

Queensland



**PENALTIES AND
SENTENCES LEGISLATION
AMENDMENT BILL 1993**

Queensland



**PENALTIES AND SENTENCES
LEGISLATION AMENDMENT BILL 1993**

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1993

A BILL

FOR

An Act to amend certain Acts in relation to penalties and sentences

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BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

Clause1. This Act may be cited as the *Penalties and Sentences Legislation Amendment Act 1993*.

PART 2—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Amended Act

Clause2. The *Penalties and Sentences Act 1992* is amended as set out in this Part and Schedule 1.

Insertion of new s.33A

Clause3. After section 33—

insert—

‘Failing to obey condition of recognisance

‘33A.(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

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originally charged; or	1
(b) make another order that the court could lawfully have made if the offender had not been released on recognisance.’.	2 3
Replacement of s.38 (Extension of time)	4
<i>Clause 4.</i> Section 38—	5
<i>omit, insert—</i>	6
‘Extension of time	7
‘38.(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—	8 9 10
(a) the court that made the order; or	11
(b) a court of like jurisdiction; or	12
(c) the proper officer of the court.	13
‘(2) The court or officer that grants an extension under subsection (1) may further extend the time.	14 15
‘(3) Application for an extension under subsection (1), or further extension under subsection (2), must be in writing.’.	16 17
Replacement of s.56 (Application to clerk of court for order after end of time allowed for payment of fine)	18 19
<i>Clause 5.</i> Section 56—	20
<i>omit, insert—</i>	21
‘Application to proper officer of court after end of time allowed for payment of fine	22 23
‘56.(1) This section applies to an offender—	24
(a) for whom an original order has been made by a court (whether before or after the commencement of this section); and	25 26
(b) who has not applied for a fine option order—	27

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- (i) under section 53; or 1
- (ii) under section 55 in the time allowed by section 55(2). 2
- ‘(2) Before a warrant may be issued for the commitment of the offender 3
to prison, the proper officer of the court that imposed the fine must— 4
- (a) send an application for a fine option order by post to the offender 5
at the offender’s address last known to the proper officer; and 6
- (b) advise the offender that if the offender fails to make application 7
for a fine option order within 15 business days after the 8
application is posted to the offender, a warrant may be issued for 9
the commitment of the offender to prison for failing to pay the 10
fine. 11
- ‘(3) The offender may apply to the proper officer even though a warrant 12
of commitment has been issued or executed in relation to the original order. 13
- ‘(4) The application must— 14
- (a) be in the approved form; and 15
- (b) state the particulars that are relevant having regard to the matters 16
of which the proper officer is required to be satisfied under 17
section 57(1); and 18
- (c) be signed by the applicant.’. 19
- Insertion of new s.58 20**
- Clause 6.* Before section 59— 21
- insert— 22*
- ‘Proper officer must reconsider offender’s financial position 23**
- ‘58.(1) If— 24**
- (a) an offender has previously been refused a fine option order; and 25
- (b) the court records show that the refusal was made because of 26
section 57(1)(a); and 27
- (c) the proper officer of the court is satisfied that the offender’s 28
financial position has become worse since the refusal; 29

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the proper officer must consider a fresh application, if made, by the offender for a fine option order. 1
2

‘(2) The application must— 3

(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 4
5
6

(b) be in the approved form; and 7

(c) state how the offender’s financial position has become worse; and 8

(d) be signed by the applicant; and 9

(e) be lodged— 10

(i) if the court is the Supreme Court or a District Court—in the registry of the court; or 11
12

(ii) if the court is a Magistrates Court—with the clerk of the court. 13
14

‘(3) The offender may make the application even though a warrant of commitment has been issued or executed in relation to the original order. 15
16

‘(4) The offender cannot make more than 1 application under subsection (1).’ 17
18

**Replacement of s.68 (Extension of 1 year mentioned in s.66(b) may be made) 19
20**

Clause 7. Section 68— 21

omit, insert— 22

‘Period mentioned in s.66(2) may be extended 23

‘68.(1) The 1 year or other time mentioned in section 66(2) may be extended— 24
25

(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 26
27

(b) by a court under section 74(4)(a). 28

‘(2) Application for an extension under subsection (1) may be made by 29

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an authorised Commission officer.	1
‘(3) The court, or proper officer of the court, must advise the Commission and the offender when the application will be heard.	2 3
‘(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.’.	4 5
Replacement of s.83 (Court to notify court that imposed fine option order)	6 7
<i>Clause 8.</i> Section 83—	8
<i>omit, insert—</i>	9
‘Court to notify court that imposed fine option order	10
‘83. 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.’.	11 12 13
Replacement of s.151 (General provisions)	14
<i>Clause 9.</i> Section 151—	15
<i>omit, insert—</i>	16
‘Application of remission provisions to suspended sentences	17
‘151.(1) If a term of imprisonment is wholly suspended, the provisions of an Act that provide for remission of sentence—	18 19
(a) do not apply to the term of imprisonment or the operational period; but	20 21
(b) do apply to imprisonment ordered to be served under section 147(1)(b) or (c).	22 23
‘(2) If a term of imprisonment is partly suspended, the provisions of an Act that provide for remission of sentence—	24 25
(a) do not apply to—	26
(i) the part of the term of imprisonment that is suspended; or	27
(ii) the operational period; or	28

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(iii) the imprisonment that must be served before an order made under section 144(3) that suspends part of the term of imprisonment has effect; but	1 2 3
(b) do apply to imprisonment ordered to be served under section 147(1)(c).’.	4 5
Insertion of new s.151A	6
<i>Clause 10.</i> After section 151—	7
<i>insert—</i>	8
‘Re-integration programs for suspended sentences	9
‘151A. An offender whose sentence of imprisonment is suspended is eligible for release to a re-integration program only in relation to imprisonment ordered under section 147(1)(b) or (c).’.	10 11 12
Insertion of new s.158A	13
<i>Clause 11.</i> After section 158—	14
<i>insert—</i>	15
‘Term of imprisonment does not run if offender on bail awaiting appeal	16 17
‘158A. 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.’.	18 19 20
Insertion of new s.180A	21
<i>Clause 12.</i> After section 180—	22
<i>insert—</i>	23
‘Meaning of certain sentence provisions	24
‘180A. 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—	25 26 27

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- (a) to pay a fine; or 1
- (b) to be imprisoned; or 2
- (c) to pay a fine and also to be imprisoned. 3

Example— 4

‘Maximum penalty—100 penalty units or imprisonment for 2 years’ means 5
the offender is liable to— 6

- (a) a maximum fine of 100 penalty units; or 7
- (b) maximum imprisonment of 2 years; or 8
- (c) a maximum fine of 100 penalty units and also maximum 9
imprisonment of 2 years.’. 10

Insertion of new ss.182A and 182B 11

Clause 13. After section 182— 12

insert— 13

‘Court may make order for default payment of penalty 14

‘182A.(1) A court that orders an offender to pay a penalty may also 15
order that, if the offender fails to pay the penalty immediately or within the 16
time allowed by the court in its order, the offender is to be imprisoned for a 17
term calculated under subsection (2)(a). 18

‘(2) The term of imprisonment— 19

- (a) must be— 20
 - (i) the term that, in the court’s opinion, will satisfy the justice of 21
the case; but 22
 - (ii) not more than 14 days imprisonment for each penalty unit, 23
or part of a penalty unit, that the offender was ordered to 24
pay; and 25
- (b) must be served cumulatively with any term of imprisonment the 26
offender is serving, or has been sentenced to serve, unless the 27
court orders otherwise. 28

‘(3) This section has effect subject to the provisions of the Act under 29

which the penalty is ordered to be paid.	1
‘Warrant for arrest and imprisonment	2
‘182B.(1) If the offender does not pay the penalty mentioned in section 182A immediately or within the time allowed by the court, the proper officer of the court must issue a warrant for the arrest and imprisonment of the offender for the term ordered by the court.	3 4 5 6
‘(2) A warrant under subsection (1) is to be directed to all police officers.	7
‘(3) The proper officer of the court must not issue a warrant under subsection (1) unless the officer has made the offender aware of the provisions of Division 2 of Part 4.’.	8 9 10
Insertion of new ss.185A and 185B	11
<i>Clause 14.</i> After section 185—	12
<i>insert—</i>	13
‘Power of proper officer to issue warrant	14
‘185A.(1) If a court makes an order under section 182A(1) or 185(1) and the penalty is not paid, the proper officer of the court must issue a warrant of commitment for the imprisonment of the offender as soon as practicable after the end of the time (if any) fixed by the court in which the penalty is to be paid.	15 16 17 18 19
‘(2) If a court makes an order under section 184 and the act ordered is not done, the proper officer of the court must issue a warrant of commitment for the imprisonment of the offender as soon as practicable after the end of the time (if any) fixed by the court for the doing of the act.	20 21 22 23
‘Power of proper officer to postpone warrant	24
‘185B.(1) The proper officer of the court may postpone the issue of a warrant under section 182B or 185A if the officer considers it just to postpone the issue of the warrant.	25 26 27
‘(2) Application for a postponement under subsection (1)—	28

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- | | |
|---|--------|
| (a) must be in writing; and | 1 |
| (b) may be made by a party to the proceedings in which the warrant is to be issued.’. | 2
3 |

PART 3—MINOR AND CONSEQUENTIAL AMENDMENTS OF OTHER ACTS	4 5
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Amended Acts	6
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<p><i>Clause 15.</i> Each Act mentioned in Schedule 2 is amended as set out in Schedule 2.</p>	7 8
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SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS OF PENALTIES AND SENTENCES ACT 1992

section 2

1. Section 4 (definition “penalty”)—

omit ‘means’, insert ‘includes’.

2. Section 4—

insert—

‘ **“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.’

3. Section 5 (at the end)—

insert—

‘**(4)** For the purposes of this or another Act, unless the contrary intention appears, a reference to a penalty of a specified number of penalty units is a reference to a fine of that number of penalty units.

Example—

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

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SCHEDULE 1 (continued)

4. Section 21 (heading)—	1
<i>omit ‘Discharge’, insert ‘Termination’.</i>	2
5. Section 21—	3
<i>omit ‘discharged’ (twice occurring), insert ‘terminated’.</i>	4
6. Section 28 (heading)—	5
<i>omit ‘Discharge’, insert ‘Termination’.</i>	6
7. Section 28—	7
<i>omit ‘discharged’, insert ‘terminated’.</i>	8
8. Section 33 (heading)—	9
<i>omit ‘Discharge’, insert ‘Termination’.</i>	10
9. Section 33—	11
<i>omit ‘discharged’, insert ‘terminated’.</i>	12
10. Section 52 (definition “fine”)—	13
<i>omit, insert—</i>	14
‘“fine” includes—	15
(a) the fee payable for lodging a complaint for an offence with a clerk of the court; and	16 17
(b) the lodging fee connected with the preparation and giving of a notification under Part 4A of the <i>Justices Act 1886</i> ;	18 19

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SCHEDULE 1 (continued)

11. Section 53 (at the end)—	1
<i>insert—</i>	2
‘(4) The court may adjourn the hearing of the application for the period that the court considers is proper to allow the offender to obtain information.	3 4 5
‘(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).’.	6 7
12. Section 55(2)—	8
<i>omit, insert—</i>	9
‘(2) If—	10
(a) the original order directs that the offender is to pay the fine—	11
(i) immediately—the application may be made on the day on which the order is made; or	12 13
(ii) within a fixed time—the application may be made at any time before the end of the fixed time; or	14 15
(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.’.	16 17 18
13. Section 57—	19
<i>omit.</i>	20
14. Section 58(1)—	21
<i>omit</i> ‘clerk’ (1st mention), <i>insert</i> ‘proper officer’.	22
15. Section 58(1)—	23
<i>omit</i> ‘clerk of the court’ (2nd mention), <i>insert</i> ‘proper officer’.	24

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SCHEDULE 1 (continued)

- | | |
|--|-------------|
| 16. Section 58(2)— | 1 |
| <i>omit</i> ‘clerk’, <i>insert</i> ‘proper officer’. | 2 |
| 17. Section 58 (at the end)— | 3 |
| <i>insert—</i> | 4 |
| ‘(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.’. | 5
6
7 |
| 18. Section 58 (as amended)— | 8 |
| <i>renumber</i> as section 57. | 9 |
| 19. Section 59(1)— | 10 |
| <i>omit</i> ‘clerk of the court to whom an application is made under section 56’, | 11
12 |
| <i>insert</i> ‘proper officer of the court to whom an application is made under section 56 or 58’. | 13
14 |
| 20. After section 59(1)— | 15 |
| <i>insert—</i> | 16 |
| ‘(2) Subsection (1) does not apply if— | 17 |
| (a) the offender is personally before the court or proper officer of the court when the application is made; and | 18
19 |
| (b) the application is to be dealt with immediately.’. | 20 |
| 21. Section 59(2)— | 21 |
| <i>omit</i> ‘clerk’, <i>insert</i> ‘proper officer’. | 22 |

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SCHEDULE 1 (continued)

- | | |
|--|----------|
| 22. Section 59(3)— | 1 |
| <i>omit ‘clerk’, insert ‘proper officer’.</i> | 2 |
| 23. Section 59(2) to (4) (as amended by amendments 21 and 22)— | 3 |
| <i>renumber as section 59(3), (4) and (5) respectively.</i> | 4 |
| 24. Section 60(1)— | 5 |
| <i>omit ‘clerk’, insert ‘proper officer’.</i> | 6 |
| 25. Section 60(2)(b)(i) (after ‘refusal’)— | 7 |
| <i>insert ‘and whether the refusal was made because of section 57(1)(a) or (b)’.</i> | 8
9 |
| 26. Section 60(3)— | 10 |
| <i>omit ‘clerk of the court refuses an application, the clerk of the court’,</i> | 11 |
| <i>insert ‘proper officer of the court refuses an application under section 56 or 58, the proper officer’.</i> | 12
13 |
| 27. Section 60 (at the end)— | 14 |
| <i>insert—</i> | 15 |
| ‘(4) If a court or the proper officer of the court refuses an application, | 16 |
| there must be noted in the records of the court whether the refusal was | 17 |
| made because of section 57(1)(a) or (b).’. | 18 |
| 28. Section 61 (heading)— | 19 |
| <i>omit ‘clerk’, insert ‘proper officer’.</i> | 20 |

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SCHEDULE 1 (continued)

29. Section 61(1)—	1
<i>omit ‘clerk’, insert ‘proper officer’.</i>	2
30. Section 61(2)—	3
<i>omit ‘The clerk’, insert ‘Subject to section 58, the proper officer’.</i>	4
31. Section 62(1)(a)—	5
<i>omit ‘or 57’.</i>	6
32. Section 62(2)—	7
<i>omit ‘clerk’, insert ‘proper officer’.</i>	8
33. Section 64—	9
<i>omit ‘clerk’, insert ‘proper officer’.</i>	10
34. Section 66(b)—	11
<i>omit, insert—</i>	12
‘(b) must perform in a satisfactory way community service directed by an authorised Commission officer—	13 14
(i) for the number of hours stated in the order; and	15
(ii) at the times directed by the officer; and’.	16
35. Section 66 (at the end)—	17
<i>insert—</i>	18
‘(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.	19 20 21

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SCHEDULE 1 (continued)

‘(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.’.	1 2
36. Section 69(1)—	3
<i>omit</i> ‘clerk’, <i>insert</i> ‘proper officer’.	4
37. Section 74(4)(a)—	5
<i>omit</i> ‘mentioned in section 66(b)’,	6
<i>insert</i> ‘or other time mentioned in section 66(2)’.	7
38. Section 74(7)—	8
<i>omit, insert—</i>	9
‘(7) If a notice given under subsection (1) requires the offender to appear before a court other than the court that originally sentenced the offender, the first court must—	10 11 12
(a) give a copy of the notice immediately it is received to the court that originally sentenced the offender; and	13 14
(b) if the first court acts under subsection (4)—notify the court that originally sentenced the offender of the action taken under the subsection.’.	15 16 17
39. Section 78(2)—	18
<i>omit, insert—</i>	19
‘(2) If—	20
(a) a fine option order is revoked by a court under this Part; and	21
(b) the court is not the court that made the fine option order;	22
the first court must—	23
(c) issue a warrant of commitment for the arrest of the offender; and	24

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SCHEDULE 1 (continued)

- (d) cause notice of the revocation and issue of the warrant to be given to the court that made the order.’. 1
2
- 40. Section 79 (after ‘application made’)—** 3
insert ‘to it’. 4
- 41. Section 81(3) (after ‘given to’)—** 5
insert ‘the court,’. 6
- 42. Section 81(4) (after ‘given to’)—** 7
insert ‘the court,’. 8
- 43. Section 81 (at the end)—** 9
insert— 10
- ‘(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. 11
12
13
- ‘(6) The court must advise the Commission and the offender when the application will be heard. 14
15
- ‘(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.’. 16
17
- 44. Section 85(1) and (2)—** 18
omit, insert— 19
- ‘**85.(1)** An offender who is aggrieved by a decision of the proper officer of the court refusing an application by the offender under section 56 or 58 may appeal to the court that made the original order. 20
21
22
- ‘(2) The appeal must be instituted— 23
- (a) within 25 business days after notice of refusal is posted to the 24

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SCHEDULE 1 (continued)

offender; and	1
(b) by filing a notice of appeal, in the approved form, with the proper officer of the court.’.	2 3
45. Section 85(3)—	4
<i>omit ‘court’, insert ‘proper officer of the court’.</i>	5
46. Section 86(2)—	6
<i>omit ‘Magistrates Court’, insert ‘court’.</i>	7
47. Section 86(3)—	8
<i>omit ‘Magistrates Court’, insert ‘court’.</i>	9
48. Section 86(4)—	10
<i>omit ‘Magistrates Court’, insert ‘court’.</i>	11
49. Section 86(4)—	12
<i>omit ‘58’, insert ‘57’.</i>	13
50. Section 87(1) (after ‘practice of’)—	14
<i>insert ‘the Supreme Court or District Courts or’.</i>	15
51. Section 87(1)—	16
<i>omit ‘a Magistrates Court’, insert ‘the court’.</i>	17
52. Section 87(2) (before ‘Magistrate’ (twice occurring))—	18
<i>insert ‘Judge or’.</i>	19

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SCHEDULE 1 (continued)

53. Section 88 (heading)—	1
<i>omit ‘Discharge’, insert ‘Termination’.</i>	2
54. Section 88(1)—	3
<i>omit ‘discharged’, insert ‘terminated’.</i>	4
55. Section 89 (heading)—	5
<i>omit ‘discharged’, insert ‘terminated’.</i>	6
56. Section 89—	7
<i>omit ‘discharge of a fine option order under section 88 also discharges’,</i>	8
<i>insert ‘termination of a fine option order under section 88 also terminates’.</i>	9 10
57. Section 92 (at the end)—	11
<i>insert—</i>	12
‘(5) A term of imprisonment imposed under subsection (1)(b)(i) must not be suspended under Part 8.’	13 14
58. Section 99 (heading)—	15
<i>omit ‘Discharge’, insert ‘Termination’.</i>	16
59. Section 99(1)—	17
<i>omit ‘discharged’, insert ‘terminated’.</i>	18
60. Section 99(2)—	19
<i>omit ‘discharged’, insert ‘terminated’.</i>	20

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SCHEDULE 1 (continued)

61. Section 101 (after ‘offender’ (2nd mention))—	1
<i>insert</i> ‘if the court is satisfied that the offender is a suitable person to perform community service under the order’.	2 3
62. Section 103(1)(d)—	4
<i>omit, insert—</i>	5
‘(d) must perform in a satisfactory way community service directed by an authorised Commission officer—	6 7
(i) for the number of hours stated in the order; and	8
(ii) at the times directed by the officer; and’.	9
63. Section 103(2)—	10
<i>omit, insert—</i>	11
‘(2) The total number of hours stated in the order—	12
(a) must not be less than 40 and not more than 240; and	13
(b) must be performed within 1 year from the making of the order or another time allowed by the court.	14 15
‘(3) 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.’.	16 17 18
64. Section 108 (heading)—	19
<i>omit</i> ‘Discharge’, <i>insert</i> ‘Termination’.	20
65. Section 108(1)—	21
<i>omit</i> ‘discharged’, <i>insert</i> ‘terminated’.	22

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SCHEDULE 1 (continued)

66. Section 108(2)—	1
<i>omit ‘discharged’, insert ‘terminated’.</i>	2
67. Section 112—	3
<i>omit ‘less than 1 year’, insert ‘1 year or less’.</i>	4
68. Section 114(1)(f)—	5
<i>omit, insert—</i>	6
‘(f) must, during the period of the order, if an authorised	7
Commission officer directs, reside at community residential	8
facilities for periods (not longer than 7 days at a time) that the	9
officer directs; and’.	10
69. Section 119 (heading)—	11
<i>omit ‘Discharge’, insert ‘Termination’.</i>	12
70. Section 119(1)—	13
<i>omit ‘discharged’, insert ‘terminated’.</i>	14
71. Section 119(2)—	15
<i>omit ‘discharged’, insert ‘terminated’.</i>	16
72. Section 122(3) (after ‘given to’)—	17
<i>insert ‘the court,’.</i>	18
73. Section 122(4) (after ‘given to’)—	19
<i>insert ‘the court,’.</i>	20

*Penalties and Sentences Legislation
Amendment*

SCHEDULE 1 (continued)

- 74. Section 122 (at the end)—** 1
- insert—* 2
- ‘(5) If an application is made under subsection (1) to a court that is not 3
the court that made the community based order, the first court must give a 4
copy of the application to the court that made the community based order.’. 5
- 75. Section 128(1) (after ‘an authorised Commission officer’)—** 6
- insert ‘, or a person authorised for the purpose of this section by the 7
Commission,’.* 8
- 76. Section 129(1) (after ‘an authorised Commission officer’)—** 9
- insert ‘, or a person authorised for the purpose of this section by the 10
Commission,’.* 11
- 77. Section 144(1)—** 12
- omit ‘less than 5 years’, insert ‘5 years or less’.* 13
- 78. Section 144(5)—** 14
- omit, insert—* 15
- ‘(5) The court must state an operational period during which the offender 16
must not commit another offence punishable by imprisonment if the 17
offender is to avoid being dealt with under section 146 for the suspended 18
sentence. 19
- ‘(6) The operational period starts on the day the order is made and must 20
be— 21
- (a) not less than the term of imprisonment imposed; and 22
- (b) not more than 5 years.’. 23

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SCHEDULE 1 (continued)

79. Section 147(1)—	1
<i>omit, insert—</i>	2
‘147.(1) A court mentioned in section 146(2), (4) or (6) that deals with the offender for the suspended sentence may—	3 4
(a) extend the operational period for not longer than 1 year from the making of the order under this subsection; or	5 6
(b) order the offender to serve the whole of the imprisonment; or	7
(c) order the offender to serve the part of the imprisonment that the court orders.’.	8 9
80. Section 147(2)—	10
<i>omit ‘(1)(a) or (b)(ii)’, insert ‘(1)(b)’.</i>	11
81. Section 148—	12
<i>omit ‘(b)(i)’.</i>	13
82. Section 154—	14
<i>omit ‘and 159’, insert ‘, 158A and 159’.</i>	15
83. Section 156(1)—	16
<i>omit ‘of imprisonment for the first offence’,</i>	17
<i>insert ‘of the period of imprisonment the offender is serving’.</i>	18
84. Section 157(1) (definition “period of imprisonment”)—	19
<i>omit.</i>	20

*Penalties and Sentences Legislation
Amendment*

SCHEDULE 1 (continued)

85. Section 157(3)(a)—	1
<i>omit</i> ‘made a recommendation of a non-parole period for an offender’,	2
<i>insert</i> ‘sentenced the offender to a term of imprisonment’.	3
 86. Section 157(6)(b)(ii) (after ‘than the’)—	 4
<i>insert</i> ‘fresh’.	5
 87. Section 158(a)(ii)—	 6
<i>omit, insert—</i>	7
‘(ii) has been in custody in relation to proceedings for the offence and for no other reason;’.	8 9
 88. Section 158 (at the end)—	 10
<i>insert—</i>	11
‘(2) If subsection (1)(a) applies to an offender, the sentencing court must—	12 13
(a) state the dates between which the offender was in custody in relation to proceedings for the offence and no other reason; and	14 15
(b) calculate the time that the offender was in custody in relation to proceedings for the offence and no other reason; and	16 17
(c) declare the time calculated under paragraph (b) to be imprisonment already served under the sentence; and	18 19
(d) cause to be noted in the records of the court—	20
(i) the fact that the declaration was made and its details; and	21
(ii) unless the court otherwise orders under subsection (1), the fact that the declared time was taken into account by it in imposing sentence; and	22 23 24
(e) cause the Commission to be advised of the declaration and its details.’.	25 26

*Penalties and Sentences Legislation
Amendment*

SCHEDULE 1 (continued)

- 89. Section 161(3)(a)—** 1
- omit, insert—* 2
- ‘(a) state the dates between which the offender was held in 3
 presentence custody; and 4
- (b) calculate the time that the offender was held in presentence 5
 custody; and 6
- (c) declare the time calculated under paragraph (b) to be 7
 imprisonment already served under the sentence; and’ 8
- 90. Section 161(3)(b) and (c)—** 9
- renumber* as section 161(3)(d) and (e) respectively. 10
- 91. Section 182 (heading, after ‘penalty’)—** 11
- insert* ‘for an offender dealt with on indictment’. 12
- 92. Section 182(1) (before ‘fails’)—** 13
- insert* ‘dealt with on indictment’. 14
- 93. Section 182(5)—** 15
- omit* ‘Subject to section 57(2), on’, *insert* ‘On’. 16
- 94. Section 182 (at the end)—** 17
- insert—* 18
- ‘(6) If the court deals with the offender under subsection (5)(a) and 19
 imposes a fine, the court must inform the offender that the offender may 20
 immediately verbally apply to the court for a fine option order in relation to 21
 the fine. 22
- ‘(7) If an application is made under subsection (6), the court— 23

*Penalties and Sentences Legislation
Amendment*

SCHEDULE 1 (continued)

- | | |
|---|----------------------|
| (a) must immediately proceed to hear the application but may adjourn the application to obtain further information; and | 1
2 |
| (b) may make a fine option order.’. | 3 |
| 95. Section 183(a) (after ‘provide’)— | 4 |
| <i>insert</i> ‘, or a court that orders an offender to pay a penalty does not make an order,’. | 5
6 |
| 96. Section 185(2)(b) (before ‘imprisonment’)— | 7 |
| <i>insert</i> ‘any term of’. | 8 |
| 97. Section 185(3)— | 9 |
| <i>omit, insert—</i> | 10 |
| ‘(3) This section has effect— | 11 |
| (a) subject to the provisions of the Act under which the penalty is ordered to be paid; and | 12
13 |
| (b) despite section 152 whether or not a conviction is recorded.’. | 14 |
| 98. Section 189(1)(b)(i)— | 15 |
| <i>omit, insert—</i> | 16 |
| ‘(i) there has been lodged in court a form that includes, or has attached, a list of other offences that it is alleged the offender has committed but of which the offender has not been convicted;’. | 17
18
19
20 |
| 99. After section 204(1)— | 21 |
| <i>insert—</i> | 22 |
| ‘(2) However, this Act (the “ original Act ”) as in force immediately before the commencement of the <i>Penalties and Sentences Legislation</i> | 23
24 |

*Penalties and Sentences Legislation
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SCHEDULE 1 (continued)

<i>Amendment Act 1993</i> (the “ amending Act ”) continues to apply to sentences imposed after the commencement of the original Act and before the commencement of the amending Act.’.	1 2 3
100. Section 204(3) — <i>omit ‘(2)’, insert ‘(3)’.</i>	4 5
101. Section 204(4) — <i>omit ‘(2) and (3)’, insert ‘(3) and (4)’.</i>	6 7
102. Section 204(2) to (5) (as amended by amendments 100 and 101) — <i>renumber</i> as section 204(3), (4), (5) and (6) respectively.	8 9
103. Section 204 (at the end) — <i>insert—</i>	10 11
‘(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.’.	12 13 14 15

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

section 15

CORRECTIVE SERVICES ACT 1988

1. Section 93(7)—

omit ‘section 685A of The Criminal Code’,

insert ‘Division 4 of Part 3 of the *Penalties and Sentences Act 1992*’.

2. After section 187(2)(c)—

insert—

‘(d) in consequence of the term of imprisonment being served by way of an intensive correction order in force under Part 6 of the *Penalties and Sentences Act 1992*; or

(e) in consequence of the term of imprisonment being wholly suspended under Part 8 of the *Penalties and Sentences Act 1992*.’.

JUSTICES ACT 1886

1. Section 98F(2)—

omit, insert—

‘(2) The order is taken—

(a) to be an order of the court; and

*Penalties and Sentences Legislation
Amendment*

SCHEDULE 2 (continued)

- (b) for the purposes only of the *Penalties and Sentences Act 1992*, to have been made after a conviction has been recorded.’. 1
2
- 2. Section 98J(2)—** 3
omit ‘The’, *insert* ‘Subject to section 98F(2)(b), the’. 4
- 3. Section 98K—** 5
omit, insert— 6
- ‘Fine option orders** 7
- ‘98K.** Division 2 of Part 4 of the *Penalties and Sentences Act 1992* applies to an enforcement order made under this Part— 8
9
- (a) as if— 10
- (i) the fine imposed for an offence under a principal enactment; 11
or 12
- (ii) the prescribed amount mentioned in section 98D(3)(a) or 98E(4)(a)(iii); or 13
14
- (iii) the prescribed lodging fee mentioned in section 98E(1); or 15
- (iv) the amount of the execution fee prescribed under section 98I(3)(b); 16
17
- specified in the enforcement order or a warrant issued under section 98I were a fine; and 18
19
- (b) as if the enforcement order were an original order made by a Magistrates Court.’. 20
21
22