

Queensland



# **PENALTIES AND SENTENCES ACT 1992**

**Reprinted as in force on 10 March 2003  
(includes commenced amendments up to 2002 No. 59)**

**Reprint No. 7G**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

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# Queensland



## PENALTIES AND SENTENCES ACT 1992

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# **PENALTIES AND SENTENCES ACT 1992**

[as amended by all amendments that commenced on or before 10 March 2003]

## **An Act to consolidate and amend the law relating to sentencing of offenders**

WHEREAS—

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.

## **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 protection of the Queensland community is a paramount consideration; and

- (c) promoting consistency of approach in the sentencing of offenders; and
- (d) providing fair procedures—
  - (i) for imposing sentences; and
  - (ii) for dealing with offenders who contravene the conditions of their sentence; and
- (e) providing sentencing principles that are to be applied by courts; and
- (f) making provision so that offenders are not imprisoned for nonpayment of fines without the opportunity of obtaining a fine option order; and
- (g) promoting public understanding of sentencing practices and procedures; and
- (h) generally reforming the sentencing laws of Queensland.

#### **4 Definitions**

In this Act—

**“approved form”** means a form approved by the chief executive (corrective services) for the relevant purpose.

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

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

**“authorised corrective services officer”** see section 4A.

**“community based order”** means any community service order, intensive correction order or probation order.

**“community service”** has the same meaning as in the *Corrective Services Act 2000*.

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

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

**“Crown prosecutor”**, for part 3A, 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.

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

**“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.

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

**“intensive correction order”** means an intensive correction order in force under part 6.

**“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.

**“operational period”**, of a term of imprisonment suspended under section 144(1), means the period stated under section 144(5) in relation to the term.

**“penalty”** includes any fine, compensation, restitution or other amount of money.

**“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.

**“post-prison community based release”** see the *Corrective Services Act 2000*.

**“prison”** means a prison within the meaning of the *Corrective Services Act 2000*.

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

**“proper officer”** means—

- (a) for an order made by the Supreme Court—the sheriff; or
- (b) for an order made by the District Court—any registrar; or
- (c) for an order made by a Magistrates Court—any clerk of the court.

**“property”** includes electricity.

**“prosecutor”**, for part 3A, 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.

**“re-integration program”** means a program under the *Corrective Services Act 2000* that is designed to assist an offender to re-integrate into the community, and includes leave of absence and post-prison community based release.

**“sentence”** means any penalty or imprisonment ordered to be paid or served, or any other order made, by a court after an offender is convicted, whether or not a conviction is recorded.

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

**“term of imprisonment”** means the duration of imprisonment imposed for a single offence, and includes the imprisonment an offender is serving, or is liable to serve—

- (a) for default in payment of a single fine; or
- (b) for failing to comply with a single order of a court.

#### **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 2000*; or



(ii) an employee of a person or body engaged under that Act, section 196;<sup>1</sup> 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 2000*.

## 5 Meaning of penalty unit

(1) The value of a penalty unit is—

(a) for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act—\$75; or

(aa) for the *Cooperatives Act 1997*—\$100; or

(b) in any other case, for this or another Act—\$75.

(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.

(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.

*Example—*

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

## 6 Application to children and certain courts

(1) This Act does not apply to—

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1 Section 196 (Engaging service providers)

- (a) Aboriginal Courts constituted under the *Community Services (Aborigines) Act 1984*; or
- (b) Island Courts constituted under the *Community Services (Torres Strait) Act 1984*;

except to the extent allowed by that Act.

(2) This Act does not apply to—

- (a) a child within the meaning of the *Juvenile Justice Act 1992*; or
- (b) a Childrens Court;

except to the extent allowed by the *Juvenile 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.

**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; or
- (d) a warden—to an officer employed in a mining registrar's office.

**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
- (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
- (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 any physical or emotional harm done to a victim; 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, age and intellectual capacity; and
- (g) the presence of any aggravating or mitigating factor concerning the offender; 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
- (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 a report given by an authorised corrective services officer; and
- (o) 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—

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- (i) the offender's relationship to the offender's community; or
  - (ii) any cultural considerations; or
  - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and
- (p) anything else prescribed by this Act to which the court must have regard; and
- (q) any other relevant circumstance.

**(3)** 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.

**(4)** In sentencing an offender to whom subsection (3) 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;
- (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.

(5) If required by the court for subsection (2)(o), 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.

(6) In this section—

**“community justice group”**, for an offender, means—

- (a) the community justice group established under the *Community Services (Aborigines) Act 1984*, part 3A, division 1, or *Community Services (Torres Strait) Act 1984*, part 3A, 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
- (c) a group of persons made up of elders or other respected persons of the offender’s community.

**“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*.

## **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
  - (ii) recorded in writing and kept in the office of the clerk of the court with the charge sheet; and
- (c) 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.

## **11 Matters to be considered in determining offender's character**

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) any significant contributions made to the community by the offender; and
- (c) such other matters as the court considers are relevant.

## **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—

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- (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).

**(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;

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

### **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.

(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**

(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—

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- (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
- (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)<sup>2</sup>—
  - (i) the written undertaking;

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<sup>2</sup> Section 188 (Court may reopen sentencing proceedings)

- (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
- (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;
- (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.

## **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

- (b) that the offender cannot 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 on sentence**

In imposing a sentence on an offender, a court may receive any information, including a report mentioned in the *Corrective Services Act 2000*, section 245,<sup>3</sup> that it considers appropriate to enable it to impose the proper sentence.

## **15A Audio visual 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 audio visual link or audio link, if the prosecutor and the offender agree to the use of the link.

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

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

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3 Section 245 (Pre-sentence reports)

4 Sections 10 (Court's reasons to be stated and recorded) and 13 (Guilty plea to be taken into account)

## **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.

**“disqualifying offence”** see section 15E.

**“drug assessment and education session”**, for an offender, means a single one-on-one 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—

- (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 under the *Police Powers and Responsibilities Act 2000*, section 211<sup>5</sup> to attend 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.<sup>6</sup>

“**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.

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5 *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

6 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3 (Interpretation)

**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<sup>7</sup> 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 1.0 g and the prescribed quantity in relation to Y is 0.2 g. The person had—

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

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

The total quantity of the preparation and admixture in the person’s possession containing Y is 0.3 g (0.2 + 0.1) which is more than the prescribed quantity in relation to Y (0.2 g).

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(2).<sup>8</sup>

(2) In this section—

“dangerous drug” see the *Drugs Misuse Act 1986*, section 4.<sup>9</sup>

<sup>7</sup> *Drugs Misuse Act 1986*, section 9 (Possessing dangerous drugs)

<sup>8</sup> *Drugs Misuse Act 1986*, section 10 (Possessing things)

<sup>9</sup> *Drugs Misuse Act 1986*, section 4 (Definitions)

**“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,<sup>10</sup> other than an offence dealt with, or to be dealt with, summarily; or
- (c) an indictable offence involving violence against another person,<sup>11</sup> other than an offence charged under any of the following provisions of the Criminal Code—
  - section 335
  - section 340(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
  - section 340(b).<sup>12</sup>

(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—

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10 *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs), 8 (Producing dangerous drugs) or 9 (Possessing dangerous drugs)

11 *Acts Interpretation Act 1954*, section 36—

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

12 Criminal Code, sections 335 (Common assault) and 340 (Serious assaults)



**“offence of a sexual nature”** means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 219, 221, 222, 227, 228, 229B, 323A, 323B, 363A or chapter 32.<sup>13</sup>

### **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 within which the *Health Act 1937* 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.

## **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.

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13 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16 years), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young person etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 222 (Incest), 227 (Indecent acts), 228 (Obscene publications and exhibitions), 229B (Maintaining a sexual relationship with a child), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation), 363A (Abduction of child under 16) or chapter 32 (Rape and sexual assaults)

## 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.

(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 attend 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 attending a drug assessment and education session.

(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.

## **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.

(2) When the offender appears before the court under the warrant issued under subsection (1)(b), 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.

## **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.

### *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—

- (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.

(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 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**

Subject to section 98,<sup>14</sup> 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.

**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(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.

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14 Section 98 (Application of s 32)

***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 amount stated in the recognisance be paid to the proper officer of the court by the offender or surety liable to pay the amount, immediately or within the time or by the instalments stated in the order; and
- (b) that in default of payment of the amount, the person be imprisoned for the term, of not more than 2 years, stated in the order.

(2) If all or part of the amount remains unpaid after the time allowed by the court, the proper officer may register the amount under the *State Penalties Enforcement Act 1999*, section 34.<sup>15</sup>

**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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<sup>15</sup> Section 34 (Default in paying fine, penalty or other amount under court order)



(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**

Subject to section 36(3), a court may act under this division whether or not it records a conviction.

### **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<sup>16</sup> 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
- (c) the time within which the restitution is to be made or the compensation is to be paid; and
- (d) 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.

(3) The court may make an order under subsection (2) only if it records a conviction.

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<sup>16</sup> Section 189 (Outstanding offences may be taken into account in imposing sentence)

**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; or
- (c) the proper officer of the court.

(2) The court or officer 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.

**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 *State Penalties Enforcement Act 1999*.

#### **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.

#### **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 1989*, section 30.<sup>17</sup>

(4) In this section—

“**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—2 years after the day on which the term of imprisonment ends; or
- (b) otherwise—2 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

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<sup>17</sup> *Domestic and Family Violence Protection Act 1989*, section 30 (Power of court if spouse pleads or is found guilty of related offences)

*Penalties and Sentences Act 1992*

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- (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
  - (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
- (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

- (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 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.

**43F Contravention of non-contact order**

(1) An offender must not unlawfully contravene a non-contact order.

Maximum penalty—40 penalty units or 1 year’s 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.

## **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—
  - (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.

(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 the fine be paid by instalments.

## 51 Time to pay

If a court does not make an instalment order, it may, at the time of imposing the fine, order that the offender be allowed time to pay the fine.

### *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.

(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—

(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.

(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 cannot 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.

(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).

(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
- (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 cannot 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.

(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—

- (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 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—

- (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 person in charge of a prison 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
- (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**

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.

### **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 a court under section 74(4)(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.

### **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.

(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.

(2) For the purposes of section 186,<sup>18</sup> 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

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<sup>18</sup> Section 186 (Reduction of imprisonment)

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.

(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 *State Penalties Enforcement Act 1999*, 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
- (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
- (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
- (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(1)(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—

$$DF = \frac{AF}{AP} \times DP$$

(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.

“**DP**” (default penalty) means the default imprisonment for failing to pay the whole of the penalty mentioned in the order.

*Penalties and Sentences Act 1992*

*Example—*

Original order—

<b>AF</b> ( Fine	\$450.00
( Costs of court	\$50.00
	\$500.00

Restitution \$500.00

**AP** Penalty \$1000.00

**DP** Default Imprisonment 10 weeks

**DF** =  $\frac{\mathbf{AF}}{\mathbf{AP}} \times \mathbf{DP}$

=  $\frac{500}{1000} \times 10$

= 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.

(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.

*Penalties and Sentences Act 1992*

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“**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 the fine converted to fine option order for 90 hours (HCS) and the offender has paid \$200.00 (PP) and performed 18 hours of community service (HP)—

$$\begin{aligned}
 \text{PDI} &= \text{DF} - \left[ \text{DF} \times \left( \frac{\text{PP}}{\text{AF}} + \frac{\text{HP}}{\text{HCS}} \right) \right] \\
 &= 5 - \left[ 5 \times \left( \frac{200}{500} + \frac{18}{90} \right) \right] \\
 &= 5 - \left[ 5 \times \left( \frac{2}{5} + \frac{1}{5} \right) \right] \\
 &= 5 - \left[ 5 \times \frac{3}{5} \right] \\
 &= 5 - 3 \\
 &= 2 \text{ weeks}
 \end{aligned}$$

**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
- (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.

## **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.

“**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).

### **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—

- (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).<sup>19</sup>

#### **94 Additional requirements of probation order**

(1) 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
  - (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; and
- (c) 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
- (d) pay compensation to a person for any loss or destruction of, or damage caused to, property—
  - (i) in relation to which the offence was committed; or

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<sup>19</sup> Section 123 (Offence to contravene requirement of community based orders)

- (ii) in the course of, or in connection with, the commission of the offence; and
- (e) 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) The order must state when the restitution is to be made or the compensation is to be paid.

(3) The amount must be paid, directly or indirectly, to the proper officer of the court that made the probation order.

### **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.

**99 Termination of probation order**

(1) A probation order is terminated—

- (a) at the end of its period; and
- (b) if the order contains a requirement that the offender make restitution or pay compensation—when the restitution is made or the compensation is paid.

(2) A probation order is terminated—

- (a) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (b) if the order is revoked under section 120(1).

***Division 2—Community service orders*****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—

- (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).

**104 Requirements relating to restitution and compensation**

(1) The community service order may contain requirements 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, or damage caused to, 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) The order must state when the restitution is to be made or the compensation is to be paid.

(3) The amount must be paid, directly or indirectly, to the proper officer of the court that made the community service order.

### **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—

- (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**

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.

**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.

(5) Subject to subsections (2) and (4), all community service that an offender is required to perform under subsections (1) and (3) is to be performed cumulatively unless the court orders that it is to be performed concurrently.

**108 Termination of community service order**

(1) A community service order is terminated when—

- (a) the offender performs community service in accordance with the requirements of the order for the number of hours stated in the order; and
- (b) if the order contains a requirement that the offender make restitution or pay compensation—the restitution is made or the compensation is paid.

(2) A community service order is terminated—

- (a) if the offender is sentenced or further sentenced for the offence for which the order was made; or
- (b) if the order is revoked under section 120(1).<sup>20</sup>

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<sup>20</sup> Section 120 (Amendment and revocation of community based order)

***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.<sup>21</sup>

**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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<sup>21</sup> Criminal Code, chapter 67 (Appeal—pardon)



**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) The provisions of an Act relating to remission of sentence do not apply to the offender in relation to a sentence or part of a sentence served by way of intensive correction in the community.

(3) 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 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.

(3) In subsection (1)—

“**offence**” does not include an offence against section 123(1).

### **115 Additional requirements of intensive correction order**

(1) 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
  - (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; and
- (c) 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
- (d) pay compensation to a person for any loss or destruction of, or damage caused to, 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

- (e) 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) The order must state when the restitution is to be made or the compensation is to be paid.

(3) The amount must be paid, directly or indirectly, to the proper officer of the court that made the intensive correction order.

### **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.

(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**

- (1) An intensive correction order is terminated—
  - (a) at the end of its period; and
  - (b) if the order contains a requirement that the offender make restitution or pay compensation—when the restitution is made or the compensation is paid.
- (2) An intensive correction order is terminated—
  - (a) if the offender is sentenced or further sentenced for the offence for which the order was made; or
  - (b) if the order is revoked under section 120(1); or
  - (c) 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 order**

(1) The court that made a community based order may, on application 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.

### **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.

(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.

### **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.

(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).

(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—

*Penalties and Sentences Act 1992*

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- (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;
- (c) an order extending the period of 1 year allowed for the offender to perform community 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—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.

(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.

**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—
  - (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 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.

(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).

### **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,<sup>22</sup> concurrently with any other term of imprisonment previously imposed on the offender by that or another court.

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22 *Bail Act 1980*, section 33 (Failure to appear in accordance with undertaking)

**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.

(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.

**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;

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.

### **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.

**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**

(1) 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.

(2) If a requirement of the community based order is that the offender make restitution or pay compensation, the proper officer of the court must not pay out any amount paid under the requirement—

- (a) until the time for making an appeal is ended; or
- (b) if an appeal is made—until the appeal is finally determined.

**135 Directions under community based order**

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.

### **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.

(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.

### **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),<sup>23</sup> 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 cannot 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.

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23 *Justices Act 1886*, section 43 (Matter of complaint)

**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 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 cannot 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.

**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.



**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 the operational period of an order made under section 144; 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 the operational period of an order made under section 144.

(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).

(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<sup>24</sup> 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.

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24 Section 144 (Sentence of imprisonment may be suspended)

(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.

(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
- (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
- (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 the operational period of an order made under section 144(1) 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,<sup>25</sup> concurrently with any other imprisonment previously imposed on the offender by that or another court.

### **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—

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<sup>25</sup> *Bail Act 1980*, section 33 (Failure to appear in accordance with undertaking)

- (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.

### **151 Application of remission provisions to suspended sentences**

(1) If a term of imprisonment is wholly suspended, the provisions of an Act that provide for remission of sentence—

- (a) do not apply to the term of imprisonment or the operational period; but
- (b) do apply to imprisonment ordered to be served under section 147(1)(b) or (c).

(2) If a term of imprisonment is partly suspended, the provisions of an Act that provide for remission of sentence—

- (a) do not apply to—
  - (i) the part of the term of imprisonment that is suspended; or
  - (ii) the operational period; or
  - (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
- (b) do apply to imprisonment ordered to be served under section 147(1)(b) or (c).

### **151A Re-integration programs for suspended sentences**

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).

## **PART 9—IMPRISONMENT**

### **152 Court must record conviction**

A court may make an order of imprisonment only if it records a conviction.

### **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.

### **154 Calculation of term of imprisonment**

Except as provided in sections 156(1), 158A and 159 and subject to an order being made under 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.

### **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 the schedule; or
  - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; and
- (b) committed the offence while—
  - (i) a prisoner serving a term of imprisonment; or
  - (ii) released on post-prison community based release under the *Corrective Services Act 2000*; or
  - (iii) on leave of absence, from a term of imprisonment, granted under the *Corrective Services Act 2000*; 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.

### **157 Eligibility for post-prison community based release**

(1) In this section—



**“non-release period”** means the part of a period of imprisonment that an offender must serve before the offender is eligible to apply for a post-prison community based release order under the *Corrective Services Act 2000*.

(2) If a court imposes a term of imprisonment of more than 2 years on an offender, it may recommend that the offender be eligible for post-prison community based release only after serving a specified part of the term.

(3) If a court imposes another term of imprisonment on an offender who is already serving imprisonment for an offence, and the offender’s period of imprisonment is more than 2 years, the court must—

- (a) if it is a court of like jurisdiction or higher jurisdiction to the court that last sentenced the offender to a term of imprisonment—make a recommendation for post-prison community based release relating to the period of imprisonment that the offender must serve; or
- (b) if it is a court of lesser jurisdiction to the court that last sentenced the offender to a term of imprisonment, recommend a non-release period in relation to the fresh term of imprisonment imposed by the court.

(4) In making a recommendation under subsection (3)(a), the court—

- (a) must have regard to all the facts known to the court; and
- (b) must ensure that the non-release period is not less than that mentioned in subsection (2).

(5) A recommendation made under subsection (3)(a)—

- (a) revokes previous recommendations made by courts in relation to a non-release period for an offender; and
- (b) starts on the day it is made.

(6) If a recommendation is made under subsection (3)(b) and the existing non-release period—

- (a) has not ended—the non-release period in relation to the total period of imprisonment is the total of all non-release periods that are in force; or
- (b) has ended—the non-release period in relation to the fresh term of imprisonment—
  - (i) starts on the day the recommendation is made; and

- (ii) must not be longer than the fresh term of imprisonment imposed on the offender.

(7) If an offender is convicted of a serious violent offence—

- (a) the court that sentences the offender for the serious violent offence can not make a recommendation under this section that reduces the period of imprisonment the offender must serve before being eligible for post-prison community based release under the *Corrective Services Act 2000*; and
- (b) no recommendation made under this section by any court can reduce the period of imprisonment that the offender must serve before being eligible for post-prison community based release under the *Corrective Services Act 2000*.

### **158 Imprisonment to have effect from arrest**

(1) If—

- (a) an offender—
  - (i) is convicted of an offence; and
  - (ii) has been in custody in relation to proceedings for the offence and for no other reason; and
- (b) the court sentences the offender to imprisonment for the offence;

the court may order that the term of the imprisonment is to have effect on and from the day the offender was arrested.

(2) If subsection (1)(a) applies to an offender, the sentencing court must—

- (a) state the dates between which the offender was in custody in relation to proceedings for the offence and no other reason; and
- (b) calculate the time that the offender was in custody in relation to proceedings for the offence and no other reason; and
- (c) declare the time calculated under paragraph (b) to be imprisonment already served under the sentence; and
- (d) cause to be noted in the records of the court—
  - (i) the fact that the declaration was made and its details; and

- (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
- (e) cause the chief executive (corrective services) to be advised of the declaration and its details.

### **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,<sup>26</sup> 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.

### **160 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.

### **161 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 and for no other reason 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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<sup>26</sup> Criminal Code, section 142 (Escape by persons in lawful custody)

- (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, the sentencing court must—

- (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; and
- (d) cause to be noted in the records of the court—
  - (i) the fact that the declaration was made and its details; and
  - (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
- (e) cause the chief executive (corrective services) to be advised of the declaration and its details.

**(4)** If—

- (a) an offender is charged with a series of offences committed on different occasions; and
- (b) the offender has been in custody continuously 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 arrested even if the offender is not convicted of the offence for which the offender was first arrested or any other offences in the series.

**(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) or (5), may be made by the offender or—

- (a) if the sentencing court was the Supreme Court or a District Court—the director of public prosecutions; or
- (b) if the sentencing court was a Magistrates Court—the prosecutor.

## **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 the schedule; or
    - (B) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; and
  - (ii) sentenced to 10 or more years imprisonment for the offence, calculated under section 161C;<sup>27</sup> 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.

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<sup>27</sup> Section 161C (Calculation of number of years of imprisonment)

(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 the schedule; or
  - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; 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;

the sentencing court may declare the offender to be convicted of a serious violent offence as part of the sentence.

### **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 the schedule; or

- (d) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule.

(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 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.

### **161D Sentence for serious violent offence cannot be remitted**

The sentence of an offender convicted of a serious violent offence cannot be remitted under the *Corrective Services Act 2000*.

## **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).

**“violent offence”** means—

- (a) an indictable offence—
  - (i) that, in fact, involves the use of, counselling or procuring the use of, or attempting or conspiring to use, violence against a person; and
  - (ii) for which an offender may be sentenced to imprisonment for life; or
- (b) an offence against the Criminal Code, section 208, 215, 216, 349 or 352<sup>28</sup> for which an offender may be sentenced to imprisonment for life.

### **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 violent offence on—

- (a) its own initiative; or
- (b) an application made by counsel for the prosecution.

(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 2000*, chapter 7, part 6,<sup>29</sup> 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

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28 Criminal Code, section 208 (Unlawful sodomy), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 349 (Rape) or 352 (Sexual assaults)

29 *Mental Health Act 2000*, chapter 7 (Examinations, references and orders for persons charged with offences), part 6 (Inquiries on references to Mental Health Court)



- (ii) the severity of the violent 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 physical 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.

(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 violent 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 violent offence so that evidence on sentence may be called by the prosecution and the offender.

## **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 certified transcript of, or any medical or other report tendered in, any proceeding against the offender for a violent offence.

## **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.

**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—
  - (i) if the offender's nominal sentence is other than life imprisonment—50% of the offender's nominal sentence; or
  - (ii) if the offender's nominal sentence is life imprisonment and the Criminal Code, section 305(2) does not apply—15 years; or
  - (iii) if the offender's nominal sentence is life imprisonment and the Criminal Code, section 305(2) applies—20 years; and
- (b) must review the indefinite sentence at subsequent intervals of not more than 2 years from when the last review was made.

(2) 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.

(3) Subsection (1)(a), as in force immediately before the commencement of this subsection, continues to apply in relation to an indefinite sentence that was imposed in relation to an offence committed before the commencement.

**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.

(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 victim, within the meaning of the *Criminal Offence Victims Act 1995*, section 5,<sup>30</sup> 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.

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30 *Criminal Offence Victims Act 1995*, section 5 (Who is a victim under the declaration)

(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 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 fundamental principles of justice for victims of crime declared by the *Criminal Offence Victims Act 1995*, part 2.<sup>31</sup>

### **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) sentence the offender under this Act for the violent 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 sentence imposed under subsection (1)(b)—

- (a) is taken to have started on the day the indefinite sentence was originally imposed; and

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<sup>31</sup> *Criminal Offence Victims Act 1995*, part 2 (Fundamental principles of justice for victims of crime)

- (b) takes the place of the indefinite sentence; and
- (c) must be not less than the nominal sentence.

### **174 Re-integration programs for offenders**

(1) An offender sentenced under section 173(1)(b) may apply to be released to a re-integration program.

(2) If the offender is released to a re-integration program, the offender must be under the authority of the Queensland Community Corrections Board and the supervision of an authorised corrective services officer for not less than 5 years from the offender's release to a re-integration program.

(3) If a term of imprisonment imposed under section 173(1)(b) ends within 5 years after the offender's release to a re-integration program, the term of imprisonment is taken, for the purposes of subsection (2), to extend until the end of the 5 years.

(4) However, the offender may apply to the Queensland Community Corrections Board to be discharged from the offender's re-integration program at any time after the end of the term of imprisonment imposed under section 173(1)(b).

### **175 Remissions not to be allowed**

The sentence of an offender under section 173(1)(b) must not be remitted under the *Corrective Services Act 2000*.

### **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 *Health Services Act 1991* is administered or such other similar persons or bodies as the court considers appropriate; and
- (b) such other reports as the court considers appropriate.

(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 *Health Services Act 1991*, section 63,<sup>32</sup> does not apply to an officer, employee or agent of the department in which that Act is administered, 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<sup>33</sup>—

- (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—

- (a) evidence under section 167; and
- (b) an application made under section 171 or 172.

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32 *Health Services Act 1991*, section 63 (Confidentiality)

33 Criminal Code, chapter 67 (Appeal—pardon)

(2) A court may order that, at the time evidence under section 167 is to be heard, the person in charge of the place where the offender is imprisoned or detained bring the offender before the court.

(3) On the hearing of an application made under section 171 or 172, the court may order the person in charge of the place where the offender is imprisoned or detained 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 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.

(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—

- (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.

### **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.

(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 under subsection (2)(a).

**(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
  - (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 nonpayment of penalty**

**(1) If—**

- (a) an offender is ordered to pay a penalty; and
- (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 apply—
  - (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 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
- (b) give to the registrar under the *State Penalties Enforcement Act 1999*, 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) 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.

### **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
- (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 person in charge of the prison in satisfaction or part satisfaction of the penalty;

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 person in charge of the prison—

- (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 driver licence**

(1) If—

- (a) an offender is convicted of an offence in connection with, or arising out of, the driving 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 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 driver licence.

(2) 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*.

(3) In subsection (1)—

“**conviction**” includes a conviction that is not recorded.

“**driver licence**” means a driver licence within the meaning of 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;

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—
    - (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<sup>34</sup> 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

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34 Section 13A (Cooperation with law enforcement authorities to be taken into account)

(ii) any further time the court may allow on application at any time; or

(c) 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)<sup>35</sup> 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 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

(c) asks that they be taken into account by the court in imposing sentence for the offence of which the person has been convicted.

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35 Criminal Code, section 671 (Time for appealing)

(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) cannot 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 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).

**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 cannot 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; and
- (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
- (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
- (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 *Passports Act 1938* (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—
- (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.

## 196 Regulations

The Governor in Council may make regulations under this Act.

## 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 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 if it 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**

### **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).

(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<sup>36</sup> applies as if the reference in the definition to the provision of the Criminal Code mentioned in column 1 included a reference to the provision of the Criminal Code mentioned in column 2 as in force at any time before the commencement of this section.

<b>Column 1</b>	<b>Column 2</b>
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.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
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 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.

**SCHEDULE**

sections 161A(a), 161B(3)(a) and 161C(1)(c) and (d)

**SERIOUS VIOLENT OFFENCES****CRIMINAL CODE**

1. Section 62 (Punishment of unlawful assembly)
2. Section 63 (Punishment of riot)
3. Section 75 (Threatening violence)
4. Section 142 (Escape by persons in lawful custody)
5. Section 208 (Unlawful sodomy)
6. Section 209 (Attempted sodomy)
7. Section 210 (Indecent treatment of children under 16)
8. Section 213 (Owner etc. permitting abuse of children on premises)
9. Section 215 (Carnal knowledge with or of children under 16)
10. Section 216 (Abuse of intellectually impaired persons)
11. Section 217 (Procuring young person etc. for carnal knowledge)
12. Section 218 (Procuring sexual acts by coercion etc.)
13. Section 222 (Incest)
14. Section 229B (Maintaining a sexual relationship with a child)
15. Sections 303 and 310 (Manslaughter)
16. Section 306 (Attempt 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)

## SCHEDULE (continued)

21. Section 317A (Carrying or sending dangerous goods in a vehicle)
22. Section 318 (Obstructing rescue or escape from unsafe premises)
23. Section 319 (Intentionally endangering safety of persons travelling by railway)
24. Section 319A (Endangering safety of persons travelling by aircraft)
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 (Maliciously administering poison with intent to harm)
30. Section 323 (Wounding and similar acts)
31. Section 326 (Endangering life of children by exposure)
32. Section 328A (Dangerous operation of a vehicle)
33. Section 339 (Assaults occasioning bodily harm)
34. Section 340 (Serious assaults)
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)
41. Section 411(1) (Punishment of robbery)
42. Section 411(2) (Punishment of robbery)
43. Section 412 (Attempted robbery)
44. Section 419(3)(b) (Burglary)
45. Section 421(2) (Entering or being in premises and committing indictable offences)

## SCHEDULE (continued)

**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)

**CORRECTIVE SERVICES ACT 2000**

1. Section 92(2)
2. Section 94(a)

**DRUGS MISUSE ACT 1986**

1. Section 5 (Carrying on the business of trafficking in a dangerous drug)
2. Section 6 (Aggravated supply of dangerous drugs (to minors, intellectually handicapped people, in schools and in correctional institutions))
3. Section 8 (Producing dangerous drugs (producing first schedule drugs in excess of the third schedule))

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 10 March 2003. Future amendments of the Penalties and Sentences Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

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7	to Act No. 63 of 2000	1 July 2001	3 August 2001
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date of assent 24 November 1992

ss 1–2 commenced on date of assent

ss 3–15, 44–51, 143–206 and 207 in a certain respect commenced  
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pt 3 (ss 16–43) commenced 27 November 1992 (1992 SL No. 378)

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(1992 SL No. 393)

remaining provisions commenced 1 September 1994 (1994 SL No. 288)

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date of assent 23 July 1993

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### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

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date of assent 7 March 1994

commenced on date of assent



**Marine Safety Act 1994 No. 14 ss 1–2, 234 sch 2**

date of assent 27 April 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 3 June 1994 (1994 SL No. 177)

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date of assent 1 December 1994

ss 1–2 commenced on date of assent

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date of assent 11 April 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1995 (1995 SL No. 117)

**Criminal Offence Victims Act 1995 No. 54 ss 1–2, 45 sch 2**

date of assent 22 November 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1995 (1995 SL No. 383)

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

s 4 sch 1 amd1 commenced 12 April 1996 (automatic commencement under AIA s 15DA(2)) (1995 No. 58 s 2(1) sch 1)

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date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 25**

date of assent 12 December 1996

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remaining provisions commenced 28 February 1997 (1997 SL No. 35)

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date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

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date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 151)

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date of assent 15 May 1997

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date of assent 25 August 1997

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remaining provisions commenced 1 September 1997 (1997 SL No. 286)

**Corrective Services Legislation Amendment Act 1997 No. 46 pts 1, 4**

date of assent 29 August 1997

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82  
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date of assent 5 December 1997

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date of assent 30 March 1999

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remaining provisions commenced 1 May 1999 (1999 SL No. 72)

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

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date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2000 (2000 SL No. 14)

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remaining provisions commenced 1 March 2000 (2000 SL No. 15)

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**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

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date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 2000 (2000 SL No. 272)

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date of assent 25 October 2000

commenced on date of assent

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date of assent 17 November 2000

commenced on date of assent

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date of assent 24 November 2000

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remaining provisions commenced 1 July 2002 (2002 SL No. 158)

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date of assent 13 March 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 10 March 2003 (2003 SL No. 17)

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date of assent 23 May 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 19 July 2002 (2002 SL No. 157)

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commenced on date of assent

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date of assent 14 November 2002

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**8                    Forms notified or published in the gazette****Form 7 Version 2—Warrant imprisoning an offender until a recognisance is entered into**

pubd gaz 8 August 1997 p 1737

**Form 17 Version 3—Notice to Offender of Your Failure to Pay a Court Ordered Penalty and of Your Ability to Apply for a Fine Option Order**

pubd gaz 11 October 1996 p 534

**Form 41 Version 3—Warrant of Commitment where Punishment is by Imprisonment**

pubd gaz 22 November 1996 p 1145

**Form 42 Version 2—Warrant of imprisonment for re-offending during suspended imprisonment**

pubd gaz 8 August 1997 p 1737

**Form 61 Version 4—Warrant of Arrest and Imprisonment**

pubd gaz 1 December 2000 p 1285

**Form 64—Version 1—Part 3A—Non-Contact Order**

pubd gaz 21 June 2002 p 775

**Form 65—Version 1—Part 3A—Application to Amend/Revoke a Non-Contact Order**

pubd gaz 21 June 2002 p 775

**Form 66—Version 1—Part 3A—Amendment/Revocation of Non-Contact Order**

pubd gaz 21 June 2002 p 775

