution is to be made or the compensation is to be paid; and

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(c) the time within which the restitution is to be made or the compensation is to be paid or, alternatively, that the proper officer of the court is, under the SPE Act, section 34, to give particulars of the amount of the restitution or compensation to SPER for registration under that section; and

(d) if the order states the time within which the restitution is to be made or the compensation is to be paid—the way in which the restitution is to be made or the compensation is to be paid.

(2) When making an order under section 35(1), the court may also order that the offender is to be imprisoned if the offender fails to comply with the order.

37 Limit on imprisonment under s 36(2)

Imprisonment ordered under section 36(2) must not be longer than—

(a) if the order is made on indictment—1 year; or

(b) if the order is made on summary conviction—6 months.

38 Extension of time

(1) The time stated in an order made under section 35(1) within which the restitution is to be made, or the compensation is to be paid, may be extended by—

(a) the court that made the order; or

(b) a court of like jurisdiction.

(2) The court that grants an extension under subsection (1) may further extend the time.

(3) Application for an extension under subsection (1), or further extension under subsection (2), must be in writing.

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39 Directions for enforcing order of imprisonment

(1) In making an order under section 36(2), the court may give such directions as it considers appropriate for the enforcement of the order of imprisonment.

(2) A direction mentioned in subsection (1) may include a direction that the offender must appear—

(a) before the court, or a court of like jurisdiction, at a time and place stated in the direction; or

(b) if called on by notice given to the offender;

to show cause why the imprisonment should not be enforced because of the failure to comply with the order.

39A Other orders available on failure to comply

On an appearance by an offender under section 39(2), if the court considers the order of imprisonment should not be enforced against the offender, the court may—

(a) accept payment of the amount ordered in full; or

(b) if the offender has not been paying the amount by instalments, order that the unpaid amount be paid by instalments; or

(c) cause the proper officer to register the prescribed particulars of the unpaid amount under the SPE Act.

40 Failing to appear as directed

If the offender fails to appear as required by a direction mentioned in section 39(2), the court may issue a warrant directed to all police officers to arrest and bring the offender before the court, or a court of like jurisdiction, to show cause as required by the direction.

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41 Instalments—failing to pay

If an amount is ordered to be paid by instalments and an instalment is not paid, the same proceedings may be taken as if the original order had directed that the unpaid instalments be paid in a single amount and the amount had not been paid.

42 Payment of restitution or compensation

A court may order that restitution or compensation must be made, directly or indirectly, to the proper officer of the court.

43 Division does not limit operation of other provisions

This division does not limit the operation of another provision of this Act that provides for the making of restitution or the payment of compensation.

Part 3A Non-contact orders

43A Court may make order whether or not it records conviction

A court may make a non-contact order whether or not it records a conviction.

43B Making non-contact order

(1) If a court convicts an offender of a personal offence, whether on indictment or summarily, the court may make a non-contact order for the offender.

(2) The order may be made in addition to any other order the court may make under this or another Act.

(3) However, the court must not make a non-contact order if an order may be made under the *Domestic and Family Violence Protection Act 2012*, section 42.

(4) In this section—

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personal offence means an indictable offence committed against the person of someone.

43C Requirements of non-contact order

(1) A non-contact order is an order that contains either or both of the following—

(a) a requirement that the offender not contact the victim against whom the offence was committed, or someone who was with the victim when the offence was committed (an ***associate***), for a stated time;

(b) a requirement that the offender not go to a stated place, or within a stated distance of a stated place, for a stated time.

(2) The time stated in the order must be a period starting when the order is made and ending no later than—

(a) if the offender is sentenced to a term of imprisonment for the offence and the sentence is not suspended—5 years after the day on which the term of imprisonment ends; or

(b) otherwise—5 years after the day on which the order is made.

(3) The court may make the order if satisfied that, unless the order is made, there is an unacceptable risk that the offender would—

(a) injure the victim or associate, including for example by injuring the victim or associate psychologically; or

(b) harass the victim or associate; or

(c) damage the property of the victim or associate; or

(d) act in a way that could reasonably be expected to cause a detriment to the victim or associate, including for example by acting in a way that—

(i) makes the victim or associate fear that he or she may be injured; or

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(ii) makes the victim or associate fear that his or her property may be damaged; or

(iii) hinders or stops the victim or associate doing something he or she is lawfully entitled to do; or

(iv) makes the victim or associate do something he or she is lawfully entitled not to do.

Example of subparagraph (iii)—

acting in a way that makes the victim significantly change the way the victim would ordinarily travel to work

Example of subparagraph (iv)—

acting in a way that makes the victim sell a property the victim would not otherwise sell

(4) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including for example—

(a) the terms of any other order relating to the offender and the victim or associate; and

(b) the viability of making the order in circumstances in which contact between the offender and the victim or associate may be unavoidable; and

(c) the offender's antecedents.

Example of another order under paragraph (a)—

an order under the *Family Law Act 1975* (Cwlth)

Example of unavoidable contact under paragraph (b)—

Contact may be unavoidable if the offender and the victim both live in a small remote community.

(5) In this section—

contact the victim or associate means—

(a) intentionally initiate contact with the victim or associate in any way, including for example, by phone, mail, fax, email or other technology; or

(b) intentionally follow, loiter near, watch or approach the victim or associate; or

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(c) intentionally loiter near, watch, approach or enter a place where the victim or associate lives, works or visits.

property of a victim or associate means—

(a) property in which the victim or associate has an interest, whether or not the offender also has an interest in the property; or

(b) property that is otherwise—

(i) in the care or custody of the victim or associate; or

(ii) at the premises where the victim or associate is living.

43D Amending or revoking non-contact order

(1) The following persons may apply, in the approved form, to amend or revoke a non-contact order—

(a) a prosecutor;

(b) the victim named in the order;

(c) any associate named in the order;

(d) the offender.

(2) However, the offender can not apply within 6 months after the order was made.

(3) The application may be made to—

(a) a court of equivalent jurisdiction to the court in which the order was made; or

(b) if the offender is appearing before a court of higher jurisdiction in relation to another offence against the victim or associate—the judge before whom the offender is appearing.

(4) The applicant must give a copy of the application to—

(a) if the applicant is the offender, victim or associate—the prosecuting authority; or

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(b) if the applicant is a prosecutor—the offender, the victim and any associate named in the order.

(5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.

(6) For an application made by the offender, victim or associate, the prosecuting authority who received the application under subsection (4)(a) must take all reasonable steps to immediately give a copy of the application to—

(a) if the application is made by the offender—the victim and any associate named in the order; or

(b) if the application is made by the victim—the offender and any associate named in the order; or

(c) if the application is made by the associate—the offender and the victim.

(7) The prosecutor, offender, victim and associate are each entitled to be heard at the hearing of an application.

(8) A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the offender, the victim or any associate named in the order that justifies the amendment or revocation.

Example of a material change in the victim's circumstances—

Because of the relocation of the victim's employer's workplace, the victim starts working in the building in which the offender works.

(9) In this section—

prosecuting authority means—

(a) if the prosecutor who appeared before the court when the non-contact order was made was a police officer—the commissioner of the police service or someone authorised to accept the application on the commissioner's behalf; or

(b) if the prosecutor who appeared before the court when the non-contact order was made was a Crown prosecutor—the director of public prosecutions or

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someone authorised to accept the application on the director's behalf.

43E Order to be given to interested persons

(1) A proper officer of the court that makes, amends or revokes a non-contact order for an offender must immediately—

(a) reduce the order to writing in the approved form; and

(b) give a copy of the order to—

(i) if the prosecutor who appeared before the court when the non-contact order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the order on the director's behalf; and

(ii) the offender; and

(iii) if the order was amended or revoked on the application of the victim named in the order—the victim; and

(iv) if the order was amended or revoked on the application of any associate named in the order—the associate; and

(v) the chief executive (corrective services); and

(c) give a copy of the order to the commissioner of the police service, or someone authorised to accept the order on the commissioner's behalf, by fax, email or a similar facility.

(2) Failure to comply with subsection (1) does not invalidate the order.

(3) If the proper officer is not required under subsection (1) to give a copy of the order to the victim or associate, the prosecutor, or someone on the prosecutor's behalf, must take all reasonable steps to give a copy of the order to the victim or associate.

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43F Contravention of non-contact order

(1) An offender must not unlawfully contravene a non-contact order.

Maximum penalty—120 penalty units or 3 years imprisonment.

(2) A Magistrates Court that convicts an offender of an offence against subsection (1) may, in addition to or instead of sentencing the offender under subsection (1)—

(a) if the non-contact order was made by a Magistrates Court—amend the order; or

(b) if the non-contact order was made by the Supreme or District Court (the ***sentencing court***)—order the offender to appear before the sentencing court.

(3) If an order is made under subsection (2)(b), the Magistrates Court must also make 1 of the following orders—

(a) an order committing the offender into custody to be brought before the sentencing court;

(b) an order granting the offender bail on the condition that the offender appear before the sentencing court.

(4) If the Magistrates Court sentenced the offender under subsection (1), the sentencing court may amend the order or decide no further action be taken.

(5) If the Magistrates Court did not sentence the offender under subsection (1), the sentencing court may do the following—

(a) sentence the offender under subsection (1);

(b) in addition to or instead of sentencing the offender under subsection (1), amend the order;

(c) decide no further action be taken.

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Part 3B Banning orders

43G Definitions for pt 3B

In this part—

banning order see section 43I.

licence see the *Liquor Act 1992*, section 4.

licensed premises see the *Liquor Act 1992*, section 4.

licensee see the *Liquor Act 1992*, section 4.

police banning notice see the *Police Powers and Responsibilities Act 2000*, section 602B.

public place see the *Liquor Act 1992*, section 11.

43H Record of conviction not required

A court may make a banning order whether or not it records a conviction.

43I What is a *banning order*

A ***banning order*** is an order that prohibits an offender, for a stated period, from doing, or attempting to do, any of the following—

(a) entering or remaining in stated licensed premises or a stated class of licensed premises;

(b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, the stated licensed premises or stated class of licensed premises mentioned in an order made under paragraph (a);

Examples of orders for paragraph (b)—

- an order that prohibits a person from entering or remaining in, between the hours of 10p.m. and 6a.m., an area that is within 10m of stated licensed premises mentioned in an order made under paragraph (a)

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- an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., a stated street, or an area abutting several stated streets, that is located near stated licensed premises mentioned in an order made under paragraph (a)
- an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., the safe night precinct under the *Liquor Act 1992* in which the stated licensed premises mentioned in an order made under paragraph (a) are located

(c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.

43J Making a banning order

(1) A court may make a banning order for an offender if—

(a) the offender has been convicted of—

(i) an offence that involved the use, threatened use or attempted use of unlawful violence to a person or property; or

(ii) an offence against the *Drugs Misuse Act 1986*, section 5 or 6; and

(b) having regard to the evidence available to the court, the court is satisfied that the offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and

(c) the court is satisfied that, unless the order is made, the offender would pose an unacceptable risk to—

(i) the good order of licensed premises and areas in the vicinity of licensed premises; or

(ii) the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.

(2) The order may be made in addition to any other order the court may make under this or another Act.

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(3) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including, for example, the following—

(a) whether the offender is, or has been, subject to another banning order;

(b) whether the offender is, or has been, subject to—

(i) a special condition mentioned in the *Bail Act 1980*, section 11(3); or

(ii) a police banning notice;

(c) the offender's criminal history;

(d) the offender's personal circumstances and the likely effect of the order on those circumstances;

(e) anything else the court considers relevant.

(4) The court may impose any conditions it considers necessary on a banning order, including a condition that the offender report to a police station within 48 hours after the banning order is made to be photographed for an image to distribute to relevant persons under the *Police Powers and Responsibilities Act 2000*, chapter 19, part 5B.

(4A) Subsection (4B) applies if—

(a) the court has regard to a police banning notice when considering whether to make the order; and

(b) the notice is in effect when the court considers making the order.

(4B) The court must decide whether the police banning notice should be—

(a) cancelled; or

(b) amended and how it should be amended.

(4C) The banning order must state the court's decision under subsection (4B).

(5) A banning order does not stop the offender from—

(a) entering or remaining in any of the following—

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(i) the offender's residence;

(ii) the offender's place of employment;

(iii) a place at which the offender is receiving formal education;

(iv) a mode of transport required to be used by the offender;

(v) any other place that the court considers necessary in order to prevent undue hardship to the offender or a member of the offender's family; or

(b) entering any place that it is reasonably necessary for the offender to enter for the purpose of entering or remaining in a place or mode of transport mentioned in paragraph (a).

(6) If a place mentioned in subsection (5) is located within the area to which the banning order applies, the banning order must—

(a) describe the place in sufficient detail to identify the place; and

(b) state that the offender is not stopped from entering or remaining in the place.

Example for subsection (6)—

If an offender's residence is located within the area to which the banning order applies, the banning order must state the address of the residence and state that the offender is not stopped from entering or remaining in the residence.

(7) If a mode of transport mentioned in subsection (5) operates within an area to which the banning order applies, the banning order must—

(a) describe the mode of transport in sufficient detail to identify the mode of transport; and

(b) state that the offender is not stopped from entering or remaining in the mode of transport.

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Example for subsection (7)—

If a bus route required to be used by the offender operates within the area to which the banning order applies, the banning order must describe the bus route and state that the offender is not stopped from entering or remaining in a bus on that route.

(8) The offender bears the onus of proving the following—

(a) for subsection (5)(a)(i)—that a place is the offender's residence;

(b) for subsection (5)(a)(ii)—that a place is the offender's place of employment;

(c) for subsection (5)(a)(iii)—that the offender is receiving formal education at a place;

(d) for subsection (5)(a)(iv)—that a mode of transport is required to be used by the offender;

(e) for subsection (5)(a)(v)—that undue hardship would be caused to the offender or a member of the offender's family if the offender was prevented from entering or remaining in a place.

43K Banning order to be explained

(1) Before making a banning order, the court must explain, or cause to be explained, to the offender—

(a) the purpose and effect of the order; and

(b) the consequences of contravening the order; and

(c) that the order may be amended or revoked on the application of the offender or a prosecutor.

(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

43L Amending or revoking banning order

(1) The following persons may apply to the court, in the approved form, to amend or revoke a banning order—

(a) a prosecutor;

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(b) the offender.

(2) However, the offender can not apply until at least 6 months after the order was made.

(3) The application may be made to a court of equivalent jurisdiction to the court in which the order was made.

(4) The applicant must give a copy of the application to—

(a) if the applicant is the offender—the prosecuting authority; or

(b) if the applicant is a prosecutor—the offender.

(5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.

(6) The prosecutor and offender are each entitled to be heard at the hearing of the application.

(7) A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the offender that justifies the amendment or revocation.

(8) In this section—

prosecuting authority means—

(a) if the prosecutor who appeared before the court when the banning order was made was a police officer—the commissioner of the police service or someone authorised to accept the application on the commissioner's behalf; or

(b) if the prosecutor who appeared before the court when the banning order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the application on the director's behalf.

43M Banning order to be given to interested persons

(1) A proper officer of the court that makes, amends or revokes a banning order for an offender must immediately—

(a) reduce the order to writing in the approved form; and

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(b) give a copy of the order to—

(i) if the prosecutor who appeared before the court when the banning order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the order on the director's behalf; and

(ii) the offender; and

(iii) the chief executive (corrective services); and

(c) give a copy of the order to the commissioner of the police service, or someone authorised to accept the order on the commissioner's behalf, by fax, email or a similar facility.

(2) Failure to comply with subsection (1) does not invalidate the order.

43N Commissioner of police service may give copy of banning order to particular persons

(1) The commissioner of the police service may give a copy of a banning order to—

(a) the licensee of any licensed premises stated in the order; or

(b) the licensee of any licensed premises within a class of licensed premises stated in the order; or

(c) the holder of a licence or permit to sell liquor at an event stated in the order; or

(d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c).

(e) the Commissioner for Liquor and Gaming under the *Gaming Machine Act 1991*; or

(f) an approved operator for an approved ID scanning system.

(2) In this section—

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approved ID scanning system see the *Liquor Act 1992*, section 173EE.

approved manager means a person holding an approval as an approved manager under the *Liquor Act 1992*.

approved operator see the *Liquor Act 1992*, section 173EE.

permit see the *Liquor Act 1992*, section 4.

43O Contravention of banning order

(1) A person must not, without reasonable excuse, contravene a banning order.

Maximum penalty—40 penalty units or 1 year's imprisonment.

(2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person under subsection (1)—

(a) if the banning order was made by a Magistrates Court—amend the order; or

(b) if the banning order was made by the Supreme or District Court (the ***sentencing court***)—order the person to appear before the sentencing court.

(3) If an order is made under subsection (2)(b), the Magistrates Court must also make either of the following orders—

(a) an order committing the person into custody to be brought before the sentencing court;

(b) an order granting the person bail on the condition that the person appear before the sentencing court.

(4) If the Magistrates Court sentenced the person under subsection (1), the sentencing court may amend the order or decide no further action be taken.

(5) If the Magistrates Court did not sentence the person under subsection (1), the sentencing court may do any of the following—

(a) sentence the person under subsection (1);

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(b) in addition to or instead of sentencing the person under subsection (1), amend the order;

(c) decide no further action be taken.

Part 4 Fines

Division 1 General

44 Court may impose fine whether or not conviction recorded

A court may impose a fine whether or not it records a conviction.

45 Power to fine

(1) An offender may be fined.

(2) The fine may be in addition to, or instead of, any other sentence to which the offender is liable.

(3) The maximum fine that a court may impose is—

(a) the appropriate maximum applicable to the offence under a provision of this or another Act relating to the offence; or

(b) if there is no such maximum—the maximum mentioned in section 46.

(4) This section has effect subject to a specific provision of another Act relating to the offence.

46 Fine limitations of certain courts

(1) If an Act creates an offence and does not provide a sentence, the maximum fine that a court may impose for a single offence is—

(a) if the court is a Magistrates Court and the offender is—

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(i) an individual—165 penalty units; or

(ii) a corporation—835 penalty units; or

(b) if the court is a District Court and the offender is an individual—4,175 penalty units.

(2) If an Act creates an offence and does not provide a sentence, there is no limit on the fine that the court may impose for a single offence if—

(a) the court is a District Court and the offender is a corporation; or

(b) the court is the Supreme Court.

47 Lesser fine than provided may be imposed

Unless an Act otherwise provides, a court may impose a lesser fine than the fine stated in the Act.

48 Exercise of power to fine

(1) If a court decides to fine an offender, then, in determining the amount of the fine and the way in which it is to be paid, the court must, as far as practicable, take into account—

(a) the financial circumstances of the offender; and

(b) the nature of the burden that payment of the fine will be on the offender.

(2) The court may fine the offender even though it has been unable to find out about the matters mentioned in subsection (1)(a) and (b).

(3) In considering the financial circumstances of the offender, the court must take into account any other order that it or another court has made, or that it proposes to make—

(a) providing for the confiscation of the proceeds of crime; or

(b) requiring the offender to make restitution or pay compensation.

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(3A) In considering the financial circumstances of the offender, the court must not take into account the offender levy imposed under section 179C.

(4) If the court considers that—

(a) it would be appropriate both to impose a fine and to make a restitution or compensation order; and

(b) the offender has not enough means to pay both;

the court must, in making its order, give more importance to restitution or compensation, though it may also impose a fine.

(5) In fixing the amount of a fine, the court may have regard to, among other matters—

(a) any loss or destruction of, or damage caused to, a person's property because of the offence; and

(b) the value of a benefit received by the person because of the offence.

49 Single fine for 2 or more offences

(1) If an offender is found guilty (including being found guilty on a plea of guilty) of 2 or more offences—

(a) that are founded on the same facts; or

(b) that form, or are part of, a series of offences of the same or a similar kind;

the court may impose a single fine for all the offences.

(2) A fine imposed under subsection (1) must not be more than the total of the maximum fines that could be imposed for each of the offences.

50 Instalment order

If a court fines an offender, it may order that—

(a) the fine be paid by instalments; or

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(b) the proper officer give, under the SPE Act, section 34, particulars of the fine to SPER for registration under that section.

51 Payment of fine

If a court does not make an instalment order under section 50(a), it must, at the time of imposing the fine order that—

(a) the offender be allowed time to pay the fine; or

(b) the proper officer give, under the SPE Act, section 34, particulars of the fine to SPER for registration under that section.

Division 2 Fine option orders

52 Definitions

In this division—

fine includes the fee payable for lodging a complaint for an offence with a clerk of the court.

original order means an order of a court—

(a) that imposes a fine on an offender, whether or not it also requires the payment of another penalty; and

(b) that directs that in default of payment of the fine or other penalty either immediately or within a fixed time, the offender is to be imprisoned for a period ordered by the court.

53 Application for order if offender before court

(1) If an offender is before a court when the court makes an original order for the offender, the court must explain to the offender that he or she may immediately verbally apply to the court for a fine option order.

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(2) If—

(a) the original order directs that the offender is to pay the fine—

(i) immediately—the application may be made on the day on which the order is made; or

(ii) within a fixed time—the application may be made at any time before the end of the fixed time; or

(b) the offender is given a notice under section 54—the application may be made at any time before the end of the time fixed in the original order.

(3) The explanation mentioned in subsection (1) must be made in language or in a way likely to be readily understood by the offender.

(4) The court may adjourn the hearing of the application for the period that the court considers is proper to allow the court or offender to obtain information.

(5) If the court refuses the application, it must note in the records of the court whether the refusal was made because of section 57(1)(a) or (b).

54 If offender not before court written notice of right to apply for fine option order to be given

If the offender is not before the court when the court makes an original order for the offender, the court must cause written notice to be given to the offender informing the offender of his or her right to apply for a fine option order.

55 Application for order generally

(1) If a court makes an original order for an offender, the offender may apply to the court for a fine option order.

(2) If—

(a) the original order directs that the offender is to pay the fine—

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(i) immediately—the application may be made on the day on which the order is made; or

(ii) within a fixed time—the application may be made at any time before the end of the fixed time; or

(b) the offender is given a notice under section 54—the application may be made at any time before the end of the time fixed in the original order.

(3) The application must—

(a) be in the approved form; and

(b) state the particulars that are relevant having regard to the matters of which the court is required to be satisfied under section 58(1); and

(c) be signed by the applicant; and

(d) be lodged—

(i) if the court is the Supreme Court or a District Court—in the registry of that court; or

(ii) if the court is a Magistrates Court—with the clerk of the court.

(4) On the lodging of the application, the original order is suspended so far as it requires the payment of a fine.

(5) Section 8 does not apply to this section.

56A Offender may apply to proper officer for fine option order

(1) If a court makes an original order for an offender, the offender may apply to the proper officer of the court for a fine option order.

(2) The application must—

(a) be in the approved form; and

(b) state the relevant particulars, having regard to the matters of which the proper officer must be satisfied under section 57(1); and

(c) be signed by the applicant.

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(3) The application can not be made after a warrant of commitment has been issued on the original order.

(4) The offender can not make an application under this section if the offender has made an application under section 53 or 55.

(5) The application lapses if the offender makes an application to the court under section 53 or 55.

(6) Also, if the court decides an application under section 53 or 55, the proper officer can not afterwards consider an application under this section unless permitted by section 58.

57 Matters to be considered on application

(1) A court or proper officer of the court may make a fine option order for an offender only if the court or proper officer is satisfied that—

(a) the offender is unable to pay the fine in accordance with the original order or, if the offender were to pay the fine in accordance with the original order, the offender or the offender's family would suffer economic hardship; and

(b) the offender is a suitable person to perform community service under a fine option order.

(1A) The fact that an offender's only source of income is a social security or veteran's pension, benefit or allowance from the Commonwealth is a ground on which a court may be satisfied that the offender or the offender's family would suffer economic hardship if the offender were to pay the fine in accordance with the original order.

(1B) In considering an application for a fine option order, a court or proper officer of the court must have regard to the principle that an offender should not be considered to be unsuitable to perform community service merely because of—

(a) any physical, intellectual or psychiatric disability of the offender; or

(b) the offender's sex, educational level or religious beliefs.

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(1C) Subsection (1B) does not limit the matters to which the court or proper officer of the court may have regard.

(2) A court or proper officer of the court may adjourn the application for the purpose of obtaining any information, notification or report from an authorised corrective services officer for the purposes of subsection (1).

(2A) An authorised corrective services officer must not, in any information, notification or report, recommend that a fine option order or community based order should not be made for an offender merely because of—

(a) any physical, intellectual or psychiatric disability of the offender; or

(b) the offender's sex, educational level or religious beliefs.

(3) Subject to section 58, the proper officer of the court may consider an application for a fine option order only if the offender has not previously made an application under this division in relation to the original order.

58 Proper officer must reconsider offender's financial position

(1) If—

(a) an offender has previously been refused a fine option order; and

(b) the court records show that the refusal was made because of section 57(1)(a); and

(c) the proper officer of the court is satisfied that the offender's financial position has become significantly worse since the refusal;

the proper officer must consider a fresh application, if made, by the offender for a fine option order.

(2) The application must—

(a) be made to the proper officer of the court that, or the proper officer who, previously refused an application for a fine option order; and

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(b) be in the approved form; and

(c) state how the offender's financial position has become significantly worse; and

(d) be signed by the applicant; and

(e) be lodged—

(i) if the court is the Supreme Court or a District Court—in the registry of the court; or

(ii) if the court is a Magistrates Court—with the clerk of the court.

(3) The offender may make the application even though a warrant of commitment has been issued or executed in relation to the original order.

(4) The offender can not make more than 1 application under subsection (1).

59 Determination of application

(1) The court to which an application is made under section 55, or the proper officer of the court to whom an application is made under section 58, must cause written notice to be given to the offender of the time and place at which it is proposed to determine the application.

(2) Subsection (1) does not apply if—

(a) the offender is personally before the court or proper officer of the court when the application is made; and

(b) the application is to be dealt with immediately.

(3) The offender may appear before the court or proper officer of the court at the time and place mentioned in the notice unless the applicant is in lawful custody at that time.

(4) If the offender does not appear before the court or proper officer of the court at the time and place mentioned in the notice, the application may be determined in the offender's absence.

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(5) In determining whether to grant or refuse the application, consideration must be given to—

(a) the information contained in the application; and

(b) the information relating to the offender, and the offence to which the application relates, that was before the court when the original order was made.

60 Application may be granted or refused

(1) If an application is granted, the court or proper officer of the court must—

(a) make a fine option order for the offender; and

(b) explain to the offender, in language or a way likely to be readily understood by the offender—

(i) the purpose and effect of the order; and

(ii) what may follow if the offender fails to comply with the order; and

(iii) the offender's right under section 73 to pay the fine, or any part of the fine, to which the fine option order relates and how that section requires the payment to be applied.

(2) If a court refuses an application under section 55—

(a) any suspension of the original order to which the application relates ceases to have effect; and

(b) the court must cause written notice to be given to the applicant—

(i) of the refusal and whether the refusal was made because of section 57(1)(a) or (b); and

(ii) that any suspension of the original order has ceased to have effect.

(3) If a proper officer of the court refuses an application under section 58, the proper officer must—

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(a) give written notice to the applicant of the refusal and the reasons for the refusal; and

(b) give written notice to the court that made the original order that the application was made and refused.

(4) If a court or the proper officer of the court refuses an application, there must be noted in the records of the court whether the refusal was made because of section 57(1)(a) or (b).

61 Making of order by proper officer of the court

(1) The proper officer of the court may make a fine option order, but the offender must not be released under section 65 if—

(a) the original order requires the payment of a part of the fine to the complainant, and directs that in default of payment the offender is to be imprisoned for a period, unless—

(i) that part of the fine has been paid; or

(ii) the offender has served a period of imprisonment that bears to the default period of imprisonment, as nearly as possible, the same proportion as that part of the fine bears to the total fine; or

(b) the original order requires, in addition to the imposition of a fine, the payment of another penalty, and directs that in default of payment the offender is to be imprisoned for a period, unless—

(i) the amount of the penalty has been paid; or

(ii) the offender has served a period of imprisonment that bears to the default period of imprisonment, as nearly as possible, the same proportion as the amount of the penalty bears to the total amount required to be paid by the order.

(2) Subject to section 58, the proper officer of the court may make a fine option order only if the offender has not

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previously made an application under this division in relation to the original order.

62 Effect of fine option order

(1) If a court makes a fine option order—

(a) on an application under section 53 or on appeal under section 85—it may suspend the original order so far as it requires the payment of a fine; or

(b) on an application under section 55—the suspension of the original order so far as it requires the payment of a fine is continued.

(2) If a proper officer of the court makes a fine option order under section 60(1)(a), the original order to which it relates is suspended so far as it requires the payment of a fine.

(3) If an original order requires the payment of a fine and another penalty, then, for the period for which the order is suspended so far as it requires the payment of the fine, the default period of imprisonment stated in the order is taken to have been reduced by a period that bears to the period stated, as nearly as possible, the same proportion as the amount of the fine bears to the total amount of the fine and other penalty required to be paid by the order.

(4) If—

(a) a warrant of commitment is issued because of an offender's failure to comply with an original order; and

(b) the warrant has not been executed at the time of the making of a fine option order under section 60 for the original order;

the warrant, so far as it relates to the payment of a fine, stops being in force on the making of the fine option order.

63 No liability if warrant executed in good faith and without negligence

If—

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(a) a warrant of commitment stops being in force because of section 62(4); and

(b) a police officer in good faith and without negligence purports to execute the warrant;

liability at law does not attach to the police officer, the chief executive (corrective services) or the State because of the purported execution of the warrant.

64 Order to be in writing

A court or proper officer of the court that makes a fine option order for an offender must—

(a) immediately reduce the order to writing in the approved form; and

(b) give a copy of the order to the offender; and

(c) give to the chief executive (corrective services)—

(i) a copy of the order; and

(ii) a copy of the original order to which the order relates; and

(iii) details of the offence for which the original order was made.

65 Release from custody when order is made

If an offender for whom a fine option order is made is in lawful custody when the order is made merely because of the offender's failure to pay the fine, the offender must be released immediately.

66 Requirements of fine option orders

(1) A fine option order must contain requirements that the offender—

(a) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and

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(b) must perform in a satisfactory way community service directed by an authorised corrective services officer—

(i) for the number of hours stated in the order; and

(ii) at the times directed by the officer; and

(c) must comply with every reasonable direction of an authorised corrective services officer; and

(d) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and

(e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer.

(2) The number of hours stated in a fine option order under subsection (1)(b)(i) must be performed within 1 year, or another time allowed in the order, from the making of the order.

(3) A direction given under subsection (1)(b)(ii) applies to all fine option orders made for the offender by the same court on the same day.

67 Directions under fine option order

(1) A direction given by an authorised corrective services officer under a requirement of a fine option order must, as far as practicable, avoid—

(a) conflicting with the offender's religious beliefs; and

(b) interfering with any times during which the offender usually works or attends a school or other educational or training establishment; and

(c) interfering with the offender's family responsibilities.

(2) A direction given under a fine option order may be given orally or in writing.

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(3) An offender must not be given a direction under a fine option order to perform more than 8 hours community service on any day.

(4) However, if the offender consents and an authorised corrective services officer approves, the offender may perform more than 8 hours community service in a day.

(5) In performing community service, the offender must be allowed reasonable rest and meal breaks.

68 Period mentioned in s 66(2) may be extended

(1) The 1 year or other time mentioned in section 66(2) may be extended—

(a) by a court, or the proper officer of the court, at any time before the end of the 1 year or other time; or

(b) by the proper officer of the court under section 74(7)(a).

(2) Application for an extension under subsection (1) may be made by an authorised corrective services officer.

(3) The court, or proper officer of the court, must advise the chief executive (corrective services) and the offender when the application will be heard.

(4) The application may be heard in the absence of the offender if the court or proper officer is satisfied that the offender is unable to be present.

(5) If the 1 year or other time is extended, the court or proper officer of the court that makes the extension must notify the chief executive (corrective services) and the offender of the extension in the approved form.

69 Maximum number of hours

(1) The number of hours for which an offender may be required to perform community service under a requirement of a fine option order must be such number as, in the opinion of the court or proper officer of the court, satisfies the justice of the case.

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(2) The number mentioned in subsection (1) must not be more than 5 hours for each penalty unit, or part of a penalty unit, that was imposed as a fine under the original order.

70 Fine reduced proportionate to imprisonment

If, when the fine option order is made for the offender under section 60, the offender is serving a term of imprisonment because of the nonpayment of the fine to which the order relates, the fine is taken to have been reduced by an amount that bears to the fine, as nearly as possible, the same proportion as the number of days for which the offender has been imprisoned bears to the term of imprisonment.

71 Community service to be performed cumulatively

(1) All community service required to be performed by an offender under a fine option order is to be performed cumulatively with any community service not performed by the offender that the offender is required to perform under a community service order or fine option order.

(2) If 2 or more fine option orders that require an offender to perform community service are in force at the same time, the community service is to be performed in the same chronological sequence as the sequence in which the orders were made.

72 Performance of community service to be credited against fine

(1) If an offender performs community service under a fine option order, the amount of the fine is to be reduced by an amount that bears to the amount of the fine, as nearly as possible, the same proportion that the number of hours of community service performed by the offender under the order bears to the number of hours of community service that the offender is required to perform under the order.

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(2) For the purposes of section 186, an amount credited against the amount of a fine under subsection (1) is taken to be payment of an amount in part satisfaction of a court order.

73 Payments and application of payments

(1) Subject to subsection (3) and despite a suspension of an original order so far as it requires the payment of a fine, the fine or a part of the fine may be paid.

(2) A fine or part of a fine must be paid, directly or indirectly, to the proper officer of the court in which the original order was made.

(3) If, after a fine option order is made—

(a) payment of part of the amount originally required to be paid by the original order is made—the payment must be applied—

(i) firstly, to the amount of a penalty (other than the fine) required to be paid by the original order; and

(ii) then, to the amount of the fine; or

(b) a payment is applied to the amount of the fine to which the fine option order relates—the number of hours of community service required to be performed by an offender under a requirement of the order must be reduced by a number that bears to the number of hours, as nearly as possible, the same proportion that the amount of the payment bears to the amount of the fine.

74 Failing to comply with a requirement of an order

(1) This section applies if, while a fine option order is in force for an offender, an authorised corrective service officer (a ***supervisor***), or a person authorised for the purpose of this section by the chief executive (corrective services) (also a ***supervisor***), reasonably believes the offender has contravened a requirement of the order.

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(2) The supervisor may give the offender a notice under this section requiring the offender—

(a) to stop contravening the order; or

(b) to give the supervisor a reasonable explanation for the contravention within a stated time, of at least 5 days but not more than 14 days.

(3) The notice must—

(a) be in the approved form; and

(b) state the particulars of the contravention; and

(c) state that failure to give a reasonable explanation for the contravention may result in the fine option order being revoked without notice to the person.

(4) A notice under subsection (2) may relate to 2 or more fine option orders.

(5) If the supervisor is satisfied no reasonable explanation has been given within the stated time, the supervisor may apply to the proper officer for an order under subsection (7).

(6) The proper officer may decide the application in the absence of the offender.

(7) If satisfied the offender has contravened the fine option order without reasonable excuse, the proper officer may, by order—

(a) extend or further extend the 1 year or other time mentioned in section 66(2); or

(b) revoke all fine option orders made for the offender and issue a warrant for the arrest and imprisonment of the offender for the term ordered by the court; or

(c) revoke all fine option orders made for the offender and give to the registrar under the SPE Act, for registration, the prescribed particulars under that Act of the unpaid amount of the penalty.

(8) The proper officer must give notice of the revocation of the fine option order to—

(a) the offender; and

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(b) if relevant, the court, or the proper officer of the court, that made the fine option order.

76 Proper officer to determine hours of community service

If a proper officer proposes to revoke a fine option order, the proper officer must determine the number of hours (if any) for which the offender performed community service under the order.

78 Effect of revoking order under s 74

If a proper officer revokes a fine option order under section 74—

(a) the original order for which the fine option order was made is wholly reinstated; and

(b) any time that was allowed for the payment of the amount originally required to be paid by the original order must be disregarded; and

(c) any directions in the original order that the amount is to be paid by instalments must be disregarded; and

(d) any default imprisonment mentioned in the original order takes effect immediately and is to be reduced under section 82 if that section applies.

79 Revocation of fine option order other than under s 74

The court that makes a fine option order may, on application made to it under section 81, revoke the order if the court is satisfied—

(a) that the offender is not able to comply with the order because the offender's circumstances have materially altered since the order was made; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court; or

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

80 Offender may be re-sentenced on revocation of order under s 79

(1) Subject to subsection (2), if a fine option order is revoked under section 79, the court that made the original order must—

(a) confirm the original order; or

(b) vary the original order; or

(c) revoke the original order and re-sentence the offender for the offence for which the order was made in a way in which the court could deal with the offender if the offender had just been convicted by or before it of the offence.

(2) In determining how to re-sentence the offender, the court must take into account the extent to which the offender had complied with the order before its revocation.

81 Application for revocation

(1) An application under section 79 must be made—

(a) by—

(i) the offender; or

(ii) an authorised corrective services officer; or

(iii) the director of public prosecutions; and

(b) while the fine option order is in force; and

(c) in the approved form.

(2) Notice of an application made by the offender must be given by the court to the chief executive (corrective services) and—

(a) if the court that made the fine option order was the Supreme Court or a District Court—to the director of public prosecutions; or

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(b) if the court that made the fine option order was a Magistrates Court—to the prosecutor before that court.

(3) Notice of an application by an authorised corrective services officer must be given to the court, the offender and the director of public prosecutions.

(4) Notice of an application by the director of public prosecutions must be given to the court, the offender and the chief executive (corrective services).

(5) If an application is made under subsection (1) to a court that is not the court that made the fine option order, the first court must give a copy of the application to the court that made the fine option order.

(6) The court must advise the chief executive (corrective services) and the offender when the application will be heard.

(7) The application may be heard in the absence of the offender if the court is satisfied that the offender is unable to be present.

82 Imprisonment to be reduced proportionate to amount of fine paid or community service performed

(1) Subject to subsection (3), if an original order is wholly reinstated under section 78(a), the period of the default imprisonment in relation to the fine mentioned in the order is the period calculated in accordance with the following formula—

$$\mathbf{DF} = \frac{\mathbf{AF}}{\mathbf{AP}} \times \mathbf{DP}$$

(2) In subsection (1)—

AF (amount of fine) means the total amount of the fine under the order.

AP (amount of penalty) means the total amount of the penalty under the order.

DF (default fine) means the default imprisonment for failing to pay the whole of the fine mentioned in the order.

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DP (default penalty) means the default imprisonment for failing to pay the whole of the penalty mentioned in the order.

Example—

Original order—

AF	(Fine	$450.00
	(Costs of court	$50.00
		$500.00
	Restitution	$500.00
AP	Penalty	$1,000.00
DP	Default imprisonment	10 weeks
DF	=	$\frac{\mathbf{AF}}{\mathbf{AP}} \times \mathbf{DP}$
	=	$\frac{\mathbf{500}}{\mathbf{1{,}000}} \times \mathbf{10}$
	=	5 weeks

Note:

This is a hypothetical example only and should not be construed to imply any relevance of the values used.

(3) Subsection (4) applies if—

(a) the fine mentioned in the original order has been paid in part; or

(b) the offender has performed part of the community service required to be performed by the relevant fine option order.

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(4) If this subsection applies, the period of default imprisonment is to be the period calculated in accordance with the following formula—

$$\mathbf{PDI} = \mathbf{DF} - \left[\mathbf{DF} \times \left(\frac{\mathbf{PP}}{\mathbf{AF}} + \frac{\mathbf{HP}}{\mathbf{HCS}}\right)\right]$$

(5) In subsection (4)—

AF has the meaning given by subsection (2).

DF has the meaning given by subsection (2) (and is calculated in accordance with subsection (1)).

HCS (hours of community service) means the number of hours for which the offender is required to perform community service under the fine option order.

HP (hours performed) means the number of hours for which community service has been performed by the offender under the fine option order.

PDI (period of default imprisonment) means the period of the default imprisonment that still has to be served.

PP (part payment) means the amount of the part of the fine that has been paid.

Example—

If a fine has been converted to a fine option order for 90 hours (HCS) and the offender has paid $200.00 (PP) and performed 18 hours of community service (HP)—

$$\mathbf{PDI} = \mathbf{DF} - \left[\mathbf{DF} \times \left(\frac{\mathbf{PP}}{\mathbf{AF}} + \frac{\mathbf{HP}}{\mathbf{HCS}}\right)\right]$$

$$= 5 - \left[\mathbf{5} \times \left(\frac{\mathbf{200}}{\mathbf{500}} + \frac{\mathbf{18}}{\mathbf{90}}\right)\right]$$

$$= 5 - \left[\mathbf{5} \times \left(\frac{\mathbf{2}}{\mathbf{5}} + \frac{\mathbf{1}}{\mathbf{5}}\right)\right]$$

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$$= \quad 5 \quad - \quad \left[\mathbf{5} \times \frac{\mathbf{3}}{\mathbf{5}}\right]$$

$$= \quad 5 \quad - \quad 3$$

$$= \quad 2 \text{ weeks}$$

Note:

This is a hypothetical example only and should not be construed to imply any relevance of the values used.

(6) If the original order requires the payment of restitution or compensation, the default imprisonment that relates to the nonpayment of the restitution or compensation is not affected by this section.

(7) Subsection (1) does not apply so far as the original order makes provision for default imprisonment if the whole, or part, of the fine is not paid.

(8) For the purpose of determining the results of any calculation made under this section, a part of any hour, day, week or month (a ***unit***) is to be rounded to the nearest whole number and, in the case of a half of a unit, the unit is to be rounded up to the nearest whole number.

83 Court to notify court that imposed fine option order

If a court that revokes an order under section 79 is not the court that imposed the fine option order, the first court must notify the court that imposed the fine option order of the action taken under section 80.

84 Certificates

(1) A certificate given by the chief executive (corrective services) or an authorised corrective services officer, stating—

(a) that the offender named in the certificate has performed community service under a fine option order for the number of hours stated; or

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(b) that the offender named in the certificate has failed to perform community service under a fine option order; or

(c) that the fine, or part of the fine, to which an original order relates, has been paid;

is evidence of the matters.

(2) When, in the opinion of the chief executive (corrective services), a fine option order is discharged, it must forward a certificate stating the opinion, and the reasons for the opinion, to—

(a) if a clerk of the court made the order—the court in which the original order was made; or

(b) in any other case—the court that made the fine option order.

85 Appeals

(1) An offender who is aggrieved by a decision of the proper officer of the court refusing an application by the offender under section 58 may appeal to the court that imposed the fine.

(2) The appeal must be instituted—

(a) within 1 calendar month after notice of refusal is posted to the offender; and

(b) by filing a notice of appeal, in the approved form, with the proper officer of the court.

(3) The proper officer of the court must—

(a) give a copy of the notice of appeal to the chief executive (corrective services); and

(b) advise the appellant and the chief executive (corrective services) of the time and date for the hearing of the appeal.

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86 Hearing and determination of appeals

(1) The hearing of the appeal is not limited to the material on which the decision appealed against was made.

(2) The appellant may appear before the court—

(a) personally or by agent, counsel or solicitor; or

(b) if the appellant is in lawful custody at the time—by agent, counsel or solicitor only.

(3) In determining the appeal, the court may—

(a) affirm the decision appealed against; or

(b) set aside the decision appealed against and make a fine option order for the appellant.

(4) The court must not make a fine option order under subsection (3)(b) unless it is satisfied about the matters mentioned in section 57(1).

88 Termination of fine option order

(1) A fine option order made for an offender is terminated if—

(a) the offender finishes performing community service for the number of hours stated in the order; or

(b) the fine is paid; or

(c) so much of the fine as has not been notionally paid by the performance by the offender of community service is paid; or

(d) community service is performed by the offender for the number of hours left after deducting HP from HCS; or

(e) the order is revoked under section 74 or 79.

(2) In subsection (1)—

fine includes the reduced amount of a fine calculated under section 70.

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HCS (hours of community service) means the number of hours for which the offender is required to perform community service under the fine option order.

HP (hours performed) means the number of hours for which community service has notionally been performed by the offender by payment of part of the fine.

89 Original order terminated

The termination of a fine option order under section 88(1)(a) to (d) also terminates the original order in relation to which the fine option order was made so far as the original order requires the payment of a fine.

Part 5 Intermediate orders

Division 1 Probation orders

90 Court may make probation order whether or not conviction recorded

Subject to section 91, a court may make a probation order whether or not it records a conviction.

91 Making of an order

If a court convicts an offender of an offence punishable by imprisonment or a regulatory offence, the court may—

(a) whether or not it records a conviction—make for the offender a probation order mentioned in section 92(1)(a); or

(b) if it records a conviction—make for the offender a probation order mentioned in section 92(1)(b).

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92 Effect of order

(1) The effect of a probation order is—

(a) that the offender is released under the supervision of an authorised corrective services officer for the period stated in the order; or

(b) that the offender—

(i) is sentenced to a term of imprisonment for not longer than 1 year; and

(ii) at the end of the term of imprisonment the offender is released under the supervision of an authorised corrective services officer for the remainder of the period stated in the order.

(2) The period of the probation order starts on the day the order is made and must be—

(a) if the order is made under subsection (1)(a)—not less than 6 months or more than 3 years; or

(b) if the order is made under subsection (1)(b)—not less than 9 months or more than 3 years.

(3) The requirements of a probation order made under subsection (1)(a) start on the day the order is made.

(4) The requirements of a probation order made under subsection (1)(b) start—

(a) immediately the offender is released from prison; or

(b) if the offender is released to a re-integration program—at the end of the program.

(5) A term of imprisonment imposed under subsection (1)(b)(i) must not be suspended under part 8.

93 General requirements of probation order

(1) The probation order must contain requirements that the offender—

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(a) must not commit another offence during the period of the order; and

(b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and

(c) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and

(d) must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order; and

(e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and

(g) must comply with every reasonable direction of an authorised corrective services officer.

(2) In subsection (1)—

offence does not include an offence against section 123(1).

94 Additional requirements of probation order

The probation order may contain requirements that the offender—

(a) submit to medical, psychiatric or psychological treatment; and

(b) comply, during the whole or part of the period of the order, with the conditions that the court considers are necessary—

(i) to cause the offender to behave in a way that is acceptable to the community; or

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(ii) to stop the offender from again committing the offence for which the order was made; or

(iii) to stop the offender from committing other offences.

95 Probation order to be explained

(1) Before making the probation order, the court must explain, or cause to be explained, to the offender—

(a) the purpose and effect of the order; and

(b) what may follow if the offender contravenes the requirements of the order; and

(c) that the order may be amended or revoked on application of the offender, an authorised corrective services officer or the director of public prosecutions.

(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

96 Offender to agree to making or amending of order

The court may make or amend the probation order only if the offender agrees to the order being made or amended and also agrees to comply with the order as made or amended.

97 Multiple offences

(1) A court may make 1 or more probation orders for an offender convicted of 2 or more offences.

(2) The court may include the orders in a single form of order that specifies each offence for which a probation order is made.

98 Application of s 32

A court must not deal with an offender under section 32 if the court is of the opinion that it is appropriate to release the offender on probation under this part.

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99 Termination of probation order

A probation order is terminated—

(a) at the end of its period; or

(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or

(c) if the order is revoked under section 120(1).

Division 2 Community service orders

Subdivision 1 General

100 Court may make order whether or not conviction recorded

A court may make a community service order whether or not it records a conviction.

101 Making of an order

If a court convicts an offender of an offence punishable by imprisonment or a regulatory offence, the court may make a community service order for the offender if the court is satisfied that the offender is a suitable person to perform community service under the order.

102 Effect of order

The effect of the order is that the offender is required to perform unpaid community service for the number of hours stated in the order.

103 General requirements of community service order

(1) The community service order must contain requirements that the offender—

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(a) must not commit another offence during the period of the order; and

(b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and

(c) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and

(d) must perform in a satisfactory way community service directed by an authorised corrective services officer—

(i) for the number of hours stated in the order; and

(ii) at the times directed by the officer; and

(e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and

(g) must comply with every reasonable direction of an authorised corrective services officer.

(2) The total number of hours stated in the order—

(a) must not be less than 40 and not more than 240; and

(b) must be performed within 1 year from the making of the order or another time allowed by the court.

(2A) A direction given under subsection (1)(d)(ii) applies to all community service orders made for the offender by the same court on the same day.

(3) In subsection (1)—

offence does not include an offence against section 123(1).

105 Community service order to be explained

(1) Before making the community service order, the court must explain, or cause to be explained, to the offender—

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(a) the purpose and effect of the order; and

(b) what may follow if the offender contravenes the requirements of the order; and

(c) that the order may be amended or revoked on application of the offender, an authorised corrective services officer or the director of public prosecutions.

(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

106 Offender to agree to making or amending of order

(1) The court may make or amend the community service order only if the offender agrees to the order being made or amended and also agrees to comply with the order as made or amended.

(2) Subsection (1) does not apply to a community service order required under section 108B.

107 Multiple offences

(1) A court may make 1 or more community service orders for an offender convicted of 2 or more offences.

(2) If a court makes 2 or more community service orders, the number of hours of community service ordered must not, when added together, total more than 240.

(3) A court may make 1 or more further community service orders for an offender who is subject to an existing community service order.

(4) The number of hours of community service that the offender has not performed under the existing order, and the number of hours of community service ordered to be served under the orders made under subsection (3), must not, when added together, total more than 240.

(4A) A court may make—

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(a) 1 or more community service orders for an offender who is subject to an existing graffiti removal order; or

(b) 1 or more community service orders for an offender who is subject to an existing graffiti removal order and an existing community service order.

(4B) The number of hours of unperformed unpaid service and the number of hours of community service ordered to be served under the orders made under subsection (4A)(a) or (b) must not, when added together, total more than 240.

(5) Subject to subsections (2), (4) and (4B) all unpaid service to which this section applies is to be performed cumulatively unless the court orders otherwise.

(6) This section applies subject to section 108C.

108 Termination of community service order

A community service order is terminated—

(a) when the offender performs community service in accordance with the requirements of the order for the number of hours stated in the order; or

(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or

(c) if the order is revoked under section 120(1) or 120A.

Subdivision 2 Community service orders mandatory for particular offences

108A Definitions for sdiv 2

In this subdivision—

prescribed offence means an offence against—

(a) any of the following provisions of the Criminal Code—

(i) section 72;

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(ii) section 320;

(iii) section 323;

(iv) section 335;

(v) section 339;

(vi) section 340(1)(b) or (2AA); or

(b) the *Police Powers and Responsibilities Act 2000*, section 790.

public place means—

(a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

(b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

108B When community service order must be made

(1) It is a circumstance of aggravation for a prescribed offence that the offender committed the offence in a public place while the offender was adversely affected by an intoxicating substance.

(2) If a court convicts an offender of a prescribed offence with the circumstance of aggravation mentioned in subsection (1), the court must make a community service order for the offender whether or not the court also makes another order under this or another Act.

(2A) However, subsection (2) does not apply if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with a community service order.

(3) Subsection (2) is subject to sections 121(4), 125(8) and 126(6B).

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108C Effect if offender is also subject to other orders

(1) This section applies if—

(a) under section 108B, a court makes a community service order (the ***new order***) for an offender; and

(b) the offender is also subject to 1 or more other community service orders or graffiti removal orders (the ***existing orders***); and

(c) the total number of hours of unperformed unpaid service under the new order and the existing orders is more than 240.

(2) For subsection (3), the ***excess amount*** is the amount by which the total number of hours of unperformed unpaid service under the new order and the existing orders is more than 240.

(3) Of the hours of service ordered to be performed under the new order, a number of hours equal to the excess amount must be performed concurrently with the unperformed community service under the existing orders.

Example—

Under section 108B, a court makes a community service order (the ***new order***) requiring an offender to perform 50 hours of service. The offender is also subject to other community service orders for which there are 220 hours of unperformed unpaid service. Of the hours of service to be performed under the new order, 30 hours are to be served concurrently with the hours of unperformed unpaid service under the existing orders.

108D Effect if offender is detained on remand or imprisoned

(1) This section applies if—

(a) under section 108B, a court makes a community service order for an offender; and

(b) during the period mentioned in section 103(2)(b) (the ***period for performance***), the offender is detained in custody on remand or is serving a term of imprisonment in a corrective services facility.

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(2) The community service order is suspended for the period the offender is detained or imprisoned.

(3) The period for performance is extended by the period the offender is detained or imprisoned.

Division 3 General

109 Court may make probation order and community service order for an offender

(1) If an offender is before a court for sentence after being convicted of an offence punishable by a term of imprisonment or a regulatory offence, the court may make for the offender a probation order mentioned in section 92(1)(a) and also a community service order.

(2) If a court makes a probation order and a community service order under subsection (1), the court—

(a) must make separate orders; and

(b) must not impose an order as a requirement of the other order.

(3) If an offender for whom a probation order and a community service order are made under subsection (1) contravenes a requirement of either order and is dealt with for the original offence in relation to the order, the other order is discharged.

110 Appeal against probation order or community service order

An offender aggrieved by the making of a probation order or community service order may appeal under the *Justices Act 1886* or the Criminal Code, chapter 67.

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Part 5A Graffiti removal orders

110A Making of an order

(1) This section applies if a court convicts an offender of a graffiti offence, whether on indictment or summarily.

(2) The court must make a graffiti removal order for the offender whether or not it records a conviction and whether or not it also makes another order under this or another Act.

(3) However, subsection (2) does not apply if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with a graffiti removal order.

(4) Subsection (2) is subject to sections 121(3), 125(7) and 126(6A).

110B Effect of order

The effect of the order is that the offender is required to perform unpaid graffiti removal service for the number of hours stated in the order.

110C General requirements of graffiti removal order

(1) The graffiti removal order must contain requirements that the offender—

(a) must not commit another offence during the period of the order; and

(b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and

(c) must report to, and receive visits from, an authorised corrective services officer as directed by the officer; and

(d) must perform in a satisfactory way graffiti removal service directed by an authorised corrective services officer—

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(i) for the number of hours stated in the order; and

(ii) at the times directed by the officer; and

(e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and

(g) must comply with every reasonable direction of an authorised corrective services officer.

(2) The total number of hours stated in the order—

(a) must not be more than 40; and

(b) subject to subsection (3), must be performed within 1 year from the making of the order or another time allowed by the court.

(3) If, during the period mentioned in subsection (2)(b), the offender is detained in custody on remand or is serving a term of imprisonment in a corrective services facility—

(a) the graffiti removal order is suspended for the period the offender is detained or imprisoned; and

(b) the period mentioned in subsection (2)(b) is extended by the period the offender is detained or imprisoned.

(4) A direction given under subsection (1)(d)(ii) applies to all graffiti removal orders made for the offender by the same court on the same day.

(5) In this section—

another offence does not include an offence against section 123(1).

110D Graffiti removal order to be explained

(1) Before making the graffiti removal order, the court must explain, or cause to be explained, to the offender—

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(a) the purpose and effect of the order; and

(b) what may follow if the offender contravenes the requirements of the order; and

(c) that the order may be amended or revoked, on application of the offender, an authorised corrective services officer or the director of public prosecutions, if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

110E Multiple orders for single graffiti offence

(1) This section applies if—

(a) an offender is before a court for sentence after being convicted of a single graffiti offence; and

(b) in relation to the offence, the court makes a graffiti removal order and also makes 1 or both of the following orders—

(i) a community service order;

(ii) a probation order.

(2) The court—

(a) must make separate orders; and

(b) must not impose an order as a requirement of another order.

(3) If the court makes both a graffiti removal order and a community service order, the total number of hours of unpaid service ordered must not be more than 240.

(4) If the offender for whom the orders are made contravenes a requirement of any of the orders and is dealt with for the original offence in relation to the order, the other orders are discharged.

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110F Multiple orders for multiple offences

(1) Subsections (2) and (3) apply if an offender is convicted of 2 or more graffiti offences, whether or not the offender is also convicted of 1 or more other offences that are not graffiti offences.

(2) The court—

(a) must make at least 1 graffiti removal order for the offender; and

(b) may make either or both of the following—

(i) more than 1 graffiti removal order for the offender;

(ii) 1 or more community service orders for the offender.

(3) If the court makes more than 1 graffiti removal order, the number of hours of graffiti removal service ordered must not, when added together, total more than 40.

(4) Subsection (5) applies if an offender is convicted of a graffiti offence and 1 or more other offences that are not graffiti offences.

(5) The court may, in addition to a graffiti removal order, make 1 or more community service orders for the offender.

(6) If, under subsection (2) or (5), the court makes 1 or more graffiti removal orders and also makes 1 or more community service orders, the total number of hours of unpaid service ordered must not be more than 240.

110G Successive orders

(1) Subsection (2) applies if an offender is—

(a) convicted of a graffiti offence; and

(b) subject to 1 or more existing graffiti removal orders.

(2) Subject to subsection (3), the number of hours of unperformed graffiti removal service and the number of hours of graffiti removal service ordered to be served for the graffiti offence must not, when added together, total more than 40.

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(3) If the number of hours of unperformed graffiti removal service is 40, the graffiti removal service ordered to be served for the graffiti offence must be performed concurrently with the unperformed graffiti removal service.

(4) Subsection (5) applies if an offender is—

(a) convicted of a graffiti offence; and

(b) subject to either of the following—

(i) 1 or more existing community service orders;

(ii) 1 or more existing graffiti removal orders and 1 or more existing community service orders.

(5) Subject to subsection (6), the number of hours of unperformed unpaid service and the number of hours of graffiti removal service ordered to be served for the graffiti offence must not, when added together, total more than 240.

(6) If the number of hours of unperformed unpaid service is 240, the graffiti removal service ordered to be served for the graffiti offence—

(a) must be performed concurrently with any unperformed graffiti removal service to the extent that the number of hours of graffiti removal service ordered to be served for the graffiti offence is, when added to the number of hours of unperformed graffiti removal service, more than 40; or

(b) to the extent that paragraph (a) does not apply—must, when it is performed by the offender, be taken to be both—

(i) community service performed under 1 or more of the existing community service orders; and

(ii) graffiti removal service performed under the graffiti removal order made by the court for the offence.

(7) For subsection (6)(b), the chief executive (corrective services) must—

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(a) subject to any order of the court, identify the existing community service order, or orders, in relation to which the graffiti removal service is taken to have been performed; and

(b) notify the offender in writing of the matter mentioned in paragraph (a).

110H Unpaid service to be performed cumulatively

All unpaid service to which the following sections apply is to be performed cumulatively unless the court orders otherwise—

(a) section 110E, subject to subsection (3) of that section;

(b) section 110F, subject to subsections (3) and (6) of that section;

(c) section 110G, subject to subsections (2), (3), (5) and (6) of that section.

110I Termination of graffiti removal order

A graffiti removal order is terminated—

(a) when the offender performs graffiti removal service in accordance with the requirements of the order for the number of hours stated in the order; or

(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or

(c) if the order is revoked under section 120A.

Part 6 Intensive correction orders

111 Court may make order only if it records conviction

A court may make an intensive correction order only if it records a conviction.

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112 Making of order

If a court sentences an offender to a term of imprisonment of 1 year or less, the court may make an intensive correction order for the offender.

113 Effect of order

(1) The effect of the order is that the offender is to serve the sentence of imprisonment by way of intensive correction in the community and not in a prison.

(2) For the purposes of the provisions of an Act providing for disqualification for, or loss of, office or the forfeiture of benefits, the offender is taken not to have been sentenced to a term of imprisonment.

114 General requirements of intensive correction order

(1) The intensive correction order must contain requirements that the offender—

(a) must not commit another offence during the period of the order; and

(b) must report to an authorised corrective services officer at the place, and within the time, stated in the order; and

(c) must report to, and receive visits from, an authorised corrective services officer at least twice in each week that the order is in force; and

(d) must take part in counselling and satisfactorily attend other programs as directed by the court or an authorised corrective services officer during the period of the order; and

(e) must perform in a satisfactory way community service that an authorised corrective services officer directs during the period of the order; and

(f) must, during the period of the order, if an authorised corrective services officer directs, reside at community

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residential facilities for periods (not longer than 7 days at a time) that the officer directs; and

(g) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(h) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and

(i) must comply with every reasonable direction of an authorised corrective services officer.

(2) An authorised corrective services officer must not direct the offender to attend programs or perform community service for more than 12 hours in any week.

(2A) Unless the court or an authorised corrective services officer otherwise directs, the offender must—

(a) attend programs for one-third of the time directed; and

(b) perform community service for two-thirds of the time directed.

(3) In subsection (1)—

offence does not include an offence against section 123(1).

115 Additional requirements of intensive correction order

The intensive correction order may contain requirements that the offender—

(a) submit to medical, psychiatric or psychological treatment; and

(b) comply, during the whole or part of the period of the order, with conditions that the court considers are necessary—

(i) to cause the offender to behave in a way that is acceptable to the community; or

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(ii) to stop the offender from again committing the same type of offence for which the order was made; or

(iii) to stop the offender from committing other offences.

116 Intensive correction order to be explained

(1) Before making the intensive correction order, the court must explain, or cause to be explained, to the offender—

(a) the purpose and effect of the order; and

(b) what may follow if the offender contravenes the requirements of the order; and

(c) that the order may be amended or revoked on application by the offender, an authorised corrective services officer or the director of public prosecutions.

(2) The explanation must be made in language or a way likely to be readily understood by the offender.

117 Offender to agree to making or amending of order

The court may make or amend the intensive correction order only if the offender agrees to the order being made or amended and also agrees to comply with the order as made or amended.

118 Multiple offences

(1) If—

(a) a court sentences an offender to 2 or more terms of imprisonment at the same time; and

(b) the total period that the offender is sentenced to serve is longer than 1 year;

the court must not make an intensive correction order for any of the offences.

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(2) If—

(a) a court sentences an offender to 2 or more terms of imprisonment at the same time; and

(b) the total period that the offender is sentenced to serve is not longer than 1 year;

the court may make intensive correction orders for each of the offences.

(3) The court may include the orders in a single form of order that specifies each offence for which an intensive correction order is made.

119 Termination of intensive correction order

An intensive correction order is terminated—

(a) at the end of its period; or

(b) if the offender is sentenced or further sentenced for the offence for which the order was made; or

(c) if the order is revoked under section 120(1); or

(d) if the offender is committed to prison under section 127(1).

Part 7 Other provisions relating to community based orders

Division 1 Amendment and revocation of orders

120 Amendment and revocation of community based orders generally

(1) The court that made a community based order other than an order to which section 120A applies may, on application

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under this division, amend or revoke the order if the court is satisfied—

(a) that the offender is not able to comply with the order because the offender's circumstances have materially altered since the order was made; or

(b) that the circumstances of the offender were wrongly stated or were not accurately presented to the court; or

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

(2) If a court other than the court that imposed the community based order amends or revokes the order, the first court must notify the original court of the amendment or revocation.

120A Amendment and revocation of s 108B community service order or graffiti removal order

(1) This section applies to—

(a) a community service order made under section 108B; or

(b) a graffiti removal order.

(2) The court that made the order may, on application under this division, amend or revoke the order if the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with the order.

(3) If a court other than the court that imposed the order amends or revokes the order, the first court must notify the original court of the amendment or revocation.

121 Offender may be re-sentenced on revocation of order

(1) Subject to subsection (2), if a community based order is revoked, the court that made the order may re-sentence the offender for the offence for which the order was made in any way in which the court could deal with the offender if the offender had just been convicted by or before it of the offence.

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(2) In determining how to re-sentence the offender, the court must take into account the extent to which the offender had complied with the order before its revocation.

(3) If the community based order mentioned in subsection (1) is a graffiti removal order, the court need not, but may, when re-sentencing the offender for the graffiti offence for which the order was made, make another graffiti removal order.

(4) If the community based order mentioned in subsection (1) is a community service order made under section 108B, the court need not, but may, when re-sentencing the offender for the offence for which the order was made, make another community service order.

122 Application for amendment or revocation

(1) An application under this division must be made—

(a) by—

(i) the offender; or

(ii) an authorised corrective services officer; or

(iii) the director of public prosecutions; and

(b) while the community based order is in force; and

(c) in the approved form.

(2) Notice of an application made by the offender must be given by the court to the chief executive (corrective services) and—

(a) if the court that made the community based order was the Supreme Court or a District Court—to the director of public prosecutions; or

(b) if the court that made the community based order was a Magistrates Court—to the prosecutor before that court.

(3) Notice of an application by an authorised corrective services officer must be given to the court, the offender and the director of public prosecutions.

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(4) Notice of an application by the director of public prosecutions must be given to the court, the offender and the chief executive (corrective services).

(5) If an application is made under subsection (1) to a court that is not the court that made the community based order, the first court must give a copy of the application to the court that made the community based order.

Division 2 Contravention of orders

123 Offence to contravene requirement of community based orders

(1) An offender who contravenes, without reasonable excuse, a requirement of a community based order commits an offence.

Maximum penalty—10 penalty units.

(2) Subsection (1) applies—

(a) whether or not the contravention is an offence against another Act or law; and

(b) whether the contravention happens in or out of Queensland.

124 Proceeding for offence may be brought in any Magistrates Court

Subject to section 128 or 129, proceeding for an offence against section 123(1) may be brought in any Magistrates Court.

125 Powers of Magistrates Court that convicts offender of offence against s 123(1)

(1) This section applies if a Magistrates Court convicts the offender of an offence against section 123(1).

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(2) The court may, in addition to, or instead of, dealing with the offender under section 123(1), admonish and discharge the offender or make 1 or more of the following orders—

(a) an order—

(i) requiring payment of an amount that was required to be paid by the community based order concerned and has not been paid; and

(ii) for the enforcement of payment of the amount as if it were then making the community based order;

(b) with the offender's consent, an order to increase the number of hours for which the offender is required by the order to perform community service;

(ba) an order to increase the number of hours for which the offender is required by the order to perform graffiti removal service;

(c) an order extending the period of 1 year allowed for the offender to perform community service or graffiti removal service.

(3) The imposition of a fine under section 123(1) or the making of an order mentioned in subsection (2) does not affect the continuation of the community based order.

(4) The court may also—

(a) if the community based order was made by a Magistrates Court—subject to section 126A, deal with the offender for the offence for which the community based order was made in any way that it could deal with the offender if the offender had just been convicted by it of the offence; or

(b) if the community based order was made by the Supreme Court or a District Court (the ***sentencing court***)—

(i) commit the offender into custody to be brought before the sentencing court; or

(ii) grant bail to the offender on the condition that the offender must appear before the sentencing court.

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(5) If the offender is subject to 2 or more community based orders that were made by courts of different jurisdictions, an order under subsection (4)(b) may be made that the offender be brought or appear before whichever of the courts is the court of highest jurisdiction.

(6) In taking action under subsection (4)(a), the court must have regard to—

(a) the making of the community based order; and

(b) anything done to comply with the requirements of the order.

(7) If the offence mentioned in subsection (1) relates to a graffiti removal order, the court, in taking action under subsection (4)(a), need not, but may, make another graffiti removal order.

(8) If the offence mentioned in subsection (1) relates to a community service order made under section 108B, the court, in taking action under subsection (4)(a), need not, but may, make another community service order.

126 Powers of Supreme Court or District Court to deal with offender

(1) This section applies if—

(a) the community based order to which the offender is subject was made by the Supreme Court or a District Court; and

(b) the offender is before the court or, if the order was made by a District Court, before the Supreme Court; and

(c) the court is satisfied that the offender committed an offence against section 123(1) in relation to the community based order.

(2) The court may, in addition to, or instead of, dealing with the offender under section 123(1)—

(a) admonish and discharge the offender; or

(b) make an order—

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(i) requiring payment of an amount that was required to be paid by the community based order and has not been paid; and

(ii) for the enforcement of the payment of the amount as if it were then making the community based order.

(3) The imposition of a fine under section 123(1) or the making of an order mentioned in subsection (2) does not affect the continuation of the community based order.

(4) The court may also, subject to section 126A, deal with the offender for the offence for which the community based order was made in any way in which it could deal with the offender if the offender had just been convicted before it of the offence.

(5) If the offender is before the court—

(a) under an order made under subsection (7) or section 125(5); or

(b) under a summons or warrant issued under section 128 or 129; or

(c) has just been convicted by the court of another offence committed during the period of the community based order and the offender also is the subject of community based orders made by courts of lower jurisdiction;

the court may deal with the offender under this section as if the court had made all the community based orders.

(6) In taking action under subsection (4), the court must have regard to—

(a) the making of the community based order; and

(b) anything done to comply with the requirements of the order.

(6A) If the community based order mentioned in subsection (1) is a graffiti removal order, the court, in taking action under subsection (4), need not, but may, make another graffiti removal order.

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(6B) If the community based order mentioned in subsection (1) is a community service order made under section 108B, the court, in taking action under subsection (4), need not, but may, make another community service order.

(7) If the offender is the subject of a community based order made by the Supreme Court and is convicted before a District Court of another offence committed during the period of the community based order, the court may—

(a) commit the offender to custody to be brought before the Supreme Court; or

(b) grant bail to the offender on the condition that the offender must appear before the Supreme Court.

(8) In subsections (5) and (7)—

offence does not include an offence against section 123(1).

126A Particular provision for driver licence disqualifications

(1) This section applies if—

(a) a court decides to deal with an offender under section 125(4)(a) or 126(4) in relation to an offence for which a community based order was made; and

(b) the offence is an offence for which a period of disqualification from holding or obtaining a Queensland driver licence—

(i) may be imposed under this Act; or

(ii) may or must be imposed under the *Transport Operations (Road Use Management) Act 1995*; and

(c) a period of disqualification has been imposed for the offence.

(2) In taking action under section 125(4)(a) or 126(4), the court may not change or revoke the period of disqualification imposed for the offence.

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127 Additional power of courts in relation to an intensive correction order

(1) A court that, under this part, deals with the offender for the offence for which an intensive correction order was made may, whether or not the order is still in force, do so by revoking the order and committing the offender to prison for the portion of the term of imprisonment to which the offender was sentenced that was unexpired on the day the relevant offence against section 123(1) was committed.

(2) The committal of the offender to imprisonment under subsection (1) does not affect the offender's eligibility to a re-integration program.

(3) Unless the court otherwise orders, the offender must serve the imprisonment—

(a) immediately; and

(b) subject to the *Bail Act 1980*, section 33, concurrently with any other term of imprisonment previously imposed on the offender by that or another court.

128 Summons or warrant for contravention of single community based order

(1) A justice, to whom it is made to appear on complaint by an authorised corrective services officer, or a person authorised for this section by the chief executive (corrective services), that an offender has committed an offence against section 123(1), may issue a summons requiring the offender to appear before a court.

(2) If—

(a) a complaint under subsection (1) is in writing and on oath; and

(b) the justice is satisfied that the offender will not appear in answer to a summons;

the justice may, instead of issuing a summons, issue a warrant directed to all police officers to arrest the offender and bring the offender before a court.

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(3) A court mentioned in subsection (1) or (2) may be—

(a) the court that made the community based order, if it was not a Magistrates Court; or

(b) a Magistrates Court.

(4) In exercising a discretion under subsection (1) or (2), the justice must have regard to—

(a) the way in which the offender has contravened a requirement of the community based order; and

(b) the original offence concerned; and

(c) whether the authorised corrective services officer intends to recommend to the court before which the offender appears, or is brought, if the offender is convicted, that the offender be dealt with as if the offender had just been convicted of the offence for which the community based order was made.

(5) If a summons or warrant is issued, the complainant must immediately forward the complaint to the court before which the offender is required or directed to appear or to be brought under the summons or warrant.

129 Summons or warrant for contravention of multiple orders made by courts of different jurisdictions

(1) If an offender is the subject of community based orders made by courts of different jurisdictions, a justice, to whom it is made to appear by complaint by an authorised corrective services officer, or a person authorised for this section by the chief executive (corrective services), that the offender has committed an offence against section 123(1), may issue a summons requiring the offender to appear before a court.

(2) If—

(a) a complaint under subsection (1) is in writing and on oath; and

(b) the justice is satisfied that the offender will not appear in answer to a summons;

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the justice may instead of issuing a summons, issue a warrant directed to all police officers to arrest the offender and bring the offender before the court of highest jurisdiction.

(3) The court mentioned in subsection (1) or (2) may be—

(a) the court that made the community based order; or

(b) a Magistrates Court.

(4) In exercising a discretion under subsection (1) or (2), the justice must have regard to—

(a) the way in which the offender has contravened a requirement of the community based order; and

(b) the original offence concerned; and

(c) whether the authorised corrective services officer intends to recommend to the court before which the offender appears, or is brought, if the offender is convicted, that the offender be dealt with as if the offender had just been convicted of the offence for which the community based order was made.

(5) If a summons or warrant is issued, the complainant must immediately forward the complaint to the court before which the offender is required or directed to appear or to be brought under the summons or warrant.

130 Discharge of multiple community based orders where contravention taken into account

If a court—

(a) deals with an offender under section 125 or 126 for an offence for which a community based order was made; and

(b) under section 189, takes into account contraventions of the requirements of other community based orders;

all the community based orders are discharged.

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Note—

An offence against section 123(1) is an excluded offence under section 189 if the community based order to which the offence relates is a graffiti removal order.

131 Contravention of requirements of order—judge to determine

If, in a matter under this division before the Supreme Court or a District Court, a question arises whether an offender has contravened, without reasonable excuse, a requirement of a community based order, the question is to be determined by the judge.

132 Proceedings after end of period of order

A proceeding for a contravention of a requirement of a community based order may be taken, and the offender dealt with, under this division for the contravention even though the order has been terminated or revoked.

Division 3 General

133 Authorised corrective services officers subject to direction of court

In relation to community based orders, authorised corrective services officers are subject to the directions of the court that made the order.

134 Requirements of order have effect despite appeal

If an offender appeals against a community based order, the order has effect and the requirements of the order are to be complied with until the appeal is finally determined.

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135 Directions under community based order

(1) A direction given by an authorised corrective services officer under a requirement of a community based order must, as far as practicable, avoid—

(a) conflicting with the offender's religious beliefs; and

(b) interfering with any times during which the offender usually works or attends school or another educational or training establishment; and

(c) interfering with the offender's family responsibilities.

(2) A direction given under a community based order may be given orally or in writing.

(3) An offender must not be given a direction under a community based order to perform more than 8 hours unpaid service on any day.

(4) However, if the offender consents and an authorised corrective services officer approves, the offender may perform more than 8 hours unpaid service in a day.

(5) In performing unpaid service, the offender must be allowed reasonable rest and meal breaks.

136 Notifications following making of order

(1) A court that makes a community based order, or makes an order amending or revoking a community based order, must make it in the approved form and must cause a copy of the order to be given to—

(a) the offender; and

(b) the person in charge of an institution in which the order requires the offender to reside; and

(c) the chief executive (corrective services), together with details of the offence in relation to which the order was made.

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(2) If an offender is required or permitted by a community based order to reside in another State or a Territory, the chief executive (corrective services) must cause—

(a) a copy of the order; and

(b) other relevant documents and information;

to be forwarded to the proper authority in that State or Territory.

137 Facilitation of proof

(1) If an offender is before a court with a view to being dealt with for contravening a requirement in a community based order, then, subject to subsection (2), the presumptions mentioned in subsection (3) are to be made.

(2) A presumption mentioned in subsection (3) may be made only if there is before the court—

(a) a complaint; or

(b) a statement purporting to be that of a person authorised by the chief executive (corrective services) to make the statement;

that particularises matters relevant to the offender being so dealt with in the case in question.

(3) Until the contrary is proved, it must be presumed—

(a) that, under subsection (1), the community based order alleged in the complaint or statement mentioned in subsection (2) was made as alleged for the offender before the court; and

(b) if the offender is before the court under subsection (1)—that the offender contravened the requirement, as alleged in the complaint or statement.

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138 Application of Justices Act

(1) The *Justices Act 1886* applies to a complaint, summons, warrant or penalty under this part with all necessary modifications and any modifications prescribed by regulation.

(2) For the purposes of the application mentioned in subsection (1)—

(a) a complaint is taken to be a complaint for an offence; and

(b) a summons is taken to be a summons to answer a complaint; and

(c) a penalty imposed under section 121 may be enforced by an order that might be made by the adjudicating justices under the *Justices Act 1886* so as to enforce the payment of a penalty imposed on a conviction for an offence under an Act that does not expressly provide for enforcement of the payment.

(3) Despite the *Justices Act 1886*, section 43(2) or (3), if 2 or more matters are properly joined in a single complaint made for the purposes of division 2 because the matters of complaint—

(a) are alleged to be constituted by the same act or omission; or

(b) are founded on substantially the same facts;

it is not necessary to set out each matter of complaint in a separate paragraph.

(4) Objection can not be taken to the complaint mentioned in subsection (3) on the ground that each matter of complaint is not set out in a separate paragraph.

139 Court may order summons or warrant for offender's appearance

(1) The court to which an authorised corrective services officer makes application under section 122 may order that a summons issue, directed to the offender, requiring the

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offender to appear at the time and place stated in the summons to be dealt with according to law.

(2) If the offender to whom a summons under subsection (1) or section 128 or 129 is directed fails to appear in answer to the summons, the court may, on proof of the service of the summons on the offender, order that a warrant issue, directed to all police officers, to arrest the offender and bring the offender before the court to be dealt with according to law.

140 Power of Magistrates Court under s 128(2), 129(2) or 139(2)

(1) If—

(a) a warrant issued under section 128(2), 129(2) or 139(2) directs that an offender be brought before the Supreme Court or a District Court; and

(b) the offender can not be brought before the court because no sittings are being held at the time;

the warrant has effect as if it directed that the offender be brought before a Magistrates Court.

(2) On an offender's appearance before a Magistrates Court under subsection (1), the court must—

(a) commit the offender to custody to be brought; or

(b) grant bail to the offender on the condition that the offender appear;

before the Supreme Court or a District Court.

141 Community service under intensive correction order cumulative with any other community service

Community service that an offender is required to perform under an intensive correction order is to be performed cumulatively with any other community service the offender is required to perform under this or another Act.

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142 Offence against this part—complainant

Proceedings for an offence against a community based order, if not initiated by a court, must be started by complaint made by a person authorised by the chief executive (corrective services) in that behalf, either generally or in a particular case.

Part 8 Orders of suspended imprisonment

143 Court not to act without recording a conviction

A court may make an order under section 144(1) only if it records a conviction.

144 Sentence of imprisonment may be suspended

(1) If a court sentences an offender to imprisonment for 5 years or less, it may order that the term of imprisonment be suspended.

(2) An order under subsection (1) may be made only if the court is satisfied that it is appropriate to do so in the circumstances.

(3) An order under subsection (1) may suspend the whole or a part of the term of imprisonment.

(4) A court must not suspend a term of imprisonment if it is satisfied, having regard to the provisions of this Act, that it would be appropriate in the circumstances that the offender be imprisoned for the term of imprisonment imposed.

(5) The court must state an operational period during which the offender must not commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 146 for the suspended sentence.

(6) The operational period starts on the day the order is made and must be—

(a) not less than the term of imprisonment imposed; and

(b) not more than 5 years.

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145 Effect of suspended imprisonment

An offender for whom an order under section 144 is made has to serve the suspended imprisonment only if the offender is ordered to do so under section 147.

146 Consequences of committing offence during operational period

(1) A court must proceed under this section if—

(a) the court—

(i) convicts an offender of an offence for which imprisonment may be imposed; and

(ii) is satisfied that the offence was committed during—

(A) the operational period of an order made under section 144; or

(B) an extension of the operational period ordered under section 147(1)(a)(i); or

(C) a further stated operational period ordered under section 147(1)(a)(ii)(B); or

(b) an offender is otherwise before the court and the court is satisfied that—

(i) the offender was convicted, in or outside Queensland, of an offence for which imprisonment may be imposed; and

(ii) the offence was committed during—

(A) the operational period of an order made under section 144; or

(B) an extension of the operational period ordered under section 147(1)(a)(i); or

(C) a further stated operational period ordered under section 147(1)(a)(ii)(B).

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(2) If the court mentioned in subsection (1) has like jurisdiction to the court that made the order, the first court must deal with the offender under section 147 for the suspended imprisonment.

(2A) If the court mentioned in subsection (1) is of higher jurisdiction than the court that made the order, the first court must deal with the offender under section 147 for the suspended imprisonment unless the court considers that it would be in the interests of justice for the offender to be dealt with under section 147 by the court that made the order.

(2B) If, under subsection (2A), the first court does not deal with the offender under section 147 for the suspended imprisonment, it must—

(a) commit the offender to custody to be brought; or

(b) grant bail to the offender conditioned to appear;

before a court of like jurisdiction to the court that made the order.

(3) If—

(a) the order was made by a court other than a Magistrates Court; and

(b) the court mentioned in subsection (1) is a Magistrates Court;

the Magistrates Court must proceed under subsection (4).

(4) The Magistrates Court mentioned in subsection (3) must—

(a) commit the offender to custody to be brought; or

(b) grant bail to the offender conditioned to appear;

before a court of like jurisdiction to the court that made the order.

(5) If—

(a) the order was made by the Supreme Court; and

(b) the court mentioned in subsection (1) is a District Court;

the District Court must proceed under subsection (6).

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(6) The District Court mentioned in subsection (5) must—

(a) commit the offender to custody to be brought before the Supreme Court; or

(b) grant bail to the offender conditioned that the offender appear before the Supreme Court.

(7) If the offender comes before a court under subsection (2B), (4) or (6), the court must deal with the offender under section 147 for the suspended imprisonment.

146A Summons or warrant for offender whose sentence of imprisonment has been suspended

(1) This section applies if—

(a) an order has been made under section 144 or 147(1)(a) for an offender; and

(b) a police officer or an authorised corrective services officer suspects, on reasonable grounds, that the offender has committed an offence, in or outside Queensland, during the operational period of the order; and

(c) imprisonment may be imposed if the offender is convicted, in or outside Queensland, of the suspected offence.

(2) The officer may, by a complaint to a magistrate, apply for a summons requiring the offender to appear before the court that made the order.

(3) The magistrate may issue the summons or, instead of issuing the summons, issue a warrant, in the approved form, directed to all police officers to arrest the offender and bring the offender before the court that made the order to be further dealt with according to law.

(4) The summons or warrant issued under this section is of no effect unless and until the offender is convicted of an offence that enables a court to deal with the offender under section 147.

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(5) The magistrate must issue the summons or warrant if the magistrate is satisfied the grounds for issuing the summons or warrant exist.

(6) However, the warrant may be issued only if—

(a) the complaint is under oath; and

(b) the magistrate is satisfied the offender would not appear in answer to a summons.

(7) Further, the magistrate may refuse to issue the warrant if the magistrate considers it would be unjust to issue the warrant.

(8) The summons or warrant may state the suspected offence in general terms.

147 Power of court mentioned in s 146

(1) A court mentioned in section 146(2), (2A), (4) or (6) that deals with the offender for the suspended imprisonment may—

(a) order—

(i) that the operational period be extended for not longer than 1 year; or

(ii) if the operational period has expired when the court is dealing with the offender—

(A) that the offender's term of imprisonment be further suspended; and

(B) that the offender be subject to a further stated operational period of not longer than 1 year during which the offender must not commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 146 for the suspended imprisonment; or

(b) order the offender to serve the whole of the suspended imprisonment; or

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(c) order the offender to serve the part of the suspended imprisonment that the court orders.

(2) The court must make an order under subsection (1)(b) unless it is of the opinion that it would be unjust to do so.

(3) In deciding whether it would be unjust to order the offender to serve the whole of the suspended imprisonment the court must have regard to—

(a) whether the subsequent offence is trivial having regard to—

(i) the nature of the offence and the circumstances in which it was committed; and

(ii) the proportion between the culpability of the offender for the subsequent offence and the consequence of activating the whole of the suspended imprisonment; and

(iii) the antecedents and any criminal history of the offender; and

(iv) the prevalence of the original and subsequent offences; and

(v) anything that satisfies the court that the prisoner has made a genuine effort at rehabilitation since the original sentence was imposed, including, for example—

(A) the relative length of any period of good behaviour during the operational period; and

(B) community service performed; and

(C) fines, compensation or restitution paid; and

(D) anything mentioned in a pre-sentence report; and

(vi) the degree to which the offender has reverted to criminal conduct of any kind; and

(vii) the motivation for the subsequent offence; and

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(b) the seriousness of the original offence, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and

(c) any special circumstance arising since the original sentence was imposed that makes it unjust to impose the whole of the term of suspended imprisonment.

(4) If the court is of the opinion mentioned in subsection (2), it must state its reasons.

(5) In this section—

original offence means the offence for which a term of imprisonment has been suspended under section 144(1).

original sentence means the sentence imposed for the original offence.

subsequent offence means the offence committed during—

(a) the operational period of an order made under section 144 for the original offence; or

(b) an extension of the operational period ordered under section 147(1)(a)(i) for the original offence; or

(c) a further stated operational period ordered under section 147(1)(a)(ii)(B) for the original offence.

148 Imprisonment to be served immediately

If, under section 147(1), the court orders the offender to serve imprisonment, then, unless the court otherwise orders, the imprisonment must be served—

(a) immediately; and

(b) subject to the *Bail Act 1980*, section 33, concurrently with any other imprisonment previously imposed on the offender by that or another court.

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149 Reasons not stated—order still valid

An order under section 147 is not invalid merely because of the failure of the court to state its reasons as required by section 147(3), but its failure to do so may be considered by an appeal court if an appeal against the order is made.

150 Bail Act applies if offender not dealt with immediately

If it is not possible for a court to deal with an offender under section 147 immediately, then, for the purposes of granting bail, the *Bail Act 1980* applies—

(a) as if a reference to a person on a charge of, or in connection with, an offence were a reference to the offender; and

(b) with any other necessary modifications and any modifications prescribed by regulation.

151A Parole for suspended sentences

An offender whose sentence of imprisonment is suspended is eligible for release on parole only in relation to imprisonment ordered under section 147(1)(b) or (c).

Part 8A Drug and alcohol treatment orders

Division 1 Preliminary

151B Definitions for part

In this part—

core conditions, of the rehabilitation part of a treatment order, see section 151R(1).

court means a Magistrates Court prescribed by regulation.

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custodial part, of a treatment order, see section 151N(2).

drug and alcohol treatment order means an order made under division 3.

eligible offence means—

(a) a summary offence; or

(b) an indictable offence that is, or is to be, dealt with summarily.

Note—

Under the *Drugs Misuse Act 1986*, section 13A, proceedings for particular indictable offences may be taken summarily if a treatment order is sought under this part.

operational period, for the custodial part of a treatment order, see sections 151N(1)(c) and 151O(2)(b)(ii).

rehabilitation part, of a treatment order, see section 151Q(2).

review team, for a treatment order, means—

(a) the court; and

(b) a representative of each treatment order agency, other than a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; and

(c) a representative of 1 Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

severe substance use disorder means—

(a) a disorder prescribed by regulation that relates to the use of alcohol or other drugs; or

(b) if no disorder is prescribed under paragraph (a)—a substance use disorder estimated as being severe under the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association in 2013.

suitability assessment report means a suitability assessment report given to the court under section 151K.

treatment order means a drug and alcohol treatment order.

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treatment order agency means the following—

(a) the department in which the *Corrective Services Act 2006* is administered;

(b) the department in which the *Penalties and Sentences Act 1992* is administered;

(c) a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17;

(d) Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*;

(e) the police service.

treatment program means a treatment program included in the rehabilitation part of a treatment order under section 151Q.

151C Purpose of part and treatment orders

(1) The purpose of this part is to provide for the making of drug and alcohol treatment orders.

(2) The purpose of making a drug and alcohol treatment order for an offender is to—

(a) facilitate the rehabilitation of the offender by providing a judicially supervised, therapeutically oriented, integrated treatment regime; and

(b) reduce the offender's severe substance use disorder; and

(c) reduce the level of criminal activity associated with the offender's severe substance use disorder; and

(d) reduce the health risks to the offender that are associated with the offender's severe substance use disorder; and

(e) assist with the offender's integration into the community.

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Division 2 When treatment orders may be made

151D Court may make treatment order only if it records conviction

A court may make a treatment order only if it records a conviction.

151E When treatment order may be made

(1) A court may make a treatment order for an offender only if—

(a) the offender—

(i) has pleaded guilty to an eligible offence; and

(ii) resides within the court district of the court; and

(b) the court—

(i) considers it would be appropriate to sentence the offender to a term of imprisonment for the eligible offence; and

(ii) has received a suitability assessment report for the offender; and

(iii) is satisfied the offender has a severe substance use disorder; and

(iv) considers the offender's severe substance use disorder contributed to the commission of the eligible offence; and

(v) considers it is appropriate in the circumstances to make the treatment order for the offender.

(2) If an order of the Supreme Court or a District Court is in force that imposes a sentence on the offender for another offence, the court must have regard to the order in deciding whether or not it is appropriate to make a treatment order for the offender.

(3) In this section—

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court district, of a court, means the district within which the court is held, as provided for under the *Justices Act 1886*, section 22B.

151F When treatment order can not be made

(1) Despite section 151E, a court can not make a treatment order for an offender if—

(a) the offender is serving a term of imprisonment in a corrective services facility; or

(b) the offender is subject to a parole order; or

(c) the offender is serving, or is required to serve, the unexpired portion of a period of imprisonment for another offence in Queensland or elsewhere because—

(i) a parole order for the offender has been cancelled under the *Corrective Services Act 2006*, section 205 or 209; or

(ii) an order similar to a parole order for the offender has been cancelled under a provision of an Act of the Commonwealth or another State that is similar to a provision mentioned in subparagraph (i); or

(d) the offender is charged with a sexual assault offence.

(2) In this section—

parole order see the *Corrective Services Act 2006*, schedule 4.

sexual assault offence means an offence against the following—

(a) the Criminal Code, chapter 22;

(b) the Criminal Code, chapter 32.

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151G Particular matters for offences involving violence against another person

(1) In deciding whether to make a treatment order for an offender who has committed an offence involving violence against another person, the court must have regard to the following—

(a) the nature and seriousness of the offence, and any previous offences involving violence, committed by the offender;

(b) whether or not the offence resulted in bodily harm, within the meaning of the Criminal Code, section 1, to another person;

(c) any relevant medical, psychiatric or other information available to the court about the offender;

(d) if the offence committed by the offender was a domestic violence offence—the risk of further domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act 2012*, being committed by the offender.

(2) The court must not make a treatment order for the offender if the court is satisfied that, if the order were made, the offender would pose an unacceptable risk to the safety and welfare of—

(a) a person who is in a domestic relationship with the offender; or

(b) a review team member for the treatment order; or

(c) a person employed or engaged by a treatment order agency; or

(d) a member of the community.

(3) In this section—

domestic relationship means a relevant relationship under the *Domestic and Family Violence Protection Act 2012*, section 13.

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151H Multiple offences

(1) A court may make more than 1 treatment order for an offender convicted of more than 1 eligible offence.

(2) However, if the court makes 2 or more treatment orders, the total term of imprisonment imposed on the offender under the custodial part of the order must be 4 years or less.

(3) The court may include the treatment orders in a single form of order that states each offence for which a treatment order is made.

(4) The court must not impose a penalty on the offender under this Act for 1 or more of the offences if the penalty may reduce or otherwise interfere with the offender's ability to comply with a treatment order applying to the offender.

Division 3 Making treatment orders

Subdivision 1 Preliminary steps

151I Explaining treatment order

(1) Before making a treatment order, the court must explain, or cause to be explained, to the offender the purpose and effect of the order, including—

(a) the content of the custodial part and rehabilitation part of the treatment order; and

(b) the core conditions of the rehabilitation part of the treatment order; and

(c) the potential requirements of the treatment program under the rehabilitation part of the treatment order, including the impacts on the offender's right to privacy that may be necessary to comply with the treatment order; and

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Examples of impacts on the offender's right to privacy—

- the requirement to consent to the sharing of information about the offender between review team members
- a requirement the offender wear a drug or alcohol monitoring device
- a requirement to install monitoring devices at the offender's place of residence

(d) what may happen if the offender does not comply with the rehabilitation part of the treatment order; and

(e) when and how the treatment order, and the rehabilitation part of the treatment order, may be amended, revoked, cancelled or terminated.

(2) The explanation must be made in language, or in a way, likely to be readily understood by the offender.

151J Offender to agree to making of order

The court may consider making the treatment order only if the offender—

(a) agrees to the order being made; and

(b) agrees to comply with the order.

151K Adjournment for obtaining suitability assessment report

(1) If the court is considering making a treatment order for an offender, and the agreement of the offender has been obtained under section 151J, the court must make an order requiring an appropriately qualified review team member to—

(a) prepare a suitability assessment report that complies with section 151L; and

(b) give the report to the court within 28 days after the order is made, or a longer period allowed by the court.

(2) The court must give a copy of the suitability assessment report to—

(a) the prosecutor; and

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(b) the offender's legal representative; and

(c) the review team; and

(d) if the court orders—the offender.

151L Requirements for suitability assessment report

A suitability assessment report for an offender must include—

(a) an assessment of whether the offender has a severe substance use disorder; and

(b) an assessment of the suitability of the offender for release under a treatment order; and

(c) if the report states the offender is suitable for release under a treatment order—a proposed treatment program for the offender.

Subdivision 2 Content of treatment orders

151M Content

A treatment order for an offender must—

(a) record the offender's conviction; and

(b) include—

(i) a custodial part; and

(ii) a rehabilitation part.

Subdivision 3 Custodial part

151N Custodial part of treatment order

(1) In making a treatment order, the court must—

(a) sentence the offender to imprisonment for 4 years or less; and

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(b) order that the sentence of imprisonment is suspended; and

(c) state the period (the ***operational period***) during which the offender must not commit another offence if the offender is to avoid being dealt with under section 151O for the suspended sentence.

(2) The matters stated in subsection (1) constitute the ***custodial part*** of the treatment order.

(3) For subsection (1)(c), the operational period—

(a) starts on the day the order is made; and

(b) must end on a day at least 2 years but not more than 5 years after the day it starts.

(4) The operational period must be at least as long as the sentence of imprisonment imposed under the order.

(5) An offender to whom a treatment order applies has to serve the sentence of imprisonment suspended under the custodial part of the order only if the offender is ordered to do so under section 151O(2)(c) or (d) or 151W(1)(c) or (d).

151O Orders if offender commits offence for which imprisonment may be imposed

(1) This section applies if—

(a) the court—

(i) convicts an offender to whom a treatment order applies of an offence for which imprisonment may be imposed; and

(ii) is satisfied the offence was committed during the operational period for the treatment order; or

(b) an offender to whom a treatment order applies is otherwise before the court and the court is satisfied—

(i) the offender was convicted, in or outside Queensland, of an offence for which imprisonment may be imposed; and

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(ii) the offence was committed during the operational period for the treatment order.

(2) The court may, having regard to the matters stated in section 151P—

(a) extend the operational period for the custodial part of the treatment order by no more than 1 year; or

(b) if the operational period has expired when the court is dealing with the offender, make an order—

(i) that the offender's term of imprisonment be further suspended; and

(ii) stating a period (also an ***operational period***) during which the offender must not commit another offence if the offender is to avoid being dealt with again under this section; or

(c) if the rehabilitation part of the treatment order is in force, order—

(i) that the rehabilitation part of the treatment order is revoked; and

(ii) that the offender must serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by any period served by the offender under the rehabilitation part of the treatment order; or

(d) order the offender to serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by any period served by the offender under the rehabilitation part of the treatment order.

151P Considerations for taking action under s 151O

(1) In making an order under section 151O, the court must have regard to—

(a) the extent to which the offender has otherwise complied with the treatment order; and

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(b) whether the subsequent offence is trivial having regard to—

(i) the nature of the subsequent offence and the circumstances in which it was committed, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and

(ii) the proportionality between the culpability of the offender for the subsequent offence and the consequence of making the order; and

(iii) the antecedents and any criminal history of the offender; and

(iv) the prevalence of the original and subsequent offences; and

(v) the motivation for the subsequent offence; and

(c) the seriousness of the original offence, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and

(d) any special circumstance arising since the original sentence was imposed that affects whether it would be just to make the order.

(2) In this section—

original offence means the offence for which a term of imprisonment has been suspended under section 151N(1)(b).

original sentence means the sentence imposed for the original offence.

subsequent offence means the offence committed during the operational period of a treatment order.

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Subdivision 4 Rehabilitation part

151Q Rehabilitation part of treatment order

(1) In making a treatment order, the court must—

(a) include in the order a treatment program that complies with section 151S; and

(b) order the offender to comply with—

(i) the core conditions; and

(ii) the treatment program.

(2) The matters stated in subsection (1) constitute the ***rehabilitation part*** of the treatment order.

(3) The rehabilitation part—

(a) starts when the treatment order is made; and

(b) ends on the day that is 2 years after the day it started, unless it is sooner cancelled or extended under division 4.

151R Core conditions

(1) An offender to whom the rehabilitation part of a treatment order applies must comply with the conditions (the ***core conditions***) stated in subsection (2).

(2) The offender—

(a) must not commit another offence; and

(b) must report to a review team member for the treatment order at the places and times directed by an authorised corrective services officer or a review team member for the treatment order; and

(c) must receive visits from an authorised corrective services officer or a review team member for the treatment order at the times directed by the officer or member; and

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(d) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and

(e) must not leave or stay outside Queensland without the permission of the court; and

(f) must appear before the court at the times directed by the court; and

(g) must comply with any other reasonable direction of—

(i) an authorised corrective services officer; or

(ii) a review team member for the treatment order given under section 151T(2).

151S Treatment program

(1) The treatment program for a treatment order—

(a) must state the period, of not more than 2 years, within which the program must be completed by the offender; and

(b) may include the conditions or other requirements the court considers necessary to achieve the purposes of the treatment order.

(2) Without limiting subsection (1)(b), the treatment program may include conditions requiring the offender to do the following, as stated in the treatment order or as directed by a review team member for the treatment order—

(a) submit to medical, psychiatric or psychological treatment that is relevant to the offender's rehabilitation;

(b) submit to detoxification at a stated facility that is not a corrective services facility;

(c) participate in counselling or programs relevant to the offender's rehabilitation;

(d) attend meetings with a review team member for the treatment order;

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(e) participate in vocational, educational or employment programs or courses;

(f) submit to alcohol or other drug testing;

(g) wear a device that detects alcohol or other drug usage by the offender;

(h) install a device or equipment at the offender's place of residence;

(i) reside at a stated place for a stated period.

Division 4 Administering treatment orders

151T Review team obligations and requirement for court to consult

(1) The review team members for a treatment order who are representatives of treatment order agencies must assist the court in administering the order.

(2) In administering a treatment order, the review team may—

(a) give a direction that is reasonably necessary to achieve the purposes of the treatment order; and

(b) consult with and be assisted by the chief executive (health).

(3) In making an order or taking an action under this division in relation to a treatment order, the court—

(a) must consult with the review team for the order about whether the order or action is appropriate; and

(b) may consult with and be assisted by the chief executive (health).

(4) In this section—

chief executive (health) means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

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151U Court may cancel rehabilitation part of treatment order on early completion of treatment program

The court may cancel the whole or part of the rehabilitation part of the treatment order if the court is satisfied—

(a) the offender has complied, or substantially complied, with the treatment program; and

(b) continuation of the rehabilitation part, or a part of the rehabilitation part, is not necessary to achieve the purposes of the treatment order.

151V Court may amend rehabilitation part of treatment order

(1) The court may, from time to time, amend the rehabilitation part of a treatment order by—

(a) adding conditions to or removing conditions from the treatment program; or

(b) amending conditions imposed under the treatment program, including, for example, by amending the type or frequency of alcohol or other drug testing; or

(c) extending the rehabilitation part of the treatment order.

(2) The court may make the amendment—

(a) on the court's own initiative; or

(b) on an application by—

(i) the offender; or

(ii) the prosecutor; or

(iii) a review team member for the treatment order.

(3) In deciding whether to make the amendment, the court must have regard to the extent to which the offender has complied with the treatment order.

(4) However, the court may not extend the rehabilitation part of the treatment order beyond the day the custodial part of the treatment order ends.

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(5) The court must give reasons for a decision to amend a treatment order under this section.

151W Failure to comply with rehabilitation part of treatment order

(1) If a court is satisfied an offender has, without reasonable excuse, failed to comply with the rehabilitation part of the offender's treatment order, the court may do any of the following—

(a) impose a condition on the treatment program for the order the court considers necessary to achieve the purposes of the treatment order;

(b) at any 1 hearing under this section, order that the offender perform up to 40 hours of community service, but not to the extent the order would increase the total amount of community service imposed on the offender in relation to the treatment order to more than 240 hours;

(c) at any 1 hearing under this section, order that the offender must serve up to 7 consecutive days of the sentence of imprisonment suspended under the custodial part of the treatment order;

(d) revoke the rehabilitation part of the treatment order and order that the offender must serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by the period of imprisonment served by the offender under the treatment order;

(e) amend the rehabilitation part of the treatment order under section 151V.

(2) To remove any doubt, it is declared that—

(a) an order made under subsection (1)(b) is not a community service order; and

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(b) the court may impose a condition or make an order mentioned in subsection (1)(a), (b) or (c) for the offender more than once.

(3) In taking action under subsection (1)(d), the court must have regard to the extent to which the offender has otherwise complied with the treatment order.

(4) The court must give reasons for a decision to take action under this section.

Division 5 Ending treatment orders

151X Court may revoke treatment order

(1) The court may revoke a treatment order—

(a) on the court's own initiative, if the court is satisfied the purposes of the treatment order can no longer be achieved, including, for example, because—

(i) the offender is no longer capable of complying with the treatment order because of a physical or psychiatric disability; or

(ii) the offender is sentenced to a term of imprisonment for another offence; or

(iii) the offender has failed to comply with the treatment order in a material way; or

(iv) the offender is no longer willing to comply with the treatment order, or is unlikely to comply with the treatment order for another reason; or

(b) on an application by—

(i) the offender; or

(ii) a prosecutor; or

(iii) a review team member for the treatment order.

(2) In deciding whether to revoke the treatment order, the court must—

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(a) consult with the review team for the treatment order about whether the revocation is appropriate; and

(b) have regard to the extent to which the offender has complied with the treatment order.

151Y Requirements for revocation

(1) If the court revokes a treatment order—

(a) for a treatment order made for the offender in relation to an offence dealt with summarily under the *Drugs Misuse Act 1986*, section 13A, the court must—

(i) order that the record of the conviction for the offence be revoked; and

Note—

For the effect of not recording a conviction, see section 12.

(ii) vacate the offender's treatment order; and

(iii) under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence, even though section 104(2)(b) of that Act has not been complied with; or

(b) otherwise—the court may deal with the offender as if the offender had just been convicted of the eligible offence for which the treatment order was made.

(2) However, in imposing a term of imprisonment on the offender under subsection (1), the court—

(a) must reduce the term of imprisonment by any period of imprisonment served by the offender under the custodial part of the treatment order; and

(b) can not impose a term of imprisonment that, together with any imprisonment served under the treatment order, exceeds the sentence of imprisonment that was imposed under the custodial part of the treatment order; and

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(c) must have regard to the extent to which the offender has otherwise complied with the treatment order.

151Z Termination of treatment orders

A treatment order made for an offender is terminated if—

(a) it is revoked under section 151X; or

(b) the operational period of the custodial part of the treatment order has ended.

Division 6 Miscellaneous

151ZA Immunity from prosecution

(1) A person is not liable to prosecution for a relevant drug offence resulting from any admission made by the person for the purposes of—

(a) preparing a suitability assessment report for the person; or

(b) administering a treatment order for the person.

(2) The admission, and any evidence obtained because of the admission, is not admissible against the person in a prosecution for the relevant drug offence.

(3) Subsections (1) and (2) do not prevent the person from being prosecuted for the relevant drug offence if evidence of the offence, other than the admission made by the person or evidence obtained because of the admission, exists.

(4) In this section—

relevant drug offence means the following offences—

(a) an offence mentioned in the *Drugs Misuse Act 1986*, section 9, 9A or 10;

(b) an offence that may be dealt with summarily under the *Drugs Misuse Act 1986*, section 13 or 14.

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151ZB Arrest warrants

(1) A court may issue a warrant for an offender's arrest if the court—

(a) reasonably suspects, after consulting the review team for the offender's treatment order, that the offender has failed to comply with the treatment order; or

(b) revokes the offender's treatment order.

(2) The warrant authorises any police officer to arrest the offender and to bring the offender before the court.

151ZC Court may remand offender in custody

(1) If a warrant is issued under section 151ZB(1)(a), the court may remand the offender in custody to appear before the court if the court decides to—

(a) reserve making a decision about revoking the treatment order or rehabilitation part of the treatment order; or

(b) revoke the treatment order or rehabilitation part of the treatment order.

(2) The period for which the offender may be remanded in custody is—

(a) an initial period of not more than 30 days; and

(b) a further period or periods of not more than 8 days.

(3) If the court remands the offender in custody, the chief executive (corrective services) must ensure the person appears before the court to be dealt with as required.

151ZD No appeal against particular decisions

(1) An appeal does not lie against a decision of the court—

(a) not to make a treatment order; or

(b) that an offender has failed to comply with a treatment order; or

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(c) to cancel the rehabilitation part of a treatment order; or

(d) to amend the rehabilitation part of a treatment order; or

(e) to revoke the rehabilitation part of a treatment order; or

(f) to revoke a treatment order.

(2) Subsection (1) applies despite the *Justices Act 1886*, section 222 and the Criminal Code, chapter 67.

Part 9 Imprisonment

Division 1 Liability

152 Court must record conviction

A court may make an order of imprisonment only if it records a conviction.

152A Proper officer to give chief executive (corrective services) record of order of imprisonment

(1) If a court orders an offender serve all or part of a term of imprisonment, the proper officer of the court must make a record of the order committing the offender into custody and give a copy of the record to the chief executive (corrective services).

(2) The record must be in the approved form and may deal with each offence for which the offender is convicted.

(3) Despite subsection (2), the proper officer of the court complies with subsection (1) if the proper officer gives the chief executive (corrective services) a verdict and judgment record under the *Criminal Practice Rules 1999*.

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153 Imprisonment—liability to

(1) An offender liable to imprisonment for life, or for any other period, may be sentenced to imprisonment for any lesser period.

(2) An offender liable to imprisonment may be sentenced to pay a fine not exceeding the limits prescribed in section 46 in addition to, or instead of, the imprisonment.

153A Term of imprisonment if none prescribed

If an offender is convicted of an offence punishable by imprisonment, but the maximum term of imprisonment is not prescribed by law, the maximum term that can be imposed is—

(a) if the conviction is on indictment—5 years; or

(b) if the conviction is not on indictment—2 years.

Division 2 Calculation

154 Calculation of term of imprisonment

(1) Except as provided in sections 156(1), 158A and 159 and subject to an order being made under the repealed section 158, a term of imprisonment—

(a) on conviction on indictment—starts on the day the court imposes imprisonment on the offender; and

(b) on a summary conviction—starts at the beginning of the offender's custody for the imprisonment.

(2) In this section—

repealed section 158 means section 158 as in force immediately before it was repealed by the *Justice and Other Legislation Amendment Act 2004*.

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155 Imprisonment to be served concurrently unless otherwise ordered

Unless otherwise provided by this Act, or the court imposing imprisonment otherwise orders, if—

(a) an offender is serving, or has been sentenced to serve, imprisonment for an offence; and

(b) is sentenced to serve imprisonment for another offence;

the imprisonment for the other offence is to be served concurrently with the first offence.

156 Cumulative orders of imprisonment

(1) If—

(a) an offender is serving, or has been sentenced to serve, imprisonment for an offence; and

(b) is sentenced to serve imprisonment for another offence;

the imprisonment for the other offence may be directed to start from the end of the period of imprisonment the offender is serving, or has been sentenced to serve.

(2) Subsection (1) applies whether the imprisonment for the first offence is being served concurrently or cumulatively with imprisonment for another offence.

156A Cumulative order of imprisonment must be made in particular circumstances

(1) This section applies if an offender—

(a) is convicted of an offence—

(i) against a provision mentioned in schedule 1; or

(ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and

(b) committed the offence while—

(i) a prisoner serving a term of imprisonment; or

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(ii) released on post-prison community based release under the *Corrective Services Act 2000* or released on parole under the *Corrective Services Act 2006*; or

(iii) on leave of absence, from a term of imprisonment, granted under the *Corrective Services Act 2000* or the *Corrective Services Act 2006*; or

(iv) at large after escaping from lawful custody under a sentence of imprisonment.

(2) A sentence of imprisonment imposed for the offence must be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve.

158A Term of imprisonment does not run if offender on bail awaiting appeal

The term of imprisonment of an offender who appeals against sentence, and is granted bail awaiting the determination of the appeal, does not run during the time the offender is on bail.

159 Term of imprisonment does not run while prisoner at large

An offender who commits an offence against the Criminal Code, section 142, on being returned to lawful custody, must serve the imprisonment that the offender would have served if the offender had not escaped in addition to any punishment imposed for the offence.

159A Time held in presentence custody to be deducted

(1) If an offender is sentenced to a term of imprisonment for an offence, any time that the offender was held in custody in relation to proceedings for the offence must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders.

(2) Subsection (1) does not apply to—

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(a) a period of custody of less than 1 day; or

(b) imprisonment of less than 1 day; or

(c) imprisonment that has been wholly suspended; or

(d) the suspended part of imprisonment partly suspended.

(3) If an offender was held in custody in circumstances to which subsection (1) applies, and the court has not made an order mentioned in subsection (3A), the sentencing court must, as part of the sentencing order—

(a) state the dates between which the offender was held in presentence custody; and

(b) calculate the time that the offender was held in presentence custody; and

(c) declare the time calculated under paragraph (b) to be imprisonment already served under the sentence.

(3A) Subsection (3B) applies if—

(a) an offender was held in custody in circumstances to which subsection (1) applies (***presentence custody***); and

(b) the sentencing court orders that the time, or part of the time, the offender was held in custody is not to be taken to be imprisonment already served under the sentence.

(3B) The sentencing court must, as part of the sentencing order—

(a) state the dates between which the offender was held in presentence custody; and

(b) calculate the time that the offender was held in presentence custody; and

(c) declare the part of the time that is taken to be imprisonment already served under the sentence or declare that no time is taken to be imprisonment already served under the sentence.

(3C) If an offender was held in presentence custody and the sentencing court makes a declaration under subsection (3)(c) or (3B)(c), the sentencing court must cause the chief

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executive (corrective services) to be advised in writing of the declaration and its details.

(4) If—

(a) an offender is charged with a number of offences committed on different occasions; and

(b) the offender has been in custody since arrest on charges of the offences and for no other reason;

the time held in presentence custody must be taken, for the purposes of subsection (1), to start when the offender was first arrested on any of those charges, even if the offender is not convicted of the offence for which the offender was first arrested or any 1 or more of the number of offences with which the offender is charged.

(4A) To help the sentencing court for the purposes of subsections (3) and (3B), the prosecuting authority must give to the court a presentence custody certificate.

(5) If the sentencing court is satisfied that the time declared under subsection (3) was not correct, it must—

(a) declare the correct time; and

(b) amend the sentence accordingly; and

(c) cause the chief executive (corrective services) to be advised of the amendment.

(6) An application for a declaration under subsection (3), (3B) or (5) may be made by—

(a) the offender; or

(b) the prosecuting authority; or

(c) the offender and the prosecuting authority jointly.

(7) If an application for a declaration under subsection (5) is made by the offender and the prosecuting authority jointly, the sentencing court may make the declaration having regard to written materials and submissions before it and without requiring the attendance of the parties.

(8) Subsection (7) applies only if—

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(a) the parties propose in the joint application that the declaration be made having regard to written materials and submissions before the court and without the attendance of the parties; and

(b) the application is accompanied by a draft order and written submission in support.

(9) If the sentencing court decides that the application is inappropriate for decision without an oral hearing, the court—

(a) must immediately notify the parties to the application of the decision by telephone or in some other way; and

(b) may set a date for hearing.

(10) In this section—

presentence custody certificate means a certificate, in the approved form, signed by the chief executive (corrective services), an authorised corrective services officer or the commissioner of the police service, that—

(a) states the offence or offences for which the offender was held in custody; and

(b) states the dates between which the offender was held in custody for each of those offences; and

(c) calculates the time that the offender was held in custody.

proceedings for the offence includes proceedings that relate to the same, or same set of, circumstances as those giving rise to the charging of the offence.

prosecuting authority means—

(a) if the sentencing court is the Supreme Court or a District Court—the director of public prosecutions; or

(b) if the sentencing court is a Magistrates Court—the prosecutor.

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Division 3 Parole

160 Definitions for div 3

In this division—

current parole eligibility date, in relation to the imposition of a term of imprisonment mentioned in section 160A on an offender, means a parole eligibility date—

(a) previously fixed for the offender in relation to another term of imprisonment; and

(b) cancelled under section 160E on the imposition of the term of imprisonment.

current parole release date, in relation to the imposition of a term of imprisonment mentioned in section 160A on an offender, means a parole release date—

(a) previously fixed for the offender in relation to another term of imprisonment; and

(b) cancelled under section 160E on the imposition of the term of imprisonment.

impose, a term of imprisonment on an offender for an offence, includes make an order that the offender serve—

(a) the whole or part of suspended imprisonment for the offence; and

(b) the unexpired portion of an intensive correction order for the offence.

parole eligibility date, for an offender, means the date fixed under section 160B(2), (4) or (7), 160C(2), (3) or (5), 160D(2) or (3) or 213 as the date the offender is eligible for parole.

parole release date, for an offender, means the date fixed under section 160B(3) as the date the offender is to be released on parole.

period of imprisonment means the period of imprisonment that includes the term of imprisonment mentioned in section 160A.

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Note—

Period of imprisonment therefore includes the term of imprisonment a court is imposing at the time of sentence.

sexual offence means a sexual offence within the meaning of the *Corrective Services Act 2006*.

160A Application of ss 160B–160D

(1) Sections 160B to 160D apply if a court is imposing a term of imprisonment on an offender for an offence.

(2) Sections 160B to 160D are the only law under which a court may, on sentence of an offender for an offence, make an order relating to a person's release on parole.

Note—

Sections 160E to 160H further provide for the orders that may be made under sections 160B to 160D.

(3) A court can not, on sentence of an offender for an offence, make a recommendation for a person's release on parole.

(4) This section applies subject to any express provision to the contrary, in an Act, about a particular sentence.

Examples—

- Criminal Code, sections 305(2) and (4) and 314A(5) and (6)
- a provision providing that a minimum term of imprisonment be served

(5) Also—

(a) a court can not fix a date under sections 160B to 160D that reduces the minimum period of imprisonment an offender must serve under the *Corrective Services Act 2006*, section 181(2), (2A) or (2B), 181A, 182(2) or (2A), 182A(3) or (3A), 183(2) or (2B) or 185B (each a ***relevant provision***); and

(b) no date fixed by the court under sections 160B to 160D can reduce the minimum period of imprisonment an offender must serve under a relevant provision.

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(6) Sections 160B to 160D do not apply if a court sentences an offender to a term of imprisonment and makes any of the following orders under this Act for the offender—

(a) an intensive correction order;

(b) a probation order mentioned in section 92(1)(b);

(c) an order that the whole or a part of the term of imprisonment be suspended.

160AA Reduction of minimum period of imprisonment for particular offenders

(1) This section applies if—

(a) a court is imposing a term of imprisonment on an offender for a prescribed offence committed with a serious organised crime circumstance of aggravation; and

(b) either—

(i) the term of imprisonment imposed is imprisonment for life; or

(ii) the offender is serving a term of imprisonment for life; and

(c) section 13A or 13B applies for the sentence.

Note—

See section 161S in relation to the application of sections 13A and 13B for the sentencing of an offender mentioned in paragraph (a).

(2) The court may fix a date under section 160C or 160D that—

(a) reduces the minimum period of imprisonment the offender must otherwise serve under the *Corrective Services Act 2006*, section 181(2A) or (2B) or 181A(3) or (4); but

(b) does not reduce the minimum period of imprisonment the offender must serve under section 181(2) or 181A(2) of that Act.

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(3) Also, no date fixed by the court as mentioned in subsection (2) can reduce the minimum period of imprisonment the offender must serve under the *Corrective Services Act 2006*, section 181(2) or 181A(2).

(4) This section applies despite section 160A(5).

(5) In this section—

prescribed offence see section 161N.

160B Sentence of 3 years or less and not a serious violent offence or sexual offence

(1) This section applies if neither section 160C nor 160D applies.

(2) If the offender has had a court ordered parole order cancelled under the *Corrective Services Act 2006*, section 205 or 209 during the offender's period of imprisonment, the court must fix the date the offender is eligible for parole.

(3) If subsection (2) does not apply, the court must fix a date for the offender to be released on parole.

(4) However, the court may fix the date the offender is eligible for parole, instead of a date for the offender to be released on parole, if—

(a) the offender has, at any time, been convicted of a terrorism offence, whether or not the conviction has been recorded; or

(b) the offender is the subject of a Commonwealth control order; or

(c) the court is satisfied the offender has—

(i) carried out an activity to support the carrying out of a terrorist act; or

(ii) made a statement in support of the carrying out of a terrorist act; or

(iii) carried out an activity, or made a statement, to advocate the carrying out of a terrorist act or support for the carrying out of a terrorist act.

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(5) To remove any doubt, it is declared that a reference in subsection (4)(c) to a terrorist act—

(a) includes a terrorist act that has not happened; and

(b) is not limited to a specific terrorist act.

(6) If the offender had a current parole eligibility date or current parole release date, a date fixed under subsection (2), (3) or (4) must not be earlier than the current parole eligibility date or current parole release date.

Note—

See also section 160F.

(7) Despite subsections (2), (3) and (4), the court must fix the date the offender is eligible for parole under subsection (8) if—

(a) the offender is sentenced to a term of imprisonment under section 161R(2); and

(b) in imposing the base component of the sentence under that section, the court would, apart from this subsection, be required to fix a date for the offender under subsection (2), (3) or (4).

Note—

Section 161R(2)(a) requires the court to impose a sentence of imprisonment for the offence of which the offender is convicted under the law apart from part 9D.

(8) The date the offender is eligible for parole is the day that is worked out by adding the relevant further period to the date the court would otherwise fix for the offender under subsection (2), (3) or (4) if the term of imprisonment imposed on the offender under section 161R(2) consisted only of the base component of the sentence imposed under that section.

(9) In this section—

Commonwealth control order means a control order as defined in the Criminal Code (Cwlth), section 100.1(1).

relevant further period, for an offender sentenced to a term of imprisonment under section 161R(2), means the period of the

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mandatory component of the sentence imposed on the offender under that section.

terrorism offence means—

(a) a terrorism offence under the *Crimes Act 1914* (Cwlth); or

(b) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cwlth), sections 6 to 9; or

(c) an offence against the *Terrorism (Community Protection) Act 2003* (Vic), section 4B; or

(d) an offence against the *Crimes Act 1900* (NSW), section 310J; or

(e) an offence against the *Criminal Law Consolidation Act 1935* (SA), section 83CA; or

(f) another offence against a provision of a law of the Commonwealth or another State if the provision—

(i) is prescribed by regulation; and

(ii) is in relation to an activity that involves a terrorist act, or is preparatory to the carrying out of an activity that involves a terrorist act.

terrorist act see the *Police Powers and Responsibilities Act 2000*, section 211.

160C Sentence of more than 3 years and not a serious violent offence or sexual offence

(1) This section applies if section 160D does not apply and the offender's period of imprisonment is more than 3 years.

(2) If the offender had a current parole eligibility date, the court must fix the date the offender is eligible for parole.

(3) If the offender had a current parole release date, the court may fix the date the offender is eligible for parole.

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(4) A date fixed under subsection (2) or (3) must not be earlier than the current parole eligibility date or current parole release date mentioned in the subsection for the offender.

(5) If neither subsection (2) nor (3) applies, the court may fix the date the offender is eligible for parole.

Note—

See also section 160F.

160D Sentence for a serious violent offence or sexual offence

(1) This section applies if the offender's period of imprisonment includes a term of imprisonment for a serious violent offence or a sexual offence.

(2) If the offender had a current parole eligibility date or current parole release date, the court must fix the date the offender is eligible for parole.

(3) If subsection (2) does not apply, the court may fix the date the offender is eligible for parole.

(4) A date fixed under subsection (2) must not be earlier than the current parole eligibility date or current parole release date.

Note—

See also section 160F.

160E Automatic cancellation of parole release or eligibility dates

(1) An offender's parole release date is automatically cancelled when—

(a) a court fixes another parole release date or parole eligibility date for the offender under this division; or

(b) a court imposes a term of imprisonment on the offender—

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

(ii) that results in the offender's period of imprisonment being more than 3 years.

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(2) An offender's parole eligibility date is automatically cancelled when—

(a) a court fixes another parole eligibility date for the offender under this division; or

(b) a court imposes a term of imprisonment on the offender—

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

(ii) that results in the offender's period of imprisonment being more than 3 years.

Example—

O is sentenced to a 5-year term of imprisonment on 1 March 2007. The sentencing court fixes O's parole eligibility date at 1 October 2009. On 1 April 2010, O, whose application for parole in relation to the first term of imprisonment was unsuccessful, is sentenced to a further term of 2 years imprisonment to be served cumulatively with the first term. O's parole eligibility date of 1 October 2009 is cancelled under subparagraph (ii) and, under section 160C(2), the court must again fix a date that O is eligible for parole.

(3) Subsections (1) and (2) have effect even though the court fixing the relevant date or imposing the further term of imprisonment is a court of lesser jurisdiction than the court that fixed the current parole release date or current parole eligibility date being cancelled under the subsection.

160F Significance of an offender's period of imprisonment

(1) One of the objects of sections 160A to 160E is to ensure that at any 1 time there is only 1 parole release date or parole eligibility date in existence for an offender.

(2) When fixing a date under this division as the date an offender is to be released on parole or is to be eligible for release on parole, the date fixed by the court must be a date relating to the offender's period of imprisonment as opposed to a particular term of imprisonment.

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Examples—

1 O is sentenced to a term of 1 year's imprisonment on 1 July 2007 with a parole release date of 1 January 2008. O is released on parole on 1 January 2008. On 1 April 2008, O is sentenced to a further term of 1 year's imprisonment for another offence. A parole eligibility date fixed for O under section 160B(2) must relate to the 2 years period of imprisonment to which O has been sentenced and must not be earlier than 1 January 2008.

2 O is sentenced to a term of 1 year's imprisonment on 1 July 2007 with a parole release date of 1 January 2008. On 1 November 2007, O is sentenced to a further term of 1 year's imprisonment for another offence, to be served concurrently with the first term. A parole release date fixed for O under section 160B(3) must relate to the 16 months period of imprisonment to which O has been sentenced and must not be earlier than 1 January 2008.

160G Court may fix any day of sentence as parole release date

(1) If, under this Act, the court must fix a parole release date for an offender, the court may fix any day of the offender's sentence as the offender's parole release date.

Examples—

1 An offender who has been held in remand for 7 days is found guilty of an offence and sentenced to 7 days imprisonment. The sentencing court may fix the sentencing day as the offender's parole release date.

2 An offender is sentenced to 14 days imprisonment for contempt of court. The sentencing court may fix the last day of the sentence as the offender's parole release date.

(2) If the offender's parole release date is the date the offender is to be unconditionally released from lawful custody, the chief executive (corrective services) is not required to issue a court ordered parole order under the *Corrective Services Act 2006*, section 199.

(3) If the court fixes the date on which an offender is sentenced as the offender's parole release date and subsection (2) does not apply, the offender is taken immediately to be subject to a court ordered parole order—

(a) containing the conditions mentioned in the *Corrective Services Act 2006*, section 200(1); and

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(b) requiring the offender to report to a probation and parole office as defined under that Act and obtain a copy of the court ordered parole order between 9a.m. and 5p.m. either on the day the court fixes the offender's parole release date or on the next business day.

Examples—

1 The court fixes the offender's parole release date on a Thursday and the following day (Friday) is not a public holiday. The offender must report to a probation and parole office and obtain a copy of the parole order either before 5p.m. on the Thursday or between 9a.m. and 5p.m. on the Friday.

2 The court fixes the offender's parole release date on a Friday and the following Monday is not a public holiday. The offender must report to a probation and parole office and obtain a copy of the parole order either before 5p.m. on the Friday or between 9a.m. and 5p.m. on the Monday.

(4) An offender who fails to report to a probation and parole office and obtain a copy of the court ordered parole order as required under subsection (3)(b) is unlawfully at large for the *Corrective Services Act 2006*.

(5) A court mentioned in subsection (3) must, when fixing the offender's parole release date, tell the offender—

(a) of the requirement imposed on the offender under the subsection; and

(b) of the consequences if the offender fails to comply with the requirement.

(6) In this section—

court ordered parole order means a court ordered parole order as defined under the *Corrective Services Act 2006*.

160H Series of sentences involving terms of imprisonment

(1) This section applies if—

(a) a court is imposing more than 1 term of imprisonment in a series of sentencing orders; and

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(b) an order (the ***first order***) made by the court in relation to a term of imprisonment under this division would, because of section 160E, be cancelled in the series of sentencing orders by another order made under this division or by the imposition of another term of imprisonment.

(2) It is not necessary for the court to make the first order but, in making an order under this division that has final effect in relation to the series of sentencing orders, the court may only make an order that it could make if it had made the first order.

Example—

O has been charged with 3 offences and found guilty of each. The court sentences O to 2 years imprisonment on charge 1, 1 year's imprisonment on charge 2 and 2 years and 6 months imprisonment on charge 3, the terms to be served concurrently. It is not necessary for the court to make an order fixing a parole release date for each of the offences. The court may make a single order fixing a parole release date for the resulting period of imprisonment which must not be a date earlier in time than a parole release date notionally fixed under any of the previous orders the court would, apart from this section, be required to make.

Part 9A Convictions of serious violent offences

161A When an offender is convicted of a serious violent offence

An offender is convicted of a serious violent offence if—

(a) the offender is—

(i) convicted on indictment of an offence—

(A) against a provision mentioned in schedule 1; or

(B) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and

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(ii) sentenced to 10 or more years imprisonment for the offence, calculated under section 161C; or

(b) the offender is convicted on indictment and declared to be convicted of a serious violent offence under section 161B(3) or (4).

161B Declaration of conviction of serious violent offence

(1) If an offender is convicted of a serious violent offence under section 161A(a), the sentencing court must declare the conviction to be a conviction of a serious violent offence as part of the sentence.

(2) However, the failure of the sentencing court to make a declaration as required under subsection (1) does not affect the fact that the offender has been convicted of a serious violent offence.

(3) If an offender is—

(a) convicted on indictment of an offence—

(i) against a provision mentioned in schedule 1; or

(ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and

(b) sentenced to 5 or more, but less than 10, years imprisonment for the offence, calculated under section 161C;

the sentencing court may declare the offender to be convicted of a serious violent offence as part of the sentence.

(4) Also, if an offender is—

(a) convicted on indictment of an offence—

(i) that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or

(ii) that resulted in serious harm to another person; and

(b) sentenced to a term of imprisonment for the offence;

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the sentencing court may declare the offender to be convicted of a serious violent offence as part of the sentence.

(5) For subsections (3) and (4), if an offender is convicted on indictment of an offence—

(a) that involved the use, counselling or procuring the use, or conspiring or attempting to use, violence against a child under 12 years; or

(b) that caused the death of a child under 12 years;

the sentencing court must treat the age of the child as an aggravating factor in deciding whether to declare the offender to be convicted of a serious violent offence.

161C Calculation of number of years of imprisonment

(1) This section applies for deciding whether an offender is sentenced—

(a) under section 161A(a)—to 10 or more years imprisonment (the ***specified years*** of imprisonment); or

(b) under section 161B(3)—to 5 or more, but less than 10, years imprisonment (also the ***specified years*** of imprisonment);

for an offence—

(c) against a provision mentioned in schedule 1; or

(d) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1.

(2) An offender is sentenced to the specified years of imprisonment if—

(a) the offender is sentenced to a term of imprisonment of the specified years for the offence; or

(b) the term of imprisonment to which the offender is sentenced for the offence is part of a period of imprisonment of the specified years imposed on convictions consisting of the conviction on which the

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offender is being sentenced and any 1 or more of the following—

(i) a conviction of an offence mentioned in subsection (1)(c) or (d);

(ii) a conviction declared to be a conviction of a serious violent offence under section 161B.

(3) For subsection (2), whether the offender is sentenced to the specified years of imprisonment must be calculated as at the day of sentence.

Part 9B Repeat serious child sex offences

161D Meaning of serious child sex offence

A ***serious child sex offence*** is an offence against a provision mentioned in schedule 1A, or an offence that involved counselling or procuring the commission of an offence mentioned in schedule 1A, committed—

(a) in relation to a child under 16 years; and

(b) in circumstances in which an offender convicted of the offence would be liable to imprisonment for life.

161E Mandatory sentence for repeat serious child sex offence

(1) An offender is convicted of a repeat serious child sex offence if—

(a) the offender is convicted of a serious child sex offence (the ***repeat offence***) committed by the offender when the offender was an adult; and

(b) before the offender committed the repeat offence, the offender was convicted of another serious child sex offence committed by the offender when the offender was an adult.

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(2) An offender who is convicted of a repeat serious child sex offence is liable to, despite any other penalty imposed by the Criminal Code, imprisonment for life, which can not be mitigated or varied under any law, or is liable to an indefinite sentence under part 10.

(3) For the indefinite sentence under part 10 mentioned in subsection (2), the sentence of imprisonment for life, which can not be mitigated or varied under any law, is—

(a) the nominal sentence under section 163(2); and

(b) the finite sentence under section 173(1)(b).

Part 9C Serious drug offences

Division 1 Interpretation

161F Meaning of *category A offence*, *category B offence* and *category C offence*

(1) An offence is a ***category A offence*** if the offence is against a provision listed in schedule 1B, part 1, column 1.

(2) An offence is a ***category B offence*** if the offence is—

(a) against a provision listed in schedule 1B, part 2, column 1; and

(b) either—

(i) no relevant circumstance is listed in column 3; or

(ii) the relevant circumstance listed for the provision in column 3 applies in relation to the offence.

(3) An offence is a ***category C offence*** if—

(a) the offence is against a provision listed in schedule 1B, part 3, column 1; and

(b) the relevant circumstance listed for the provision in column 3 applies in relation to the offence.

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(4) Column 2 of schedule 1B gives the headings of the provisions mentioned in column 1 of the schedule, and is for information only.

Division 2 Issue of serious drug offence certificates

161G Issue of serious drug offence certificate

(1) When a court is imposing a sentence on an offender who is convicted of a serious drug offence, the court must issue a certificate (a ***serious drug offence certificate***) for each serious drug offence of which the offender is convicted.

Notes—

1 For provisions about the use of serious drug offence certificates in relation to forfeiture of property, see the *Criminal Proceeds Confiscation Act 2002*, chapter 2A.

2 Section 161M provides for the process to be followed by the proper officer of the court on the issue of a serious drug offence certificate.

(2) Subsection (3) applies if—

(a) the court is sentencing the offender for 2 or more serious drug offences (***related offences***); and

(b) the court is satisfied on the balance of probabilities that the offences arise out of a single course of conduct.

Example for subsection (2)—

An offender is convicted of producing a dangerous drug, possessing a dangerous drug and possessing things used in connection with the production of a dangerous drug and the 3 offences arise from the production of the same dangerous drug.

(3) Despite subsection (1), the court must issue a serious drug offence certificate only for the most serious related offence of which the person is convicted.

(4) For subsection (3), the ***most serious related offence*** of which the person is convicted is—

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(a) the related offence that belongs to the highest category mentioned in schedule 1B, with category A being the highest; or

(b) if more than 1 related offence belongs to the same category mentioned in schedule 1B—the offence that was committed first.

(5) For subsection (4)(b), if an offence has been committed over a period of time, the date of commission of the offence is the date the person started committing the offence.

(6) The court must hear any submission made by the offender or an authorised officer about the issue of the serious drug offence certificate.

(7) If the court has made a finding of fact that the offender committed a category C offence with a commercial purpose—

(a) the court must record this finding on the certificate; and

(b) a sentencing judge or magistrate must sign the certificate to confirm the finding.

(8) This section applies subject to section 161I.

Note—

Section 161I applies if a court is later sentencing the offender for a serious drug offence and the court is satisfied that the offence is a related offence in relation to an offence for which a serious drug offence certificate has already been issued. The later offence is taken to be a related offence. Instead of issuing a further serious drug offence certificate for the later offence, the court must amend the serious drug offence certificate.

161H Content of serious drug offence certificate

A serious drug offence certificate must be in the approved form and must state the following—

(a) the name of the offender;

(b) the serious drug offence for which the certificate is issued;

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(c) whether the offence was a category A offence, category B offence or category C offence;

(d) the date the certificate was issued;

(e) a list of any related offences for which the court did not issue a serious drug offence certificate under section 161G(3) or section 161I(2), in the order of seriousness of the related offences.

161I Amendment of certificate by court to include related offence for which offender is sentenced later

(1) This section applies if—

(a) a court is imposing a sentence on an offender for a serious drug offence (the ***later offence***); and

(b) a serious drug offence certificate has already been issued by a court for a serious drug offence (the ***earlier offence***) of which the person is convicted; and

(c) the court is satisfied on the balance of probabilities the later offence would be a related offence in relation to the earlier offence if the offender had been sentenced for both offences at the same time.

(2) The later offence is taken to be a related offence in relation to the earlier offence and any other related offences for which a serious drug offence certificate was not issued under section 161G(3).

(3) The court must amend the serious drug offence certificate issued for the earlier offence—

(a) if the later offence is the most serious related offence—so the certificate is issued for the later offence and to list the earlier offence as a related offence for which a serious drug offence certificate is not issued under subsection (2); or

(b) otherwise—to list the later offence as a related offence for which a serious drug offence certificate is not issued under subsection (2).

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(4) The court must hear any submission made by the offender or an authorised officer about whether the later offence is a related offence and how the serious drug offence certificate should be amended.

161J Amendment of certificate by proper officer to correct minor error

(1) The proper officer of the court that issued a serious drug offence certificate may amend the certificate if the amendment is necessary to correct a minor error.

(2) The proper officer may refer the matter to the court for a decision on whether the certificate should be amended and how.

Note—

Section 161M provides for the process to be followed by the proper officer of the court on the amendment of a serious drug offence certificate.

161K Amendment by proper officer, or cancellation, of certificate on quashing of conviction or appeal

(1) This section applies if—

(a) a conviction of the serious drug offence for which a serious drug offence certificate is issued is quashed; or

(b) a category B offence or a category C offence for which a serious drug offence certificate is issued is, following an appeal, no longer either a category B offence or a category C offence.

Example for paragraph (b)—

Because of a finding made by an appeal court, a relevant circumstance mentioned in schedule 1B, column 3 no longer applies to a category B offence or category C offence.

(2) Subject to subsection (4), the serious drug offence certificate is taken to be cancelled and can not be used in a proceeding under the *Criminal Proceeds Confiscation Act 2002*.

(3) Subsection (4) applies if—

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(a) related offences for which a serious drug offence certificate was not issued under section 161G(3) or section 161I(2) are listed on the serious drug offence certificate; and

(b) the offender's conviction of 1 or more of the related offences has not been quashed.

(4) The proper officer of the court that issued the serious drug offence certificate must, on an application by an authorised officer, amend the certificate so it is issued for the next most serious related offence for which the conviction of the offender has not been quashed.

Note—

Section 161M provides for the process to be followed by the proper officer of the court on the amendment of a serious drug offence certificate.

(5) The proper officer may refer the matter to the court for a decision on how the certificate should be amended.

161L Effect of amendment of certificate on date of issue

(1) This section applies if a certificate is amended under section 161I or section 161K.

(2) The certificate is taken to have been issued on the date the certificate is most recently amended.

161M Process for issuing or amending certificate

(1) This section applies if a court, or the proper officer of a court, issues a serious drug offence certificate under section 161G or amends a serious drug offence certificate under section 161I, 161J or 161K.

(2) The proper officer must as soon as reasonably practicable—

(a) place a copy of the issued or amended certificate on the court file; and

(b) give a copy of the issued or amended certificate to the offender; and

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(c) give 2 copies of the issued or amended certificate to the director of public prosecutions.

(3) The director of public prosecutions must give 1 copy of the issued or amended certificate to the Crime and Corruption Commission.

(4) A copy of a certificate required to be given under subsection (2) or (3) may be given electronically.

Part 9D Serious and organised crime

Division 1 Preliminary

161N Definitions for part

In this part—

benefit includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

commissioner means the commissioner of the police service.

control order means an order made under division 3, subdivision 1.

corresponding control order means an order prescribed to be a corresponding control order under section 161ZW.

criminal organisation see section 161O.

honorary member, of an organisation, includes a person who is a member of the organisation, but has not paid a fee to be a member of the organisation.

office holder, of an organisation, means—

(a) a person who is a president, vice-president, treasurer, secretary, director or another office holder or a shareholder of the organisation; or

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(b) a person who (whether by words or conduct, or in any other way) asserts, declares or advertises that the person holds a position of authority of any kind within the organisation; or

(c) a person who is in control of all or a substantial part of the activities of the organisation; or

(d) if the organisation appoints a person to be in charge of an activity of the organisation or keep order at a meeting or gathering of the organisation—the person appointed.

Examples—

- a person appointed to administer a child exploitation material website
- a person appointed to supervise the call centre of a cold-call investment fraud operation
- a person appointed as the sergeant-at-arms of a motorcycle club

participant, in a criminal organisation, see section 161P.

prescribed offence means an offence against a provision mentioned in schedule 1C.

prospective member, of an organisation, means a person who has started, but not completed, the process of becoming a member of the organisation.

registered corresponding control order means a corresponding control order that is registered under division 3, subdivision 5.

senior police officer means a police officer of or above the rank of sergeant.

serious criminal activity means conduct constituting an indictable offence for which the maximum penalty is at least 7 years imprisonment.

serious organised crime circumstance of aggravation see section 161Q.

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161O Meaning of *criminal organisation*

(1) A ***criminal organisation*** is a group of 3 or more persons, whether arranged formally or informally—

(a) who engage in, or have as their purpose (or 1 of their purposes) engaging in, serious criminal activity; and

(b) who, by their association, represent an unacceptable risk to the safety, welfare or order of the community.

(2) For subsection (1), it does not matter whether—

(a) the group of persons—

(i) has a name; or

(ii) is capable of being recognised by the public as a group; or

(iii) has an ongoing existence as a group beyond the serious criminal activity in which the group engages or has as a purpose; or

(iv) has a legal personality; or

(b) the persons comprising the group—

(i) have different roles in relation to the serious criminal activity; or

Example—

Of the persons comprising a methylamphetamine syndicate, different persons are responsible for supplying the cold and flu tablets, extracting the pseudoephedrine from the tablets, supplying other necessary ingredients, and cooking the ingredients to produce methylamphetamine.

(ii) have different interests in, or obtain different benefits from, the serious criminal activity; or

Example—

Of the 3 persons comprising a group that engages in serious criminal activity, 1 person obtains the profit from the activity and pays the other 2 persons an amount for engaging in the activity.

(iii) change from time to time.

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Example—

a networked online child exploitation forum

(3) In this section—

engage, in serious criminal activity, includes each of the following—

(a) organise, plan, facilitate, support, or otherwise conspire to engage in, serious criminal activity;

(b) obtain a material benefit, directly or indirectly, from serious criminal activity.

161P Meaning of *participant*

(1) A person is a ***participant***, in a criminal organisation, if—

(a) the person has been accepted as a member of the organisation and has not ceased to be a member of the organisation; or

(b) the person is an honorary member of the organisation; or

(c) the person is a prospective member of the organisation; or

(d) the person is an office holder of the organisation; or

(e) the person identifies himself or herself in any way as belonging to the organisation; or

Examples—

- using a theme-based naming convention or icon to establish a screen name or profile for an online child exploitation forum
- wearing or displaying the patches or insignia, or a version of the patches or insignia, of a criminal organisation

(f) the person's conduct in relation to the organisation would reasonably lead someone else to consider the person to be a participant in the organisation.

Example of conduct for paragraph (f)—

doing any of the following for a criminal organisation involved in the production and sale of cannabis—

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- tending the cannabis plants
- packaging the cannabis for sale
- selling the cannabis
- laundering the profits from the sale of the cannabis
- managing the day-to-day business of the organisation

(2) For subsection (1)(a), a person may be accepted as a member of a criminal organisation—

(a) informally; or

(b) through a process set by the organisation, including, for example, by paying a fee or levy.

161Q Meaning of *serious organised crime circumstance of aggravation*

(1) It is a circumstance of aggravation (a ***serious organised crime circumstance of aggravation***) for a prescribed offence of which an offender is convicted that, at the time the offence was committed, or at any time during the course of the commission of the offence, the offender—

(a) was a participant in a criminal organisation; and

(b) knew, or ought reasonably to have known, the offence was being committed—

(i) at the direction of a criminal organisation or a participant in a criminal organisation; or

(ii) in association with 1 or more persons who were, at the time the offence was committed, or at any time during the course of the commission of the offence, participants in a criminal organisation; or

(iii) for the benefit of a criminal organisation.

(2) For subsection (1)(b), an offence is committed for the benefit of a criminal organisation if the organisation obtains a benefit, directly or indirectly, from the commission of the offence.

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(3) To remove any doubt, it is declared that a criminal organisation mentioned in subsection (1)(b) need not be the criminal organisation in which the offender was a participant.

Division 2 Term of imprisonment for particular offenders

161R Court must impose term of imprisonment

(1) This section applies to the sentencing of an offender convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation.

(2) The court must impose on the offender a term of imprisonment consisting of the following components—

(a) a sentence of imprisonment for the prescribed offence imposed under the law apart from this part and without regard to the following (the ***base component***)—

(i) the sentence that must be imposed on the offender under paragraph (b);

(ii) the control order that must be made for the offender under section 161V;

(b) (other than if a sentence of life imprisonment is imposed as the base component or the offender is already serving a term of life imprisonment) a sentence of imprisonment (the ***mandatory component***) for the lesser of the following periods—

(i) 7 years;

(ii) the period of imprisonment provided for under the maximum penalty for the prescribed offence.

Note—

See the *Corrective Services Act 2006*, sections 181(2A) and (2B) and 181A(3) and (4) in relation to the parole eligibility date of an offender whose sentence under this subsection does not include a mandatory component.

(3) The mandatory component—

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(a) must be ordered to be served cumulatively with the base component; and

(b) despite any other provision of this Act under which another sentence may be ordered, must be ordered to be served wholly in a corrective services facility; and

(c) must not be mitigated or reduced under this Act or another Act or any law.

(4) Also, if the offender is serving, or has been sentenced to serve, imprisonment for another offence, the mandatory component must be ordered to be served cumulatively with the imprisonment for the other offence.

(5) Despite subsection (3)(a), if the base component does not require the offender to immediately serve a sentence of imprisonment in a corrective services facility—

(a) the offender is to immediately begin to serve the mandatory component; and

(b) the base component is to have effect, so far as practicable, at the end of the mandatory component.

(6) If the court is sentencing the offender for more than 1 prescribed offence committed with a serious organised crime circumstance of aggravation, the court must impose the mandatory component for only 1 of the offences.

(7) When deciding which prescribed offence to use for imposing the mandatory component, the court must choose the offence that will result in the offender serving the longest period of imprisonment available under this Act or another Act for the offences.

161S Cooperation with law enforcement agencies

(1) Subject to subsections (2) and (3), sections 13A and 13B apply for the sentencing of an offender who is convicted of a prescribed offence committed with a serious organised crime circumstance of aggravation.

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(2) For section 13A, an offender mentioned in subsection (1) is taken to have undertaken to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding, only if—

(a) the offender has undertaken to cooperate with law enforcement agencies in a proceeding about a major criminal offence; and

(b) the court is satisfied the cooperation will be of significant use in a proceeding about a major criminal offence.

(3) For section 13B, an offender mentioned in subsection (1) is taken to have significantly cooperated with a law enforcement agency in its investigations about an offence or a confiscation proceeding only if—

(a) the offender has significantly cooperated with a law enforcement agency in its investigations about a major criminal offence; and

(b) the court is satisfied the cooperation has been, is or will be of significant use to the law enforcement agency or another law enforcement agency in its investigations about a major criminal offence.

(4) This section applies despite section 161R(3) or (4).

(5) In this section—

major criminal offence means an indictable offence for which the maximum penalty is at least 5 years imprisonment.

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Division 3 Control orders

Subdivision 1 Making of orders

161T Court may make control order whether or not conviction recorded or other order made

A court may make a control order under this subdivision for an offender whether or not it records a conviction or makes another order for the offender under this Act or another Act.

161U Conditions

(1) A control order for an offender may impose—

(a) the conditions the court considers appropriate to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity; and

(b) the conditions the court considers necessary to enforce the order.

Example—

a condition requiring the offender to advise a law enforcement officer if the offender changes address

(2) Without limiting subsection (1)(a), a condition may—

(a) prohibit the offender from—

(i) associating with a stated person or a person of a stated class, including a person with whom the offender has a personal relationship; or

(ii) entering or being in the vicinity of a stated place or a place of a stated class; or

(iii) acquiring or possessing a stated thing or a thing of a stated class; or

(b) restrict the means by which the offender communicates with other persons; or

(c) require the offender—

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(i) to give a police officer or another stated person stated information by a stated time or at stated intervals; or

Example of stated information—

the offender's computer passwords

(ii) to attend before a police officer or another stated person by a stated time or at stated intervals.

Example—

attending before the officer in charge of a stated police station at weekly intervals

(3) The control order must require the offender, within 24 hours after the order takes effect, to deliver to the commissioner's custody at a stated police station anything the offender is prohibited from possessing under the order unless the offender has lawfully disposed of possession of the thing before the end of that period.

(4) Also, if the control order requires the person to give stated information, the order must require the information to be given in writing.

(5) Before imposing a condition mentioned in subsection (2)(a)(i) prohibiting the offender from associating with another person with whom the offender has a personal relationship, the court must consider the effect of the condition on the relationship and whether the prohibition should relate only to a particular class of activity or relate to activities generally.

(6) If the control order is made for the offender under section 161X, the order may not impose a condition other than a condition mentioned in subsection (1)(b) or (2)(a)(i) or (ii) or (b).

(7) The control order may not require the offender to—

(a) give information if giving the information—

(i) would disclose information that is the subject of legal professional privilege; or

(ii) would be a contravention of another Act; or

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(b) if the offender is an individual—give information relating to an offence with which the offender is charged.

Note—

See section 161ZH for restrictions on the admissibility in a proceeding of information given under a control order.

(8) Subsections (6) and (7) apply despite subsection (1).

(9) In this section—

information includes a document.

161V When court must make order

(1) A court sentencing an offender for a prescribed offence committed with a serious organised crime circumstance of aggravation must make a control order for the offender.

(2) However, if section 13A or 13B applies for the sentencing of the offender, the court may, but need not, make a control order for the offender.

Note—

See section 161S in relation to the application of sections 13A and 13B to the sentencing of an offender mentioned in subsection (1).

161W When court may make order—offender who was participant in criminal organisation

(1) A court sentencing an offender for an indictable offence may make a control order for the offender if—

(a) section 161R does not apply to the sentencing of the offender; and

(b) the court is satisfied the offender was, at the time the offence was committed, or at any time during the course of the commission of the offence, a participant in a criminal organisation; and

(c) the court considers that making the order is reasonably necessary to protect the public by preventing, restricting

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or disrupting the offender's involvement in serious criminal activity.

Notes—

1 See section 15 in relation to the information and sentencing submissions the court may receive for sentencing the offender.

2 See also the *Evidence Act 1977*, section 132C.

(2) For subsection (1)(b), the offender's participation in a criminal organisation need not be related to the indictable offence for which the offender is being sentenced.

(3) A control order may be made under subsection (1) on the court's own initiative or on an application by the prosecutor.

(4) If the prosecutor intends to make an application under subsection (3), the prosecutor must inform the court as soon as practicable after the offender has been convicted of the indictable offence.

(5) This section applies whether the offender is convicted of the indictable offence summarily or on indictment.

161X When court may make order—offender convicted of habitual consorting

(1) A court sentencing an offender for an offence against the Criminal Code, section 77B may make a control order for the offender if—

(a) section 161R does not apply to the sentencing of the offender; and

(b) the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.

(2) A control order may be made under subsection (1) on the court's own initiative or on an application by the prosecutor.

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161Y When court may make order—offender convicted of contravening order

(1) A court sentencing an offender for an offence against section 161ZI may make a control order for the offender if the court considers that making the order is reasonably necessary to protect the public by preventing, restricting or disrupting the offender's involvement in serious criminal activity.

(2) A control order may be made under subsection (1) on the court's own initiative or on application by the prosecutor.

161Z Control order to be explained

(1) Before making a control order for an offender, the court must explain, or cause to be explained, to the offender—

(a) the purpose and effect of the order; and

(b) what may follow if the offender contravenes the order; and

(c) that the order may be amended or revoked on the application of the offender, a Crown prosecutor, a senior police officer or an authorised corrective services officer.

(2) The explanation must be made in language or in a way likely to be readily understood by the offender.

161ZA Offender subject to existing control order

(1) This section applies if—

(a) the court must, or may, make a control order for an offender under this subdivision; and

(b) the offender is subject to a control order (an ***existing control order***).

(2) In making a further control order for the offender as mentioned in subsection (1)(a), the court must have regard to the conditions imposed on the offender under the existing control order.

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161ZB Duration

(1) A control order for an offender must state the day the order takes effect.

(2) The stated day must be—

(a) if the sentence imposed on the offender when the control order is made requires the offender to immediately serve a term of imprisonment in a corrective services facility, or the offender is already in custody in a corrective services facility for another offence—the day the offender is released from custody; or

(b) otherwise—the day the control order is made.

(3) Unless it is sooner revoked under subdivision 2, a control order remains in force until the day stated in the order, which must not be more than—

(a) for an order made under section 161X—2 years after the order takes effect; or

(b) otherwise—5 years after the order takes effect.

(4) However, the period applying for a control order under subsection (3)(a) or (b) is extended by, and the order remains in force for, the following periods—

(a) any period for which the order is suspended under section 161ZC;

(b) any period by which the order is extended under section 161ZI(5)(a).

(5) For subsection (2)(a), an offender is in custody in a corrective services facility if the offender—

(a) is serving imprisonment in the facility; or

(b) is detained on remand in the facility.

161ZC Effect if offender is detained on remand or imprisoned

(1) This section applies if, while a control order is in force for an offender, the offender is detained in custody on remand or is serving a term of imprisonment.

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(2) The control order is suspended for the period the offender is detained or imprisoned.

Subdivision 2 Amendment and revocation of orders

161ZD Application for amendment or revocation

(1) The following persons may apply, in the approved form, for the amendment or revocation of a control order—

(a) a Crown prosecutor;

(b) a senior police officer;

(c) an authorised corrective services officer;

(d) the person subject to the order.

(2) The application may be made to—

(a) a court of equivalent jurisdiction to the court that made the control order; or

(b) a court of higher jurisdiction, if the person subject to the control order is before the court.

(3) An application under subsection (1) by the person subject to the control order may be made only on the ground that—

(a) the person can no longer reasonably comply with the order; and

(b) the person's inability to comply with the order is because of a material change in the person's circumstances since—

(i) if the order has previously been amended under this subdivision—the order was last amended; or

(ii) otherwise—the order was made.

(4) The application must be accompanied by—

(a) any affidavit the applicant intends to rely on at the hearing of the application; and

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(b) if the application is for the amendment of the control order—a draft of the order the applicant is seeking from the court.

(5) If the applicant is not the person subject to the control order, the applicant must give a copy of the application, and any documents required to accompany the application under subsection (4), to the person subject to the order.

(6) If the applicant is the person subject to the control order, a proper officer of the court must give a copy of the application, and any documents required to accompany the application under subsection (4), to the prosecuting authority.

(7) The applicant must give the documents under subsection (5) or (6)—

(a) as soon as practicable after the application is filed; and

(b) at least 21 days before the day on which the application is to be heard.

(8) In this section—

prosecuting authority means—

(a) if the prosecutor who appeared before the court when the control order was made was a police officer—the commissioner or a person authorised to accept the application on the commissioner's behalf; or

(b) if the prosecutor who appeared before the court when the control order was made was a Crown prosecutor—the director of public prosecutions or a person authorised to accept the application on the director's behalf.

161ZE Court may amend order or remit application

(1) A court may, on an application made to it under section 161ZD for the amendment of a control order, amend the order only if the court considers—

(a) the person subject to the order can no longer reasonably comply with the order; and

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(b) if the applicant is the person subject to the order, the person's inability to comply with the order is because of a material change in the person's circumstances since—

(i) if the order has previously been amended under this subdivision—the order was last amended; or

(ii) otherwise—the order was made; and

(c) it is reasonable in all the circumstances to amend the order.

(2) An order amending the control order takes effect when the order is made.

(3) If the application is made under section 161ZD(2) to a court of higher jurisdiction than the court that made the control order for the person, the court of higher jurisdiction may, instead of deciding the application, remit the application to the court that made the control order or a court of equivalent jurisdiction to that court.

161ZF Court may revoke order

(1) A court may, on an application made to it under section 161ZD for the revocation of a control order, revoke the order only if the court considers—

(a) the person subject to the order can no longer reasonably comply with the order; and

(b) the person's inability to comply with the order is because of a material change in the person's circumstances since—

(i) if the order has been amended—the order was last amended; or

(ii) otherwise—the order was made; and

(c) it is reasonable in all the circumstances to revoke the order.

(2) The order revoking the control order takes effect when the order is made.

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161ZG Order amending or revoking control order to be given to interested persons

(1) This section applies if a court makes an order under section 161ZE or 161ZF (a ***relevant order***) amending or revoking a control order.

(2) A proper officer of the court must immediately—

(a) reduce the relevant order to writing; and

(b) give a copy of the relevant order to—

(i) the person the subject of the control order that was amended or revoked by the relevant order; and

(ii) if the prosecutor who appeared before the court when the relevant order was made was a Crown prosecutor—the director of public prosecutions or a person authorised to accept the order on the director's behalf; and

(iii) the commissioner or a person authorised to accept the order on the commissioner's behalf; and

(iv) the chief executive (corrective services).

(3) Failure to comply with subsection (2) does not invalidate the order.

Subdivision 3 Restrictions on use of particular information

161ZH Restrictions

(1) This section applies to information given by a person in compliance with a condition of a control order, or registered corresponding control order, that requires the person to give stated information.

(2) The information is not admissible as evidence against the person in a proceeding other than—

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(a) a proceeding against the person for an offence against section 161ZI; or

(b) a proceeding in which the person has adduced the information.

(3) In this section—

information includes a document.

Subdivision 4 Enforcement

161ZI Contravention of order

(1) A person must not contravene a control order, or a registered corresponding control order, made for the person.

Maximum penalty—

(a) for a first offence in relation to the order—3 years imprisonment; or

(b) for a later offence in relation to the order—5 years imprisonment.

Note—

Under section 161Y, the court may also make a control order for a person convicted of an offence against this section.

(2) An offence against subsection (1) is—

(a) a misdemeanour, if the offence is a first offence in relation to the control order or registered corresponding control order; or

(b) a crime, if the offence is a later offence in relation to the control order or registered corresponding control order.

(3) An offence is a later offence to an earlier offence if the person commits the offence after the person is convicted of the earlier offence.

(4) For a control order, subsection (1) applies whether the contravention of the order happens in or outside Queensland.

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(5) Without limiting subsection (1), if a person contravenes a control order made for the person (an ***existing control order***), the court may, instead of making a further control order for the person under section 161Y, amend the existing control order for the person by—

(a) extending the order by not more than—

(i) if the order was made under section 161X—2 years; or

(ii) otherwise—5 years; or

(b) imposing any further conditions the court could impose if a further control order were made for the person.

(6) In a proceeding against a person for an offence against subsection (1), it is a defence for the person to prove that the person had a reasonable excuse for contravening the control order or the registered corresponding control order.

(7) It is not a reasonable excuse for a person not to comply with a condition of a control order, or registered corresponding control order, requiring the person to give stated information that complying with the condition might tend to incriminate the person or expose the person to a penalty.

Note—

See section 161ZH for the restrictions applying to the use of the stated information.

(8) In a proceeding against a person for a contravention of a non-association condition, it is irrelevant whether or not the association related to the commission or potential commission of an offence.

(9) In a proceeding against a person for a contravention of a non-association condition that has an exception about associating with a person with whom the person subject to the control order, or the registered corresponding control order, has a personal relationship, it is for the person subject to the order to prove that the person had a personal relationship with the other person at the relevant time.

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(10) A person does not commit an offence against subsection (1) in relation to a control order, or a registered corresponding control order, by possessing a thing the person is prohibited from possessing under the order unless the person is in possession of the thing after the end of—

(a) if the person is prohibited from possessing the thing under the order as originally made and the order takes effect when it is made—24 hours after the order is made; or

(b) if the person is prohibited from possessing the thing under the order as originally registered—24 hours after the order takes effect; or

(c) if the person is prohibited from possessing the thing because of an amendment of the order—24 hours after the amendment takes effect.

(11) In this section—

non-association condition means—

(a) a condition of a control order mentioned in section 161U(2)(a)(i), whether or not the condition includes an exception about associating with another person with whom the person subject to the control order has a personal relationship; or

(b) a condition of a registered corresponding control order that corresponds to a condition mentioned in paragraph (a).

161ZJ Initial power to search and seize particular things

(1) The power under this section—

(a) may only be exercised in relation to a person subject to a control order, or a registered corresponding control order, within 7 days after—

(i) for a control order that takes effect when it is made—the order is made; or

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(ii) for a registered corresponding control order—a copy of the order is given to the person under section 161ZZA; and

(b) may only be exercised once for the premises occupied by the person or, if the person occupies 2 or more premises, once for each of the premises.

(2) A police officer may with the help, and using the force, that is reasonably necessary—

(a) enter premises occupied by the person; and

(b) search for and seize anything the person is prohibited from possessing under the control order or the registered corresponding control order.

(3) Before first entering the premises, the police officer must do, or make a reasonable attempt to do, the following—

(a) locate the person;

(b) identify himself or herself to the person;

(c) tell the person—

(i) the purpose of the entry; and

(ii) that the police officer is permitted under this Act to enter the premises without the person's consent; and

(iii) about the police officer's powers under this section;

(d) give the person an opportunity to allow the police officer to enter the premises without using force.

(4) In this section—

enter includes re-enter.

premises includes—

(a) a building or structure, or part of a building or structure, of any type; and

(b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and

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(c) the land or water where a building or structure, or a group of buildings or structures, is situated; and

(d) a vehicle or caravan; and

(e) a tent or cave; and

(f) a boat; and

(g) an ocean-going vessel; and

(h) premises held under 2 or more titles or owners.

161ZK Things seized within the first 24 hours

(1) This section applies if—

(a) a person possesses a thing the person is prohibited from possessing under a control order or a registered corresponding control order; and

(b) a period of 24 hours has not passed since—

(i) for a control order that takes effect when it is made—the order was made; or

(ii) for a registered corresponding control order—a copy of the order was given to the person under section 161ZZA.

(2) A police officer may seize the thing under section 161ZJ.

(3) The seized thing must be—

(a) kept in the commissioner's custody while the order remains in force; and

(b) returned to the person when the control order stops having effect, if the person is entitled to lawful possession of the thing at that time.

161ZL Police powers for preventing contravention of control order

(1) This section applies if a police officer reasonably suspects an offence against section 161ZI has been committed, is being

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committed, or is about to be committed in relation to a control order or a registered corresponding control order.

(2) The police officer may exercise 1 or more of the following powers in relation to the person subject to the control order or registered corresponding control order—

(a) if the order prohibits the person from associating with a stated person or a person of a stated class—require the person subject to the order to leave a place where the stated person or person of the stated class is present and not to return to the place within a stated reasonable time of not more than 24 hours;

(b) if the order prohibits the person from entering or being in the vicinity of a stated place or a place of a stated class—require the person subject to the order to leave—

(i) the stated place or a place of the stated class; or

(ii) the vicinity of a place mentioned in subparagraph (i).

(3) However, subsection (2) does not apply if requiring the person to leave the place may endanger the safety of the person or another person.

(4) A requirement made under this section is taken to be a requirement made under the *Police Powers and Responsibilities Act 2000*.

Note—

Failure to comply with a requirement made under this section is an offence against the *Police Powers and Responsibilities Act 2000*, section 791.

(5) A person does not commit an offence against the *Police Powers and Responsibilities Act 2000*, section 791 if—

(a) the person was required to do something under subsection (2); and

(b) the court is not satisfied the police officer, at the time of giving the direction, had the suspicion mentioned in subsection (1).

(6) In this section—

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place see the *Police Powers and Responsibilities Act 2000*, schedule 6.

161ZM Authorised corrective services officer may give direction

(1) If a control order, or registered corresponding control order, for a person includes a condition requiring the person to comply with a reasonable direction given by an authorised corrective services officer about a stated matter, an authorised corrective services officer may give the person a reasonable direction about the stated matter.

(2) In giving a direction under subsection (1), an authorised corrective services officer is subject to the directions of—

(a) for a control order—the court that made the order; or

(b) for a registered corresponding control order—the Supreme Court.

161ZN Proceeding after order no longer in force

A proceeding for a contravention of a control order, or a registered corresponding control order, may be taken, and the offender may be dealt with, under this subdivision for the contravention even if the order is no longer in force.

161ZO Charge must be heard and decided summarily on prosecution election

(1) This section applies to a charge before a Magistrates Court of an offence against section 161ZI.

(2) The charge must be heard and decided summarily if the prosecution elects to have the charge heard and decided summarily.

(3) This section is subject to section 161ZQ.

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161ZP Constitution of Magistrates Court

A Magistrates Court that summarily deals with a charge under section 161ZO must be constituted by a magistrate.

161ZQ When Magistrates Court must abstain from jurisdiction

(1) A Magistrates Court must abstain from dealing summarily with a charge under section 161ZO if satisfied, at any stage, and after hearing any submissions by the prosecutor and the defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

(2) If the court abstains from jurisdiction, the proceeding for the charge must be conducted as a committal proceeding.

161ZR Charge may be heard and decided where defendant arrested or served

Without limiting the places at which a charge may be heard summarily under section 161ZO, the charge may also be heard and decided at a place appointed for holding magistrates courts within the district in which the defendant was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

161ZS Time for prosecution

If a Magistrates Court hears and decides a charge summarily under section 161ZO, the Magistrates Court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

161ZT Maximum penalty for offence dealt with summarily

(1) The maximum penalty that may be imposed on a summary conviction for an offence against section 161ZI is 3 years imprisonment.

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(2) Subsection (1) does not limit section 161Y.

(3) However, in no case may a person be punished more than if the offence had been dealt with on indictment.

161ZU Appeals against decision to decide charge summarily

(1) This section applies if a person is summarily convicted or sentenced under section 161ZO.

(2) The grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.

(3) The grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily.

(4) On an appeal against a sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

Subdivision 5 Corresponding control orders

161ZV Definitions for subdivision

In this subdivision—

court means the Supreme Court.

registrar means a registrar of the Supreme Court.

respondent see section 161ZY(1)(b).

161ZW Regulation may prescribe orders

A regulation may prescribe an order to be a corresponding control order if the order—

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(a) is made under a law of another State; and

(b) has the same or a similar effect as a control order.

161ZX Application for registration of order

(1) The commissioner may apply to the registrar for the registration of a corresponding control order.

(2) The application must be accompanied by—

(a) an affidavit that includes or is accompanied by—

(i) a copy of the corresponding control order; and

(ii) enough information to enable the registrar to find that the order is a corresponding control order that is in force; and

(b) any other affidavit the commissioner intends to rely on at the hearing of the application.

(3) Also, the application must state—

(a) whether the commissioner believes it is necessary for the corresponding control order to be adapted or modified for its effective operation in Queensland; and

(b) if so, the details of the adaptation or modification the commissioner believes is necessary.

Example—

A condition of a corresponding control order is expressed in terms of legislation of the State in which the order was made. The application may state that the commissioner believes it is necessary for the order to be modified to refer to Queensland legislation.

161ZY Registration of order

(1) This section applies if the registrar is satisfied—

(a) the corresponding control order is in force; and

(b) the corresponding control order was served, or was taken to be served, on the person for whom it was made

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(the ***respondent***) under the law of the State in which the order was made.

(2) The registrar must register the corresponding control order, whether or not the respondent is given notice of the application to the registrar.

(3) A registered corresponding control order is registered for the period during which the corresponding control order, as originally made, is in force.

(4) A regulation may—

(a) prescribe the way the registrar is to register a corresponding control order or an amended corresponding control order; and

(b) provide for the keeping of the register and access to it.

(5) Subsection (2) applies subject to section 161ZZ.

161ZZ Referral of order to court for adaptation or modification

(1) This section applies if—

(a) under section 161ZX(3)(b), the application states an adaptation or modification that the commissioner believes is necessary for the effective operation of the corresponding control order in Queensland; or

(b) the registrar believes it is necessary for the corresponding control order to be adapted or modified for its effective operation in Queensland.

(2) The registrar must refer the corresponding control order to the court for adaptation or modification.

(3) The commissioner must give the respondent—

(a) a copy of the application for registration of the corresponding control order; and

(b) a copy of any accompanying affidavit; and

(c) an appearance notice.

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(4) The application may be heard in the respondent's absence if the court is satisfied the respondent has been given the documents mentioned in subsection (3).

(5) However, the court may, at any time before deciding the application, direct the commissioner to give the respondent a further appearance notice.

(6) The court may amend the corresponding control order for the purposes of its registration by adapting or modifying it in a way the court considers necessary or desirable for its effective operation in Queensland.

(7) For amending the corresponding control order as mentioned in subsection (6), the court must consider—

(a) anything the court could consider on an application under subdivision 1 for a control order; and

(b) any changes in the respondent's circumstances since the order was made.

(8) The registrar must register the corresponding control order as amended by the court.

(9) In this section—

appearance notice means a notice in the approved form stating the following in relation to a corresponding control order—

(a) that an application for the registration of the order has been referred to the court;

(b) when and where the application is to be heard;

(c) that the respondent may appear at the hearing of the application in person or be represented by a lawyer;

(d) that, if the respondent fails to appear at the hearing of the application, the court may register the order, or the order as amended by the court, in the respondent's absence.

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161ZZA Action by the registrar and commissioner after registration of order

(1) The registrar must, within 2 business days after registering a corresponding control order, give the commissioner a certificate of the registration that attaches a copy of the registered order.

(2) The commissioner must, as soon as practicable after receiving a copy of the registered corresponding control order, give the respondent a copy of the registered order.

(3) Failure to comply with subsection (2) does not affect the validity of the registration of the corresponding control order.

(4) However, the registered corresponding control order has no effect on the respondent until the respondent is given a copy of the registered order.

(5) The registrar may not ask the commissioner for any fee, or reimbursement for any expenses incurred, under this subdivision.

161ZZB Effect of amended order if respondent not notified of amendment

(1) This section applies if—

(a) a corresponding control order has been amended under section 161ZZ; and

(b) the respondent has not been notified of the amendment.

(2) Until the respondent is notified of the amendment, the registered corresponding control order has effect and is enforceable against the respondent as if it had not been amended.

161ZZC Amendment or cancellation of registered order

(1) The court may, on application, amend or cancel a registered corresponding control order.

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(2) Subdivision 2, other than section 161ZD(2), applies to the registered corresponding control order as if—

(a) a reference in the subdivision to a control order were a reference to a registered corresponding control order; and

(b) a reference in the subdivision to the revocation of a control order were a reference to the cancellation of a registered corresponding control order; and

(c) a reference in the subdivision to when a control order was last amended under subdivision 2 were a reference to when a registered corresponding control order was last amended under this section; and

(d) a reference in the subdivision to when a control order was made were a reference to when a registered corresponding control order was registered under this subdivision; and

(e) a reference in the subdivision to the prosecuting authority were a reference to the commissioner or a person authorised to accept an application made under this section on the commissioner's behalf.

(3) If the court cancels the registration of a registered corresponding control order under this section, the order, or the order as amended under this Act, stops having effect in Queensland.

161ZZD Operation of order not affected

Sections 161ZZA(4) and 161ZZB(2) do not affect any operation that a corresponding control order would, apart from this division, have in Queensland.

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Subdivision 6 Miscellaneous

161ZZE Order not affected by appeal

The starting of an appeal against the making of a control order for a person does not affect the order.

Part 10 Indefinite sentences

162 Definitions

In this part—

indefinite sentence means a sentence of imprisonment for an indefinite term that—

(a) must be reviewed under this part; and

(b) is to continue until a court orders that the indefinite term of imprisonment is discharged.

nominal sentence has the meaning given by section 163(2).

qualifying offence means an indictable offence—

(a) against a provision of the Criminal Code mentioned in schedule 2, as in force at any time (a ***relevant Code provision***); or

(b) that involved counselling or procuring the commission of, or attempting or conspiring to commit, a relevant Code provision.

163 Indefinite sentence—imposition

(1) A court may, instead of imposing a fixed term of imprisonment, impose an indefinite sentence on an offender convicted of a qualifying offence on—

(a) its own initiative; or

(b) an application made by counsel for the prosecution.

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(2) In imposing sentence under subsection (1), the court must state in its order the term of imprisonment (the ***nominal sentence***) that it would have imposed had it not imposed an indefinite sentence.

(3) Before a sentence is imposed under subsection (1), the court must be satisfied—

(a) that the *Mental Health Act 2016*, chapter 5, part 3, does not apply; and

(b) that the offender is a serious danger to the community because of—

(i) the offender's antecedents, character, age, health or mental condition; and

(ii) the severity of the qualifying offence; and

(iii) any special circumstances.

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

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

(b) the offender's antecedents, age and character; and

(c) any medical, psychiatric, prison or other relevant report in relation to the offender; and

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

(e) the need to protect members of the community from the risk mentioned in paragraph (d).

(5) Subsection (4) does not limit the matters to which a court may have regard in determining whether to impose an indefinite sentence.

164 Counsel for prosecution to inform court

(1) If counsel for the prosecution intends to make an application under section 163(1)(b), counsel must inform the court after the offender has been convicted of the offence.

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(2) The application must be made within 15 business days after the conviction.

(3) The court must allow any necessary adjournment to allow a consent under section 165(1) to be obtained.

(4) On being informed under subsection (1), the court must remand the offender in custody and must not grant the offender bail.

165 Attorney-General's consent

(1) An application under section 163(1)(b) may be made only if the Attorney-General has consented, in writing, to the making of the request.

(2) Consent must not be given under subsection (1) before the offender is convicted of the qualifying offence.

166 Adjournment

A court may impose an indefinite sentence on the offender only if—

(a) the offender is advised at, or shortly after, the time of conviction that the court may consider imposing an indefinite sentence on—

(i) its own initiative; or

(ii) an application made by counsel for the prosecution; and

(b) the court has, after advising the offender under paragraph (a), adjourned the offender's sentencing for not less than 20 business days from the day of conviction of the qualifying offence so that evidence on sentence may be received by the court.

166A Reports about offender

(1) This section applies when the court adjourns the offender's sentencing.

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(2) The court must make an order that the chief executive (corrective services) must—

(a) prepare for the court a report about the offender; and

(b) give the court the report within a stated period.

(3) The court may also order the chief executive (corrective services) to provide or obtain any other report that the court considers appropriate to enable it to impose the proper sentence.

(4) In this section—

report includes an assessment of, or information about, the prisoner.

166B Distribution of reports

(1) On receipt of a report under section 166A the court must give a copy to—

(a) the prosecution; and

(b) the offender's lawyers.

(2) The court must ensure the prosecution and the offender's lawyers have sufficient time before the sentencing to consider and respond to the report.

(3) The court may order the report, or part of the report, not be shown to the offender.

166C Use of reports

(1) The offender's lawyers may, before the offender's sentencing is to take place, file with the court a notice of intention to dispute the whole or any part of a report given under section 166A.

(2) If a notice is filed under subsection (1), the court must not take the report or the part in dispute into consideration on the sentencing unless the offender's lawyers have been given the opportunity—

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

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

167 Evidence

(1) Subject to the admissibility of the evidence, before a court imposes an indefinite sentence it must—

(a) hear evidence called by the prosecution; and

(b) hear evidence given or called by the offender, if the offender elects to give or call evidence.

(2) Subject to subsection (3), ordinary rules of evidence apply to evidence given or called under subsection (1).

(3) In deciding whether the offender is a serious danger to the community, the court may have regard to anything relevant to the issue contained in the transcript of, or any medical or other report tendered in, any proceeding against the offender for a qualifying offence.

(4) Subsections (1) and (2) do not affect the admissibility of a report given under section 166A or any matter contained in the report.

(5) In this section—

transcript, of a proceeding, means a transcription of a record under the *Recording of Evidence Act 1962* of the proceeding.

168 Court to give reasons

(1) If a court imposes an indefinite sentence, it must give detailed reasons for imposing the sentence.

(2) The reasons must be given at the time the indefinite sentence is imposed.

169 Onus of proof

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

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170 Standard of proof

A court may make a finding that an offender is a serious danger to the community only if it is satisfied—

(a) by acceptable, cogent evidence; and

(b) to a high degree of probability;

that the evidence is of sufficient weight to justify the finding.

171 Review—periodic

(1) A court that imposes an indefinite sentence, or a court of like jurisdiction—

(a) must for the first time review the indefinite sentence within 6 months after an offender has served the period of time stated in subsection (2) or (2A); and

(b) must review the indefinite sentence at subsequent intervals of not more than 2 years from when the last review was made.

(2) For subsection (1)(a), the period of time the offender must have served is—

(a) for an offender whose nominal sentence is life imprisonment for an offence of murder—

(i) if the Criminal Code, section 305(2) applies on sentence—30 years; or

(ii) if the Criminal Code, section 305(4) applies on sentence—25 years; or

(iii) otherwise—20 years; or

(b) if the offender's nominal sentence is life imprisonment and paragraph (a) does not apply—15 years; or

(c) if the offender's nominal sentence is a term of imprisonment other than life for an offence against the Criminal Code, section 314A—the lesser of the following—

(i) 80% of the offender's nominal sentence;

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(ii) 15 years; or

(d) otherwise—50% of the offender's nominal sentence.

(2A) However, for subsection (1)(a), if the indefinite sentence is imposed on the offender as the base component of a sentence under section 161R(2), the period of time the offender must have served is worked out by adding the relevant further period to the period of time the offender would otherwise be required to have served under subsection (2).

(3) Subject to section 172, the director of public prosecutions must make any application that is required to be made to cause the reviews mentioned in subsection (1) to be carried out.

(4) A court that imposes an indefinite sentence for which the nominal sentence is, under section 161E(2), life imprisonment or a court of like jurisdiction must for the first time review the indefinite sentence within 6 months after the offender has served 20 years and not the 15 years or 50% of the nominal sentence as prescribed under a previous subsection.

(5) In this section—

relevant further period, in relation to an offender whose indefinite sentence is imposed as the base component of a sentence under section 161R(2), means the period of the mandatory component of the sentence imposed on the offender under that section.

172 Review—application by offender imprisoned

(1) An offender imprisoned on an indefinite sentence may apply to the court for the indefinite sentence to be reviewed at any time after the court makes its first review under section 171(1)(a) if a court gives leave to apply on the ground that there are exceptional circumstances that relate to the offender.

(2) The court must immediately forward a copy of the application to the director of public prosecutions.

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(3) Within 10 business days after the making of the application, the court must give directions to enable the application to be heard.

(4) Subject to any directions given by the court, the application must be heard within 20 business days from the day on which it is made.

172A Distribution of reports

(1) The court must, a reasonable time before a review under section 171 or 172 is to take place, cause a copy of a report ordered by it under section 176 to be provided to—

(a) the director of public prosecutions; and

(b) the legal practitioner representing the offender; and

(c) the offender, if the court has so directed; and

(d) any affected victim under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*, section 38, of the offence for which the indefinite sentence was imposed, if the court has so decided.

(2) If the prosecution or the defence has caused a report about the offender to be prepared for a review under section 171 or 172, it must, a reasonable time before the review is to take place—

(a) file the report with the court; and

(b) provide a copy of the report to the director of public prosecutions or the legal practitioner representing the offender, as the case requires.

172B 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 172A.

(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 into consideration on the hearing of the review unless

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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.

172C Review hearing

On the hearing of a review under section 171 or 172, a court must—

(a) give both the director of public prosecutions and the offender the opportunity to lead admissible evidence on any relevant matter; and

(b) subject to section 172B, take into consideration any report in respect of the offender that is filed with the court; and

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

(d) have regard to the rights stated in the victims charter under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

172D Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003

A court hearing a review under section 171 or 172 must not have regard to whether or not the offender—

(a) may become, or is, the subject of a dangerous prisoners application; or

(b) may become subject to an order because of a dangerous prisoners application.

Note—

See also section 9(9)(b) (Sentencing guidelines).

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173 Indefinite sentence discharged

(1) Unless it is satisfied that the offender is still a serious danger to the community when a review is made under section 171 or 172, the court must—

(a) order that the indefinite sentence is discharged; and

(b) impose a sentence (a ***finite sentence***) on the offender under this Act for the qualifying offence for which the indefinite sentence was imposed.

(2) If a court does not make an order under subsection (1)(a), the indefinite sentence continues in force.

(3) A finite sentence—

(a) is taken to have started on the day the indefinite sentence was originally imposed; and

(b) takes the place of the indefinite sentence; and

(c) must be not less than the nominal sentence.

174 Parole application if finite sentence imposed

(1) An offender on whom a finite sentence has been imposed may apply under the *Corrective Services Act 2006* for release on parole under that Act.

(2) However, an application under subsection (1) can not be made less than 6 months before the relevant period of imprisonment for the offender ends.

(3) If the decision on the application is to grant the parole, the Queensland board must decide the parole period.

(4) The board can not on the application decide a parole period that ends before the relevant period of imprisonment ends.

(5) The board may decide a parole period that ends after the relevant period of imprisonment ends.

(6) The parole period decided by the board must be 5 years, subject to subsections (7) and (8).

(7) The parole period may be more than 5 years if—

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(a) the rest of the offender's period of imprisonment immediately before deciding the parole period is more than 5 years (the ***remaining period***); and

(b) the parole period is the remaining period.

(8) The parole period may be less than 5 years only if the board considers that period is appropriate having regard to any relevant board guidelines.

(9) In this section—

relevant period of imprisonment, for the offender, means a period of imprisonment for the offender consisting of or including a finite term of imprisonment, whether or not the finite term has ended.

174A When parole order must be made

(1) This section applies if an offender on whom a finite sentence has been imposed is not currently on parole 6 months before the relevant period of imprisonment for the offender ends (the ***6-month period***).

(2) To remove any doubt, it is declared that this section applies even if the offender made an application under section 174 (an ***offender application***) that has not been not decided.

(3) The Queensland board must, within the 6-month period, make a parole order under the *Corrective Services Act 2006*, section 194.

(4) If the offender has made an offender application, subsection (3) applies even if the decision on the application was not or would not have been to grant the parole.

(5) If the offender has not made an offender application, subsection (3) applies as if the offender had lawfully made an offender application.

Note—

The word 'lawfully' is necessary because ordinarily an offender application within the 6-month period would be prevented under section 174(2).

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(6) The parole order may order the offender's release at any time during or at the end of the 6-month period for a parole period ending after the relevant period of imprisonment ends.

(7) The board must decide the parole period which is to start from the release.

(8) The parole period decided by the board must be 5 years, subject to subsection (9).

(9) The parole period may be less than 5 years only if the board considers that period is appropriate having regard to any relevant board guidelines.

(10) In this section—

relevant period of imprisonment, for the offender, see section 174(9).

174B Provisions for parole orders under part

(1) This section applies if a parole order is made under section 174 or 174A.

(2) The *Corrective Services Act 2006*, chapter 5, part 1, divisions 5 and 6 apply to the parole order.

(3) The *Dangerous Prisoners (Sexual Offenders) Act 2003* continues to apply to a prisoner, within the meaning of section 5(6) of that Act, who is or has been subject to the application of section 174 or 174A.

Note—

See also the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 51 (Parole).

(4) During the parole period decided under section 174 or 174A, the offender must be under the authority of the Queensland board and the supervision of an authorised corrective services officer.

(5) Subsections (6) and (7) apply if (other than for this section) there would exist a period (the ***gap period***) between the end of the relevant period of imprisonment for the offender and the last day of the parole period.

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(6) The finite term included in the relevant period of imprisonment is taken to be extended by the gap period.

(7) Any term of imprisonment ordered to be served cumulatively with the finite term is taken to be ordered to be served cumulatively with the finite term as extended.

(8) In this section—

relevant period of imprisonment, for the offender, see section 174(9).

174C Parole provisions on cancellation of parole order

(1) This section applies if a parole order under section 174 or 174A is made for an offender and the order is cancelled.

(2) No further parole order may be made under either section against the offender.

(3) Any extension of the finite term under section 174B(6) continues to apply and is not affected by the cancellation.

(4) To remove any doubt, it is declared that this section does not limit the offender's ability under the *Corrective Services Act 2006* to apply for, or to be granted, further parole.

(5) The Queensland board must hear and decide any application for the further parole.

176 Registrar of court to give report

(1) For a review under section 171 or 172, the court may direct the registrar of the court to give to the court—

(a) reports provided by the chief executive (corrective services) or the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered or such other similar persons or bodies as the court considers appropriate; and

(b) such other reports as the court considers appropriate.

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(2) A person who is requested by the registrar to give to the registrar reports mentioned in subsection (1) must comply with the request.

(3) Reports mentioned in subsection (1)(a) are to be relevant to the period from the time the indefinite sentence was imposed on the offender or the last review was made by the court.

(4) The *Hospital and Health Boards Act 2011*, section 142(1), does not apply to a designated person under part 7 of that Act who gives a report or information to a court or the registrar of the court for this part.

(5) Reports mentioned in subsection (1) are in addition to any other evidence that may be placed before the court.

177 Appeals—general

For the purposes of the Criminal Code, chapter 67—

(a) an indefinite sentence imposed under section 163; and

(b) if a court, on making a review under section 171 or 172—

(i) refuses to act under section 173—the refusal; or

(ii) acts under section 173—the sentence imposed;

is taken to be a sentence imposed on conviction.

178 Appeals—Attorney-General

The Attorney-General may appeal to the Court of Appeal against—

(a) the making of an order under section 173(1)(a); and

(b) a sentence imposed under section 173(1)(b).

179 Hearings—offender to be present

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

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(a) evidence under section 167; and

(b) an application made under section 171 or 172.

(2) A court may order that, at the time evidence under section 167 is to be heard, the chief executive (corrective services) bring the offender before the court.

(3) On the hearing of an application made under section 171 or 172, the court may order the chief executive (corrective services) to bring the offender before the court.

(4) If the offender acts in a way that makes the hearing of the evidence or application in the offender's presence impracticable, the court may order that—

(a) the offender be removed; and

(b) the hearing of the application continue in the offender's absence.

(5) If the court is satisfied that the offender is unable to be present during the hearing of the evidence or application because of the offender's illness or another reason, the court may allow the offender to be absent during the whole or a part of the hearing if it is satisfied that—

(a) the offender's interests will not be prejudiced by the hearing continuing in the offender's absence; and

(b) the interests of justice require that the hearing should continue in the offender's absence.

Part 10A Offender levy

179A Purpose of pt 10A

The purpose of this part is to provide for a levy imposed on an offender on sentence to help pay generally for the cost of law enforcement and administration.

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179B Definition for part

In this part—

proper officer of the court, for an offender levy, means the proper officer of the court that imposed the sentence for which the offender is liable to pay the levy.

179C Imposition of offender levy

(1) On being sentenced for an offence, an offender becomes liable to pay the State a levy (the ***offender levy***).

(2) Subsection (1) applies whether or not a conviction is recorded.

(3) If in the same sentencing proceeding the court sentences the offender for more than 1 offence, only one levy is payable for all the offences.

Examples—

1 An offender is sentenced in the same proceeding for more than 1 offence charged in a single indictment, complaint or other form of charge.

2 An offender is sentenced in the same proceeding on more than 1 indictment, complaint or other form of charge.

(4) The imposition of the levy is not a sentence (including punishment) and is in addition to any sentence imposed by the court for the offence.

(5) The levy is the amount prescribed under a regulation.

Note—

This Act does not prescribe a limit to the amount that may be prescribed under a regulation.

(6) This section does not apply to an offence under the *Bail Act 1980*, section 29 or 33.

(7) This section is subject to section 179D.

179D Subsequent sentences

(1) This section applies if—

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(a) the sentencing court sentences the offender for an offence (the ***original sentence***); and

(b) subsequently, a court, whether or not differently constituted, resentences the offender.

(2) The liability of the offender to pay the levy for the original sentence is unaffected but the offender is not liable to pay an offender levy for the resentence.

(3) In this section—

resentence includes, on appeal or otherwise, in relation to the sentencing of the offender, any of the following—

(a) substitute another sentence;

(b) further deal with the offender including make a further order;

(c) confirm, vary or amend the sentence or order made on the original sentence.

Examples of resentences under this Act—

Orders made under section 20(1)(a), 20(2), 27(1)(c), 27(2), 33A(1), 33A(3), 33B(1)(a), 33B(2), 33C(7), 38(1), 39A, 43D(8), 43F(4), 43L(7), 43O(4), 60(1), 68(1), 74(7), 80(1), 120(1), 121(1), 125(4)(a), 126(4), 127(1), 147(1), 159A(5)(b), 173(1), 173(2), 182(5)(a), 182(7)(b), 185(1), 188(3), 188(4) or 195(5).

179E Payment of offender levy

(1) The offender must pay the offender levy under subsection (2) or (3).

(2) If the particulars of the levy have been registered with SPER under section 179F, the offender must pay the levy under the SPE Act.

(3) However, if the particulars of the levy have not been registered with SPER under section 179F, the offender must pay the levy to the proper officer of the court.

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179F Enforcement of offender levy by registration

(1) When an offender becomes liable to pay the offender levy under section 179C, the proper officer of the court must give the same particulars in relation to the levy to the SPER registrar for registration that it would give if—

(a) the court made an order fining the offender the amount of the levy for the offence; and

(b) the proper officer were the registrar of the court; and

Note—

The SPE Act uses the term 'registrar of the court'.

(c) the particulars were the prescribed particulars of the unpaid amount of the fine.

(2) The SPER registrar must register the particulars.

(3) For the purposes of registration, and on registration, the SPE Act, other than the excluded provisions, applies, with all necessary and convenient changes, to the levy and to the offender in the same way as it applies—

(a) to the unpaid amount of a fine, for an offence, imposed by a court on a person the particulars of which are registered; and

(b) to that person.

(4) The requirement under subsection (1)(c) to give prescribed particulars is subject to a regulation made under the SPE Act for offender levies.

(5) The proper officer may give amended particulars to SPER for registration if amendment of the particulars is necessary because of error.

(6) This section does not apply if all of the amount of the levy is paid under section 179E(3) before the particulars have been given under subsection (1).

(7) In this section—

excluded provisions means the following provisions of the SPE Act—

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(a) provisions of that Act relating to infringement notices;

(b) section 52 to the extent it applies to an arrest and imprisonment warrant, and the other provisions of that Act relating to arrest and imprisonment warrants;

(c) section 54;

(d) part 6;

(e) part 8.

prescribed particulars see the SPE Act, schedule 2.

registration means registration under the SPE Act, section 34.

SPER registrar means the registrar under the SPE Act.

179G Amounts to be satisfied before satisfying offender levy

An amount paid under section 179E(3) must first be applied by the proper officer towards satisfying an unpaid amount, known to the proper officer, ordered by a court for the following—

(a) compensation;

(b) restitution;

(c) damages;

(d) a fixed portion of a penalty.

Note—

See also the *Justices Act 1886*, section 175A.

179H Effect of appeal against relevant convictions

(1) This section applies if—

(a) the offender has paid all or part of the offender levy under section 179E(3); and

(b) on appeal all convictions that resulted in the imposition of the offender levy are quashed.

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(2) The proper officer must refund to the offender any amount paid to the proper officer for the offender levy.

Part 10B Victim impact statements

179I Definitions for part

In this part—

harm means physical, mental or emotional harm.

victim means an affected victim under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*, section 38, including a victim mentioned in section 38(3) or (4) of that Act.

victim impact statement means a written statement that—

(a) is signed and dated; and

(b) states the particulars of the harm caused to a victim by an offence; and

(c) may have attached to it—

(i) documents supporting the particulars, including, for example, medical reports; or

(ii) photographs, drawings or other images.

179J Application of part

This part applies for sentencing an offender for an offence that is a relevant offence under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*, section 39.

Note—

Under the *Youth Justice Act 1992*, section 256A, this part also applies in relation to an offender who is a child.

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179K Giving details of impact of crime on victim during sentencing

(1) A victim of the offence is to be permitted to give the prosecutor for the offence details of the harm caused to the victim by the offence, for the purpose of the prosecutor informing the sentencing court.

Notes—

1 If the offender's mental condition relating to the offence is referred to the Mental Health Court under the *Mental Health Act 2016*, see section 162 of that Act for the information a victim of the offence may give that court to help it make a decision on the reference.

2 See also the victim's rights set out in the victims charter under the *Victims' Commissioner and Sexual Violence Review Board Act 2024*.

(2) The prosecutor may continue with the sentencing proceeding without having permitted the victim to give details of the harm if it is reasonable to do so in the circumstances, having regard to the following matters—

(a) the interests of justice;

(b) whether permitting the details of the harm to be given would unreasonably delay the sentencing of the offender;

(c) anything else that may adversely affect the reasonableness or practicality of permitting details of the harm to be given.

(3) If details of the harm are given to the prosecutor, the prosecutor must—

(a) decide what, if any, details are appropriate to be given to the sentencing court; and

(b) give the appropriate details to the sentencing court, whether or not in the form of a victim impact statement under section 179L.

Note—

In sentencing the offender, the sentencing court must have regard to the harm done to, or impact of the offence on, the victim under—

(a) section 9(2)(c)(i); or

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(b) if the offender is a child—the *Youth Justice Act 1992*, section 150(2).

(4) In deciding what details are appropriate, the prosecutor may have regard to the victim's wishes.

(5) The fact that a victim impact statement is absent at the sentencing, or that details of the harm caused to a victim by the offence are otherwise absent at the sentencing, does not, of itself, give rise to any inference that the offence caused little or no harm to the victim.

(6) To remove any doubt, it is declared that it is not mandatory for a victim to give the prosecutor details of the harm caused to the victim by the offence.

(7) Subject to section 179M, the sentencing court is to decide if, and how, details of the harm are to be given to the court in accordance with the rules of evidence and the practices and procedures applying to the court.

Example of how details of harm may be given to sentencing court—

production of a victim impact statement to the sentencing court

179L Preparation of victim impact statement

(1) For section 179K(3), details of the harm caused to a victim by the offence may be given to the prosecutor in the form of a victim impact statement prepared by—

(a) the victim; or

(b) another person if the victim can not give the statement because of the victim's age or impaired capacity.

(2) If a victim impact statement is given to the prosecutor electronically, the statement is taken to have been signed by the person who gives it.

179M Reading aloud of victim impact statement during sentencing

(1) This section applies if a person has prepared a victim impact statement under section 179L.

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(2) The prosecutor for the offence may request, orally or in writing, that all or part of the victim impact statement be read aloud before the court by—

(a) if the person who prepared the statement wishes to read it—the person; or

(b) if the person who prepared the statement wishes the prosecutor to read it—the prosecutor.

(3) If a request is made under subsection (2), the court must allow the person stated in the request to read the whole of the victim impact statement, or a part of the victim impact statement identified in the request, aloud before the court unless the court considers that, having regard to all relevant circumstances, it is inappropriate to do so.

(4) To remove any doubt, it is declared that—

(a) the purpose of the reading aloud of the victim impact statement before the court is to provide a therapeutic benefit to the victim; and

(b) it is not necessary for a person, reading aloud the victim impact statement before the court under this section, to read the statement under oath or affirmation.

179N Special arrangements for reading aloud of victim impact statement during sentencing

(1) This section applies if a person who is to read aloud a victim impact statement (the ***reader***) is the person who prepared the statement.

(2) The sentencing court may, on its own initiative or on the application of the prosecutor for the offence, direct that any of the following arrangements be made that the court considers, having regard to all relevant circumstances, are appropriate—

(a) that, while the reader is reading aloud the victim impact statement before the court, the offender be obscured from the view of the reader;

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(b) that, while the reader is reading aloud the victim impact statement before the court, all persons other than those specified by the court be excluded from the courtroom;

(c) that a person approved by the court be present while the reader is reading aloud the victim impact statement to provide emotional support to the reader;

(d) if there is an audiovisual link within the court precincts—that the reader read aloud the victim impact statement outside the courtroom and the reading be transmitted to the courtroom by means of the audiovisual link.

(3) For subsection (2)(c), the person providing emotional support to the reader must be permitted to be in close proximity to the reader, and within the reader's sight, while the reader is reading aloud the victim impact statement before the court.

(4) For subsection (2)(d)—

(a) the place outside the courtroom from which the reader reads aloud the victim impact statement is taken to be part of the sentencing court; and

(b) it is not necessary that the place be within the court precincts.

(5) The court may, on its own initiative or on the application of the prosecutor, vary or revoke a direction made under subsection (2).

Part 11 General

180 Effect of alterations in sentences

(1) If a provision of this or another Act increases the sentence, or the maximum or minimum sentence, for an offence, the increase applies only to offences committed after the commencement of the provision.

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(2) If a provision of this or another Act reduces the sentence, or the maximum or minimum sentence, for an offence, the reduction—

(a) extends to offences committed before the commencement of the provision; but

(b) does not affect any sentence imposed before the commencement.

180A Meaning of certain sentence provisions

A provision of an Act that provides to the effect that the maximum penalty for an offence may be a fine or imprisonment means that the sentencing court may order the offender—

(a) to pay a fine; or

(b) to be imprisoned; or

(c) to pay a fine and also to be imprisoned.

Example—

'Maximum penalty—100 penalty units or imprisonment for 2 years' means the offender is liable to—

(a) a maximum fine of 100 penalty units; or

(b) maximum imprisonment of 2 years; or

(c) a maximum fine of 100 penalty units and also maximum imprisonment of 2 years.

181 Corporations entitled to aggrieved party payments

If under this Act or another Act a penalty or forfeiture is payable to a party aggrieved, it is payable to a corporation if the corporation is the party aggrieved.

181A Corporations to be fined if imprisonment is the only penalty

(1) If—

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(a) an Act provides that the punishment for an offence against a provision of the Act is imprisonment only; and

(b) a body corporate is convicted of having committed the offence;

the court by or before which the body corporate is convicted may impose a fine on the body corporate determined under subsection (2).

(2) The fine mentioned in subsection (1) may be—

(a) if the imprisonment is not more than 6 months—not more than 415 penalty units; or

(b) if the imprisonment is more than 6 months but not more than 1 year—not more than 835 penalty units; or

(c) if the imprisonment is more than 1 year but not more than 2 years—not more than 1,660 penalty units; or

(d) if the term of imprisonment is more than 2 years—an unlimited amount.

(3) Subsection (1) does not apply to an offence if the Act concerned provides another way of enforcing the punishment mentioned in subsection (1)(a) against a body corporate.

181B Corporation fines under penalty provision

(1) This section applies to a provision prescribing a maximum fine for an offence only if the provision does not expressly prescribe a maximum fine for a body corporate different from the maximum fine for an individual.

(2) The maximum fine is taken only to be the maximum fine for an individual.

(3) If a body corporate is found guilty of the offence, the court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.

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181C Corporation fines under provision authorising subordinate legislation

(1) This section applies to a provision of an Act prescribing the maximum fine for an offence that may be imposed under subordinate legislation under the Act only if the provision does not expressly prescribe a maximum fine for a body corporate different from the maximum fine for an individual.

(2) The maximum fine is taken only to be the maximum fine for an individual that may be imposed under the subordinate legislation.

(3) The maximum fine for a corporation that may be imposed under the subordinate legislation is taken to be 5 times the maximum fine for an individual.

182 Enforcement of order for penalty for an offender dealt with on indictment

(1) If an offender dealt with on indictment fails to pay a penalty, or an instalment of a penalty, that a court ordered the offender to pay, the prosecution may apply to the court for the offender to be further dealt with for the offence according to law.

(2) Notice may be served on the offender requiring the offender to appear before the court at the time and place mentioned in the notice for the hearing of the application mentioned in subsection (1).

(3) The court may issue a warrant directing that the offender be arrested and brought before the court or a justice to be dealt with according to law—

(a) in the first instance instead of proceeding by way of notice mentioned in subsection (2); or

(b) if the offender fails to appear as required by the notice.

(4) If an offender is brought before a justice under a warrant issued under subsection (3), the justice may commit the offender to prison or may remand the offender on bail to be brought before the court that ordered the penalty to be paid.

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(5) On the hearing of an application under subsection (1), if the court is satisfied that the offender failed to pay the penalty, or an instalment of the penalty, it may—

(a) set aside the sentence imposed for the offence and deal with the offender in a way in which the court could have dealt with the offender if the offender had just been convicted by or before it of the offence; or

(b) dismiss the application.

(6) If the court deals with the offender under subsection (5)(a) and imposes a fine, the court must inform the offender that the offender may immediately verbally apply to the court for a fine option order in relation to the fine.

(7) If an application is made under subsection (6), the court—

(a) must immediately proceed to hear the application but may adjourn the application to obtain further information; and

(b) may make a fine option order.

182A Court may make order for default payment of penalty

(1) A court that orders an offender to pay a penalty may also order that, if the offender fails to pay the penalty immediately or within the time allowed by the court in its order, the offender is to be imprisoned for a term calculated—

(a) under subsection (2)(a); or

(b) by dividing the amount of the penalty by the cut-out rate mentioned in the SPE Act, schedule 2, definition *cut-out rate*, paragraph (a), rounded down to the nearest whole number and expressed as a number of days.

(2) The term of imprisonment—

(a) must be—

(i) the term that, in the court's opinion, will satisfy the justice of the case; but

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(ii) not more than 14 days imprisonment for each penalty unit, or part of a penalty unit, that the offender was ordered to pay; and

(b) must be served cumulatively with any term of imprisonment the offender is serving, or has been sentenced to serve, unless the court orders otherwise.

(3) This section has effect—

(a) subject to the Act under which the penalty is ordered to be paid; and

(b) despite section 152, whether or not a conviction is recorded.

183 Imprisonment unless penalty paid

If—

(a) an Act under which a penalty is ordered to be paid does not provide, or a court that orders an offender to pay a penalty does not make an order, for default in payment of the penalty; and

(b) an offender ordered to pay the penalty does not pay the penalty;

the offender may be imprisoned for a period prescribed by section 185.

184 Imprisonment unless act done

Unless an Act otherwise provides, if an offender who is ordered by a court to do an act fails to do the act, the court may order the offender to be imprisoned for a term not longer than 2 years.

185 Scale of imprisonment for non-payment of penalty

(1) If—

(a) an offender is ordered to pay a penalty; and

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(b) the court may order imprisonment of the offender or execution against the property of the offender if the penalty is not paid; and

(c) either of the following subparagraphs applies—

(i) the penalty is not paid;

(ii) execution to recover the amount of the penalty is to be against property of the offender and execution does not satisfy the amount;

the court may order the offender to be imprisoned for a term calculated under subsection (2)(a).

(2) The term of imprisonment—

(a) must be—

(i) such as, in the court's opinion, will satisfy the justice of the case; but

(ii) not more than 14 days imprisonment for each penalty unit, or part of a penalty unit, that the offender was ordered to pay; and

(b) must be served cumulatively with any term of imprisonment the offender is serving, or has been sentenced to serve, unless the court otherwise orders.

(3) This section has effect—

(a) subject to the provisions of the Act under which the penalty is ordered to be paid; and

(b) despite section 152 whether or not a conviction is recorded.

185A If offender does not pay penalty under s 182A or 185

(1) If the offender does not pay the penalty mentioned in section 182A or 185 immediately or within the time allowed by the court, the proper officer of the court must either—

(a) issue a warrant for the arrest and imprisonment of the offender for the term ordered by the court; or

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(b) give to the registrar under the SPE Act, the information and particulars the registrar requires under that Act for registration under that Act of the unpaid amount of the penalty.

(2) However, if the proper officer of the court intends to act under subsection (1)(a) and the court did not order a default period of imprisonment for the offender, the proper officer must first refer the matter to the court for an order for the imprisonment of the offender under section 185.

(3) A warrant under subsection (1)(a) is to be directed to all police officers.

185B Power of proper officer to postpone warrant

(1) The proper officer of the court may postpone the issue of a warrant under section 185A if the officer considers it just to postpone the issue of the warrant.

(2) The postponement of the warrant may be subject to the reasonable conditions the proper officer considers necessary in the circumstances.

(3) Application for a postponement under subsection (1)—

(a) must be in writing; and

(b) may be made by a party to the proceedings in which the warrant is to be issued.

(4) If the offender fails to comply with a condition to which the postponement is subject, the proper officer must deal with the offender under section 185A(1)(a) or (b) as if the offender had only just failed to pay the penalty mentioned in section 182A or 185.

185C Power of proper officer to recall warrant and issue new warrant on part payment of penalty

(1) This section applies if—

(a) the proper officer of the court issues a warrant under section 185A(1); and

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(b) before the warrant is executed, the offender pays an amount in part satisfaction of the penalty.

(2) The proper officer may—

(a) recall the warrant; and

(b) issue a new warrant for the reduced penalty for the arrest and imprisonment of the offender.

(3) For subsection (2)(b) the term of imprisonment is to be reduced in the way stated in section 186(1).

(4) If the offender pays a further amount in part satisfaction of the penalty, the proper officer may recall a warrant issued under subsection (2)(b) if it has not been executed and issue further warrants in accordance with subsection (2)(b) until the penalty is fully paid.

186 Reduction of imprisonment

(1) If it appears to the proper officer of the court that the amount of the penalty has been reduced by the offender who was ordered to pay the penalty by—

(a) payment of part of the penalty; or

(b) an amount realised by execution against the property of the offender;

the term for which the offender may be imprisoned is the number of whole days worked out by dividing the balance of the penalty by the original penalty and multiplying the result by the number of days ordered to be served in default of payment of the penalty.

(2) If—

(a) an offender is imprisoned for failing to pay a penalty; and

(b) an amount is paid to the chief executive (corrective services) in satisfaction or part satisfaction of the penalty;

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imprisonment the offender is serving is reduced to the number of whole days worked out by dividing the balance of the penalty by the original penalty and multiplying the result by the number of days ordered to be served in default of payment of the penalty.

(2A) For subsections (1) and (2), a fraction of a day is to be disregarded.

(3) The chief executive (corrective services)—

(a) must—

(i) accept payment of all amounts tendered under subsection (2); and

(ii) pay every amount tendered to the proper officer of the court; and

(b) must release the offender from custody when the penalty is fully paid, unless the offender is in custody for another matter.

187 Disqualification from holding Queensland driver licence

(1) If—

(a) an offender is convicted of an offence in connection with or arising out of the operation, or the interference in any way with the operation, of a motor vehicle by the offender; and

(b) the court by or before which the offender is convicted is satisfied having regard to the nature of the offence, or to the circumstances in which it was committed, that the offender should, in the interests of justice, be disqualified from holding or obtaining a Queensland driver licence;

the court may, in addition to any sentence that it may impose, order that the offender is, from the time of the conviction, disqualified absolutely, or for such period as is ordered by the court, from holding or obtaining a Queensland driver licence.

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(2) Subsection (1) applies whether or not a conviction is recorded.

(3) The proper officer of the court must send a copy of the order to the chief executive of the department that administers the *Transport Operations (Road Use Management) Act 1995*.

188 Court may reopen sentencing proceedings

(1) If a court has in, or in connection with, a criminal proceeding, including a proceeding on appeal—

(a) imposed a sentence that is not in accordance with the law; or

(b) failed to impose a sentence that the court legally should have imposed; or

(c) imposed a sentence decided on a clear factual error of substance; or

(d) failed to fix a date for the offender to be released on parole as required under part 9, division 3;

the court, whether or not differently constituted, may reopen the proceeding.

(2) Also, if—

(a) a court has in, or in connection with, a criminal proceeding reduced a sentence because the offender has undertaken in a written declaration to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding; and

(b) the offender, without reasonable excuse, does not cooperate under the undertaking;

the court, whether or not differently constituted, may reopen the proceeding.

(3) If a court reopens a proceeding, it—

(a) must give the parties an opportunity to be heard; and

(b) may resentence the offender—

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(i) for a reopening under subsection (1)(a)—to a sentence in accordance with law; or

(ii) for a reopening under subsection (1)(b)—to a sentence the court legally should have imposed; or

(iii) for a reopening under subsection (1)(c)—to a sentence that takes into account the factual error; or

(iv) for a reopening under subsection (2)—to a sentence under subsection (4); and

(c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).

(4) On an application under subsection (2)—

(a) if the court is satisfied that the offender has completely failed to cooperate, the court must resentence the offender having regard to the sentence that would otherwise have been imposed if an undertaking under section 13A had not been given; or

(b) if the court is satisfied that the offender has partly failed to cooperate, the court may substitute for the reduced sentence the sentence it considers appropriate, not greater than the sentence that would have been imposed if the undertaking had not been given.

(5) The court may reopen the proceeding—

(a) on its own initiative at any time; or

(b) for a reopening under subsection (1)—on the application of a party to the proceeding made within—

(i) 28 days after the day the sentence was imposed; or

(ii) any further time the court may allow on application at any time; or

(c) for a reopening under subsection (1)(d)—on the application of the chief executive (corrective services); or

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(d) for a reopening under subsection (2)—on the application of the prosecution made at any time, whether or not the appeal period under the Criminal Code, section 671(2) has expired.

(6) Subject to subsection (7), this section does not affect any right of appeal.

(7) For an appeal under any Act against a sentence imposed under subsection (3) or (4), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (3) or (4).

(8) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

189 Outstanding offences may be taken into account in imposing sentence

(1) A court that sentences an offender for an offence may proceed under this section if—

(a) the prosecution consents; and

(b) it is satisfied that—

(i) there has been lodged in court a form that includes, or has attached, a list of other offences, that are not excluded offences, that it is alleged the offender has committed but of which the offender has not been convicted; and

(ii) a copy of the form has been given to the offender; and

(iii) in all the circumstances of the case it is proper to do so.

(2) The court may take all or any of the offences contained in the list mentioned in subsection (1)(b)(i) into account if the offender—

(a) is represented by counsel or a solicitor; and

(b) pleads guilty to the offences; and

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(c) asks that they be taken into account by the court in imposing sentence for the offence of which the person has been convicted.

(3) The court must not impose a sentence that is more than the maximum sentence that may be imposed for the offence of which the person has been convicted.

(4) The court must certify on the form mentioned in subsection (1)(b)(i) the offences mentioned in the list that have been taken into account in imposing sentence on the offender.

(5) Subject to subsection (6), proceedings or further proceedings for offences contained in the certification mentioned in subsection (4) can not be taken against the offender.

(6) Proceedings or further proceedings mentioned in subsection (5) may be taken if the court's decision is quashed or set aside.

(7) If the court's decision is quashed or set aside, an admission of guilt for an offence made by the offender for the purposes of this section is not admissible in evidence—

(a) in proceedings or further proceedings taken against the offender; or

(b) in proceedings or further proceedings for the offence if the offence was not taken into account under this section in imposing sentence.

(8) Subject to section 35(4), an offence taken into account under this section in imposing sentence on an offender for another offence must not, because it was taken into account, be regarded for any purpose as an offence of which the offender has been convicted.

(9) If, under this section, an offence is taken into account in imposing sentence on an offender for another offence, then, in criminal proceedings—

(a) if reference may lawfully be made to the fact that the person was convicted of the other offence—reference

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may also be made to the fact that the first offence was taken into account; and

(b) if evidence may lawfully be given of the fact that the offender was convicted of the other offence—evidence may also be given of the fact that the first offence was taken into account.

(10) The fact that an offence was taken into account may be proved in the same way as the conviction for the offence in relation to which it was taken into account may be proved.

(11) Subsection (8) has effect despite subsection (9).

(12) In this section—

excluded offence means an offence against section 123(1) if the community based order to which the offence relates is a graffiti removal order.

190 Magistrates Court may release offender

(1) If a Magistrates Court convicts an offender of an offence relating to property, it may release the offender without imposing any sentence if the offender pays to the person entitled to the property the amount that the court orders.

(2) The amount mentioned in subsection (1)—

(a) is to be for damages assessed by the court; and

(b) may include costs.

191 Effect of order under s 190

(1) If an offender mentioned in section 190(1) pays the amount ordered by the court, the person aggrieved can not take civil proceedings against the offender for damages arising out of a cause of action that gave rise to the damages mentioned in section 190(2)(a).

(2) The order made is taken to be a sentence for the purposes of—

(a) section 7 or 179C; and

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(b) an Act that gives a right of appeal from an order made by a Magistrates Court.

192 Magistrates Court to assess value of property

If a Magistrates Court imposes a penalty for an offence on the basis of—

(a) the value of property taken, killed or destroyed; or

(b) the amount of damage done to property;

the value or amount must be assessed in money by the court.

193 Payment of value or amount assessed under s 192

(1) If the value or amount mentioned in section 192 is recovered, it must be paid—

(a) to the person aggrieved; or

(b) if the person aggrieved is unknown or the property is public property—to the consolidated fund or to the relevant public authority, as the case may be.

(2) If a Magistrates Court under section 192 imposes a penalty on several offenders for a single offence—

(a) the person aggrieved must not be paid more than the value or amount assessed under section 192; and

(b) any amount that is left after paying the assessed value or amount to the person aggrieved must be paid to the consolidated fund.

194 Restoration of property

(1) If an offender is convicted on indictment on a charge of which the unlawful obtaining of property by the offender is an element, then, on the complaint of—

(a) the owner of property; or

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(b) a person who is legally entitled to possession of the property;

the court may order the property to be restored to the owner or person.

(2) The order—

(a) may be enforced as a judgment; and

(b) is binding on the offender, and any person claiming through the offender, as determining the ownership of the property;

but, as regards any other person, has the effect only of changing the possession of the property, and does not affect any right of property or right of action.

(3) In a case to which subsection (1) applies, the court may order that any personal property—

(a) that is found in the offender's possession; and

(b) that appears to the court to have been obtained, directly or indirectly, from the unlawful obtaining mentioned in subsection (1);

be delivered to the person who appears to the court to be entitled to the personal property.

(4) This section does not apply to a valuable security if it appears that—

(a) the security has been paid or discharged in good faith by a person liable to make payment of the security; or

(b) if the security is a negotiable instrument—the security has been taken or received by transfer or delivery in good faith by a person for a valuable consideration without notice and the person did not have reasonable cause to suspect that the security had been unlawfully obtained.

(5) In subsection (4)—

valuable security includes any document that—

(a) is the property of any person; and

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(b) is evidence of the ownership of any property or of the right to recover or receive any property.

195 Passport orders

(1) If an offender is convicted of an offence and the court records a conviction, it may make 1 or more of the orders mentioned in subsection (2) in addition to any other order it may make under this Act.

(2) An order made under subsection (1) may order that the offender—

(a) must remain in Australia or the State; or

(b) must not apply for, or obtain, an Australian passport; or

(c) must surrender any passport held by the offender.

(3) An offender who contravenes an order under subsection (1) commits an offence.

Maximum penalty—2 years imprisonment.

(4) An order under subsection (1) stays in force for the duration of the sentence (whether or not the sentence is one that involves, in whole or part, a term of imprisonment).

(5) The court may, by order, amend an order under subsection (1).

(6) If the court makes an order under subsection (1) or (5), the proper officer of the court must, as soon as practicable, give a copy of the order to the secretary to the department of the Commonwealth responsible for matters arising under the *Australian Passports Act 2005* (Cwlth) and the *Foreign Passports (Law Enforcement and Security) Act 2005* (Cwlth).

(7) If an order under subsection (1) states that the offender must surrender any passport held by the offender—

(a) the passport must be given to the proper officer of the court; and

(b) the proper officer must cause the passport to be kept in such custody as the proper officer considers appropriate until—

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(i) the passport must be returned under subsection (8); or

(ii) the authority that issued the passport requests its return;

whichever happens first.

(8) If the passport is still in the custody of the proper officer of the court when the order under subsection (1) finishes, the proper officer must cause it to be returned to the offender.

(9) This section does not affect any other powers of the court.

195A Failure to perform community service in a satisfactory way

(1) For the purposes of sections 66(1)(b), 103(1)(d) and 114(1)(e), an offender is taken not to perform community service in a satisfactory way if the offender—

(a) reports to perform community service under the influence of intoxicating liquor or a dangerous drug; or

(b) is under the influence of intoxicating liquor or a dangerous drug while performing community service; or

(c) unlawfully damages—

(i) anything supplied to the offender for the purpose of performing community service; or

(ii) property in relation to which the offender is required to perform community service.

(2) Subsection (1) does not limit the circumstances in which an offender does not perform community service in a satisfactory way.

(3) In this section—

dangerous drug means a dangerous drug within the meaning of the *Drugs Misuse Act 1986*.

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195B Access to court files by representative of community justice group in offender's community

(1) This section applies if an offender is an Aboriginal or Torres Strait Islander person.

(2) A representative of the community justice group in the offender's community may inspect a court file, or a document in a court file, or obtain a copy of information from a court file or document, that may be relevant to making a submission about the offender under section 9(2)(p).

(3) However, subsection (2) applies only if the court directs that the information be made available or given to the representative.

(4) The court may make the direction whether or not the representative has made an application to the court for the direction.

(5) In deciding whether to direct that information be made available or given to the representative, the court may have regard to the following—

(a) whether the representative would otherwise have access to the information;

(b) whether the offender consents to the information being made available or given to the representative.

(6) Subsection (5) does not limit the matters to which the court may have regard.

195C Confidentiality

(1) A person who is a member of a community justice group must not—

(a) record or use information the person, or another person who is a member of the community justice group, gains through performing a function under this Act, or intentionally disclose it to anyone, other than under subsection (2); or

(b) recklessly disclose the information to anyone.

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Maximum penalty—100 penalty units or 2 years imprisonment.

(2) A person who is a member of a community justice group may—

(a) record, use or disclose the information if the recording, use or disclosure—

(i) is done as part of making submissions to the court under section 9(2)(p); or

(ii) is otherwise required or permitted by law; or

(b) disclose the information to another member of the community justice group.

(3) In this section—

disclose information to someone else means—

(a) orally disclose the information to the other person; or

(b) produce to the other person, or give the other person access to, a document containing the information; or

(c) disclose the information to the other person in another way.

195D Protection from liability

(1) This section applies to a person who—

(a) is a member of the community justice group in an offender's community; and

(b) is responsible for the making of a submission about the offender to a court under section 9(2)(p).

(2) For subsection (1)(b), it does not matter that the person did not personally make the submission to the court.

(3) The person is not civilly liable for an act done, or an omission made, honestly and without negligence in relation to the making of the submission.

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195E Court may require copies of report to be given to corrective services department

(1) A court that sentences an offender for an offence may order that a copy of a medical or other report tendered during the sentencing proceeding must be given to the corrective services department.

Note—

Information contained in the report may be confidential information under the *Corrective Services Act 2006*, section 341 that must not be disclosed other than under that section.

(2) The order may include—

(a) the time within which the copy must be given to the corrective services department; and

(b) any other requirement to facilitate the giving of the copy to the corrective services department.

(3) In this section—

corrective services department means the department in which the *Corrective Services Act 2006* is administered.

196 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may prescribe matters relating to the recording of convictions for domestic violence offences, or the making of entries in criminal histories about domestic violence offences, including, for example, the way in which, and time within which, the records or entries are to be made.

197 Forms

The chief executive may approve forms for use under this Act.

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Part 12 Queensland Sentencing Advisory Council

Division 1 Establishment and functions

198 Establishment

The Queensland Sentencing Advisory Council is established.

199 Functions of council

(1) The functions of the council are—

(a) if asked by the Court of Appeal, to give the court the council's views, in writing, about the giving or reviewing of a guideline judgment; and

(b) if asked by the Attorney-General, to advise the Attorney-General on matters relating to sentencing; and

(c) to give information to the community to enhance knowledge and understanding of matters relating to sentencing; and

(d) to publish information about sentencing; and

(e) to research matters about sentencing and publish the outcomes of the research; and

(f) to obtain the community's views on sentencing and matters about sentencing.

(2) To help in performing its functions, the council may consult with, and ask for information from, the judiciary, government departments and other entities.

Example of information that may be requested—

statistical information about crime held by a government department

(3) In this section—

publish includes give information to the judiciary, government departments and other entities.

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200 Powers of council

The council has the power to do anything necessary or convenient to be done in the performance of its functions.

Division 2 Membership

201 Appointment of members

(1) The council consists of not more than 14 members appointed by the Governor in Council, by gazette notice, on the recommendation of the Attorney-General.

(2) At least 1 member of the council must be an Aboriginal person or Torres Strait Islander.

(3) At least 1 member of the council must be a person who has lived experience as a victim of crime.

(4) In recommending a person to the Governor in Council, the Attorney-General must be satisfied the person has expertise or experience relevant to the functions of the council, including, for example, in relation to the following—

(a) victims of crime;

(b) justice matters relating to Aboriginal people or Torres Strait Islanders;

(c) justice matters relating to domestic and family violence;

(d) vulnerable persons facing the criminal justice system;

Examples of vulnerable persons—

- persons who have a mental illness
- persons who have an intellectual or other disability
- persons who have a substance abuse problem
- homeless persons

(e) law enforcement;

(f) crime prevention;

(g) criminal prosecutions;

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(h) criminal defence representation;

(i) civil liberties;

(j) corrective services, including offender rehabilitation;

(k) juvenile justice matters;

(l) criminal justice policy;

(m) criminal law, including sentencing;

(n) criminology.

(5) In this section—

corrective services see the *Corrective Services Act 2006*, schedule 4.

202 Chairperson and deputy chairperson

(1) The Governor in Council may, on the recommendation of the Attorney-General, appoint—

(a) a member of the council to be the chairperson of the council; and

(b) another member of the council to be the deputy chairperson of the council.

(2) A member may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a member.

(3) The chairperson or deputy chairperson holds office for the term, ending not later than the person's term of appointment as a member, stated in the person's appointment as chairperson or deputy chairperson.

(4) The deputy chairperson must act as chairperson—

(a) during a vacancy in the office of chairperson; and

(b) during all periods when the chairperson is absent from duty or for another reason can not perform the duties of the office.

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203 Term of appointment

(1) A member of the council holds office for the term, not longer than 3 years, stated in the member's instrument of appointment.

(2) Subsection (1) does not prevent a member from being reappointed.

203A Conditions of appointment

(1) A member is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) A member holds office on the terms, not provided for by this Act, decided by the Governor in Council.

(3) The members are appointed under this Act and not the *Public Sector Act 2022*.

203B Vacancy in office

(1) A member's office becomes vacant if—

(a) the member resigns office by signed notice given to the Attorney-General; or

(b) the member's appointment is terminated by the Governor in Council under subsection (3).

(2) A notice given by a member under subsection (1)(a)—

(a) must—

(i) state the day the member's resignation takes effect; and

(ii) be given to the Attorney-General at least 30 days before the stated day; and

(b) takes effect on the stated day or another day agreed between the member and the Attorney-General.

(3) The Governor in Council may terminate the appointment of a member if the Attorney-General recommends that the member's appointment be terminated.

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(4) The Attorney-General may recommend that a member's appointment be terminated only if satisfied that the member—

(a) is incapable of performing the member's duties; or

(b) has been convicted, including by summary conviction, of an indictable offence; or

(c) has neglected the member's duties or performed them incompetently or inefficiently.

203C Council decision not invalidated by defect in appointment or vacancy

A decision of the council is not invalidated by—

(a) a defect or irregularity in the appointment of a member of the council, including in the appointment of the chairperson or deputy chairperson; or

(b) a vacancy in the membership of the council.

Division 3 Proceedings

203D Conduct of business

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

203E Quorum

A quorum for a meeting of the council is a majority of the council's members for the time being.

203F Presiding at meetings

(1) The chairperson presides at all meetings of the council at which the chairperson is present.

(2) If the chairperson is absent from a meeting, the deputy chairperson presides.

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(3) If neither the chairperson nor deputy chairperson is present at a meeting, a member of the council chosen by the members present is to preside.

203G Conduct of meetings

(1) A question at a council meeting is decided by a majority of the votes of the members present at the meeting.

(2) Each member present at a meeting has a vote on each question to be decided.

(3) If there is an equality of votes at a meeting, the member presiding at the meeting also has a casting vote.

(4) A member present at a meeting may abstain from voting.

(5) A meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between members.

Example of use of technology—

teleconferencing

(6) A member who takes part in a meeting under subsection (5) is taken to be present at the meeting.

203H Minutes

The council must keep minutes of its meetings.

Division 4 Other matters

203I Council may engage persons to help in performing functions

(1) The council may, with the chief executive's approval, engage persons with suitable qualifications and experience to help the council in performing its functions.

(2) The engagement may be in an honorary capacity or for remuneration.

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203J Reports

(1) The council must give the Attorney-General a written report—

(a) each financial year, by the date requested in writing by the Attorney-General; and

(b) otherwise, as requested in writing by the Attorney-General.

(2) A report under subsection (1)(a)—

(a) must include information about—

(i) performance of the council's functions, in particular about the provision of information to the community to enhance knowledge and understanding of matters about sentencing; and

(ii) the work to be carried out by the council in the future in performing the council's functions; and

(b) must be tabled in the Legislative Assembly by the Attorney-General within 14 sitting days after the Attorney-General receives the report.

Part 13 Miscellaneous

204 General transitional provisions

(1) This Act applies to any sentence imposed after the commencement of this section, irrespective of when the offence was committed.

(2) However, this Act (the ***original Act***) as in force immediately before the commencement of the *Penalties and Sentences Legislation Amendment Act 1993* (the ***amending Act***) continues to apply to sentences imposed after the commencement of the original Act and before the commencement of the amending Act.

(3) An offender in relation to whom a sentence is in force immediately before the commencement of this section

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continues to be subject to the requirements of the sentence in all respects as if this Act had not been enacted.

(4) A sentence mentioned in subsection (3) may be amended, and any failure to comply with it may be dealt with, under this Act as it if were a sentence imposed after the commencement of this section.

(6) For the purposes of this section, a sentence imposed by an appeal court after the commencement of this section, on setting aside a sentencing order made before the commencement, is taken to have been imposed at the time the original sentencing order was made.

(7) If an offender fails to comply with a requirement of a sentence mentioned in subsection (3) that is not amended under subsection (4), the failure may be dealt with under this Act as if the sentence were a sentence imposed after the commencement of this section.

205 Penalty Units Act 1985 references

In an Act or document, a reference to the *Penalty Units Act 1985* may, if the context permits, be taken to be a reference to this Act.

Part 14 Transitional provisions

Division 1 Transitional provisions before Criminal Law Amendment Act 2012

206 Transitional provisions for Penalties and Sentences (Serious Violent Offences) Amendment Act 1997

(1) Section 157(7)(b) applies to a recommendation made under section 157 even if the recommendation was made before the commencement of section 157(7).

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(2) For subsection 161C(2)(b), sentences of imprisonment imposed on the offender for offences mentioned in section 161C(1)(c) or (d) must be taken into account even if the sentences were imposed before the commencement of part 9A.

207 Transitional provisions for State Penalties Enforcement Act 1999

(1) This section applies if, on the commencement of this section, an offender or surety has not paid an amount under an order under the *Crown Proceedings Act 1980*, section 13 (the ***repealed law***).

(2) Despite the repeal of the repealed law, the following provisions have effect—

(a) the order continues to have effect as if it were an order made under section 33A of this Act;

(b) any amount that has not been paid under the order under the repealed law continues to be payable until it is paid or otherwise satisfied;

(c) despite the repeal of the *Crown Proceedings Act 1980*, section 15, an application may be made under section 33B as if the order forfeiting the recognisance were an order under section 33A;

(d) any warrant that has not been enforced may be enforced according to its terms as if the repealed law had not been repealed;

(e) any proceeding commenced before the repeal for an order under the repealed law may be continued as if it were a proceeding for an order under section 33A.

208 Transitional provisions for Criminal Law Amendment Act 2000

(1) The definition of *violent offence* in section 162 applies as if the reference in the definition to the provision of the Criminal Code mentioned in column 1 included a reference to the

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provision of the Criminal Code mentioned in column 2 as in force at any time before the commencement of this section.

Column 1	Column 2
215	215
349	347
352	337

(2) The Criminal Code items in the schedule (Serious violent offences) apply as if the reference in the item mentioned in column 1 to the provision of the Criminal Code mentioned in column 2 included a reference to the provision of the Criminal Code mentioned in column 3 as in force at any time before the commencement of this section.

Column 1	Column 2	Column 3
9	215	215
35	349	347
36	350	349
37	351	336
38	352	337
39	354	351 or 354

209 Transitional provision for Penalties and Sentences (Non-contact Orders) Amendment Act 2001

Part 3A applies only to an offence committed after the commencement of this section.

210 Transitional provisions for Criminal Law Amendment Act 2002

(1) For applying section 92(1)(b)(i) for the purpose of making or amending a probation order under part 5, division 1 in relation

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to an offence, it does not matter whether the offence was committed before or after the commencement of this section.

(2) For applying section 147(1)(a), it does not matter when the order mentioned in section 146(1)(a) or (b) was made under section 144.

(3) Section 171(1)(a), as in force immediately before the commencement of the *Criminal Law Amendment Act 2002*, section 64, continues to apply in relation to an indefinite sentence that was imposed in relation to an offence committed before the commencement.

211 Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2003

Section 9 as amended by the *Sexual Offences (Protection of Children) Amendment Act 2003*, section 28, applies to the sentencing of an offender whether the offence or conviction happened before or after the commencement of that section.

212 Transitional provisions for the 2004 amendments—approved forms and serious violent offences

(1) A form approved by the chief executive (corrective services) for a purpose under this Act, and in force immediately before section 4 was amended by the 2004 Amendment Act, continues as the approved form for the purpose under this Act after the amendment.

(2) The amendment of section 161 by the 2004 Amendment Act applies in relation to a declaration to be made under section 161(3)(c) or (3B)(c) after the commencement of the amendment—

(a) whether the offences were committed before or after the commencement of the amendment; and

(b) whether the offender was convicted of the offences before or after the commencement of the amendment.

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(3) The amendment of the schedule by the 2004 Amendment Act applies for the purposes of sections 161A to 161C—

(a) whether the offences were committed before or after the commencement of the amendment; and

(b) whether the offender was convicted of the offences before or after the commencement of the amendment.

(4) In this section—

2004 Amendment Act means the *Justice and Other Legislation Amendment Act 2004*.

213 Transitional provision for s 157 (Eligibility for post-prison community based release)

(1) The date recommended under former section 157 as the date that an offender be eligible for post-prison community based release is, after the commencement, taken to be the parole eligibility date fixed for the offender under part 9, division 3.

(2) However, if—

(a) there is more than 1 recommendation in force immediately before the commencement; and

(b) the recommendations recommend different dates as the date the offender is eligible for post-prison community based release;

the date that is latest in time is taken to be the parole eligibility date fixed for the offender under part 9, division 3.

Example—

Recommendation A was made on 1 August 2005 and recommends that the offender be eligible for post-prison community based release on 1 January 2007.

Recommendation B was made on 1 March 2005 and recommends that the offender be eligible for post-prison community based release on 1 July 2007.

The date taken to be the current parole eligibility date fixed for the offender under part 9, division 3 is 1 July 2007.

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(3) The date that a period recommended under former section 157 as the non-release period for an offender ends is, after the commencement, taken to be a parole eligibility date fixed for the offender under part 9, division 3.

(4) However, if—

(a) there is more than 1 recommendation in force immediately before the commencement; and

(b) the recommendations recommend different non-release periods for the offender;

the date of the last non-release period to end is taken to be the parole eligibility date fixed for the offender under part 9, division 3.

Example—

Recommendation A was made on 1 August 2005 and recommends that the offender's non-parole period ends on 1 January 2007.

Recommendation B was made on 1 March 2005 and recommends that the offender's non-parole period ends on 1 July 2007.

The date taken to be the current parole eligibility date fixed for the offender under part 9, division 3 is 1 July 2007.

(5) In this section—

commencement means the commencement of this section.

former section 157 means section 157 as in force before the commencement.

recommendation means a recommendation made by a court under former section 157 before the commencement that is in force.

214 Transitional provision for pt 9, div 3

Part 9, division 3 applies in relation to an offence for which a court imposes a term of imprisonment after the commencement of this section whether the offence or the finding of guilt for the offence happened before or after the commencement.

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215 Transitional provision for State Penalties Enforcement and Other Legislation Amendment Act 2007

(1) This section applies if, immediately before the commencement of this section—

(a) a probation order was subject to requirements under section 94(1)(c), (d) or (e); or

(b) a community service order was subject to requirements under section 104; or

(c) an intensive correction order was subject to requirements under section 115(1)(c), (d) or (e).

(2) On the commencement, the probation order, community service order or intensive correction order continues to be subject to the requirements as if the amendment Act had not commenced.

216 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

(1) The definition *offence of a sexual nature* in section 15E(4) applies as if the reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

(2) The Criminal Code items in the schedule apply as if the reference in the item mentioned in column 1 to the provision of the Criminal Code mentioned in column 2 included a reference to the provision of the Criminal Code mentioned in column 3 as in force at any time before the commencement of this section.

Column 1	Column 2	Column 3
2	61	63
5	208	209
23	319	319A

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217 Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010

(1) Section 9(7B) and amended part 10, other than new sections 172D and 174 to 174C, apply to the sentencing of an offender and to a review under that part no matter when the relevant offence happened or happens.

(2) However, section 9(7B) and amended part 10, other than new sections 172D and 174 to 174C, only apply if the conviction for the offence took place after the date of assent of the amending Act.

(3) New sections 172D and 174 to 174C apply to an offender on whom a finite sentence has been imposed no matter when the relevant offence or conviction happened or happens, or when the finite sentence was made.

(4) Subsections (1) and (3) apply despite the *Acts Interpretation Act 1954*, section 20C.

(5) In this section—

amended part 10 means part 10 as amended under the amending Act.

amending Act means the *Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010*.

new sections 172D and 174 to 174C means those numbered sections of the post-amended Act, as affected by any relevant definitions under the post-amended Act.

post-amended Act means this Act as amended by the amending Act.

218 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

On the commencement of this section, section 152A, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, has effect in relation to a proceeding, regardless of when the proceeding was commenced.

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219 Transitional provision for the Justice and Other Legislation Amendment Act 2010

This Act as amended by the *Justice and Other Legislation Amendment Act 2010*, part 25 applies to a sentence imposed after the commencement of part 25, whether the offence was committed before or after the commencement of part 25.

220 Transitional provision for Liquor and Other Legislation Amendment Act 2010

(1) Part 3B, as inserted by the *Liquor and Other Legislation Amendment Act 2010*, section 55 applies in relation to an offence only if the offender was convicted for the offence after the commencement of this section.

(2) For subsection (1), it is irrelevant whether the act or omission constituting the offence happened before or after the commencement.

Division 2 Transitional provisions for Criminal Law Amendment Act 2012

221 Transitional provision for s 171

(1) For section 171(2)(a)(i) as inserted by the amendment Act, the period of time an offender must have served before the offender's indefinite sentence must be reviewed for the first time continues to be 20 years if—

(a) the Criminal Code, section 305(2) as amended by the amendment Act does not apply on sentence; but

(b) that section as it existed before the commencement applies on sentence.

(2) Section 171(2)(a)(iii), as inserted by the amendment Act, only applies to an offender who is serving an indefinite sentence for an offence of murder committed after the commencement.

(3) In this section—

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amendment Act means the *Criminal Law Amendment Act 2012*.

commencement means the commencement of the amendment Act, section 16.

Division 3 Transitional provision for Criminal Law (Two Strike Child Sex Offenders) Amendment Act 2012

223 Transitional provision for s 161E

(1) For applying section 161E, it does not matter whether the previous offence was committed, or the offender was convicted of the previous offence, before or after the commencement.

(2) For a previous offence mentioned in subsection (1) as having been committed before the commencement, a reference in schedule 1A to the provision to which the offence relates is taken to be a reference to the provision as in force at any time before the commencement.

(3) This section applies despite the *Acts Interpretation Act 1954*, section 20C(3) and the Criminal Code, section 11.

(4) In this section—

commencement means the commencement of this section.

previous offence, for applying section 161E, means an offence mentioned in section 161E(1)(b).

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Division 4 Transitional provisions for Penalties and Sentences and Other Legislation Amendment Act 2012

224 Retrospective application of s 179C in particular circumstances

(1) Section 179C applies in relation to an offence for which the offender is sentenced after the commencement, even if the offence was committed, or the offender was charged with or convicted of the offence, before the commencement.

(2) In this section—

commencement means the commencement of section 179C.

sentenced does not include resentenced as defined under section 179D.

Division 5 Transitional provision for Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013

226 Retrospective application of pt 9C in particular circumstances

(1) Part 9C applies in relation to a serious drug offence if the offender is charged with the offence on or after the commencement, regardless of whether the offence was committed before or after the commencement.

(2) In this section—

commencement means the commencement of this section.

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Division 6 Transitional provisions for expiry of Drug Court Act 2000

227 Definitions for div 6

In this division—

Drug Court Act means the *Drug Court Act 2000* as in force before its expiry.

intensive drug rehabilitation order means an order made under the Drug Court Act, section 19.

228 Application of div 6

This division applies from 1 July 2013.

229 Continuation of warrants

(1) This section applies to a warrant issued under the Drug Court Act, section 40, for an offender before 30 June 2013—

(a) but not enforced; or

(b) enforced but not returned before a drug court magistrate before that day.

(2) The warrant is taken to be a warrant—

(a) issued by a magistrate; and

(b) that authorises any police officer to arrest the offender and bring the offender before a magistrate.

230 Dealing with offences after enforcement of warrant

(1) This section applies if—

(a) an offender is arrested on a warrant mentioned in section 229; and

(b) the offender is brought before a magistrate.

(2) The magistrate must—

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(a) order that the record of the conviction for the offence be revoked; and

Note—

For the effect of not recording a conviction, see section 12.

(b) vacate the offender's intensive drug rehabilitation order; and

(c) deal with the offender according to law.

(3) Also, the magistrate must, under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence if—

(a) the offence, in relation to which the intensive drug rehabilitation order for the offender was made, is a prescribed drug offence under the Drug Court Act; or

(b) the magistrate is satisfied, under the Criminal Code, section 552D, the offender, if dealt with under subsection (2)(c), may not be adequately punished on summary conviction.

Note—

For the maximum penalty for indictable offences dealt with summarily, see the Criminal Code, section 552H.

(4) Subsection (3) applies even though the magistrate has not addressed the defendant as required under the *Justices Act 1886*, section 104(2).

(5) To remove any doubt, it is declared that—

(a) the *Bail Act 1980* applies to the offender; and

(b) the offender has pleaded guilty to the offence under the Drug Court Act, section 19(c).

231 Sentencing an offender after enforcement of warrant

(1) This section applies if a magistrate sentences an offender to whom section 230 applies.

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(2) In sentencing the offender, the magistrate must have regard to the initial sentence contained in the offender's intensive drug rehabilitation order.

(3) To remove any doubt, it is declared that, in applying section 159A to a sentence for a term of imprisonment imposed on an offender under this section, time spent in custody under the Drug Court Act, other than under section 32(1)(f) of that Act, is taken to be imprisonment already served under the sentence.

Division 7 Transitional provision for Justice and Other Legislation Amendment Act 2013

232 Transitional provision for sch 1

Schedule 1, as amended by the *Justice and Other Legislation Amendment Act 2013*, is taken to have had effect on and from 13 August 2013.

Division 8 Transitional provision for Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013

233 Application of amended s 15A

Section 15A, as amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*, applies to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of this section.

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Division 9 Transitional provision for Youth Justice and Other Legislation Amendment Act 2014

234 Sentencing guidelines

This Act applies to the sentencing of an offender convicted after the commencement of this section even if 1 or both of the following happened before the commencement—

(a) the commission of the offence the subject of the conviction;

(b) the start of the proceeding for the offence.

Division 10 Transitional provisions for Criminal Law Amendment Act 2014

235 Application of s 13B

(1) Section 13B applies to the sentencing of an offender for an offence on or after the commencement, even if—

(a) the proceeding for the offence was started before the commencement; or

(b) some or all of the offender's cooperation with a law enforcement agency occurred before the commencement.

(2) In this section—

commencement means the commencement of section 13B.

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Division 11 Transitional provisions for Safe Night Out Legislation Amendment Act 2014

236 Sentencing guidelines

Section 9(9A) applies to the sentencing of an offender if the offender is convicted of the offence after the commencement of this section, even if the offence was committed, or the offender was charged with the offence, before the commencement of this section.

237 Banning orders

A court may make a banning order under section 43I, as amended by the *Safe Night Out Legislation Amendment Act 2014*, if the offender is convicted of the offence after the commencement of this section, even if the offence was committed, or the offender was charged with the offence, before the commencement of this section.

238 Community service orders required under s 108B

Section 108B does not apply to an offence committed before the commencement of that section.

Division 12 Transitional provision for Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016

239 Imposition of DAAR condition

(1) Section 19(2B), as inserted by the amending Act, applies to an order made under section 19(1)(b) in relation to an offender on or after the commencement.

(2) For subsection (1), it is irrelevant whether the act or omission constituting the offence for which the order is made happened,

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or the proceeding for the offence was started, before or after the commencement.

(3) In this section—

amending Act means the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016*.

Division 13 Transitional provision for Criminal Law (Domestic Violence) Amendment Act 2016

240 Sentencing submissions

The amendments made to section 15 by the *Criminal Law (Domestic Violence) Amendment Act 2016* apply in relation to sentencing an offender even if the offence or conviction happened before the commencement.

Division 14 Transitional provision for Youth Justice and Other Legislation Amendment Act (No. 1) 2016

241 Sentencing guidelines

Section 9, as amended by the *Youth Justice and Other Legislation Amendment Act (No. 1) 2016*, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

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Division 15 Transitional provision for Health and Other Legislation Amendment Act 2016

242 *Offence of a sexual nature* taken to include references to Criminal Code, ss 208 and 209

The definition *offence of a sexual nature* in section 15E(4) applies as if the reference to the Criminal Code, section 215 included a reference to—

(a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and

(b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Division 16 Transitional provisions for Serious and Organised Crime Legislation Amendment Act 2016

Subdivision 1 Transitional provisions for repeal of Vicious Lawless Association Disestablishment Act 2013

243 Definitions for subdivision

In this subdivision—

commencement means the commencement of the *Serious and Organised Crime Legislation Amendment Act 2016*, part 35.

repealed VLAD Act means the *Vicious Lawless Association Disestablishment Act 2013* repealed by the *Serious and Organised Crime Legislation Amendment Act 2016*, part 35.

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244 Application of subdivision

This subdivision applies if a court has in, or in connection with, a criminal proceeding, including, for example, a proceeding on appeal, sentenced a person as a vicious lawless associate for a declared offence under the repealed VLAD Act, section 7.

245 Application to Supreme Court to reopen sentencing proceedings

(1) The person may apply to the Supreme Court to reopen the proceeding to the extent the court imposed on the person either or both of the following—

(a) a further sentence of 15 years imprisonment served wholly in a corrective services facility under the repealed VLAD Act, section 7(1)(b);

(b) a further sentence of 10 years imprisonment served wholly in a corrective services facility under the repealed VLAD Act, section 7(1)(c).

(2) The application must be made within 3 months after the commencement.

(3) The court may, at any time, extend the period mentioned in subsection (2).

(4) The court must give a copy of the application to the director of public prosecutions.

(5) Within 10 business days after the making of the application, the court must give directions to enable the application to be heard.

246 Supreme Court may reopen sentencing proceedings

(1) On the hearing of an application under section 245, the Supreme Court may reopen the proceeding to the extent mentioned in section 245(1).

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(2) The Supreme Court may also, at any time, reopen the proceeding to the extent mentioned in section 245(1) if a court reopens the proceeding under section 188.

(3) If the Supreme Court reopens the proceeding under subsection (1) or (2), the court must—

(a) give the parties an opportunity to be heard; and

(b) if the person was sentenced under the repealed VLAD Act, section 7(1)(a) to a sentence other than life imprisonment or an indefinite sentence—resentence the person to a further sentence as if the law applicable to the further sentence were the law mentioned in section 161R(2)(b); and

(c) if the person was sentenced under the repealed VLAD Act, section 7(1)(a) to life imprisonment or an indefinite sentence—resentence the person to a further sentence as if the law applicable to the further sentence were the *Corrective Services Act 2006*.

(4) The court may have regard to—

(a) relevant material admitted before the court during the previous trial and sentence of the person; and

(b) any other material relevant to the further sentence.

(5) If the previous sentencing court reduced, under section 13A, the further sentence imposed under the repealed VLAD Act, section 7(1)(b) or (c), the court must have regard to the material placed on the court file under section 13A(7)(c).

(6) Subsection (5) does not—

(a) affect an order prohibiting publication that has been made in relation to the material under section 13A(8); or

(b) limit the reopening of a proceeding under section 188.

(7) Also, if the Supreme Court reopens the proceeding under subsection (2), and the court that reopened the proceeding under section 188 was a court other than the Supreme Court, the Supreme Court may remit the resentencing of the person under subsection (3)(b) or (c) to the other court.

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(8) In this section—

indefinite sentence means an indefinite sentence under part 10.

247 Appeals

If a further sentence is imposed under section 246, the person, and the Attorney-General, have the same rights to appeal against the further sentence as if it were the further sentence originally imposed on the person.

248 No cause of action

No cause of action may be started or continued against the State in relation to any period of imprisonment the person may have actually served that is more than the period of imprisonment the person would have served if originally sentenced to the further sentence imposed under section 246.

Subdivision 2 Other transitional provisions

249 Making of control order for offender convicted of committing indictable offence before commencement

Section 161W applies to the sentencing of an offender convicted of an indictable offence after the commencement whether the offence was committed before or after the commencement.

250 Application of amended s 187

Section 187, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies to the sentencing of an offender for an offence after the commencement whether the proceeding for the offence was started before or after the commencement.

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251 Application of s 161Q to particular prescribed offences

(1) This section applies if—

(a) an offender is convicted of an offence against—

(i) the Criminal Code, section 218B, 229B or 229HB; or

(ii) the *Drugs Misuse Act 1986*, section 5 or 9D; or

(iii) the *Weapons Act 1990*, section 65; and

(b) the offence is committed partly, but not wholly, after the commencement.

(2) Section 161Q applies in relation to the offence only if, at a time after the commencement, the offender—

(a) was a participant in a criminal organisation; and

(b) knew, or ought reasonably to have known, a matter mentioned in section 161Q(1)(b).

Division 17 Transitional provision for Criminal Law Amendment Act 2017

252 Warrant for arrest of offender failing to enter into recognisance under order made before commencement

Part 3, division 3AA applies in relation to an original order whether the order was made before or after the commencement.

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Division 18 Transitional provision for Victims of Crime Assistance and Other Legislation Amendment Act 2017

253 Victim impact statements

(1) Part 10B applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

(2) A victim impact statement given under the *Victims of Crime Assistance Act 2009*, repealed section 15(5) before the commencement, including a statement given electronically, is taken to have been given under section 179L.

(3) In this section—

repealed section 15(5), of the *Victims of Crime Assistance Act 2009*, means section 15(5) of that Act as it was in force from time to time before its repeal by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017*.

Division 19 Transitional provision for Liquor and Other Legislation Amendment Act 2017

254 Banning orders

A court may make a banning order under section 43J if the offender is convicted of an offence mentioned in section 43J(1)(a)(i) or (ii) after the commencement, even if the offence was committed, or the offender was charged with the offence, before the commencement.

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Division 20 Transitional provision for Justice Legislation (Links to Terrorist Activity) Amendment Act 2019

255 Application of s 160B to sentencing offenders after commencement

Section 160B, as amended by the *Justice Legislation (Links to Terrorist Activity) Amendment Act 2019*, applies in relation to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

Division 21 Transitional provisions for Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020

256 Sentencing guidelines

Section 9, as amended by the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020*, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before, or happens after, the commencement.

257 Application of s 195E

Section 195E applies to a court sentencing an offender after the commencement—

(a) whether the offence or conviction happened before, or happens after, the commencement; and

(b) even if the sentence is imposed on appeal or reopening of sentencing proceedings under section 188.

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Division 22 Transitional provision for Justice and Other Legislation Amendment Act 2020

258 Application of ss 9 and 159A to sentencing offenders after commencement

Sections 9 and 159A, as amended by the *Justice and Other Legislation Amendment Act 2020*, apply in relation to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

Division 23 Transitional provisions for Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024

259 Sentencing guidelines

Section 9, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies to the sentencing of an offender after the commencement whether the conviction happened before or after the commencement.

260 Convictions for offences relating to domestic violence

Section 12A, as amended by the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, applies only in relation to convictions for relevant domestic violence offences committed from the commencement.

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Division 24 Transitional provision for Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024

261 Particular offences continue as prescribed offences

On the commencement, repealed sections 229G, 229H, 229HB, 229K and 229L of the Criminal Code continue to be prescribed offences for part 9D.

Division 25 Transitional provision for Respect at Work and Other Matters Amendment Act 2024

262 Application of s 9 to sentencing offenders after commencement

Section 9, as amended by the *Respect at Work and Other Matters Amendment Act 2024*, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

Division 26 Transitional provisions for Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Act 2025

263 Definition for division

In this division—

amendment Act means the *Penalties and Sentences (Sexual Offences) and Other Legislation Amendment Act 2025*.

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264 Application of s 9 to sentencing offenders after commencement

Section 9, as amended by the amendment Act, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

265 Application of s 179K to sentencing offenders after commencement

Section 179K, as amended by the amendment Act, applies to the sentencing of an offender after the commencement whether the offence or conviction happened before or after the commencement.

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Schedule 1 Serious violent offences

sections 156A(1)(a), 161A(a), 161B(3)(a) and 161C(1)(c) and (d)

Criminal Code

2 section 61 (Riot)

3 section 75 (Threatening violence)

4 section 142 (Escape by persons in lawful custody)

7 section 210 (Indecent treatment of children under 16)

7A section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority)

8 section 213 (Owner etc. permitting abuse of children on premises)

9 section 215 (Engaging in penile intercourse with child under 16)

10 section 216 (Abuse of persons with an impairment of the mind)

11 section 217 (Procuring young person etc. for penile intercourse)

11A section 217A (Obtaining commercial sexual services from person who is not an adult)

11B section 217B (Allowing person who is not an adult to take part in commercial sexual services)

11C section 217C (Conduct relating to provision of commercial sexual services by person who is not an adult)

12 section 218 (Procuring sexual acts by coercion etc.)

12A section 219 (Taking child for immoral purposes)

13 section 222 (Incest)

14 section 229B (Repeated sexual conduct with a child)

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14B section 236(2) (Misconduct with regard to corpses)

15 sections 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter)

16 section 306 (Attempt to murder)

16A section 309 (Conspiring to murder)

17 section 313 (Killing unborn child)

18 section 315 (Disabling in order to commit indictable offence)

19 section 316 (Stupefying in order to commit indictable offence)

20 section 317 (Acts intended to cause grievous bodily harm and other malicious acts)

21 section 317A(1) (Carrying or sending dangerous goods in a vehicle)

22 section 318 (Obstructing rescue or escape from unsafe premises)

23 section 319 (Endangering the safety of a person in a vehicle with intent)

25 section 320 (Grievous bodily harm)

26 section 320A (Torture)

27 section 321 (Attempting to injure by explosive or noxious substances)

28 section 321A (Bomb hoaxes)

29 section 322 (Administering poison with intent to harm)

30 section 323 (Wounding)

30A section 324 (Failure to supply necessaries)

31 section 326 (Endangering life of children by exposure)

32 section 328A (Dangerous operation of a vehicle)

32A section 334C (Coercive control)

33 section 339 (Assaults occasioning bodily harm)

34 section 340 (Serious assaults)

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35 section 349 (Rape)

36 section 350 (Attempt to commit rape)

37 section 351 (Assault with intent to commit rape)

38 section 352 (Sexual assaults)

39 section 354 (Kidnapping)

40 section 354A (Kidnapping for ransom)

40A section 364 (Cruelty to children under 16)

41 section 411(1) (Punishment of robbery)

42 section 411(2) (Punishment of robbery)

43 section 412 (Attempted robbery)

43A section 417A (Taking control of aircraft)

44 section 419(1) (Burglary), if section 419(3)(b)(i) or (ii) applies

Criminal Code (Provisions repealed by Criminal Law Amendment Act 1997)

1 section 208 (Unlawful anal intercourse)

2 section 221 (Conspiracy to defile)

3 section 222 (Incest by man)

4 section 223 (Incest by adult female)

5 section 318 (Preventing escape from wreck)

Criminal Code (Provision repealed by Health and Other Legislation Amendment Act 2016)

1 section 208 (Unlawful sodomy)

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Criminal Code (Provision repealed by Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024)

1 section 229G(1) (Procuring engagement in prostitution), if section 229G(2) applies

Corrective Services Act 2006

1 section 122(2) (Unlawful assembly, riot and mutiny)

2 section 124(1)(a) (Other offences)

Corrective Services Act 2000 (Provisions repealed by Corrective Services Act 2006)

1 section 92(2) (Unlawful assembly, riot and mutiny)

2 section 94(a) (Other offences)

Drugs Misuse Act 1986

1 section 5 (Trafficking in dangerous drugs), if the offender is sentenced for the offence on or after the commencement of the *Serious and Organised Crime Legislation Amendment Act 2016*, section 164, whether the offence or conviction happened before or after that commencement

2 section 6 (Supplying dangerous drugs), if the offence is one of aggravated supply as mentioned in that section

3 section 8 (Producing dangerous drugs), if the circumstances mentioned in paragraph (a) or (b) of the penalty apply

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Schedule 1A Serious child sex offences

section 161D

Criminal Code

Section	Section heading or description of offence
213	Owner etc. permitting abuse of children on premises
215	Engaging in penile intercourse with child under 16
219	Taking child for immoral purposes
222	Incest
229B	Repeated sexual conduct with a child
349	Rape
352	Sexual assaults

Criminal Code (Provisions repealed by Criminal Law Amendment Act 1997)

Section	Section heading
208	Unlawful anal intercourse
222	Incest by man

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Criminal Code (Provisions amended, renumbered or repealed by Criminal Law Amendment Act 2000)

Section	Section heading
215	Carnal knowledge of girls under 16
337	Sexual assaults
347	Rape

Criminal Code (Provision repealed by Health and Other Legislation Amendment Act 2016)

Section	Section heading
208	Unlawful sodomy

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Schedule 1B Serious drug offences

section 161F

Drugs Misuse Act 1986

Part 1 Category A offences

Column 1 Section	Column 2 Section heading
5	Trafficking in dangerous drugs

Part 2 Category B offences

Column 1 Section	Column 2 Section heading	Column 3 Relevant circumstance
6(1)	Supplying dangerous drugs	The quantity of the dangerous drug is of or exceeds the quantity specified in the *Drugs Misuse Regulation 1987*, schedule 3 in respect of that drug.
7	Receiving or possessing property obtained from trafficking or supplying	
8	Producing dangerous drugs	The circumstances mentioned in paragraph (a), (b), (c) or (d) of the penalty apply.

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Column 1	Column 2	Column 3
Section	**Section heading**	**Relevant circumstance**
10B	Possession of a prohibited combination of items	

Part 3 Category C offences

Column 1	Column 2	Column 3
Section	**Section heading**	**Relevant circumstance**
8	Producing dangerous drugs	The circumstances mentioned in paragraph (e) of the penalty apply and the court has made a finding of fact that the offender committed the offence with a commercial purpose. *Note—* See the *Evidence Act 1977*, section 132C.
9	Possessing dangerous drugs	The circumstances mentioned in paragraph (a), (b) or (c) of the penalty apply and the court has made a finding of fact that the offender committed the offence with a commercial purpose. *Note—* See the *Evidence Act 1977*, section 132C.

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Schedule 1C Prescribed offences

section 161N, definition *prescribed offence*

Criminal Code

- section 61 (Riot)
- section 87 (Official corruption)
- section 92A (Misconduct in relation to public office)
- section 119B (Retaliation against or intimidation of judicial officer, juror, witness etc.)
- section 122 (Corruption of jurors)
- section 127 (Corruption of witnesses)
- section 140 (Attempting to pervert justice)
- section 210 (Indecent treatment of children under 16)
- section 210A (Sexual acts with a child aged 16 or 17 under one's care, supervision or authority)
- section 213 (Owner etc. permitting abuse of children on premises)
- section 215 (Engaging in penile intercourse with child under 16)
- section 217 (Procuring young person etc. for penile intercourse)
- section 217A (Obtaining commercial sexual services from person who is not an adult)
- section 217B (Allowing person who is not an adult to take part in commercial sexual services)
- section 217C (Conduct relating to provision of commercial sexual services by person who is not an adult)
- section 218 (Procuring sexual acts by coercion etc.)

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- section 218A (Using internet etc. to procure children under 16)
- section 218B (Grooming child under 16 years or parent or carer of child under 16 years)
- section 219 (Taking child for immoral purposes)
- section 228A (Involving child in making child exploitation material)
- section 228B (Making child exploitation material)
- section 228C (Distributing child exploitation material)
- section 228D (Possessing child exploitation material)
- section 228DA (Administering child exploitation material website)
- section 228DB (Encouraging use of child exploitation material website)
- section 228DC (Distributing information about avoiding detection)
- section 228I (Producing or supplying child abuse object)
- section 228J (Possessing child abuse object)
- section 229B (Repeated sexual conduct with a child)
- sections 302 (Definition of *murder*) and 305 (Punishment of murder)
- sections 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter)
- section 306 (Attempt to murder)
- section 307 (Accessory after the fact to murder)
- section 308 (Threats to murder in document)
- section 309 (Conspiring to murder)
- section 314A (Unlawful striking causing death)
- section 317 (Acts intended to cause grievous bodily harm and other malicious acts)

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- section 317A (Carrying or sending dangerous goods in a vehicle)
- section 320 (Grievous bodily harm)
- section 320A (Torture)
- section 321 (Attempting to injure by explosive or noxious substances)
- section 339 (Assaults occasioning bodily harm), if the offence is committed in circumstances where the offender is liable to imprisonment for 10 years
- section 340(1)(b) (Serious assaults), if the offence is committed in circumstances where the offender is liable to imprisonment for 14 years
- section 349 (Rape)
- section 350 (Attempt to commit rape)
- section 351 (Assault with intent to commit rape)
- section 352 (Sexual assaults)
- section 354 (Kidnapping)
- section 354A (Kidnapping for ransom)
- section 359 (Threats), if the offence is committed in circumstances where the offender is liable to imprisonment for 10 years
- section 359E (Punishment of unlawful stalking, intimidation, harassment or abuse)
- section 398 (Punishment of stealing), if clause 15 (Stealing firearm or ammunition) applies
- section 400 (Attempted stealing of valuable metal item or component)
- section 408C (Fraud), if the offence is committed in circumstances where the offender is liable to imprisonment for 14 or more years
- section 408D (Obtaining or dealing with identification information)

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- sections 409 (Definition of *robbery*) and 411(1) or (2) (Punishment of robbery)
- section 412 (Attempted robbery)
- section 415 (Extortion)
- section 419(1), but only if section 419(3) applies, or 419(4) (Burglary)
- section 433 (Receiving tainted property)

Criminal Proceeds Confiscation Act 2002

- section 250 (Money laundering)

Drugs Misuse Act 1986

Note—

See the *Evidence Act 1977*, section 132C in relation to findings of fact on sentencing.

- section 5 (Trafficking in dangerous drugs)
- section 6 (Supplying dangerous drugs), if the offence is committed with a commercial purpose
- section 7 (Receiving or possessing property obtained from trafficking or supplying)
- section 8 (Producing dangerous drugs), if the offence is committed with a commercial purpose
- section 9B (Supplying relevant substances or things), if the offence is committed with a commercial purpose
- section 9C (Producing relevant substances or things), if the offence is committed with a commercial purpose
- section 9D (Trafficking in relevant substances or things)

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Weapons Act 1990

- section 50B (Unlawful supply of weapons), if either of the following applies—
  - the penalty, paragraph (a), (b) or (c)(i) or (ii)
  - the penalty, paragraph (c)(iii) for a category A or B weapon or category M crossbow
- section 56A (Reckless discharge of weapon towards building or vehicle)
- section 65 (Unlawful trafficking in weapons)

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Schedule 2 Qualifying offences

section 162, definition *qualifying offence*, paragraph (a)

Criminal Code

Section	Section heading or description of offence
54A	Demands with menaces upon agencies of government
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Engaging in penile intercourse with child under 16
216	Abuse of persons with an impairment of the mind
217	Procuring young person etc. for penile intercourse
218	Procuring sexual acts by coercion etc.
219	Taking child for immoral purposes
221	Conspiracy to defile
222	Incest
229B	Repeated sexual conduct with a child
302, 305	Murder
303, 310	Manslaughter
306	Attempt to murder
309	Conspiring to murder
311	Aiding suicide
313	Killing unborn child
314A	Unlawful striking causing death

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Section	Section heading or description of offence
315	Disabling in order to commit indictable offence
317	Acts intended to cause grievous bodily harm and other malicious acts
320A	Torture
321	Attempting to injure by explosive or noxious substances
322	Administering poison with intent to harm
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults
411(2)	Robbery with circumstance of aggravation
412	Attempted robbery

Criminal Code (Provisions repealed by Criminal Law Amendment Act 1997)

Section	Section heading
208	Unlawful anal intercourse
221	Conspiracy to defile
222	Incest by man
223	Incest by adult female

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Criminal Code (Provisions amended, renumbered or repealed by Criminal Law Amendment Act 2000)

Section	Section heading
215	Carnal knowledge of girls under 16
336	Assault with intent to commit rape
337	Sexual assaults
347	Rape
349	Attempt to commit rape

Criminal Code (Provision repealed by Criminal Code and Other Acts Amendment Act 2008)

Section	Section heading
209	Attempted sodomy

Criminal Code (Provision repealed by Health and Other Legislation Amendment Act 2016)

Section	Section heading
208	Unlawful sodomy