



# Penalties and Sentences Act 1992

Reprinted as in force on 1 December 2010

Reprint No. 11

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# Information about this reprint

This Act is reprinted as at 1 December 2010. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- correct minor errors (s 44).

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—**

- **when provisions commenced**
- **editorial changes made in the reprint, including table of corrected minor errors**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’).

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

**Replacement reprint date** If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



## Queensland

# Penalties and Sentences Act 1992

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	13
3	Purposes .....	13
4	Definitions .....	14
4A	Meaning of authorised corrective services officer .....	18
5	Meaning of penalty unit .....	19
6	Application to children and certain courts .....	20
7	Sentences under this Act are sentences for purposes of the Criminal Code, ch 67 .....	20
8	Construction of references to court that made order .....	20
8A	Delegation of powers by proper officer .....	21
<b>Part 2</b>	<b>Governing principles</b>	
9	Sentencing guidelines .....	21
10	Court's reasons to be stated and recorded .....	28
11	Matters to be considered in determining offender's character ...	28
12	Court to consider whether or not to record conviction .....	28
13	Guilty plea to be taken into account .....	30
13A	Cooperation with law enforcement authorities to be taken into account .....	31
14	Preference must be given to compensation for victims .....	33
15	Information on sentence .....	34
15A	Audiovisual link or audio link may be used to sentence .....	34
<b>Part 2A</b>	<b>Guideline judgments</b>	
15AA	Definitions for pt 2A .....	35
15AB	Powers of court to give or review guideline judgments .....	36
15AC	Limitations for guideline judgments .....	36
15AD	Guideline judgments on own initiative .....	37
15AE	Guideline judgments on application .....	37

Contents

---

15AF	Right of appearance in a guideline proceeding . . . . .	38
15AG	Powers of Attorney-General or director of public prosecutions . .	39
15AH	Relevant considerations before giving or reviewing guideline judgment . . . . .	39
15AI	Procedural requirements if court decides to give or review guideline judgment . . . . .	40
15AJ	Discretion of court preserved . . . . .	40
15AK	Use of evidence in giving or reviewing guideline judgments . . . .	41
15AL	Relationship between guideline judgments and other sentencing matters . . . . .	41
<b>Part 3</b>	<b>Releases, restitution and compensation</b>	
<b>Division 1</b>	<b>Orders to release certain offenders</b>	
<b>Subdivision 1</b>	<b>Interpretation</b>	
15B	Definitions for div 1 . . . . .	42
15C	Meaning of eligible drug offender . . . . .	42
15D	Meaning of eligible drug offence . . . . .	44
15E	Meaning of disqualifying offence . . . . .	45
15F	Meaning of approved provider . . . . .	46
<b>Subdivision 2</b>	<b>Orders</b>	
16	Court may make order under this division if it does not record conviction . . . . .	46
17	Making of order . . . . .	47
18	Matters to which court must have regard . . . . .	47
19	Order of court . . . . .	47
20	Contravention of order . . . . .	48
21	Termination of recognisance . . . . .	49
<b>Division 2</b>	<b>Recognisances for property related offences</b>	
22	Court may make order under this division if it does not record conviction . . . . .	49
23	When court may act under this division . . . . .	49
24	Adjournment and release of offender if recognisance entered into . . . . .	50
25	Offender may be called on to do certain things . . . . .	50
26	Offender may be called on for sentence . . . . .	50
27	Offender failing to appear under recognisance or when called . .	51
28	Termination of recognisance . . . . .	51

<b>Division 3</b>	<b>Release on entering into recognisance</b>	
29	Court may act under this division whether or not it records conviction . . . . .	52
30	Recognisance—conviction on indictment. . . . .	52
31	Recognisance—summary conviction . . . . .	52
32	Recognisance instead of imposing any other sentence . . . . .	53
33	Termination of recognisance . . . . .	53
33A	Failing to obey condition of recognisance . . . . .	54
<b>Division 3A</b>	<b>Provisions relating to forfeited recognisances</b>	
33B	Order for payment of amount under forfeited recognisance. . . . .	54
33C	Variation or revocation of order forfeiting recognisance . . . . .	55
<b>Division 4</b>	<b>Orders for restitution and compensation</b>	
34	Court may act under this division whether or not it records conviction . . . . .	56
35	Order for restitution or compensation. . . . .	56
36	What order may state. . . . .	57
37	Limit on imprisonment under s 36(2) . . . . .	58
38	Extension of time . . . . .	58
39	Directions for enforcing order of imprisonment. . . . .	58
39A	Other orders available on failure to comply . . . . .	59
40	Failing to appear as directed . . . . .	59
41	Instalments—failing to pay . . . . .	59
42	Payment of restitution or compensation . . . . .	59
43	Division does not limit operation of other provisions . . . . .	59
<b>Part 3A</b>	<b>Non-contact orders</b>	
43A	Court may make order whether or not it records conviction. . . . .	60
43B	Making non-contact order. . . . .	60
43C	Requirements of non-contact order . . . . .	60
43D	Amending or revoking non-contact order . . . . .	63
43E	Order to be given to interested persons . . . . .	64
43F	Contravention of non-contact order . . . . .	65
<b>Part 3B</b>	<b>Banning orders</b>	
43G	Definitions for pt 3B . . . . .	66
43H	Record of conviction not required. . . . .	66
43I	What is a banning order . . . . .	67
43J	Making a banning order . . . . .	68

Contents

---

43K	Banning order to be explained . . . . .	70
43L	Amending or revoking banning order . . . . .	71
43M	Banning order to be given to interested persons . . . . .	72
43N	Commissioner may give copy of banning order to licensee . . . . .	72
43O	Contravention of banning order . . . . .	73
<b>Part 4</b>	<b>Fines</b>	
<b>Division 1</b>	<b>General</b>	
44	Court may impose fine whether or not conviction recorded . . . . .	74
45	Power to fine. . . . .	74
46	Fine limitations of certain courts. . . . .	75
47	Lesser fine than provided may be imposed . . . . .	75
48	Exercise of power to fine . . . . .	75
49	Single fine for 2 or more offences. . . . .	76
50	Instalment order . . . . .	77
51	Payment of fine. . . . .	77
<b>Division 2</b>	<b>Fine option orders</b>	
52	Definitions. . . . .	77
53	Application for order if offender before court . . . . .	78
54	If offender not before court written notice of right to apply for fine option order to be given. . . . .	78
55	Application for order generally . . . . .	79
56A	Offender may apply to proper officer for fine option order . . . . .	79
57	Matters to be considered on application. . . . .	80
58	Proper officer must reconsider offender's financial position. . . . .	81
59	Determination of application. . . . .	82
60	Application may be granted or refused. . . . .	83
61	Making of order by proper officer of the court . . . . .	84
62	Effect of fine option order . . . . .	85
63	No liability if warrant executed in good faith and without negligence . . . . .	86
64	Order to be in writing . . . . .	86
65	Release from custody when order is made . . . . .	86
66	Requirements of fine option orders . . . . .	87
67	Directions under fine option order . . . . .	87
68	Period mentioned in s 66(2) may be extended . . . . .	88
69	Maximum number of hours. . . . .	89

70	Fine reduced proportionate to imprisonment . . . . .	89
71	Community service to be performed cumulatively . . . . .	89
72	Performance of community service to be credited against fine . .	89
73	Payments and application of payments . . . . .	90
74	Failing to comply with a requirement of an order . . . . .	90
76	Proper officer to determine hours of community service . . . . .	92
78	Effect of revoking order under s 74. . . . .	92
79	Revocation of fine option order other than under s 74 . . . . .	92
80	Offender may be re-sentenced on revocation of order under s 79	93
81	Application for revocation . . . . .	93
82	Imprisonment to be reduced proportionate to amount of fine paid or community service performed . . . . .	94
83	Court to notify court that imposed fine option order . . . . .	97
84	Certificates . . . . .	97
85	Appeals . . . . .	98
86	Hearing and determination of appeals . . . . .	98
88	Termination of fine option order . . . . .	99
89	Original order terminated . . . . .	100
<b>Part 5</b>	<b>Intermediate orders</b>	
<b>Division 1</b>	<b>Probation orders</b>	
90	Court may make probation order whether or not conviction recorded . . . . .	100
91	Making of an order . . . . .	100
92	Effect of order . . . . .	100
93	General requirements of probation order . . . . .	101
94	Additional requirements of probation order . . . . .	102
95	Probation order to be explained . . . . .	102
96	Offender to agree to making or amending of order . . . . .	103
97	Multiple offences. . . . .	103
98	Application of s 32 . . . . .	103
99	Termination of probation order . . . . .	103
<b>Division 2</b>	<b>Community service orders</b>	
100	Court may make order whether or not conviction recorded . . . . .	104
101	Making of an order . . . . .	104
102	Effect of order . . . . .	104
103	General requirements of community service order . . . . .	104

Contents

---

105	Community service order to be explained . . . . .	105
106	Offender to agree to making or amending of order . . . . .	106
107	Multiple offences. . . . .	106
108	Termination of community service order. . . . .	106
<b>Division 3</b>	<b>General</b>	
109	Court may make probation order and community service order for an offender . . . . .	107
110	Appeal against probation order or community service order . . . .	107
<b>Part 6</b>	<b>Intensive correction orders</b>	
111	Court may make order only if it records conviction. . . . .	108
112	Making of order . . . . .	108
113	Effect of order. . . . .	108
114	General requirements of intensive correction order . . . . .	108
115	Additional requirements of intensive correction order . . . . .	109
116	Intensive correction order to be explained . . . . .	110
117	Offender to agree to making or amending of order . . . . .	110
118	Multiple offences. . . . .	111
119	Termination of intensive correction order . . . . .	111
<b>Part 7</b>	<b>Other provisions relating to community based orders</b>	
<b>Division 1</b>	<b>Amendment and revocation of orders</b>	
120	Amendment and revocation of community based order. . . . .	112
121	Offender may be re-sentenced on revocation of order . . . . .	112
122	Application for amendment or revocation . . . . .	113
<b>Division 2</b>	<b>Contravention of orders</b>	
123	Offence to contravene requirement of community based orders .	113
124	Proceeding for offence may be brought in any Magistrates Court	114
125	Powers of Magistrates Court that convicts offender of offence against s 123(1) . . . . .	114
126	Powers of Supreme Court or District Court to deal with offender.	115
126A	Particular provision for driver licence disqualifications . . . . .	117
127	Additional power of courts in relation to an intensive correction order . . . . .	118
128	Summons or warrant for contravention of single community based order . . . . .	118
129	Summons or warrant for contravention of multiple orders made by courts of different jurisdictions. . . . .	119
130	Discharge of multiple community based orders where contravention taken into account . . . . .	120



131	Contravention of requirements of order—judge to determine . . .	121
132	Proceedings after end of period of order . . . . .	121
<b>Division 3</b>	<b>General</b>	
133	Authorised corrective services officers subject to direction of court . . . . .	121
134	Requirements of order have effect despite appeal . . . . .	121
135	Directions under community based order . . . . .	122
136	Notifications following making of order . . . . .	122
137	Facilitation of proof . . . . .	123
138	Application of Justices Act . . . . .	124
139	Court may order summons or warrant for offender's appearance	124
140	Power of Magistrates Court under s 128(2), 129(2) or 139(2) . . .	125
141	Community service under intensive correction order cumulative with any other community service . . . . .	125
142	Offence against this part—complainant . . . . .	126
<b>Part 8</b>	<b>Orders of suspended imprisonment</b>	
143	Court not to act without recording a conviction . . . . .	126
144	Sentence of imprisonment may be suspended . . . . .	126
145	Effect of suspended imprisonment . . . . .	127
146	Consequences of committing offence during operational period .	127
146A	Summons or warrant for offender whose sentence of imprisonment has been suspended . . . . .	129
147	Power of court mentioned in s 146 . . . . .	130
148	Imprisonment to be served immediately . . . . .	132
149	Reasons not stated—order still valid . . . . .	133
150	Bail Act applies if offender not dealt with immediately . . . . .	133
151A	Conditional release and parole for suspended sentences . . . . .	133
<b>Part 9</b>	<b>Imprisonment</b>	
<b>Division 1</b>	<b>Liability</b>	
152	Court must record conviction . . . . .	133
152A	Proper officer to give chief executive (corrective services) record of order of imprisonment . . . . .	134
153	Imprisonment—liability to . . . . .	134
153A	Term of imprisonment if none prescribed . . . . .	134
<b>Division 2</b>	<b>Calculation</b>	
154	Calculation of term of imprisonment . . . . .	135

Contents

---

155	Imprisonment to be served concurrently unless otherwise ordered . . . . .	135
156	Cumulative orders of imprisonment . . . . .	135
156A	Cumulative order of imprisonment must be made in particular circumstances . . . . .	136
158A	Term of imprisonment does not run if offender on bail awaiting appeal . . . . .	137
159	Term of imprisonment does not run while prisoner at large . . . . .	137
159A	Time held in presentence custody to be deducted . . . . .	137
<b>Division 3</b>	<b>Parole</b>	
160	Definitions for div 3 . . . . .	140
160A	Application of ss 160B–160D . . . . .	141
160B	Sentence of 3 years or less and not a serious violent offence or sexual offence . . . . .	142
160C	Sentence of more than 3 years and not a serious violent offence or sexual offence . . . . .	143
160D	Sentence for a serious violent offence or sexual offence . . . . .	143
160E	Automatic cancellation of parole release or eligibility dates . . . . .	144
160F	Significance of an offender's period of imprisonment . . . . .	145
160G	Court may fix any day of sentence as parole release date . . . . .	145
160H	Series of sentences involving terms of imprisonment . . . . .	147
<b>Part 9A</b>	<b>Convictions of serious violent offences</b>	
161A	When an offender is convicted of a serious violent offence . . . . .	148
161B	Declaration of conviction of serious violent offence . . . . .	148
161C	Calculation of number of years of imprisonment . . . . .	149
<b>Part 10</b>	<b>Indefinite sentences</b>	
162	Definitions . . . . .	150
163	Indefinite sentence—imposition . . . . .	151
164	Counsel for prosecution to inform court . . . . .	152
165	Attorney-General's consent . . . . .	152
166	Adjournment . . . . .	153
166A	Reports about offender . . . . .	153
166B	Distribution of reports . . . . .	154
166C	Use of reports . . . . .	154
167	Evidence . . . . .	154
168	Court to give reasons . . . . .	155
169	Onus of proof . . . . .	155

170	Standard of proof . . . . .	155
171	Review—periodic . . . . .	155
172	Review—application by offender imprisoned . . . . .	156
172A	Distribution of reports . . . . .	157
172B	Disputed report. . . . .	157
172C	Review hearing. . . . .	158
172D	Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003 . . . . .	158
173	Indefinite sentence discharged. . . . .	158
174	Parole application if finite sentence imposed . . . . .	159
174A	When parole order must be made . . . . .	160
174B	Provisions for parole orders under part . . . . .	161
174C	Parole provisions on cancellation of parole order. . . . .	162
176	Registrar of court to give report . . . . .	162
177	Appeals—general. . . . .	163
178	Appeals—Attorney-General . . . . .	163
179	Hearings—offender to be present . . . . .	163
<b>Part 11</b>	<b>General</b>	
180	Effect of alterations in sentences . . . . .	164
180A	Meaning of certain sentence provisions . . . . .	165
181	Corporations entitled to aggrieved party payments . . . . .	165
181A	Corporations to be fined if imprisonment is the only penalty . . . . .	165
181B	Corporation fines under penalty provision . . . . .	166
181C	Corporation fines under provision authorising subordinate legislation . . . . .	167
182	Enforcement of order for penalty for an offender dealt with on indictment . . . . .	167
182A	Court may make order for default payment of penalty . . . . .	168
183	Imprisonment unless penalty paid . . . . .	169
184	Imprisonment unless act done . . . . .	169
185	Scale of imprisonment for non-payment of penalty . . . . .	169
185A	If offender does not pay penalty under s 182A or 185 . . . . .	170
185B	Power of proper officer to postpone warrant. . . . .	171
185C	Power of proper officer to recall warrant and issue new warrant on part payment of penalty. . . . .	171
186	Reduction of imprisonment. . . . .	172
187	Disqualification from holding Queensland driver licence . . . . .	173

Contents

---

188	Court may reopen sentencing proceedings . . . . .	174
189	Outstanding offences may be taken into account in imposing sentence . . . . .	176
190	Magistrates Court may release offender . . . . .	178
191	Effect of order under s 190 . . . . .	178
192	Magistrates Court to assess value of property . . . . .	178
193	Payment of value or amount assessed under s 192. . . . .	179
194	Restoration of property . . . . .	179
195	Passport orders . . . . .	180
195A	Failure to perform community service in a satisfactory way . . . . .	182
195B	Access to court files by representative of community justice group in offender's community . . . . .	182
195C	Confidentiality . . . . .	183
195D	Protection from liability . . . . .	184
196	Regulation-making power . . . . .	184
197	Forms . . . . .	184
<b>Part 12</b>	<b>Sentencing Advisory Council</b>	
<b>Division 1</b>	<b>Establishment and functions</b>	
198	Establishment . . . . .	185
199	Function to state views to Court of Appeal . . . . .	185
200	Other functions . . . . .	185
201	Powers of council . . . . .	186
<b>Division 2</b>	<b>Membership</b>	
202	Membership of council . . . . .	186
203	Chairperson and deputy chairperson . . . . .	187
203A	Conditions of appointment . . . . .	188
203B	Vacation of office of council member . . . . .	188
203C	Removal from office of council members . . . . .	188
203D	Defects in appointment of members . . . . .	188
<b>Division 3</b>	<b>Proceedings</b>	
203E	Conduct of business . . . . .	189
203F	Quorum . . . . .	189
203G	Presiding at meetings . . . . .	189
203H	Conduct of meetings . . . . .	189
203I	Minutes . . . . .	190

<b>Division 4</b>	<b>Other matters</b>	
203J	Staff . . . . .	190
203K	Council may engage persons to help in performing functions . . .	190
203L	Reports. . . . .	190
<b>Part 13</b>	<b>Miscellaneous</b>	
204	General transitional provisions . . . . .	191
205	Penalty Units Act 1985 references . . . . .	192
<b>Part 14</b>	<b>Transitional provisions</b>	
206	Transitional provisions for Penalties and Sentences (Serious Violent Offences) Amendment Act 1997 . . . . .	192
207	Transitional provisions for State Penalties Enforcement Act 1999	193
208	Transitional provisions for Criminal Law Amendment Act 2000 . .	193
209	Transitional provision for Penalties and Sentences (Non-contact Orders) Amendment Act 2001 . . . . .	194
210	Transitional provisions for Criminal Law Amendment Act 2002 . .	194
211	Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2003 . . . . .	195
212	Transitional provisions for the 2004 amendments—approved forms and serious violent offences. . . . .	195
213	Transitional provision for s 157 (Eligibility for post-prison community based release) . . . . .	196
214	Transitional provision for pt 9, div 3 . . . . .	197
215	Transitional provision for State Penalties Enforcement and Other Legislation Amendment Act 2007. . . . .	197
216	Transitional provision for Criminal Code and Other Acts Amendment Act 2008. . . . .	198
217	Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010 . . . . .	198
218	Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010 . . . . .	199
219	Transitional provision for the Justice and Other Legislation Amendment Act 2010. . . . .	199
220	Transitional provision for Liquor and Other Legislation Amendment Act 2010. . . . .	200
<b>Schedule 1</b>	<b>Serious violent offences</b> . . . . .	201
<b>Schedule 2</b>	<b>Qualifying offences</b> . . . . .	205
 <b>Endnotes</b>		
1	Index to endnotes. . . . .	208

Contents

---

2	Date to which amendments incorporated. . . . .	208
3	Key . . . . .	209
4	Table of reprints . . . . .	209
5	Tables in earlier reprints . . . . .	210
6	List of legislation. . . . .	211
7	List of annotations . . . . .	217
8	List of forms notified or published in the gazette . . . . .	232
9	Table of corrected minor errors. . . . .	234

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# Penalties and Sentences Act 1992

[as amended by all amendments that commenced on or before 1 December 2010]

## **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,

[s 4]

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- 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 non-payment 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 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.

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

***board guidelines*** means guidelines under the *Corrective Services Act 2006*, section 227.

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

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



- 
- (a) a community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, part 4, division 1, for the offender's community; or
  - (b) a group of persons within the offender's community, other than a department of government, that is involved in the provision of any of the following—
    - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
    - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
    - (iii) other activities relating to local justice issues; or
  - (c) a group of persons made up of elders or other respected persons of the offender's community.

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

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

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

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

**court**, for part 2A, see section 15AA.

**Crown prosecutor**, for parts 3A and 3B, 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.

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

[s 4]

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*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.

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

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

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

*indefinite sentence*, for part 10, see section 162.

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

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

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

*nominal sentence*, for part 10, see section 162.

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

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

*offender'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*.

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***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.

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

***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.

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

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

***proper officer*** means—

- (a) for an order made 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 parts 3A and 3B, 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.

***public place***, for part 3B, see section 43G.

***qualifying offence***, for part 10, see section 162.

[s 4A]

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

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

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

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

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

**SPER** means the State Penalties Enforcement Registry established under the *State Penalties Enforcement Act 1999*.

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

- (a) the imprisonment an offender is serving, or is liable to serve—
  - (i) for default in payment of a single fine; or
  - (ii) for failing to comply with a single order of a court; and
- (b) for an offender on whom a finite sentence has been imposed, any extension under section 174B(6) of the offender's finite term.

#### **4A Meaning of authorised corrective services officer**

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

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- (i) a corrective services officer under the *Corrective Services Act 2006*; or
  - (ii) an employee of a person or body engaged under that Act, section 272; and
- (b) is authorised by the chief executive (corrective services) for the relevant purpose.
- (2) In this section—  
*chief executive (corrective services)* does not include an engaged service provider under the *Corrective Services Act 2006*.

## 5 Meaning of penalty unit

- (1) The value of a penalty unit is—
- (a) for the *State Penalties Enforcement Act 1999* or an infringement notice under that Act, other than an infringement notice for an offence against a local law—\$100; or
  - (b) for a local law, or an infringement notice under the *State Penalties Enforcement Act 1999* for an offence against a local law—the amount, not more than \$100, prescribed under a regulation; or
  - (c) in any other case, for this or another Act—\$100.
- (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**

This Act does not apply to—

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

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

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

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

## **8 Construction of references to court that made order**

- (1) A reference in this Act to the court that made a community based order or fine option order or an original order within the meaning of section 52 includes—
  - (a) if the order was made by the Supreme Court—any sittings of the Supreme Court in its criminal jurisdiction at any place in Queensland; or
  - (b) if the order was made by a District Court—any sittings of a District Court in its criminal jurisdiction at any place in Queensland; or
  - (c) if the order was made by a Magistrates Court—any Magistrates Court sitting at any place in Queensland; or
  - (d) if the order was made by a Wardens Court—any Wardens Court sitting at any place in Queensland.

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- (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

[s 9]

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- (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—
    - (i) any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under the *Victims of Crime Assistance Act 2009*, section 15; and
    - (ii) the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and
  - (d) the extent to which the offender is to blame for the offence; and
  - (e) any damage, injury or loss caused by the offender; and
  - (f) the offender's character, 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



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- (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 an oral or written report given by an authorised corrective services officer; and
  - (o) if the offender is on bail and is required under the offender’s undertaking to attend a rehabilitation, treatment or other intervention program or course—the offender’s successful completion of the program or course; and
  - (p) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender’s community that are relevant to sentencing the offender, including, for example—
    - (i) the offender’s relationship to the offender’s community; or
    - (ii) any cultural considerations; or
    - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates; and

[s 9]

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

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- (5) Also, in sentencing an offender for any offence of a sexual nature committed in relation to a child under 16 years—
- (a) the principles mentioned in subsection (2)(a) do not apply; and
  - (b) the offender must serve an actual term of imprisonment, unless there are exceptional circumstances.
- (5A) For subsection (5)(b), in deciding whether there are exceptional circumstances, a court may have regard to the closeness in age between the offender and the child.
- (6) In sentencing an offender to whom subsection (5) applies, the court must have regard primarily to—
- (a) the effect of the offence on the child; and
  - (b) the age of the child; and
  - (c) the nature of the offence, including, for example, any physical harm or the threat of physical harm to the child or another; and
  - (d) the need to protect the child, or other children, from the risk of the offender reoffending; and
  - (e) the need to deter similar behaviour by other offenders to protect children; and
  - (f) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
  - (g) the offender's antecedents, age and character; and
  - (h) any remorse or lack of remorse of the offender; and
  - (i) any medical, psychiatric, prison or other relevant report relating to the offender; and
  - (j) anything else about the safety of children under 16 the sentencing court considers relevant.
- (6A) Also, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for the following offences—

[s 9]

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- (a) an offence against the *Classification of Computer Games and Images Act 1995*, section 28 if the objectionable computer game is a child abuse computer game under the Act;
  - (b) an offence against any of the following provisions of the *Classification of Films Act 1991*—
    - (i) section 41(3) or 42(3) or (4);
    - (ii) section 43, if the offence involves a child abuse film under the Act;
  - (c) an offence against any of the following provisions of the *Classification of Publications Act 1991*—
    - (i) section 14;
    - (ii) section 12, 13, 15, 16 or 17 if the offence involves a child abuse publication or child abuse photograph under the Act;
  - (d) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.
- (6B) In sentencing an offender to whom subsection (6A) applies, the court must have regard primarily to—
- (a) the nature of any image of a child that the offence involved, including the apparent age of the child and the activity shown; and
  - (b) the need to deter similar behaviour by other offenders to protect children; and
  - (c) the prospects of rehabilitation including the availability of any medical or psychiatric treatment to cause the offender to behave in a way acceptable to the community; and
  - (d) the offender's antecedents, age and character; and
  - (e) any remorse or lack of remorse of the offender; and
  - (f) any medical, psychiatric, prison or other relevant report relating to the offender; and

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- (g) anything else about the safety of children under 16 the sentencing court considers relevant.
- (7) If required by the court for subsection (2)(p), the representative must advise the court whether—
- (a) any member of the community justice group that is responsible for the submission is related to the offender or the victim; or
  - (b) there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.
- (8) In sentencing an offender, a court must not have regard to whether or not the offender—
- (a) may become, or is, the subject of a dangerous prisoners application; or
  - (b) may become subject to an order because of a dangerous prisoners application.
- (8) In determining the appropriate sentence for an offender who has 1 or more previous convictions, the court must treat each previous conviction as an aggravating factor if the court considers that it can reasonably be treated as such having regard to—
- (a) the nature of the previous conviction and its relevance to the current offence; and
  - (b) the time that has elapsed since the conviction.
- (9) Despite subsection (8), the sentence imposed must not be disproportionate to the gravity of the current offence.
- (10) In this section—
- actual term of imprisonment*** means a term of imprisonment served wholly or partly in a corrective services facility.
- corrective services facility*** see the *Corrective Services Act 2006*, schedule 4.

[s 10]

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## **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—
  - (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).
- (3A) Despite subsection (3)(b), the conviction may be entered in a record kept by a department, a prosecuting authority or the offender's legal representative if it is necessary for the legitimate performance of the functions of the department, prosecuting authority or legal representative.
- (4) A conviction without the recording of a conviction—
  - (a) does not stop a court from making any other order that it may make under this or another Act because of the conviction; and
  - (b) has the same result as if a conviction had been recorded for the purposes of—
    - (i) appeals against sentence; and
    - (ii) proceedings for variation or contravention of sentence; and
    - (iii) proceedings against the offender for a subsequent offence; and

[s 13]

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- (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.
- (7) Despite subsection (6), the second court is not required to record the conviction for the offence if—
  - (a) the offender is the subject of a community service order or probation order; and
  - (b) the reason the court is dealing with the offender for the same offence is because the offender has applied for a revocation of the community service order or probation order; and
  - (c) the offender has not breached the community service order or probation order.

### **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—
  - (a) must advise the relevant officer—
    - (i) that the offender has undertaken to cooperate with law enforcement agencies; and

[s 13A]

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- (ii) that written or oral submissions or evidence will be made or brought before the court relevant on that account to the reduction of sentence; and
  - (b) may give 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)—
    - (i) the written undertaking;
    - (ii) a record of evidence or submissions made relevant to the reduction of sentence and the sentencing remarks made under paragraph (b).

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- (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; or
  - (b) for an order made by a magistrate—3 years imprisonment.
- (11) In this section—
- relevant officer* means—
- (a) for a proceeding before the Supreme or District Court—the sentencing judge’s associate; or
  - (b) for a proceeding before a Magistrates Court—the relevant clerk of the court.

## **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

[s 15]

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

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

## **15 Information on sentence**

- (1) In imposing a sentence on an offender, a court may receive any information, including a report mentioned in the *Corrective Services Act 2006*, section 344, that it considers appropriate to enable it to impose the proper sentence.
- (2) An authorised corrective services officer must not, in any information or report, recommend that a fine option order or community based order should not be made for an offender merely because of—
  - (a) any physical, intellectual or psychiatric disability of the offender; or
  - (b) the offender's sex, educational level or religious beliefs.

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

- (1) The court may allow anything that must or may be done in relation to the sentencing of an offender to be done over an audiovisual link or audio link, if the prosecutor and the offender agree to the use of the link.
- (2) For sections 10(1) and 13(3) or (4), anything done, for an offender's sentencing, over an audiovisual link or audio link between the offender and the court sitting in open court is taken to be done in open court.
- (3) The provisions of the *Evidence Act 1977* relating to the use of an audiovisual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).

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## Part 2A                      Guideline judgments

### 15AA Definitions for pt 2A

In this part—

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

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

*court* means the Court of Appeal.

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

*guideline judgment* means a judgment that—

- (a) is declared to be a guideline judgment by the court; and
- (b) contains guidelines to be taken into account by courts in sentencing offenders being guidelines applying—
  - (i) generally; or
  - (ii) to a particular court or class of court; or
  - (iii) to a particular offence, or class of offence, including under a Commonwealth Act; or
  - (iv) to a particular penalty or class of penalty; or
  - (v) to a particular class of offender.

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

*guideline proceeding* means—

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

[s 15AB]

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*review*, a guideline judgment, means—

- (a) confirm the guideline judgment; or
- (b) vary the guideline judgment; or
- (c) revoke the guideline judgment; or
- (d) substitute a new guideline judgment for the guideline judgment.

### **15AB Powers of court to give or review guideline judgments**

- (1) The court may give or review a guideline judgment—
  - (a) on its own initiative under section 15AD; or
  - (b) on an application under section 15AE.
- (2) However—
  - (a) a guideline judgment for an offence under a Commonwealth Act may be given or reviewed only in a proceeding where the guideline judgment relates to a matter in the proceeding; and
  - (b) the court must comply with section 15AC.

### **15AC Limitations for guideline judgments**

- (1) A guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, must be consistent with Queensland law.
- (2) A guideline judgment for an offence under a Commonwealth Act must—
  - (a) be consistent with Commonwealth law; and
  - (b) set out non-binding considerations to guide the future exercise of discretion and not purport to establish a rule of binding effect; and
  - (c) articulate principles to underpin the determination of a particular sentence and not state the expected decisions in a future proceeding.

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### **15AD Guideline judgments on own initiative**

- (1) The court may, on its own initiative—
  - (a) give or review a guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, in a proceeding and whether or not the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining the proceeding; and
  - (b) pronounce the guideline judgment separately or by inclusion in any judgment the court considers appropriate.
- (2) The court may, on its own initiative—
  - (a) give or review a guideline judgment for an offence under a Commonwealth Act in a proceeding and only if the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining the proceeding; and
  - (b) pronounce the guideline judgment only by inclusion in the judgment for the proceeding.

### **15AE Guideline judgments on application**

- (1) The following persons may apply to the court for a guideline judgment to be given or reviewed—
  - (a) the Attorney-General;
  - (b) the director of public prosecutions;
  - (c) the chief executive officer of Legal Aid Queensland.
- (2) For subsection (1), the application is not required to be an application in a proceeding.
- (3) Also, on an appeal after a person is convicted, the person may apply to the court for review of a guideline judgment to the extent it contains a guideline that is relevant in the circumstances.

[s 15AF]

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- (4) The application may include submissions in support of the application.
- (5) The court may, on an application under this section—
  - (a) give or review a guideline judgment, other than a guideline judgment for an offence under a Commonwealth Act, whether or not this is necessary for the purpose of determining a proceeding; and
  - (b) pronounce the guideline judgment separately or by inclusion in any judgment the court considers appropriate.
- (6) The court may, on an application under this section—
  - (a) give or review a guideline judgment for an offence under a Commonwealth Act only if the court considers giving or reviewing the guideline judgment is necessary for the purpose of determining a proceeding in relation to the offence; and
  - (b) pronounce the guideline judgment only by inclusion in the judgment for the proceeding.

### **15AF Right of appearance in a guideline proceeding**

- (1) The following persons may appear in a guideline proceeding—
  - (a) the Attorney-General;
  - (b) the director of public prosecutions;
  - (c) the chief executive officer of Legal Aid Queensland.
- (2) Also, for a guideline proceeding in which the court is giving or reviewing a guideline judgment relevant to an appeal before the court against the sentence of a convicted person, the convicted person may appear in the guideline proceeding.
- (3) Without limiting subsection (1) or (2), a person who may appear under subsection (1) or (2) may—
  - (a) oppose or support the giving or reviewing of the guideline judgment by the court; and



- (b) make submissions in relation to the framing of the guidelines to be contained in the guideline judgment; and
- (c) inform the court of any relevant pending appeal against sentence; and
- (d) assist the court in relation to any relevant matter.

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

- (1) Nothing in the *Director of Public Prosecutions Act 1984* or any Act or law prevents, or in any way limits, the exercise of a power conferred on the director of public prosecutions under section 15AE or 15AF.
- (2) Without limiting subsection (1), in exercising a power conferred on the director of public prosecutions under this section, the director is not, despite the *Director of Public Prosecutions Act 1984*, section 10, responsible to, or subject to the direction of, the Attorney-General.
- (3) Nothing in any Act or law prevents, or in any way limits, the performance of a function conferred on the Attorney-General under section 15AE or 15AF.

### **15AH Relevant considerations before giving or reviewing guideline judgment**

- (1) If the court is considering giving or reviewing a guideline judgment, the court must—
  - (a) consider—
    - (i) the need to promote consistency of approach in sentencing offenders; and
    - (ii) the need to promote public confidence in the criminal justice system; and
  - (b) notify the council and consider the written views of the council given within the reasonable period stated in the notification.

[s 15AI]

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- (2) However, the court does not have to notify the council under subsection (1)(b) if—
  - (a) the court is considering giving or reviewing a guideline judgment relevant to an appeal before the court against the sentence of a convicted person; and
  - (b) the court considers that the time taken to notify the council and consider its views would result in an injustice to the convicted person.

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

- (1) This section applies if the court decides to give or review a guideline judgment.
- (2) The court must—
  - (a) for any guideline proceeding—notify the following persons of their right to appear before the court in the guideline proceeding—
    - (i) the Attorney-General;
    - (ii) the director of public prosecutions;
    - (iii) the chief executive officer of Legal Aid Queensland; and
  - (b) if the court is giving or reviewing a guideline judgment relevant to an appeal before the court against the sentence of a convicted person—notify the convicted person.
- (3) If the court has received the written views of council under section 15AH(1)(b), the court must give a copy of the council's views to the persons mentioned in subsection (2)(a) and (b).

### **15AJ Discretion of court preserved**

- (1) Nothing in this part—

- (a) limits any power or jurisdiction of the court to give or review a judgment providing guidance on matters relating to sentencing that the court has apart from this part; or
  - (b) requires the court to give or review a guideline judgment if it considers giving or reviewing a guideline judgment inappropriate.
- (2) If, on an application under section 15AE, the court decides not to give or review a guideline judgment, the court must give reasons for its decision.

### **15AK Use of evidence in giving or reviewing guideline judgments**

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

### **15AL Relationship between guideline judgments and other sentencing matters**

A guideline in a guideline judgment—

- (a) is additional to anything else required under part 2; and
- (b) does not limit or otherwise affect any requirement under that part.

[s 15B]

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## **Part 3**                      **Releases, restitution and compensation**

### **Division 1**                **Orders to release certain offenders**

#### **Subdivision 1**        **Interpretation**

##### **15B**    **Definitions for div 1**

In this division—

*approved provider* see section 15F.

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

*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

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- (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 379 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.

**prescribed diversion alternative** means circumstances prescribed under a regulation for this definition that are

[s 15D]

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similar to the circumstances mentioned in subsection (4)(a)(i) or (ii).

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

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

## 15D Meaning of *eligible drug offence*

- (1) An *eligible drug offence* is—
- (a) an offence by a person against the *Drugs Misuse Act 1986*, section 9 of unlawfully having possession of a dangerous drug if—
- (i) each dangerous drug mentioned in the charge for the offence is a prescribed dangerous drug; and
- (ii) for each dangerous drug mentioned in the charge, the total quantity of the substances, preparations, solutions and admixtures in the person's possession containing the dangerous drug is not more than the prescribed quantity in relation to the dangerous drug; and

*Example—*

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

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

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

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

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

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- (iii) the court considers each dangerous drug mentioned in the charge was for the person's personal use; or
- (b) an offence against the *Drugs Misuse Act 1986*, section 10(1), if the court considers the possession of each thing mentioned in the charge was related to its personal use by the person in connection with the commission of the offence; or
- (c) an offence against the *Drugs Misuse Act 1986*, section 10(2), (4) or (4A).
- (2) In this section—

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

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

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

## **15E Meaning of *disqualifying offence***

- (1) A ***disqualifying offence*** is—
- (a) an offence of a sexual nature; or
- (b) an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9, other than an offence dealt with, or to be dealt with, summarily; or
- (c) an indictable offence involving violence against another person, other than an offence charged under any of the following provisions of the Criminal Code—
- section 335
  - section 340(1)(a), but only if the offence is the assault of another with intent to resist or prevent the lawful arrest or detention of the person or of any other person
  - section 340(1)(b).

[s 15F]

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*Editor's note—*

*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.

- (2) A reference to a provision in subsection (1) or (4) includes a reference to a law of another State or the Commonwealth that corresponds to the provision.
- (3) A reference in subsection (1)(c) to an indictable offence includes a reference to an indictable offence dealt with summarily.
- (4) In this section—

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

## **15F Meaning of *approved provider***

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

**chief executive (health)** means the chief executive of the department 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.



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## **17 Making of order**

- (1) If a court considers that it is appropriate that no punishment or only a nominal punishment should be imposed on an offender, the court may make an order under section 19.
- (2) Despite subsection (1), a drug diversion court may make an order under section 19(1)(b) that includes a drug diversion condition if the matters mentioned in section 19(2A)(b) and (c) are satisfied.

## **18 Matters to which court must have regard**

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

- (a) the offender's character, age, health and mental condition; and
- (b) the nature of the offence; and
- (c) circumstances (if any) under which the offence was committed that make the offence less serious than what it would be if it had been committed under other circumstances; and
- (d) anything else to which the court considers it proper to have regard.

## **19 Order of court**

- (1) The court may make an order—
  - (a) releasing the offender absolutely; or
  - (b) that the offender be released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that the offender must—
    - (i) be of good behaviour; and
    - (ii) appear for conviction and sentence if called on at any time during such period (not longer than 3 years) as is stated in the order.

[s 20]

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- (2) In making an order under subsection (1)(b), the court may impose any additional conditions that it considers appropriate.
- (2A) Without limiting subsection (2), the court may impose a condition that the offender must 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.
- (1A) Also, without limiting subsection (1), if the offender contravenes a drug diversion condition of the offender's recognisance, the proper officer of the court may bring the offender back before the court by giving notice to the offender that the proceeding for the offence is to be heard by the court on a stated day.
- (2) When the offender appears before the court, whether under the warrant issued under subsection (1)(b) or under a notice given under subsection (1A), the court may—

- (a) record a conviction and sentence the offender for the offence with which the offender was originally charged; or
- (b) make any other order that the court could have made; as if the offender had not been released on recognisance.

## **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.

[s 24]

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## **24 Adjudgment 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

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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

[s 29]

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- (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

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released if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that the offender keep the peace and be of good behaviour for a period (not longer than 1 year) fixed by the court.

### **32 Recognisance instead of imposing any other sentence**

- (1) Subject to section 98, if an offender is convicted, the court may, instead of imposing another sentence, release the offender if the offender enters into a recognisance, with or without sureties, in such amount as the court considers appropriate, on the conditions that—
  - (a) the offender must appear before the court to be sentenced at a future sittings of the court or if called on within a period stated by the court; and
  - (b) the offender must in the meantime keep the peace and be of good behaviour.
- (2) In making an order under subsection (1), the court may impose any additional conditions that it considers appropriate.

### **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).

[s 33A]

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### **33A Failing to obey condition of recognisance**

- (1) If the court is satisfied that the offender has failed to obey a condition of the recognisance, the court may forfeit the recognisance and issue a warrant to arrest the offender.
- (2) The warrant is to be directed to all police officers to arrest and bring the offender before the court or a court of like jurisdiction.
- (3) The court before which the offender is brought may—
  - (a) sentence the offender for the offence with which the offender was originally charged; or
  - (b) make another order that the court could lawfully have made if the offender had not been released on recognisance.

## **Division 3A Provisions relating to forfeited recognisances**

### **33B Order for payment of amount under forfeited recognisance**

- (1) A court must, on the forfeiture of a recognisance, order—
  - (a) that the offender or surety liable to pay an amount stated in the recognisance pay the amount to the proper officer of the court immediately or within the time or by the instalments stated in the order; or
  - (b) that the proper officer of the court is, under the *State Penalties Enforcement Act 1999*, section 34, to give particulars of the amount undertaken by the surety to be paid on the forfeiture of the recognisance to SPER for registration under that section.
- (2) If the court makes an order under subsection (1)(a), the court may also order that the offender or surety be imprisoned for the term, of not more than 2 years, stated in the order if the offender or surety defaults in paying the amount.



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**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;
    - (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;

[s 34]

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- (c) stay the enforcement of any warrant until the application is decided.
- (6) Also, the court may hear the application earlier than 14 days after service of the application if the parties consent to the earlier hearing.
- (7) The court must decide the application and may—
  - (a) vary the order; or
  - (b) revoke the order; or
  - (c) refuse the application.

## **Division 4                      Orders for restitution and compensation**

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

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

### **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

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- (c) pay compensation for personal injury suffered by a person (whether or not the person is the victim against whom the offence was committed) because of the commission of the offence.
  - (2) An order may be made under subsection (1) in addition to any other sentence to which the offender is liable.
  - (3) If an offence is taken into account under section 189 in imposing sentence on an offender for another offence, the court may make an order under subsection (1).
  - (4) If a court makes an order under subsection (1) because of subsection (3), then, despite section 189(8), the offender has the same right of appeal as if the court had convicted the offender of the offence in relation to which the order was made.

### **36 What order may state**

- (1) An order made under section 35(1) may state—
  - (a) the amount to be paid by way of restitution or compensation; and
  - (b) the person to whom the restitution is to be made or the compensation is to be paid; and
  - (c) the time within which the restitution is to be made or the compensation is to be paid or, alternatively, that the proper officer of the court is, under the *State Penalties Enforcement Act 1999*, section 34, to give particulars of the amount of the restitution or compensation to SPER for registration under that section; and
  - (d) if the order states the time within which the restitution is to be made or the compensation is to be paid—the way in which the restitution is to be made or the compensation is to be paid.
- (2) When making an order under section 35(1), the court may also order that the offender is to be imprisoned if the offender fails to comply with the order.

[s 37]

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### **37 Limit on imprisonment under s 36(2)**

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

- (a) if the order is made on indictment—1 year; or
- (b) if the order is made on summary conviction—6 months.

### **38 Extension of time**

- (1) The time stated in an order made under section 35(1) within which the restitution is to be made, or the compensation is to be paid, may be extended by—
  - (a) the court that made the order; or
  - (b) a court of like jurisdiction.
- (2) The court that grants an extension under subsection (1) may further extend the time.
- (3) Application for an extension under subsection (1), or further extension under subsection (2), must be in writing.

### **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.

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**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.

[s 43A]

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## 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.
- (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—

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- (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
- (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—

[s 43C]

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- (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.



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**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

[s 43E]

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- (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

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- (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.

[s 43G]

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- (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 3B                      Banning orders

### 43G    Definitions for pt 3B

In this part—

*banning order* see section 43I.

*licence* see the *Liquor Act 1992*, section 4.

*licensed premises* see the *Liquor Act 1992*, section 4.

*licensee* see the *Liquor Act 1992*, section 4.

*public place* see the *Liquor Act 1992*, section 11.

### 43H    Record of conviction not required

A court may make a banning order whether or not it records a conviction.

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**43I What is a *banning order***

(1) A ***banning order*** is an order that prohibits an offender, until a stated date, from doing, or attempting to do, any of the following—

- (a) entering or remaining in stated licensed premises or a stated class of licensed premises;
- (b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, the stated licensed premises or stated class of licensed premises mentioned in an order made under paragraph (a);

*Examples of orders for paragraph (b)—*

- an order that prohibits a person from entering or remaining in, between the hours of 10p.m. and 6a.m., an area that is within 10m of stated licensed premises mentioned in an order made under paragraph (a)
  - an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., a stated street, or an area abutting several stated streets, that is located near stated licensed premises mentioned in an order made under paragraph (a)
  - an order that prohibits a person from entering or remaining in, between the hours of 11p.m. and 5a.m., the drink safe precinct under the *Liquor Act 1992* in which the stated licensed premises mentioned in an order made under paragraph (a) are located
- (c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.

(2) The stated date in the order must be no later than—

- (a) if the offender is sentenced to a term of imprisonment for the offence and the sentence is not suspended—1 year after the day on which the term of imprisonment ends; or
- (b) if the offender is sentenced to a term of imprisonment for the offence and the sentence is suspended under

[s 43J]

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- section 144(1)—1 year after the day on which the operational period of the term of imprisonment ends; or
- (c) otherwise—1 year after the day on which the order is made.

### **43J Making a banning order**

- (1) A court may make a banning order for an offender if—
- (a) the offender has been convicted of an offence that involved the use, threatened use or attempted use of unlawful violence to a person or property; and
  - (b) having regard to the evidence available to the court, the court is satisfied that the offence was committed in licensed premises or in a public place in the vicinity of licensed premises; and
  - (c) the court is satisfied that, unless the order is made, the offender would pose an unacceptable risk to—
    - (i) the good order of licensed premises and areas in the vicinity of licensed premises; or
    - (ii) the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.
- (2) The order may be made in addition to any other order the court may make under this or another Act.
- (3) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including, for example, the following—
- (a) whether the offender is, or has been, subject to another banning order;
  - (b) whether the offender is, or has been, subject to—
    - (i) a special condition mentioned in the *Bail Act 1980*, section 11(3); or
    - (ii) a civil banning order imposed under the *Liquor Act 1992*, section 173X;

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- (c) the offender's criminal history;
  - (d) the offender's personal circumstances and the likely effect of the order on those circumstances;
  - (e) anything else the court considers relevant.
- (4) The court may impose any conditions it considers necessary on a banning order.
- (5) A banning order does not stop the offender from—
- (a) entering or remaining in any of the following—
    - (i) the offender's residence;
    - (ii) the offender's place of employment;
    - (iii) a place at which the offender is receiving formal education;
    - (iv) a mode of transport required to be used by the offender;
    - (v) any other place that the court considers necessary in order to prevent undue hardship to the offender or a member of the offender's family; or
  - (b) entering any place that it is reasonably necessary for the offender to enter for the purpose of entering or remaining in a place or mode of transport mentioned in paragraph (a).
- (6) If a place mentioned in subsection (5) is located within the area to which the banning order applies, the banning order must—
- (a) describe the place in sufficient detail to identify the place; and
  - (b) state that the offender is not stopped from entering or remaining in the place.

*Example for subsection (6)—*

If an offender's residence is located within the area to which the banning order applies, the banning order must state the address of the residence and state that the offender is not stopped from entering or remaining in the residence.

[s 43K]

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- (7) If a mode of transport mentioned in subsection (5) operates within an area to which the banning order applies, the banning order must—
- (a) describe the mode of transport in sufficient detail to identify the mode of transport; and
  - (b) state that the offender is not stopped from entering or remaining in the mode of transport.

*Example for subsection (7)—*

If a bus route required to be used by the offender operates within the area to which the banning order applies, the banning order must describe the bus route and state that the offender is not stopped from entering or remaining in a bus on that route.

- (8) The offender bears the onus of proving the following—
- (a) for subsection (5)(a)(i)—that a place is the offender's residence;
  - (b) for subsection (5)(a)(ii)—that a place is the offender's place of employment;
  - (c) for subsection (5)(a)(iii)—that the offender is receiving formal education at a place;
  - (d) for subsection (5)(a)(iv)—that a mode of transport is required to be used by the offender;
  - (e) for subsection (5)(a)(v)—that undue hardship would be caused to the offender or a member of the offender's family if the offender was prevented from entering or remaining in a place.

### **43K Banning order to be explained**

- (1) Before making a banning order, the court must explain, or cause to be explained, to the offender—
- (a) the purpose and effect of the order; and
  - (b) the consequences of contravening the order; and
  - (c) that the order may be amended or revoked on the application of the offender or a prosecutor.



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- (2) The explanation must be made in language or in a way likely to be readily understood by the offender.

#### **43L Amending or revoking banning order**

- (1) The following persons may apply to the court, in the approved form, to amend or revoke a banning order—
- (a) a prosecutor;
  - (b) the offender.
- (2) However, the offender can not apply until at least 6 months after the order was made.
- (3) The application may be made to a court of equivalent jurisdiction to the court in which the order was made.
- (4) The applicant must give a copy of the application to—
- (a) if the applicant is the offender—the prosecuting authority; or
  - (b) if the applicant is a prosecutor—the offender.
- (5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.
- (6) The prosecutor and offender are each entitled to be heard at the hearing of the application.
- (7) A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the offender that justifies the amendment or revocation.
- (8) In this section—
- prosecuting authority*** means—
- (a) if the prosecutor who appeared before the court when the banning order was made was a police officer—the commissioner of the police service or someone authorised to accept the application on the commissioner’s behalf; or
  - (b) if the prosecutor who appeared before the court when the banning order was made was a Crown

[s 43M]

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prosecutor—the director of public prosecutions or someone authorised to accept the application on the director’s behalf.

### **43M Banning order to be given to interested persons**

- (1) A proper officer of the court that makes, amends or revokes a banning order for an offender must immediately—
  - (a) reduce the order to writing in the approved form; and
  - (b) give a copy of the order to—
    - (i) if the prosecutor who appeared before the court when the banning order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the order on the director’s behalf; and
    - (ii) the offender; and
    - (iii) the chief executive (corrective services); and
  - (c) give a copy of the order to the commissioner of the police service, or someone authorised to accept the order on the commissioner’s behalf, by fax, email or a similar facility.
- (2) Failure to comply with subsection (1) does not invalidate the order.

### **43N Commissioner may give copy of banning order to licensee**

- (1) The commissioner may give a copy of a banning order to—
  - (a) the licensee of any licensed premises stated in the order; or
  - (b) the licensee of any licensed premises within a class of licensed premises stated in the order; or
  - (c) the holder of a licence or permit to sell liquor at an event stated in the order; or

(d) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or the event mentioned in paragraph (c).

(2) In this section—

***approved manager*** means a person holding an approval as an approved manager under the *Liquor Act 1992*.

***permit*** see the *Liquor Act 1992*, section 4.

### 43O Contravention of banning order

(1) A person must not, without reasonable excuse, contravene a banning order.

Maximum penalty—40 penalty units or 1 year's imprisonment.

(2) A Magistrates Court that convicts a person of an offence against subsection (1) may, in addition to or instead of sentencing the person under subsection (1)—

(a) if the banning order was made by a Magistrates Court—amend the order; or

(b) if the banning order was made by the Supreme or District Court (the ***sentencing court***)—order the person to appear before the sentencing court.

(3) If an order is made under subsection (2)(b), the Magistrates Court must also make either of the following orders—

(a) an order committing the person into custody to be brought before the sentencing court;

(b) an order granting the person bail on the condition that the person appear before the sentencing court.

(4) If the Magistrates Court sentenced the person under subsection (1), the sentencing court may amend the order or decide no further action be taken.

(5) If the Magistrates Court did not sentence the person under subsection (1), the sentencing court may do any of the following—

[s 44]

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- (a) sentence the person under subsection (1);
- (b) in addition to or instead of sentencing the person under subsection (1), amend the order;
- (c) decide no further action be taken.

## **Part 4**                      **Fines**

### **Division 1**                **General**

#### **44**      **Court may impose fine whether or not conviction recorded**

A court may impose a fine whether or not it records a conviction.

#### **45**      **Power to fine**

- (1) An offender may be fined.
- (2) The fine may be in addition to, or instead of, any other sentence to which the offender is liable.
- (3) The maximum fine that a court may impose is—
  - (a) the appropriate maximum applicable to the offence under a provision of this or another Act relating to the offence; or
  - (b) if there is no such maximum—the maximum mentioned in section 46.
- (4) This section has effect subject to a specific provision of another Act relating to the offence.

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**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—4175 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).

[s 49]

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- (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.

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## 50 Instalment order

If a court fines an offender, it may order that—

- (a) the fine be paid by instalments; or
- (b) the proper officer give, under the *State Penalties Enforcement Act 1999*, section 34, particulars of the fine to SPER for registration under that section.

## 51 Payment of fine

If a court does not make an instalment order under section 50(a), it must, at the time of imposing the fine order that—

- (a) the offender be allowed time to pay the fine; or
- (b) the proper officer give, under the *State Penalties Enforcement Act 1999*, section 34, particulars of the fine to SPER for registration under that section.

## Division 2 Fine option orders

### 52 Definitions

In this division—

***fine*** includes the fee payable for lodging a complaint for an offence with a clerk of the court.

***original order*** means an order of a court—

- (a) that imposes a fine on an offender, whether or not it also requires the payment of another penalty; and
- (b) that directs that in default of payment of the fine or other penalty either immediately or within a fixed time, the offender is to be imprisoned for a period ordered by the court.

### **53 Application for order if offender before court**

- (1) If an offender is before a court when the court makes an original order for the offender, the court must explain to the offender that he or she may immediately verbally apply to the court for a fine option order.
- (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.



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**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.

[s 57]

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- (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 can not afterwards consider an application under this section unless permitted by section 58.

## **57 Matters to be considered on application**

- (1) A court or proper officer of the court may make a fine option order for an offender only if the court or proper officer is satisfied that—
  - (a) the offender is unable to pay the fine in accordance with the original order or, if the offender were to pay the fine in accordance with the original order, the offender or the offender's family would suffer economic hardship; and
  - (b) the offender is a suitable person to perform community service under a fine option order.
- (1A) The fact that an offender's only source of income is a social security or veteran's pension, benefit or allowance from the Commonwealth is a ground on which a court may be satisfied that the offender or the offender's family would suffer economic hardship if the offender were to pay the fine in accordance with the original order.
- (1B) In considering an application for a fine option order, a court or proper officer of the court must have regard to the principle

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that an offender should not be considered to be unsuitable to perform community service merely because of—

- (a) any physical, intellectual or psychiatric disability of the offender; or
  - (b) the offender's sex, educational level or religious beliefs.
- (1C) Subsection (1B) does not limit the matters to which the court or proper officer of the court may have regard.
- (2) A court or proper officer of the court may adjourn the application for the purpose of obtaining any information, notification or report from an authorised corrective services officer for the purposes of subsection (1).
- (2A) An authorised corrective services officer must not, in any information, notification or report, recommend that a fine option order or community based order should not be made for an offender merely because of—
- (a) any physical, intellectual or psychiatric disability of the offender; or
  - (b) the offender's sex, educational level or religious beliefs.
- (3) Subject to section 58, the proper officer of the court may consider an application for a fine option order only if the offender has not previously made an application under this division in relation to the original order.

**58 Proper officer must reconsider offender's financial position**

- (1) If—
- (a) an offender has previously been refused a fine option order; and
  - (b) the court records show that the refusal was made because of section 57(1)(a); and
  - (c) the proper officer of the court is satisfied that the offender's financial position has become significantly worse since the refusal;

[s 59]

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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 can not make more than 1 application under subsection (1).

## **59 Determination of application**

- (1) The court to which an application is made under section 55, or the proper officer of the court to whom an application is made under section 58, must cause written notice to be given to the offender of the time and place at which it is proposed to determine the application.
- (2) Subsection (1) does not apply if—
  - (a) the offender is personally before the court or proper officer of the court when the application is made; and
  - (b) the application is to be dealt with immediately.

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- (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—

[s 61]

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- (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

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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;

[s 63]

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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 chief executive (corrective services) or the State because of the purported execution of the warrant.

**64 Order to be in writing**

A court or proper officer of the court that makes a fine option order for an offender must—

- (a) immediately reduce the order to writing in the approved form; and
- (b) give a copy of the order to the offender; and
- (c) give to the chief executive (corrective services)—
  - (i) a copy of the order; and
  - (ii) a copy of the original order to which the order relates; and
  - (iii) details of the offence for which the original order was made.

**65 Release from custody when order is made**

If an offender for whom a fine option order is made is in lawful custody when the order is made merely because of the offender's failure to pay the fine, the offender must be released immediately.



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## **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**

- (1) A direction given by an authorised corrective services officer under a requirement of a fine option order must, as far as practicable, avoid—
  - (a) conflicting with the offender's religious beliefs; and

[s 68]

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- (b) interfering with any times during which the offender usually works or attends a school or other educational or training establishment; and
  - (c) interfering with the offender's family responsibilities.
- (2) A direction given under a fine option order may be given orally or in writing.
  - (3) An offender must not be given a direction under a fine option order to perform more than 8 hours community service on any day.
  - (4) However, if the offender consents and an authorised corrective services officer approves, the offender may perform more than 8 hours community service in a day.
  - (5) In performing community service, the offender must be allowed reasonable rest and meal breaks.

## **68 Period mentioned in s 66(2) may be extended**

- (1) The 1 year or other time mentioned in section 66(2) may be extended—
  - (a) by a court, or the proper officer of the court, at any time before the end of the 1 year or other time; or
  - (b) by the proper officer of the court under section 74(7)(a).
- (2) Application for an extension under subsection (1) may be made by an authorised corrective services officer.
- (3) The court, or proper officer of the court, must advise the chief executive (corrective services) and the offender when the application will be heard.
- (4) The application may be heard in the absence of the offender if the court or proper officer is satisfied that the offender is unable to be present.
- (5) If the 1 year or other time is extended, the court or proper officer of the court that makes the extension must notify the chief executive (corrective services) and the offender of the extension in the approved form.

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**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

[s 73]

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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, 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

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*supervisor*), or a person authorised for the purpose of this section by the chief executive (corrective services) (also a *supervisor*), reasonably believes the offender has contravened a requirement of the order.

- (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

[s 76]

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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—

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- (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.

[s 82]

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- (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(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.

*Example—*

Original order—

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

	Restitution	\$500.00
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<b>AP</b>	Penalty	<u>\$1000.00</u>
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<b>DP</b>	Default imprisonment	10 weeks
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<b>DF</b>	=	$\frac{\mathbf{AF}}{\mathbf{AP}} \times \mathbf{DP}$
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	=	$\frac{500}{1000} \times 10$
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	=	5 weeks
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**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—
- the fine mentioned in the original order has been paid in part; or
  - the offender has performed part of the community service required to be performed by the relevant fine option order.

[s 82]

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- (4) If this subsection applies, the period of default imprisonment is to be the period calculated in accordance with the following formula—

$$\mathbf{PDI} = \mathbf{DF} - \left[ \mathbf{DF} \times \left( \frac{\mathbf{PP}}{\mathbf{AF}} + \frac{\mathbf{HP}}{\mathbf{HCS}} \right) \right]$$

- (5) In subsection (4)—

**AF** has the meaning given by subsection (2).

**DF** has the meaning given by subsection (2) (and is calculated in accordance with subsection (1)).

**HCS** (hours of community service) means the number of hours for which the offender is required to perform community service under the fine option order.

**HP** (hours performed) means the number of hours for which community service has been performed by the offender under the fine option order.

**PDI** (period of default imprisonment) means the period of the default imprisonment that still has to be served.

**PP** (part payment) means the amount of the part of the fine that has been paid.

*Example—*

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

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

$$\begin{aligned} &= 5 - 3 \\ &= 2 \text{ weeks} \end{aligned}$$

**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.

[s 85]

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- (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

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- (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—

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- (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

[s 94]

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corrective services officer during the period of the order;  
and

- (e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and
- (f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and
- (g) must comply with every reasonable direction of an authorised corrective services officer.

(2) In subsection (1)—

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

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

The probation order may contain requirements that the offender—

- (a) submit to medical, psychiatric or psychological treatment; and
- (b) comply, during the whole or part of the period of the order, with the conditions that the court considers are necessary—
  - (i) to cause the offender to behave in a way that is acceptable to the community; or
  - (ii) to stop the offender from again committing the offence for which the order was made; or
  - (iii) to stop the offender from committing other offences.

#### **95 Probation order to be explained**

- (1) Before making the probation order, the court must explain, or cause to be explained, to the offender—



- (a) the purpose and effect of the order; and
  - (b) what may follow if the offender contravenes the requirements of the order; and
  - (c) that the order may be amended or revoked on application of the offender, an authorised corrective services officer or the director of public prosecutions.
- (2) The explanation must be made in language or in a way likely to be readily understood by the offender.

**96 Offender to agree to making or amending of order**

The court may make or amend the probation order only if the offender agrees to the order being made or amended and also agrees to comply with the order as made or amended.

**97 Multiple offences**

- (1) A court may make 1 or more probation orders for an offender convicted of 2 or more offences.
- (2) The court may include the orders in a single form of order that specifies each offence for which a probation order is made.

**98 Application of s 32**

A court must not deal with an offender under section 32 if the court is of the opinion that it is appropriate to release the offender on probation under this part.

**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—

[s 100]

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- (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

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- (d) must perform in a satisfactory way community service directed by an authorised corrective services officer—
    - (i) for the number of hours stated in the order; and
    - (ii) at the times directed by the officer; and
  - (e) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and
  - (f) must not leave or stay out of Queensland without the permission of an authorised corrective services officer; and
  - (g) must comply with every reasonable direction of an authorised corrective services officer.
- (2) The total number of hours stated in the order—
- (a) must not be less than 40 and not more than 240; and
  - (b) must be performed within 1 year from the making of the order or another time allowed by the court.
- (2A) A direction given under subsection (1)(d)(ii) applies to all community service orders made for the offender by the same court on the same day.
- (3) In subsection (1)—
- offence* does not include an offence against section 123(1).

## **105 Community service order to be explained**

- (1) Before making the community service order, the court must explain, or cause to be explained, to the offender—
- (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.

[s 106]

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- (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).

### **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.

## **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.

### **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.
- (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

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- 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.
- (2A) Unless the court or an authorised corrective services officer otherwise directs, the offender must—
- (a) attend programs for one-third of the time directed; and
  - (b) perform community service for two-thirds of the time directed.
- (3) In subsection (1)—
- offence* does not include an offence against section 123(1).

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

The intensive correction order may contain requirements that the offender—

[s 116]

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- (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.

### **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.



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## 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).

[s 120]

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## **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.

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## **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.

[s 124]

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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—
    - (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.

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- (3) The imposition of a fine under section 123(1) or the making of an order mentioned in subsection (2) does not affect the continuation of the community based order.
  - (4) The court may also—
    - (a) if the community based order was made by a Magistrates Court—subject to section 126A, deal with the offender for the offence for which the community based order was made in any way that it could deal with the offender if the offender had just been convicted by it of the offence; or
    - (b) if the community based order was made by the Supreme Court or a District Court (the *sentencing court*)—
      - (i) commit the offender into custody to be brought before the sentencing court; or
      - (ii) grant bail to the offender on the condition that the offender must appear before the sentencing court.
  - (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

[s 126]

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- (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, subject to section 126A, deal with the offender for the offence for which the community based order was made in any way in which it could deal with the offender if the offender had just been convicted before it of the offence.
- (5) If the offender is before the court—
  - (a) under an order made under subsection (7) or section 125(5); or
  - (b) under a summons or warrant issued under section 128 or 129; or
  - (c) has just been convicted by the court of another offence committed during the period of the community based order and the offender also is the subject of community based orders made by courts of lower jurisdiction;the court may deal with the offender under this section as if the court had made all the community based orders.

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- (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).

## **126A Particular provision for driver licence disqualifications**

- (1) This section applies if—
- (a) a court decides to deal with an offender under section 125(4)(a) or 126(4) in relation to an offence for which a community based order was made; and
  - (b) the offence is an offence for which a period of disqualification from holding or obtaining a Queensland driver licence—
    - (i) may be imposed under this Act; or
    - (ii) may or must be imposed under the *Transport Operations (Road Use Management) Act 1995*; and
  - (c) a period of disqualification has been imposed for the offence.
- (2) In taking action under section 125(4)(a) or 126(4), the court may not change or revoke the period of disqualification imposed for the offence.

[s 127]

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**127 Additional power of courts in relation to an intensive correction order**

- (1) A court that, under this part, deals with the offender for the offence for which an intensive correction order was made may, whether or not the order is still in force, do so by revoking the order and committing the offender to prison for the portion of the term of imprisonment to which the offender was sentenced that was unexpired on the day the relevant offence against section 123(1) was committed.
- (2) The committal of the offender to imprisonment under subsection (1) does not affect the offender's eligibility to a re-integration program.
- (3) Unless the court otherwise orders, the offender must serve the imprisonment—
  - (a) immediately; and
  - (b) subject to the *Bail Act 1980*, section 33, concurrently with any other term of imprisonment previously imposed on the offender by that or another court.

**128 Summons or warrant for contravention of single community based order**

- (1) A justice, to whom it is made to appear on complaint by an authorised corrective services officer, or a person authorised for this section by the chief executive (corrective services), that an offender has committed an offence against section 123(1), may issue a summons requiring the offender to appear before a court.
- (2) If—
  - (a) a complaint under subsection (1) is in writing and on oath; and
  - (b) the justice is satisfied that the offender will not appear in answer to a summons;the justice may, instead of issuing a summons, issue a warrant directed to all police officers to arrest the offender and bring the offender before a court.



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- (3) A court mentioned in subsection (1) or (2) may be—
    - (a) the court that made the community based order, if it was not a Magistrates Court; or
    - (b) a Magistrates Court.
  - (4) In exercising a discretion under subsection (1) or (2), the justice must have regard to—
    - (a) the way in which the offender has contravened a requirement of the community based order; and
    - (b) the original offence concerned; and
    - (c) whether the authorised corrective services officer intends to recommend to the court before which the offender appears, or is brought, if the offender is convicted, that the offender be dealt with as if the offender had just been convicted of the offence for which the community based order was made.
  - (5) If a summons or warrant is issued, the complainant must immediately forward the complaint to the court before which the offender is required or directed to appear or to be brought under the summons or warrant.

## **129 Summons or warrant for contravention of multiple orders made by courts of different jurisdictions**

- (1) If an offender is the subject of community based orders made by courts of different jurisdictions, a justice, to whom it is made to appear by complaint by an authorised corrective services officer, or a person authorised for this section by the chief executive (corrective services), that the offender has committed an offence against section 123(1), may issue a summons requiring the offender to appear before a court.
- (2) If—
  - (a) a complaint under subsection (1) is in writing and on oath; and
  - (b) the justice is satisfied that the offender will not appear in answer to a summons;

[s 130]

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the justice may instead of issuing a summons, issue a warrant directed to all police officers to arrest the offender and bring the offender before the court of highest jurisdiction.

- (3) The court mentioned in subsection (1) or (2) may be—
  - (a) the court that made the community based order; or
  - (b) a Magistrates Court.
- (4) In exercising a discretion under subsection (1) or (2), the justice must have regard to—
  - (a) the way in which the offender has contravened a requirement of the community based order; and
  - (b) the original offence concerned; and
  - (c) whether the authorised corrective services officer intends to recommend to the court before which the offender appears, or is brought, if the offender is convicted, that the offender be dealt with as if the offender had just been convicted of the offence for which the community based order was made.
- (5) If a summons or warrant is issued, the complainant must immediately forward the complaint to the court before which the offender is required or directed to appear or to be brought under the summons or warrant.

### **130 Discharge of multiple community based orders where contravention taken into account**

If a court—

- (a) deals with an offender under section 125 or 126 for an offence for which a community based order was made; and
  - (b) under section 189, takes into account contraventions of the requirements of other community based orders;
- all the community based orders are discharged.

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**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.

[s 135]

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### **135 Directions under community based order**

- (1) A direction given by an authorised corrective services officer under a requirement of a community based order must, as far as practicable, avoid—
  - (a) conflicting with the offender’s religious beliefs; and
  - (b) interfering with any times during which the offender usually works or attends school or another educational or training establishment; and
  - (c) interfering with the offender’s family responsibilities.
- (2) A direction given under a community based order may be given orally or in writing.
- (3) An offender must not be given a direction under a community based order to perform more than 8 hours community service on any day.
- (4) However, if the offender consents and an authorised corrective services officer approves, the offender may perform more than 8 hours community service in a day.
- (5) In performing community service, the offender must be allowed reasonable rest and meal breaks.

### **136 Notifications following making of order**

- (1) A court that makes a community based order, or makes an order amending or revoking a community based order, must make it in the approved form and must cause a copy of the order to be given to—
  - (a) the offender; and
  - (b) the person in charge of an institution in which the order requires the offender to reside; and
  - (c) the chief executive (corrective services), together with details of the offence in relation to which the order was made.

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- (2) If an offender is required or permitted by a community based order to reside in another State or a Territory, the chief executive (corrective services) must cause—
- (a) a copy of the order; and
  - (b) other relevant documents and information;
- to be forwarded to the proper authority in that State or Territory.

### **137 Facilitation of proof**

- (1) If an offender is before a court with a view to being dealt with for contravening a requirement in a community based order, then, subject to subsection (2), the presumptions mentioned in subsection (3) are to be made.
- (2) A presumption mentioned in subsection (3) may be made only if there is before the court—
- (a) a complaint; or
  - (b) a statement purporting to be that of a person authorised by the chief executive (corrective services) to make the statement;
- that particularises matters relevant to the offender being so dealt with in the case in question.
- (3) Until the contrary is proved, it must be presumed—
- (a) that, under subsection (1), the community based order alleged in the complaint or statement mentioned in subsection (2) was made as alleged for the offender before the court; and
  - (b) if the offender is before the court under subsection (1)—that the offender contravened the requirement, as alleged in the complaint or statement.

[s 138]

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### **138 Application of Justices Act**

- (1) The *Justices Act 1886* applies to a complaint, summons, warrant or penalty under this part with all necessary modifications and any modifications prescribed by regulation.
- (2) For the purposes of the application mentioned in subsection (1)—
  - (a) a complaint is taken to be a complaint for an offence; and
  - (b) a summons is taken to be a summons to answer a complaint; and
  - (c) a penalty imposed under section 121 may be enforced by an order that might be made by the adjudicating justices under the *Justices Act 1886* so as to enforce the payment of a penalty imposed on a conviction for an offence under an Act that does not expressly provide for enforcement of the payment.
- (3) Despite the *Justices Act 1886*, section 43(2) or (3), if 2 or more matters are properly joined in a single complaint made for the purposes of division 2 because the matters of complaint—
  - (a) are alleged to be constituted by the same act or omission; or
  - (b) are founded on substantially the same facts;it is not necessary to set out each matter of complaint in a separate paragraph.
- (4) Objection can not be taken to the complaint mentioned in subsection (3) on the ground that each matter of complaint is not set out in a separate paragraph.

### **139 Court may order summons or warrant for offender's appearance**

- (1) The court to which an authorised corrective services officer makes application under section 122 may order that a summons issue, directed to the offender, requiring the

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offender to appear at the time and place stated in the summons to be dealt with according to law.

- (2) If the offender to whom a summons under subsection (1) or section 128 or 129 is directed fails to appear in answer to the summons, the court may, on proof of the service of the summons on the offender, order that a warrant issue, directed to all police officers, to arrest the offender and bring the offender before the court to be dealt with according to law.

**140 Power of Magistrates Court under s 128(2), 129(2) or 139(2)**

- (1) If—
- (a) a warrant issued under section 128(2), 129(2) or 139(2) directs that an offender be brought before the Supreme Court or a District Court; and
  - (b) the offender can not be brought before the court because no sittings are being held at the time;
- the warrant has effect as if it directed that the offender be brought before a Magistrates Court.
- (2) On an offender's appearance before a Magistrates Court under subsection (1), the court must—
- (a) commit the offender to custody to be brought; or
  - (b) grant bail to the offender on the condition that the offender appear;
- before the Supreme Court or a District Court.

**141 Community service under intensive correction order cumulative with any other community service**

Community service that an offender is required to perform under an intensive correction order is to be performed cumulatively with any other community service the offender is required to perform under this or another Act.

[s 142]

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### **142 Offence against this part—complainant**

Proceedings for an offence against a community based order, if not initiated by a court, must be started by complaint made by a person authorised by the chief executive (corrective services) in that behalf, either generally or in a particular case.

## **Part 8 Orders of suspended imprisonment**

### **143 Court not to act without recording a conviction**

A court may make an order under section 144(1) only if it records a conviction.

### **144 Sentence of imprisonment may be suspended**

- (1) If a court sentences an offender to imprisonment for 5 years or less, it may order that the term of imprisonment be suspended.
- (2) An order under subsection (1) may be made only if the court is satisfied that it is appropriate to do so in the circumstances.
- (3) An order under subsection (1) may suspend the whole or a part of the term of imprisonment.
- (4) A court must not suspend a term of imprisonment if it is satisfied, having regard to the provisions of this Act, that it would be appropriate in the circumstances that the offender be imprisoned for the term of imprisonment imposed.
- (5) The court must state an operational period during which the offender must not commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 146 for the suspended sentence.
- (6) The operational period starts on the day the order is made and must be—



- (a) not less than the term of imprisonment imposed; and
- (b) not more than 5 years.

#### **145 Effect of suspended imprisonment**

An offender for whom an order under section 144 is made has to serve the suspended imprisonment only if the offender is ordered to do so under section 147.

#### **146 Consequences of committing offence during operational period**

- (1) A court must proceed under this section if—
  - (a) the court—
    - (i) convicts an offender of an offence for which imprisonment may be imposed; and
    - (ii) is satisfied that the offence was committed during—
      - (A) the operational period of an order made under section 144; or
      - (B) an extension of the operational period ordered under section 147(1)(a)(i); or
      - (C) a further stated operational period ordered under section 147(1)(a)(ii)(B); or
  - (b) an offender is otherwise before the court and the court is satisfied that—
    - (i) the offender was convicted, in or outside Queensland, of an offence for which imprisonment may be imposed; and
    - (ii) the offence was committed during—
      - (A) the operational period of an order made under section 144; or
      - (B) an extension of the operational period ordered under section 147(1)(a)(i); or

[s 146]

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- (C) a further stated operational period ordered under section 147(1)(a)(ii)(B).
- (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 or 147(1)(a) for an offender; and
  - (b) a police officer or an authorised corrective services officer suspects, on reasonable grounds, that the offender has committed an offence, in or outside Queensland, during the operational period of the order; and
  - (c) imprisonment may be imposed if the offender is convicted, in or outside Queensland, of the suspected offence.
- (2) The officer may, by a complaint to a magistrate, apply for a summons requiring the offender to appear before the court that made the order.
- (3) The magistrate may issue the summons or, instead of issuing the summons, issue a warrant, in the approved form, directed to all police officers to arrest the offender and bring the offender before the court that made the order to be further dealt with according to law.
- (4) The summons or warrant issued under this section is of no effect unless and until the offender is convicted of an offence

[s 147]

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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

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- (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

[s 148]

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- (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—

- (a) the operational period of an order made under section 144 for the original offence; or
- (b) an extension of the operational period ordered under section 147(1)(a)(i) for the original offence; or
- (c) a further stated operational period ordered under section 147(1)(a)(ii)(B) for the original offence.

## **148 Imprisonment to be served immediately**

If, under section 147(1), the court orders the offender to serve imprisonment, then, unless the court otherwise orders, the imprisonment must be served—

- (a) immediately; and
- (b) subject to the *Bail Act 1980*, section 33, concurrently with any other imprisonment previously imposed on the offender by that or another court.

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**149 Reasons not stated—order still valid**

An order under section 147 is not invalid merely because of the failure of the court to state its reasons as required by section 147(3), but its failure to do so may be considered by an appeal court if an appeal against the order is made.

**150 Bail Act applies if offender not dealt with immediately**

If it is not possible for a court to deal with an offender under section 147 immediately, then, for the purposes of granting bail, the *Bail Act 1980* applies—

- (a) as if a reference to a person on a charge of, or in connection with, an offence were a reference to the offender; and
- (b) with any other necessary modifications and any modifications prescribed by regulation.

**151A Conditional release and parole for suspended sentences**

An offender whose sentence of imprisonment is suspended is eligible for release on parole, and conditional release within the meaning of the *Corrective Services Act 2006*, only in relation to imprisonment ordered under section 147(1)(b) or (c).

## **Part 9 Imprisonment**

### **Division 1 Liability**

**152 Court must record conviction**

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

[s 152A]

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**152A Proper officer to give chief executive (corrective services) record of order of imprisonment**

- (1) If a court orders an offender serve all or part of a term of imprisonment, the proper officer of the court must make a record of the order committing the offender into custody and give a copy of the record to the chief executive (corrective services).
- (2) The record must be in the approved form and may deal with each offence for which the offender is convicted.
- (3) Despite subsection (2), the proper officer of the court complies with subsection (1) if the proper officer gives the chief executive (corrective services) a verdict and judgment record under the *Criminal Practice Rules 1999*.

**153 Imprisonment—liability to**

- (1) An offender liable to imprisonment for life, or for any other period, may be sentenced to imprisonment for any lesser period.
- (2) An offender liable to imprisonment may be sentenced to pay a fine not exceeding the limits prescribed in section 46 in addition to, or instead of, the imprisonment.

**153A Term of imprisonment if none prescribed**

If an offender is convicted of an offence punishable by imprisonment, but the maximum term of imprisonment is not prescribed by law, the maximum term that can be imposed is—

- (a) if the conviction is on indictment—5 years; or
- (b) if the conviction is not on indictment—2 years.



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## Division 2                      Calculation

### 154      Calculation of term of imprisonment

- (1) Except as provided in sections 156(1), 158A and 159 and subject to an order being made under the repealed section 158, a term of imprisonment—
  - (a) on conviction on indictment—starts on the day the court imposes imprisonment on the offender; and
  - (b) on a summary conviction—starts at the beginning of the offender's custody for the imprisonment.
- (2) In this section—

*repealed section 158* means section 158 as in force immediately before it was repealed by the *Justice and Other Legislation Amendment Act 2004*.

### 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;

[s 156A]

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the imprisonment for the other offence may be directed to start from the end of the period of imprisonment the offender is serving, or has been sentenced to serve.

- (2) Subsection (1) applies whether the imprisonment for the first offence is being served concurrently or cumulatively with imprisonment for another offence.

### **156A Cumulative order of imprisonment must be made in particular circumstances**

- (1) This section applies if an offender—
- (a) is convicted of an offence—
    - (i) against a provision mentioned in schedule 1; or
    - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and
  - (b) committed the offence while—
    - (i) a prisoner serving a term of imprisonment; or
    - (ii) released on post-prison community based release under the *Corrective Services Act 2000* or released on parole under the *Corrective Services Act 2006*; or
    - (iii) on leave of absence, from a term of imprisonment, granted under the *Corrective Services Act 2000* or the *Corrective Services Act 2006*; or
    - (iv) at large after escaping from lawful custody under a sentence of imprisonment.
- (2) A sentence of imprisonment imposed for the offence must be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve.

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**158A Term of imprisonment does not run if offender on bail awaiting appeal**

The term of imprisonment of an offender who appeals against sentence, and is granted bail awaiting the determination of the appeal, does not run during the time the offender is on bail.

**159 Term of imprisonment does not run while prisoner at large**

An offender who commits an offence against the Criminal Code, section 142, on being returned to lawful custody, must serve the imprisonment that the offender would have served if the offender had not escaped in addition to any punishment imposed for the offence.

**159A Time held in presentence custody to be deducted**

- (1) If an offender is sentenced to a term of imprisonment for an offence, any time that the offender was held in custody in relation to proceedings for the offence 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—
  - (a) a period of custody of less than 1 day; or
  - (b) imprisonment of less than 1 day; or
  - (c) imprisonment that has been wholly suspended; or
  - (d) the suspended part of imprisonment partly suspended.
- (3) If an offender was held in custody in circumstances to which subsection (1) applies, and the court has not made an order mentioned in subsection (3A), the sentencing court must, as part of the sentencing order—
  - (a) state the dates between which the offender was held in presentence custody; and
  - (b) calculate the time that the offender was held in presentence custody; and

[s 159A]

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- (c) declare the time calculated under paragraph (b) to be imprisonment already served under the sentence.
- (3A) Subsection (3B) applies if—
  - (a) an offender was held in custody in circumstances to which subsection (1) applies (*presentence custody*); and
  - (b) the sentencing court orders that the time, or part of the time, the offender was held in custody is not to be taken to be imprisonment already served under the sentence.
- (3B) The sentencing court must, as part of the sentencing order—
  - (a) state the dates between which the offender was held in presentence custody; and
  - (b) calculate the time that the offender was held in presentence custody; and
  - (c) declare the part of the time that is taken to be imprisonment already served under the sentence or declare that no time is taken to be imprisonment already served under the sentence.
- (3C) If an offender was held in presentence custody and the sentencing court makes a declaration under subsection (3)(c) or (3B)(c), the sentencing court must cause the chief executive (corrective services) to be advised in writing of the declaration and its details.
- (4) If—
  - (a) an offender is charged with a number of offences committed on different occasions; and
  - (b) the offender has been in custody since arrest on charges of the offences and for no other reason;

the time held in presentence custody must be taken, for the purposes of subsection (1), to start when the offender was first arrested on any of those charges, even if the offender is not convicted of the offence for which the offender was first arrested or any 1 or more of the number of offences with which the offender is charged.

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- (4A) To help the sentencing court for the purposes of subsections (3) and (3B), the prosecuting authority must give to the court a presentence custody certificate.
  - (5) If the sentencing court is satisfied that the time declared under subsection (3) was not correct, it must—
    - (a) declare the correct time; and
    - (b) amend the sentence accordingly; and
    - (c) cause the chief executive (corrective services) to be advised of the amendment.
  - (6) An application for a declaration under subsection (3), (3B) or (5) may be made by—
    - (a) the offender; or
    - (b) the prosecuting authority; or
    - (c) the offender and the prosecuting authority jointly.
  - (7) If an application for a declaration under subsection (5) is made by the offender and the prosecuting authority jointly, the sentencing court may make the declaration having regard to written materials and submissions before it and without requiring the attendance of the parties.
  - (8) Subsection (7) applies only if—
    - (a) the parties propose in the joint application that the declaration be made having regard to written materials and submissions before the court and without the attendance of the parties; and
    - (b) the application is accompanied by a draft order and written submission in support.
  - (9) If the sentencing court decides that the application is inappropriate for decision without an oral hearing, the court—
    - (a) must immediately notify the parties to the application of the decision by telephone or in some other way; and
    - (b) may set a date for hearing.

(10) In this section—

*presentence custody certificate* means a certificate, in the approved form, signed by the chief executive (corrective services) or an authorised corrective services officer, that—

- (a) states the offence or offences for which the offender was held in custody; and
- (b) states the dates between which the offender was held in custody for each of those offences; and
- (c) calculates the time that the offender was held in custody.

*proceedings for the offence* includes proceedings that relate to the same, or same set of, circumstances as those giving rise to the charging of the offence.

*prosecuting authority* means—

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

## Division 3                      Parole

### 160      Definitions for div 3

In this division—

*current parole eligibility date*, in relation to the imposition of a term of imprisonment mentioned in section 160A on an offender, means a parole eligibility date—

- (a) previously fixed for the offender in relation to another term of imprisonment; and
- (b) cancelled under section 160E on the imposition of the term of imprisonment.

*current parole release date*, in relation to the imposition of a term of imprisonment mentioned in section 160A on an offender, means a parole release date—

- 
- (a) previously fixed for the offender in relation to another term of imprisonment; and
  - (b) cancelled under section 160E on the imposition of the term of imprisonment.

***impose***, a term of imprisonment on an offender for an offence, includes make an order that the offender serve—

- (a) the whole or part of suspended imprisonment for the offence; and
- (b) the unexpired portion of an intensive correction order for the offence.

***parole eligibility date***, for an offender, means the date fixed under section 160B(2), 160C(2), (3) or (5), 160D(2) or (3) or 213 as the date the offender is eligible for parole.

***parole release date***, for an offender, means the date fixed under section 160B(3) as the date the offender is to be released on parole.

***period of imprisonment*** means the period of imprisonment that includes the term of imprisonment mentioned in section 160A.

*Note—*

Period of imprisonment therefore includes the term of imprisonment a court is imposing at the time of sentence.

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

## **160A Application of ss 160B–160D**

- (1) Sections 160B to 160D apply if a court is imposing a term of imprisonment on an offender for an offence.
- (2) Sections 160B to 160D are the only law under which a court may, on sentence of an offender for an offence, make an order relating to a person's release on parole.

*Note—*

Sections 160E to 160H further provide for the orders that may be made under sections 160B to 160D.

[s 160B]

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- (3) A court can not, on sentence of an offender for an offence, make a recommendation for a person's release on parole.
- (4) This section applies subject to any express provision to the contrary, in an Act, about a particular sentence.

*Example—*

Criminal Code, section 305(2)

- (5) Also—
  - (a) a court can not fix a date under sections 160B to 160D that reduces the minimum period of imprisonment an offender must serve under the *Corrective Services Act 2006*, section 181(2) or (3), 182(2)(a) or (b) or 183(2) (a ***relevant provision***); and
  - (b) no date fixed by the court under sections 160B to 160D can reduce the minimum period of imprisonment an offender must serve under a relevant provision.
- (6) Sections 160B to 160D do not apply if a court sentences an offender to a term of imprisonment and makes any of the following orders under this Act for the offender—
  - (a) an intensive correction order;
  - (b) a probation order mentioned in section 92(1)(b);
  - (c) an order that the whole or a part of the term of imprisonment be suspended.

### **160B Sentence of 3 years or less and not a serious violent offence or sexual offence**

- (1) This section applies if neither section 160C nor 160D applies.
- (2) If the offender has had a court ordered parole order cancelled under the *Corrective Services Act 2006*, section 205 or 209 during the offender's period of imprisonment, the court must fix the date the offender is eligible for parole.
- (3) If subsection (2) does not apply, the court must fix a date for the offender to be released on parole.



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- (4) If the offender had a current parole eligibility date or current parole release date, a date fixed under subsection (2) or (3) must not be earlier than the current parole eligibility date or current parole release date.

*Note—*

See also section 160F.

### **160C Sentence of more than 3 years and not a serious violent offence or sexual offence**

- (1) This section applies if section 160D does not apply and the offender's period of imprisonment is more than 3 years.
- (2) If the offender had a current parole eligibility date, the court must fix the date the offender is eligible for parole.
- (3) If the offender had a current parole release date, the court may fix the date the offender is eligible for parole.
- (4) A date fixed under subsection (2) or (3) must not be earlier than the current parole eligibility date or current parole release date mentioned in the subsection for the offender.
- (5) If neither subsection (2) nor (3) applies, the court may fix the date the offender is eligible for parole.

*Note—*

See also section 160F.

### **160D Sentence for a serious violent offence or sexual offence**

- (1) This section applies if the offender's period of imprisonment includes a term of imprisonment for a serious violent offence or a sexual offence.
- (2) If the offender had a current parole eligibility date or current parole release date, the court must fix the date the offender is eligible for parole.
- (3) If subsection (2) does not apply, the court may fix the date the offender is eligible for parole.

[s 160E]

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- (4) A date fixed under subsection (2) must not be earlier than the current parole eligibility date or current parole release date.

*Note—*

See also section 160F.

### **160E Automatic cancellation of parole release or eligibility dates**

- (1) An offender's parole release date is automatically cancelled when—
- (a) a court fixes another parole release date or parole eligibility date for the offender under this division; or
  - (b) a court imposes a term of imprisonment on the offender—
    - (i) for a serious violent offence or a sexual offence; or
    - (ii) that results in the offender's period of imprisonment being more than 3 years.
- (2) An offender's parole eligibility date is automatically cancelled when—
- (a) a court fixes another parole eligibility date for the offender under this division; or
  - (b) a court imposes a term of imprisonment on the offender—
    - (i) for a serious violent offence or a sexual offence; or
    - (ii) that results in the offender's period of imprisonment being more than 3 years.

*Example—*

O is sentenced to a 5-year term of imprisonment on 1 March 2007. The sentencing court fixes O's parole eligibility date at 1 October 2009. On 1 April 2010, O, whose application for parole in relation to the first term of imprisonment was unsuccessful, is sentenced to a further term of 2 years imprisonment to be served cumulatively with the first term. O's parole eligibility date of 1 October 2009 is cancelled under subparagraph (ii) and, under section 160C(2), the court must again fix a date that O is eligible for parole.

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- (3) Subsections (1) and (2) have effect even though the court fixing the relevant date or imposing the further term of imprisonment is a court of lesser jurisdiction than the court that fixed the current parole release date or current parole eligibility date being cancelled under the subsection.

### **160F Significance of an offender's period of imprisonment**

- (1) One of the objects of sections 160A to 160E is to ensure that at any 1 time there is only 1 parole release date or parole eligibility date in existence for an offender.
- (2) When fixing a date under this division as the date an offender is to be released on parole or is to be eligible for release on parole, the date fixed by the court must be a date relating to the offender's period of imprisonment as opposed to a particular term of imprisonment.

#### *Examples—*

- 1 O is sentenced to a term of 1 year's imprisonment on 1 July 2007 with a parole release date of 1 January 2008. O is released on parole on 1 January 2008. On 1 April 2008, O is sentenced to a further term of 1 year's imprisonment for another offence. A parole eligibility date fixed for O under section 160B(2) must relate to the 2 years period of imprisonment to which O has been sentenced and must not be earlier than 1 January 2008.
- 2 O is sentenced to a term of 1 year's imprisonment on 1 July 2007 with a parole release date of 1 January 2008. On 1 November 2007, O is sentenced to a further term of 1 year's imprisonment for another offence, to be served concurrently with the first term. A parole release date fixed for O under section 160B(3) must relate to the 16 months period of imprisonment to which O has been sentenced and must not be earlier than 1 January 2008.

### **160G Court may fix any day of sentence as parole release date**

- (1) If, under this Act, the court must fix a parole release date for an offender, the court may fix any day of the offender's sentence as the offender's parole release date.

[s 160G]

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*Examples—*

- 1 An offender who has been held in remand for 7 days is found guilty of an offence and sentenced to 7 days imprisonment. The sentencing court may fix the sentencing day as the offender's parole release date.
  - 2 An offender is sentenced to 14 days imprisonment for contempt of court. The sentencing court may fix the last day of the sentence as the offender's parole release date.
- (2) If the offender's parole release date is the date the offender is to be unconditionally released from lawful custody, the chief executive (corrective services) is not required to issue a court ordered parole order under the *Corrective Services Act 2006*, section 199.
- (3) If the court fixes the date on which an offender is sentenced as the offender's parole release date and subsection (2) does not apply, the offender is taken immediately to be subject to a court ordered parole order—
- (a) containing the conditions mentioned in the *Corrective Services Act 2006*, section 200(1); and
  - (b) requiring the offender to report to a probation and parole office as defined under that Act and obtain a copy of the court ordered parole order between 9a.m. and 5p.m. either on the day the court fixes the offender's parole release date or on the next business day.

*Examples—*

- 1 The court fixes the offender's parole release date on a Thursday and the following day (Friday) is not a public holiday. The offender must report to a probation and parole office and obtain a copy of the parole order either before 5p.m. on the Thursday or between 9a.m. and 5p.m. on the Friday.
  - 2 The court fixes the offender's parole release date on a Friday and the following Monday is not a public holiday. The offender must report to a probation and parole office and obtain a copy of the parole order either before 5p.m. on the Friday or between 9a.m. and 5p.m. on the Monday.
- (4) An offender who fails to report to a probation and parole office and obtain a copy of the court ordered parole order as

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required under subsection (3)(b) is unlawfully at large for the *Corrective Services Act 2006*.

- (5) A court mentioned in subsection (3) must, when fixing the offender's parole release date, tell the offender—
- (a) of the requirement imposed on the offender under the subsection; and
  - (b) of the consequences if the offender fails to comply with the requirement.
- (6) In this section—

***court ordered parole order*** means a court ordered parole order as defined under the *Corrective Services Act 2006*.

## **160H Series of sentences involving terms of imprisonment**

- (1) This section applies if—
- (a) a court is imposing more than 1 term of imprisonment in a series of sentencing orders; and
  - (b) an order (the ***first order***) made by the court in relation to a term of imprisonment under this division would, because of section 160E, be cancelled in the series of sentencing orders by another order made under this division or by the imposition of another term of imprisonment.
- (2) It is not necessary for the court to make the first order but, in making an order under this division that has final effect in relation to the series of sentencing orders, the court may only make an order that it could make if it had made the first order.

*Example—*

O has been charged with 3 offences and found guilty of each. The court sentences O to 2 years imprisonment on charge 1, 1 year's imprisonment on charge 2 and 2 years and 6 months imprisonment on charge 3, the terms to be served concurrently. It is not necessary for the court to make an order fixing a parole release date for each of the offences. The court may make a single order fixing a parole release date for the resulting period of imprisonment which must not be a date earlier in time than a parole release date notionally fixed under any of the previous orders the court would, apart from this section, be required to make.

[s 161A]

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## **Part 9A**                      **Convictions of serious violent offences**

### **161A When an offender is convicted of a serious violent offence**

An offender is convicted of a serious violent offence if—

- (a) the offender is—
  - (i) convicted on indictment of an offence—
    - (A) against a provision mentioned in schedule 1;  
or
    - (B) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and
  - (ii) sentenced to 10 or more years imprisonment for the offence, calculated under section 161C; or
- (b) the offender is convicted on indictment and declared to be convicted of a serious violent offence under section 161B(3) or (4).

### **161B Declaration of conviction of serious violent offence**

- (1) If an offender is convicted of a serious violent offence under section 161A(a), the sentencing court must declare the conviction to be a conviction of a serious violent offence as part of the sentence.
- (2) However, the failure of the sentencing court to make a declaration as required under subsection (1) does not affect the fact that the offender has been convicted of a serious violent offence.
- (3) If an offender is—
  - (a) convicted on indictment of an offence—
    - (i) against a provision mentioned in schedule 1; or

- (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1; and
- (b) sentenced to 5 or more, but less than 10, years imprisonment for the offence, calculated under section 161C;

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

- (4) Also, if an offender is—
  - (a) convicted on indictment of an offence—
    - (i) that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or
    - (ii) that resulted in serious harm to another person; and
  - (b) sentenced to a term of imprisonment for the offence;

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

- (5) For subsections (3) and (4), if an offender is convicted on indictment of an offence—
  - (a) that involved the use, counselling or procuring the use, or conspiring or attempting to use, violence against a child under 12 years; or
  - (b) that caused the death of a child under 12 years;

the sentencing court must treat the age of the child as an aggravating factor in deciding whether to declare the offender to be convicted of a serious violent offence.

### **161C Calculation of number of years of imprisonment**

- (1) This section applies for deciding whether an offender is sentenced—
  - (a) under section 161A(a)—to 10 or more years imprisonment (the *specified years* of imprisonment); or

[s 162]

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- (b) under section 161B(3)—to 5 or more, but less than 10, years imprisonment (also the *specified years* of imprisonment);  
for an offence—
  - (c) against a provision mentioned in schedule 1; or
  - (d) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in schedule 1.
- (2) An offender is sentenced to the specified years of imprisonment if—
- (a) the offender is sentenced to a term of imprisonment of the specified years for the offence; or
  - (b) the term of imprisonment to which the offender is sentenced for the offence is part of a period of imprisonment of the specified years imposed on convictions consisting of the conviction on which the offender is being sentenced and any 1 or more of the following—
    - (i) a conviction of an offence mentioned in subsection (1)(c) or (d);
    - (ii) a conviction declared to be a conviction of a serious violent offence under section 161B.
- (3) For subsection (2), whether the offender is sentenced to the specified years of imprisonment must be calculated as at the day of sentence.

## Part 10 Indefinite sentences

### 162 Definitions

In this part—



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*indefinite sentence* means a sentence of imprisonment for an indefinite term that—

- (a) must be reviewed under this part; and
- (b) is to continue until a court orders that the indefinite term of imprisonment is discharged.

*nominal sentence* has the meaning given by section 163(2).

*qualifying offence* means an indictable offence—

- (a) against a provision of the Criminal Code mentioned in schedule 2, as in force at any time (a *relevant Code provision*); or
- (b) that involved counselling or procuring the commission of, or attempting or conspiring to commit, a relevant Code provision.

### **163 Indefinite sentence—imposition**

- (1) A court may, instead of imposing a fixed term of imprisonment, impose an indefinite sentence on an offender convicted of a qualifying offence on—
  - (a) its own initiative; or
  - (b) an application made by counsel for the prosecution.
- (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, 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

[s 164]

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- (ii) the severity of the qualifying offence; and
  - (iii) any special circumstances.
- (4) In determining whether the offender is a serious danger to the community, the court must have regard to—
- (a) whether the nature of the offence is exceptional; and
  - (b) the offender’s antecedents, age and character; and
  - (c) any medical, psychiatric, prison or other relevant report in relation to the offender; and
  - (d) the risk of serious harm to members of the community if an indefinite sentence were not imposed; and
  - (e) the need to protect members of the community from the risk mentioned in paragraph (d).
- (5) Subsection (4) does not limit the matters to which a court may have regard in determining whether to impose an indefinite sentence.

#### **164 Counsel for prosecution to inform court**

- (1) If counsel for the prosecution intends to make an application under section 163(1)(b), counsel must inform the court after the offender has been convicted of the offence.
- (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.

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- (2) Consent must not be given under subsection (1) before the offender is convicted of the qualifying offence.

## 166 Adjourment

A court may impose an indefinite sentence on the offender only if—

- (a) the offender is advised at, or shortly after, the time of conviction that the court may consider imposing an indefinite sentence on—
- (i) its own initiative; or
  - (ii) an application made by counsel for the prosecution; and
- (b) the court has, after advising the offender under paragraph (a), adjourned the offender's sentencing for not less than 20 business days from the day of conviction of the qualifying offence so that evidence on sentence may be received by the court.

## 166A Reports about offender

- (1) This section applies when the court adjourns the offender's sentencing.
- (2) The court must make an order that the chief executive (corrective services) must—
- (a) prepare for the court a report about the offender; and
  - (b) give the court the report within a stated period.
- (3) The court may also order the chief executive (corrective services) to provide or obtain any other report that the court considers appropriate to enable it to impose the proper sentence.
- (4) In this section—  
*report* includes an assessment of, or information about, the prisoner.

[s 166B]

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### **166B Distribution of reports**

- (1) On receipt of a report under section 166A the court must give a copy to—
  - (a) the prosecution; and
  - (b) the offender's lawyers.
- (2) The court must ensure the prosecution and the offender's lawyers have sufficient time before the sentencing to consider and respond to the report.
- (3) The court may order the report, or part of the report, not be shown to the offender.

### **166C Use of reports**

- (1) The offender's lawyers may, before the offender's sentencing is to take place, file with the court a notice of intention to dispute the whole or any part of a report given under section 166A.
- (2) If a notice is filed under subsection (1), the court must not take the report or the part in dispute into consideration on the sentencing unless the offender's lawyers have been given the opportunity—
  - (a) to lead evidence on the disputed matters; and
  - (b) to cross-examine the author of the report on its contents.

### **167 Evidence**

- (1) Subject to the admissibility of the evidence, before a court imposes an indefinite sentence it must—
  - (a) hear evidence called by the prosecution; and
  - (b) hear evidence given or called by the offender, if the offender elects to give or call evidence.
- (2) Subject to subsection (3), ordinary rules of evidence apply to evidence given or called under subsection (1).

- (3) In deciding whether the offender is a serious danger to the community, the court may have regard to anything relevant to the issue contained in the certified transcript of, or any medical or other report tendered in, any proceeding against the offender for a qualifying offence.
- (4) Subsections (1) and (2) do not affect the admissibility of a report given under section 166A or any matter contained in the report.

### **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—

[s 172]

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- (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.

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## 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 *Victims of Crime Assistance Act 2009*, section 5, of the offence for which the indefinite sentence was imposed, if the court has so decided.
- (2) If the prosecution or the defence has caused a report about the offender to be prepared for a review under section 171 or 172, it must, a reasonable time before the review is to take place—
  - (a) file the report with the court; and
  - (b) provide a copy of the report to the director of public prosecutions or the legal practitioner representing the offender, as the case requires.

## 172B Disputed report

- (1) The director of public prosecutions or the offender may file with the court a notice of intention to dispute the whole or any part of a report provided under section 172A.
- (2) If a notice is filed under subsection (1) before the review is to take place, the court must not take the report or the part in dispute into consideration on the hearing of the review unless the party that filed the notice has been given the opportunity—
  - (a) to lead evidence on the disputed matters; and
  - (b) to cross-examine the author of the report on its contents.

[s 172C]

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### **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 *Victims of Crime Assistance Act 2009*, chapter 2.

### **172D Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003**

A court hearing a review under section 171 or 172 must not have regard to whether or not the offender—

- (a) may become, or is, the subject of a dangerous prisoners application; or
- (b) may become subject to an order because of a dangerous prisoners application.

*Note—*

See also section 9(8) (Sentencing guidelines).

### **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



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- (b) impose a sentence (a *finite sentence*) on the offender under this Act for the qualifying offence for which the indefinite sentence was imposed.
  - (2) If a court does not make an order under subsection (1)(a), the indefinite sentence continues in force.
  - (3) A finite sentence—
    - (a) is taken to have started on the day the indefinite sentence was originally imposed; and
    - (b) takes the place of the indefinite sentence; and
    - (c) must be not less than the nominal sentence.

#### **174 Parole application if finite sentence imposed**

- (1) An offender on whom a finite sentence has been imposed may apply under the *Corrective Services Act 2006* for release on parole under that Act.
- (2) However, an application under subsection (1) can not be made less than 6 months before the relevant period of imprisonment for the offender ends.
- (3) Despite the *Corrective Services Act 2006*, section 187 the Queensland board must hear and decide the application.
- (4) If the decision on the application is to grant the parole, the Queensland board must decide the parole period.
- (5) The board can not on the application decide a parole period that ends before the relevant period of imprisonment ends.
- (6) The board may decide a parole period that ends after the relevant period of imprisonment ends.
- (7) The parole period decided by the board must be 5 years, subject to subsections (8) and (9).
- (8) The parole period may be more than 5 years if—
  - (a) the rest of the offender's period of imprisonment immediately before deciding the parole period is more than 5 years (the *remaining period*); and

[s 174A]

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- (b) the parole period is the remaining period.
- (9) The parole period may be less than 5 years only if the board considers that period is appropriate having regard to any relevant board guidelines.
- (10) In this section—
- relevant period of imprisonment*, for the offender, means a period of imprisonment for the offender consisting of or including a finite term of imprisonment, whether or not the finite term has ended.

#### **174A When parole order must be made**

- (1) This section applies if an offender on whom a finite sentence has been imposed is not currently on parole 6 months before the relevant period of imprisonment for the offender ends (the *6-month period*).
- (2) To remove any doubt, it is declared that this section applies even if the offender made an application under section 174 (an *offender application*) that has not been not decided.
- (3) The Queensland board must, within the 6-month period, make a parole order under the *Corrective Services Act 2006*, section 194.
- (4) If the offender has made an offender application, subsection (3) applies even if the decision on the application was not or would not have been to grant the parole.
- (5) If the offender has not made an offender application, subsection (3) applies as if the offender had lawfully made an offender application.

*Note—*

The word ‘lawfully’ is necessary because ordinarily an offender application within the 6-month period would be prevented under section 174(2).

- (6) The parole order may order the offender’s release at any time during or at the end of the 6-month period for a parole period ending after the relevant period of imprisonment ends.

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- (7) The board must decide the parole period which is to start from the release.
  - (8) The parole period decided by the board must be 5 years, subject to subsection (9).
  - (9) The parole period may be less than 5 years only if the board considers that period is appropriate having regard to any relevant board guidelines.
  - (10) In this section—  
*relevant period of imprisonment*, for the offender, see section 174(10).

#### **174B Provisions for parole orders under part**

- (1) This section applies if a parole order is made under section 174 or 174A.
- (2) The *Corrective Services Act 2006*, chapter 5, part 1, divisions 5 and 6 apply to the parole order.
- (3) The *Dangerous Prisoners (Sexual Offenders) Act 2003* continues to apply to a prisoner, within the meaning of section 5(6) of that Act, who is or has been subject to the application of section 174 or 174A.

*Note—*

See also the *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 51 (Parole).

- (4) During the parole period decided under section 174 or 174A, the offender must be under the authority of the Queensland board and the supervision of an authorised corrective services officer.
- (5) Subsections (6) and (7) apply if (other than for this section) there would exist a period (the *gap period*) between the end of the relevant period of imprisonment for the offender and the last day of the parole period.
- (6) The finite term included in the relevant period of imprisonment is taken to be extended by the gap period.

[s 174C]

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- (7) Any term of imprisonment ordered to be served cumulatively with the finite term is taken to be ordered to be served cumulatively with the finite term as extended.
- (8) In this section—  
*relevant period of imprisonment*, for the offender, see section 174(10).

### **174C Parole provisions on cancellation of parole order**

- (1) This section applies if a parole order under section 174 or 174A is made for an offender and the order is cancelled.
- (2) No further parole order may be made under either section against the offender.
- (3) Any extension of the finite term under section 174B(6) continues to apply and is not affected by the cancellation.
- (4) To remove any doubt, it is declared that this section does not limit the offender's ability under the *Corrective Services Act 2006* to apply for, or to be granted, further parole.
- (5) The Queensland board must hear and decide any application for the further parole.
- (6) Subsection (5) applies despite the *Corrective Services Act 2006*, section 187.

### **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 62A(1), does not apply to a designated officer under part 7 of that Act who gives a report or information to a court or the registrar of the court for this part.
- (5) Reports mentioned in subsection (1) are in addition to any other evidence that may be placed before the court.

### **177 Appeals—general**

For the purposes of the Criminal Code, chapter 67—

- (a) an indefinite sentence imposed under section 163; and
- (b) if a court, on making a review under section 171 or 172—
  - (i) refuses to act under section 173—the refusal; or
  - (ii) acts under section 173—the sentence imposed;is taken to be a sentence imposed on conviction.

### **178 Appeals—Attorney-General**

The Attorney-General may appeal to the Court of Appeal against—

- (a) the making of an order under section 173(1)(a); and
- (b) a sentence imposed under section 173(1)(b).

### **179 Hearings—offender to be present**

- (1) Subject to this section, the offender must be present during the hearing of—

[s 180]

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- (a) evidence under section 167; and
  - (b) an application made under section 171 or 172.
- (2) A court may order that, at the time evidence under section 167 is to be heard, the chief executive (corrective services) bring the offender before the court.
- (3) On the hearing of an application made under section 171 or 172, the court may order the chief executive (corrective services) to bring the offender before the court.
- (4) If the offender acts in a way that makes the hearing of the evidence or application in the offender's presence impracticable, the court may order that—
- (a) the offender be removed; and
  - (b) the hearing of the application continue in the offender's absence.
- (5) If the court is satisfied that the offender is unable to be present during the hearing of the evidence or application because of the offender's illness or another reason, the court may allow the offender to be absent during the whole or a part of the hearing if it is satisfied that—
- (a) the offender's interests will not be prejudiced by the hearing continuing in the offender's absence; and
  - (b) the interests of justice require that the hearing should continue in the offender's absence.

## **Part 11                      General**

### **180      Effect of alterations in sentences**

- (1) If a provision of this or another Act increases the sentence, or the maximum or minimum sentence, for an offence, the increase applies only to offences committed after the commencement of the provision.

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- (2) If a provision of this or another Act reduces the sentence, or the maximum or minimum sentence, for an offence, the reduction—
- (a) extends to offences committed before the commencement of the provision; but
  - (b) does not affect any sentence imposed before the commencement.

### **180A Meaning of certain sentence provisions**

A provision of an Act that provides to the effect that the maximum penalty for an offence may be a fine or imprisonment means that the sentencing court may order the offender—

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

*Example—*

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

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

### **181 Corporations entitled to aggrieved party payments**

If under this Act or another Act a penalty or forfeiture is payable to a party aggrieved, it is payable to a corporation if the corporation is the party aggrieved.

### **181A Corporations to be fined if imprisonment is the only penalty**

- (1) If—

[s 181B]

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- (a) an Act provides that the punishment for an offence against a provision of the Act is imprisonment only; and
- (b) a body corporate is convicted of having committed the offence;

the court by or before which the body corporate is convicted may impose a fine on the body corporate determined under subsection (2).

- (2) The fine mentioned in subsection (1) may be—
  - (a) if the imprisonment is not more than 6 months—not more than 415 penalty units; or
  - (b) if the imprisonment is more than 6 months but not more than 1 year—not more than 835 penalty units; or
  - (c) if the imprisonment is more than 1 year but not more than 2 years—not more than 1660 penalty units; or
  - (d) if the term of imprisonment is more than 2 years—an unlimited amount.
- (3) Subsection (1) does not apply to an offence if the Act concerned provides another way of enforcing the punishment mentioned in subsection (1)(a) against a body corporate.

### **181B Corporation fines under penalty provision**

- (1) This section applies to a provision prescribing a maximum fine for an offence only if the provision does not expressly prescribe a maximum fine for a body corporate different from the maximum fine for an individual.
- (2) The maximum fine is taken only to be the maximum fine for an individual.
- (3) If a body corporate is found guilty of the offence, the court may impose a maximum fine of an amount equal to 5 times the maximum fine for an individual.



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**181C Corporation fines under provision authorising subordinate legislation**

- (1) This section applies to a provision of an Act prescribing the maximum fine for an offence that may be imposed under subordinate legislation under the Act only if the provision does not expressly prescribe a maximum fine for a body corporate different from the maximum fine for an individual.
- (2) The maximum fine is taken only to be the maximum fine for an individual that may be imposed under the subordinate legislation.
- (3) The maximum fine for a corporation that may be imposed under the subordinate legislation is taken to be 5 times the maximum fine for an individual.

**182 Enforcement of order for penalty for an offender dealt with on indictment**

- (1) If an offender dealt with on indictment fails to pay a penalty, or an instalment of a penalty, that a court ordered the offender to pay, the prosecution may apply to the court for the offender to be further dealt with for the offence according to law.
- (2) Notice may be served on the offender requiring the offender to appear before the court at the time and place mentioned in the notice for the hearing of the application mentioned in subsection (1).
- (3) The court may issue a warrant directing that the offender be arrested and brought before the court or a justice to be dealt with according to law—
  - (a) in the first instance instead of proceeding by way of notice mentioned in subsection (2); or
  - (b) if the offender fails to appear as required by the notice.
- (4) If an offender is brought before a justice under a warrant issued under subsection (3), the justice may commit the offender to prison or may remand the offender on bail to be brought before the court that ordered the penalty to be paid.

[s 182A]

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- (5) On the hearing of an application under subsection (1), if the court is satisfied that the offender failed to pay the penalty, or an instalment of the penalty, it may—
  - (a) set aside the sentence imposed for the offence and deal with the offender in a way in which the court could have dealt with the offender if the offender had just been convicted by or before it of the offence; or
  - (b) dismiss the application.
- (6) If the court deals with the offender under subsection (5)(a) and imposes a fine, the court must inform the offender that the offender may immediately verbally apply to the court for a fine option order in relation to the fine.
- (7) If an application is made under subsection (6), the court—
  - (a) must immediately proceed to hear the application but may adjourn the application to obtain further information; and
  - (b) may make a fine option order.

### **182A Court may make order for default payment of penalty**

- (1) A court that orders an offender to pay a penalty may also order that, if the offender fails to pay the penalty immediately or within the time allowed by the court in its order, the offender is to be imprisoned for a term calculated—
  - (a) under subsection (2)(a); or
  - (b) by dividing the amount of the penalty by the cut-out rate mentioned in the *State Penalties Enforcement Act 1999*, schedule 2, definition *cut-out rate*, paragraph (a), rounded down to the nearest whole number and expressed as a number of days.
- (2) The term of imprisonment—
  - (a) must be—
    - (i) the term that, in the court’s opinion, will satisfy the justice of the case; but

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- (ii) not more than 14 days imprisonment for each penalty unit, or part of a penalty unit, that the offender was ordered to pay; and
  - (b) must be served cumulatively with any term of imprisonment the offender is serving, or has been sentenced to serve, unless the court orders otherwise.
- (3) This section has effect—
- (a) subject to the Act under which the penalty is ordered to be paid; and
  - (b) despite section 152, whether or not a conviction is recorded.

### **183 Imprisonment unless penalty paid**

If—

- (a) an Act under which a penalty is ordered to be paid does not provide, or a court that orders an offender to pay a penalty does not make an order, for default in payment of the penalty; and
- (b) an offender ordered to pay the penalty does not pay the penalty;

the offender may be imprisoned for a period prescribed by section 185.

### **184 Imprisonment unless act done**

Unless an Act otherwise provides, if an offender who is ordered by a court to do an act fails to do the act, the court may order the offender to be imprisoned for a term not longer than 2 years.

### **185 Scale of imprisonment for non-payment of penalty**

- (1) If—
- (a) an offender is ordered to pay a penalty; and

[s 185A]

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- (b) the court may order imprisonment of the offender or execution against the property of the offender if the penalty is not paid; and
- (c) either of the following subparagraphs applies—
  - (i) the penalty is not paid;
  - (ii) execution to recover the amount of the penalty is to be against property of the offender and execution does not satisfy the amount;

the court may order the offender to be imprisoned for a term calculated under subsection (2)(a).

- (2) The term of imprisonment—
  - (a) must be—
    - (i) such as, in the court’s opinion, will satisfy the justice of the case; but
    - (ii) not more than 14 days imprisonment for each penalty unit, or part of a penalty unit, that the offender was ordered to pay; and
  - (b) must be served cumulatively with any term of imprisonment the offender is serving, or has been sentenced to serve, unless the court otherwise orders.
- (3) This section has effect—
  - (a) subject to the provisions of the Act under which the penalty is ordered to be paid; and
  - (b) despite section 152 whether or not a conviction is recorded.

### **185A If offender does not pay penalty under s 182A or 185**

- (1) If the offender does not pay the penalty mentioned in section 182A or 185 immediately or within the time allowed by the court, the proper officer of the court must either—
  - (a) issue a warrant for the arrest and imprisonment of the offender for the term ordered by the court; or

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- (b) give to the registrar under the *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) The postponement of the warrant may be subject to the reasonable conditions the proper officer considers necessary in the circumstances.
- (3) Application for a postponement under subsection (1)—
  - (a) must be in writing; and
  - (b) may be made by a party to the proceedings in which the warrant is to be issued.
- (4) If the offender fails to comply with a condition to which the postponement is subject, the proper officer must deal with the offender under section 185A(1)(a) or (b) as if the offender had only just failed to pay the penalty mentioned in section 182A or 185.

### **185C Power of proper officer to recall warrant and issue new warrant on part payment of penalty**

- (1) This section applies if—
  - (a) the proper officer of the court issues a warrant under section 185A(1); and

[s 186]

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- (b) before the warrant is executed, the offender pays an amount in part satisfaction of the penalty.
- (2) The proper officer may—
  - (a) recall the warrant; and
  - (b) issue a new warrant for the reduced penalty for the arrest and imprisonment of the offender.
- (3) For subsection (2)(b) the term of imprisonment is to be reduced in the way stated in section 186(1).
- (4) If the offender pays a further amount in part satisfaction of the penalty, the proper officer may recall a warrant issued under subsection (2)(b) if it has not been executed and issue further warrants in accordance with subsection (2)(b) until the penalty is fully paid.

## **186 Reduction of imprisonment**

- (1) If it appears to the proper officer of the court that the amount of the penalty has been reduced by the offender who was ordered to pay the penalty by—
  - (a) payment of part of the penalty; or
  - (b) an amount realised by execution against the property of the offender;

the term for which the offender may be imprisoned is the number of whole days worked out by dividing the balance of the penalty by the original penalty and multiplying the result by the number of days ordered to be served in default of payment of the penalty.

- (2) If—
  - (a) an offender is imprisoned for failing to pay a penalty; and
  - (b) an amount is paid to the chief executive (corrective services) in satisfaction or part satisfaction of the penalty;

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imprisonment the offender is serving is reduced to the number of whole days worked out by dividing the balance of the penalty by the original penalty and multiplying the result by the number of days ordered to be served in default of payment of the penalty.

- (2A) For subsections (1) and (2), a fraction of a day is to be disregarded.
- (3) The chief executive (corrective services)—
- (a) must—
    - (i) accept payment of all amounts tendered under subsection (2); and
    - (ii) pay every amount tendered to the proper officer of the court; and
  - (b) must release the offender from custody when the penalty is fully paid, unless the offender is in custody for another matter.

## **187 Disqualification from holding Queensland driver licence**

- (1) If—
- (a) an offender is convicted of an offence in connection with, or arising out of, the 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 Queensland driver licence;

the court may, in addition to any sentence that it may impose, order that the offender is, from the time of the conviction, disqualified absolutely, or for such period as is ordered by the court, from holding or obtaining a Queensland driver licence.

[s 188]

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- (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.

### **188 Court may reopen sentencing proceedings**

- (1) If a court has in, or in connection with, a criminal proceeding, including a proceeding on appeal—
  - (a) imposed a sentence that is not in accordance with the law; or
  - (b) failed to impose a sentence that the court legally should have imposed; or
  - (c) imposed a sentence decided on a clear factual error of substance; or
  - (d) failed to fix a date for the offender to be released on parole as required under part 9, division 3;

the court, whether or not differently constituted, may reopen the proceeding.

- (2) Also, if—
  - (a) a court has in, or in connection with, a criminal proceeding reduced a sentence because the offender has undertaken in a written declaration to cooperate with law enforcement agencies in a proceeding about an offence, including a confiscation proceeding; and
  - (b) the offender, without reasonable excuse, does not cooperate under the undertaking;

the court, whether or not differently constituted, may reopen the proceeding.

- (3) If a court reopens a proceeding, it—
  - (a) must give the parties an opportunity to be heard; and
  - (b) may resentence the offender—



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- (i) for a reopening under subsection (1)(a)—to a sentence in accordance with law; or
    - (ii) for a reopening under subsection (1)(b)—to a sentence the court legally should have imposed; or
    - (iii) for a reopening under subsection (1)(c)—to a sentence that takes into account the factual error; or
    - (iv) for a reopening under subsection (2)—to a sentence under subsection (4); and
  - (c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).
- (4) On an application under subsection (2)—
- (a) if the court is satisfied that the offender has completely failed to cooperate, the court must resentence the offender having regard to the sentence that would otherwise have been imposed if an undertaking under section 13A had not been given; or
  - (b) if the court is satisfied that the offender has partly failed to cooperate, the court may substitute for the reduced sentence the sentence it considers appropriate, not greater than the sentence that would have been imposed if the undertaking had not been given.
- (5) The court may reopen the proceeding—
- (a) on its own initiative at any time; or
  - (b) for a reopening under subsection (1)—on the application of a party to the proceeding made within—
    - (i) 28 days after the day the sentence was imposed; or
    - (ii) any further time the court may allow on application at any time; or
  - (c) for a reopening under subsection (1)(d)—on the application of the chief executive (corrective services); or

[s 189]

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- (d) for a reopening under subsection (2)—on the application of the prosecution made at any time, whether or not the appeal period under the Criminal Code, section 671(2) has expired.
- (6) Subject to subsection (7), this section does not affect any right of appeal.
- (7) For an appeal under any Act against a sentence imposed under subsection (3) or (4), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (3) or (4).
- (8) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

### **189 Outstanding offences may be taken into account in imposing sentence**

- (1) A court that sentences an offender for an offence may proceed under this section if—
  - (a) the prosecution consents; and
  - (b) it is satisfied that—
    - (i) there has been lodged in court a form that includes, or has attached, a list of other offences that 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.
- (3) The court must not impose a sentence that is more than the maximum sentence that may be imposed for the offence of which the person has been convicted.
- (4) The court must certify on the form mentioned in subsection (1)(b)(i) the offences mentioned in the list that have been taken into account in imposing sentence on the offender.
- (5) Subject to subsection (6), proceedings or further proceedings for offences contained in the certification mentioned in subsection (4) can not be taken against the offender.
- (6) Proceedings or further proceedings mentioned in subsection (5) may be taken if the court's decision is quashed or set aside.
- (7) If the court's decision is quashed or set aside, an admission of guilt for an offence made by the offender for the purposes of this section is not admissible in evidence—
  - (a) in proceedings or further proceedings taken against the offender; or
  - (b) in proceedings or further proceedings for the offence if the offence was not taken into account under this section in imposing sentence.
- (8) Subject to section 35(4), an offence taken into account under this section in imposing sentence on an offender for another offence must not, because it was taken into account, be regarded for any purpose as an offence of which the offender has been convicted.
- (9) If, under this section, an offence is taken into account in imposing sentence on an offender for another offence, then, in criminal proceedings—
  - (a) if reference may lawfully be made to the fact that the person was convicted of the other offence—reference may also be made to the fact that the first offence was taken into account; and

[s 190]

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- (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 can not take civil proceedings against the offender for damages arising out of a cause of action that gave rise to the damages mentioned in section 190(2)(a).
- (2) The order made is taken to be a sentence for the purposes of—
  - (a) section 7; 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

[s 195]

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- (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

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in subsection (2) in addition to any other order it may make under this Act.

- (2) An order made under subsection (1) may order that the offender—
- (a) must remain in Australia or the State; or
  - (b) must not apply for, or obtain, an Australian passport; or
  - (c) must surrender any passport held by the offender.
- (3) An offender who contravenes an order under subsection (1) commits an offence.

Maximum penalty—2 years imprisonment.

- (4) An order under subsection (1) stays in force for the duration of the sentence (whether or not the sentence is one that involves, in whole or part, a term of imprisonment).
- (5) The court may, by order, amend an order under subsection (1).
- (6) If the court makes an order under subsection (1) or (5), the proper officer of the court must, as soon as practicable, give a copy of the order to the secretary to the department of the Commonwealth responsible for matters arising under the *Australian Passports Act 2005* (Cwlth) and the *Foreign Passports (Law Enforcement and Security) Act 2005* (Cwlth).
- (7) If an order under subsection (1) states that the offender must surrender any passport held by the offender—
- (a) the passport must be given to the proper officer of the court; and
  - (b) the proper officer must cause the passport to be kept in such custody as the proper officer considers appropriate until—
    - (i) the passport must be returned under subsection (8); or
    - (ii) the authority that issued the passport requests its return;

whichever happens first.

[s 195A]

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- (8) If the passport is still in the custody of the proper officer of the court when the order under subsection (1) finishes, the proper officer must cause it to be returned to the offender.
- (9) This section does not affect any other powers of the court.

**195A Failure to perform community service in a satisfactory way**

- (1) For the purposes of sections 66(1)(b), 103(1)(d) and 114(1)(e), an offender is taken not to perform community service in a satisfactory way if the offender—
  - (a) reports to perform community service under the influence of intoxicating liquor or a dangerous drug; or
  - (b) is under the influence of intoxicating liquor or a dangerous drug while performing community service; or
  - (c) unlawfully damages—
    - (i) anything supplied to the offender for the purpose of performing community service; or
    - (ii) property in relation to which the offender is required to perform community service.
- (2) Subsection (1) does not limit the circumstances in which an offender does not perform community service in a satisfactory way.
- (3) In this section—

*dangerous drug* means a dangerous drug within the meaning of the *Drugs Misuse Act 1986*.

**195B Access to court files by representative of community justice group in offender's community**

- (1) This section applies if an offender is an Aboriginal or Torres Strait Islander person.
- (2) A representative of the community justice group in the offender's community may inspect a court file, or a document



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in a court file, or obtain a copy of information from a court file or document, that may be relevant to making a submission about the offender under section 9(2)(o).

- (3) However, subsection (2) applies only if the court directs that the information be made available or given to the representative.
- (4) The court may make the direction whether or not the representative has made an application to the court for the direction.
- (5) In deciding whether to direct that information be made available or given to the representative, the court may have regard to the following—
  - (a) whether the representative would otherwise have access to the information;
  - (b) whether the offender consents to the information being made available or given to the representative.
- (6) Subsection (5) does not limit the matters to which the court may have regard.

### **195C Confidentiality**

- (1) A person who is a member of a community justice group must not—
  - (a) record or use information the person, or another person who is a member of the community justice group, gains through performing a function under this Act, or intentionally disclose it to anyone, other than under subsection (2); or
  - (b) recklessly disclose the information to anyone.

Maximum penalty—100 penalty units or 2 years imprisonment.
- (2) A person who is a member of a community justice group may—
  - (a) record, use or disclose the information if the recording, use or disclosure—

[s 195D]

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- (i) is done as part of making submissions to the court under section 9(2)(o); or
    - (ii) is otherwise required or permitted by law; or
  - (b) disclose the information to another member of the community justice group.
- (3) In this section—
- disclose* information to someone else means—
- (a) orally disclose the information to the other person; or
  - (b) produce to the other person, or give the other person access to, a document containing the information; or
  - (c) disclose the information to the other person in another way.

### **195D Protection from liability**

- (1) This section applies to a person who—
  - (a) is a member of the community justice group in an offender's community; and
  - (b) is responsible for the making of a submission about the offender to a court under section 9(2)(o).
- (2) For subsection (1)(b), it does not matter that the person did not personally make the submission to the court.
- (3) The person is not civilly liable for an act done, or an omission made, honestly and without negligence in relation to the making of the submission.

### **196 Regulation-making power**

The Governor in Council may make regulations under this Act.

### **197 Forms**

The chief executive may approve forms for use under this Act.

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## **Part 12                      Sentencing Advisory Council**

### **Division 1                      Establishment and functions**

#### **198      Establishment**

The Sentencing Advisory Council is established.

#### **199      Function to state views to Court of Appeal**

- (1) The council has the function of stating in writing to the Court of Appeal its views on the giving, or review, of a guideline judgment within the meaning of part 2A.
- (2) For subsection (1), the council may state its views on the following—
  - (a) whether a guideline judgment should be given or reviewed;
  - (b) the content of the guideline judgment.

#### **200      Other functions**

- (1) The other functions of the council are—
  - (a) if requested by the Attorney-General, to advise the Attorney-General on matters relating to sentencing; and
  - (b) to provide information to the community to enhance knowledge and understanding of matters relating to sentencing; and
  - (c) to publish information relating to sentencing; and
  - (d) to research matters relating to sentencing and publish the results of the research; and
  - (e) to obtain the community's views on sentencing and particular matters relating to sentencing.
- (2) To assist in performing its functions under subsection (1), the council may consult with the judiciary, government

[s 201]

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departments, any person or class of person and any other entity or class of entity.

(3) In this section—

*publish* includes give information to the judiciary, government departments, any person or class of person and any other entity or class of entity.

## **201 Powers of council**

The council has the powers necessary or convenient to perform its functions or incidental to the performance of its functions.

## **Division 2 Membership**

### **202 Membership of council**

(1) The council consists of 12 members appointed by the Governor in Council, by gazette notice, on the recommendation of the Attorney-General.

(2) The Attorney-General is to recommend persons the Attorney-General considers have expertise or experience relevant to functions of the council, for example, in relation to any of the following—

- (a) victims of crime;
- (b) justice matters relating to Aboriginal or Torres Strait Islander people;
- (c) justice matters relating to domestic and family violence;
- (d) vulnerable persons facing the criminal justice system;

*Examples of vulnerable persons—*

- persons suffering mental illness
- persons who have an intellectual or other disability
- persons who have a substance abuse problem
- homeless persons

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- (e) law enforcement;
  - (f) crime prevention;
  - (g) criminal prosecutions;
  - (h) criminal defence representation;
  - (i) civil liberties;
  - (j) corrective services, including offender rehabilitation;
  - (k) juvenile justice matters;
  - (l) criminal justice policy;
  - (m) criminal law, including sentencing;
  - (n) criminology.
- (3) In this section—
- corrective services* see the *Corrective Services Act 2006*, schedule 4.

### **203 Chairperson and deputy chairperson**

- (1) The Governor in Council may, on the recommendation of the Attorney-General, appoint—
  - (a) a member of the council to be chairperson of the council; and
  - (b) another member to be deputy chairperson of the council.
- (2) A member may be appointed as the chairperson or deputy chairperson at the same time as the person is appointed as a member and by the same gazette notice.
- (3) Subject to this division, the chairperson or deputy chairperson holds office for the term, ending not later than his or her term of appointment as a member, stated in his or her appointment as chairperson or deputy chairperson.
- (4) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of the chairperson; and

[s 203A]

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- (b) during all periods when the chairperson is absent from duty or for another reason can not perform the duties of the office.

### **203A Conditions of appointment**

- (1) A member of the council holds office for the term, not more than 3 years, stated in the member's instrument of appointment.
- (2) A member is entitled to the fees and allowances fixed by the Governor in Council, and otherwise holds office under the conditions of appointment fixed by the Governor in Council.

### **203B Vacation of office of council member**

The office of a member of the council becomes vacant if the appointed member—

- (a) resigns office by signed notice given to the Attorney-General; or
- (b) is removed from office as a member under section 203C.

### **203C Removal from office of council members**

The Governor in Council may remove an appointed member from office if—

- (a) the member is mentally or physically incapable of performing the member's duties; or
- (b) the member is convicted, including by summary conviction, of an indictable offence; or
- (c) the Governor in Council is satisfied the member has neglected the member's duties or performed the member's duties incompetently or inefficiently.

### **203D Defects in appointment of members**

A decision of the council is not invalidated by—

- (a) a defect or irregularity in the appointment of a member of the council, including in the appointment of the chairperson or deputy chairperson; or
- (b) a vacancy in the membership of the council.

## **Division 3                      Proceedings**

### **203E    Conduct of business**

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

### **203F    Quorum**

A quorum for a meeting of the council is 7 members.

### **203G    Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.
- (3) If neither the chairperson nor deputy chairperson is present at a meeting, a member of the council chosen by the members is to preside.

### **203H    Conduct of meetings**

- (1) A question at a council meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting may abstain from voting.

[s 203I]

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- (4) The council may hold meetings, or permit members to take part in meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a meeting under subsection (4) is taken to be present at the meeting.

### **203I Minutes**

The council must keep minutes of its proceedings.

## **Division 4 Other matters**

### **203J Staff**

- (1) Subject to the council's budget, the staff necessary to enable the council to perform its functions may be employed.
- (2) Staff of the council are to be employed under the *Public Service Act 2008*.

### **203K Council may engage persons to help in performing functions**

- (1) Subject to the chief executive's approval, the council may engage persons with suitable qualifications and experience to help the council in performing its functions.
- (2) The engagement may either be in an honorary capacity or for remuneration.

### **203L Reports**

- (1) The council must report in writing to the Attorney-General as follows—



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- (a) each financial year, by the date requested in writing by the Attorney-General;
  - (b) otherwise, as requested in writing by the Attorney-General from time to time.
- (2) The report under subsection (1)(a)—
- (a) must include information about—
    - (i) performance of the council's functions, in particular about the provision of information to the community to enhance knowledge and understanding of matters relating to sentencing; and
    - (ii) the work to be undertaken by the council in the future in the performance of the council's functions; and
  - (b) must be tabled in the Legislative Assembly by the Attorney-General within 14 sitting days after the Attorney-General receives it.

## 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

[s 205]

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continues to be subject to the requirements of the sentence in all respects as if this Act had not been enacted.

- (4) A sentence mentioned in subsection (3) may be amended, and any failure to comply with it may be dealt with, under this Act as 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

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sentences were imposed before the commencement of part 9A.

**207 Transitional provisions for State Penalties Enforcement Act 1999**

- (1) This section applies if, on the commencement of this section, an offender or surety has not paid an amount under an order under the *Crown Proceedings Act 1980*, section 13 (the *repealed law*).
- (2) Despite the repeal of the repealed law, the following provisions have effect—
  - (a) the order continues to have effect as if it were an order made under section 33A of this Act;
  - (b) any amount that has not been paid under the order under the repealed law continues to be payable until it is paid or otherwise satisfied;
  - (c) despite the repeal of the *Crown Proceedings Act 1980*, section 15, an application may be made under section 33B as if the order forfeiting the recognisance were an order under section 33A;
  - (d) any warrant that has not been enforced may be enforced according to its terms as if the repealed law had not been repealed;
  - (e) any proceeding commenced before the repeal for an order under the repealed law may be continued as if it were a proceeding for an order under section 33A.

**208 Transitional provisions for Criminal Law Amendment Act 2000**

- (1) The definition of *violent offence* in section 162 applies as if the reference in the definition to the provision of the Criminal Code mentioned in column 1 included a reference to the

[s 209]

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provision of the Criminal Code mentioned in column 2 as in force at any time before the commencement of this section.

<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.

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- (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.

**211 Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2003**

Section 9 as amended by the *Sexual Offences (Protection of Children) Amendment Act 2003*, section 28, applies to the sentencing of an offender whether the offence or conviction happened before or after the commencement of that section.

**212 Transitional provisions for the 2004 amendments—approved forms and serious violent offences**

- (1) A form approved by the chief executive (corrective services) for a purpose under this Act, and in force immediately before section 4 was amended by the 2004 Amendment Act, continues as the approved form for the purpose under this Act after the amendment.
- (2) The amendment of section 161 by the 2004 Amendment Act applies in relation to a declaration to be made under section 161(3)(c) or (3B)(c) after the commencement of the amendment—
- (a) whether the offences were committed before or after the commencement of the amendment; and
  - (b) whether the offender was convicted of the offences before or after the commencement of the amendment.
- (3) The amendment of the schedule by the 2004 Amendment Act applies for the purposes of sections 161A to 161C—
- (a) whether the offences were committed before or after the commencement of the amendment; and
  - (b) whether the offender was convicted of the offences before or after the commencement of the amendment.
- (4) In this section—

[s 213]

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*2004 Amendment Act* means the *Justice and Other Legislation Amendment Act 2004*.

**213 Transitional provision for s 157 (Eligibility for post-prison community based release)**

- (1) The date recommended under former section 157 as the date that an offender be eligible for post-prison community based release is, after the commencement, taken to be the parole eligibility date fixed for the offender under part 9, division 3.
- (2) However, if—
  - (a) there is more than 1 recommendation in force immediately before the commencement; and
  - (b) the recommendations recommend different dates as the date the offender is eligible for post-prison community based release;

the date that is latest in time is taken to be the parole eligibility date fixed for the offender under part 9, division 3.

*Example—*

Recommendation A was made on 1 August 2005 and recommends that the offender be eligible for post-prison community based release on 1 January 2007.

Recommendation B was made on 1 March 2005 and recommends that the offender be eligible for post-prison community based release on 1 July 2007.

The date taken to be the current parole eligibility date fixed for the offender under part 9, division 3 is 1 July 2007.

- (3) The date that a period recommended under former section 157 as the non-release period for an offender ends is, after the commencement, taken to be a parole eligibility date fixed for the offender under part 9, division 3.
- (4) However, if—
  - (a) there is more than 1 recommendation in force immediately before the commencement; and
  - (b) the recommendations recommend different non-release periods for the offender;

the date of the last non-release period to end is taken to be the parole eligibility date fixed for the offender under part 9, division 3.

*Example—*

Recommendation A was made on 1 August 2005 and recommends that the offender's non-parole period ends on 1 January 2007.

Recommendation B was made on 1 March 2005 and recommends that the offender's non-parole period ends on 1 July 2007.

The date taken to be the current parole eligibility date fixed for the offender under part 9, division 3 is 1 July 2007.

(5) In this section—

***commencement*** means the commencement of this section.

***former section 157*** means section 157 as in force before the commencement.

***recommendation*** means a recommendation made by a court under former section 157 before the commencement that is in force.

## **214 Transitional provision for pt 9, div 3**

Part 9, division 3 applies in relation to an offence for which a court imposes a term of imprisonment after the commencement of this section whether the offence or the finding of guilt for the offence happened before or after the commencement.

## **215 Transitional provision for State Penalties Enforcement and Other Legislation Amendment Act 2007**

(1) This section applies if, immediately before the commencement of this section—

(a) a probation order was subject to requirements under section 94(1)(c), (d) or (e); or

(b) a community service order was subject to requirements under section 104; or

[s 216]

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- (c) an intensive correction order was subject to requirements under section 115(1)(c), (d) or (e).
- (2) On the commencement, the probation order, community service order or intensive correction order continues to be subject to the requirements as if the amendment Act had not commenced.

**216 Transitional provision for Criminal Code and Other Acts Amendment Act 2008**

- (1) The definition *offence of a sexual nature* in section 15E(4) applies as if the reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.
- (2) The Criminal Code items in the schedule apply as if the reference in the item mentioned in column 1 to the provision of the Criminal Code mentioned in column 2 included a reference to the provision of the Criminal Code mentioned in column 3 as in force at any time before the commencement of this section.

Column 1	Column 2	Column 3
2	61	63
5	208	209
23	319	319A

**217 Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010**

- (1) Section 9(8) and amended part 10, other than new sections 172D and 174 to 174C, apply to the sentencing of an offender and to a review under that part no matter when the relevant offence happened or happens.
- (2) However, section 9(8) and amended part 10, other than new sections 172D and 174 to 174C, only apply if the conviction for the offence took place after the date of assent of the amending Act.



(3) New sections 172D and 174 to 174C apply to an offender on whom a finite sentence has been imposed no matter when the relevant offence or conviction happened or happens, or when the finite sentence was made.

(4) Subsections (1) and (3) apply despite the *Acts Interpretation Act 1954*, section 20C.

(5) In this section—

***amended part 10*** means part 10 as amended under the amending Act.

***amending Act*** means the *Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010*.

***new sections 172D and 174 to 174C*** means those numbered sections of the post-amended Act, as affected by any relevant definitions under the post-amended Act.

***post-amended Act*** means this Act as amended by the amending Act.

## **218 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**

On the commencement of this section, section 152A, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, has effect in relation to a proceeding, regardless of when the proceeding was commenced.

## **219 Transitional provision for the Justice and Other Legislation Amendment Act 2010**

This Act as amended by the *Justice and Other Legislation Amendment Act 2010*, part 25 applies to a sentence imposed after the commencement of part 25, whether the offence was committed before or after the commencement of part 25.

**220 Transitional provision for Liquor and Other Legislation Amendment Act 2010**

- (1) Part 3B, as inserted by the *Liquor and Other Legislation Amendment Act 2010*, section 55 applies in relation to an offence only if the offender was convicted for the offence after the commencement of this section.
- (2) For subsection (1), it is irrelevant whether the act or omission constituting the offence happened before or after the commencement.

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## Schedule 1      Serious violent offences

sections 156A(1)(a), 161A(a), 161B(3)(a) and 161C(1)(c) and (d)

### Criminal Code

- 2 section 61 (Riot)
- 3 section 75 (Threatening violence)
- 4 section 142 (Escape by persons in lawful custody)
- 5 section 208 (Unlawful 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 persons with an impairment of the mind)
- 11 section 217 (Procuring young person etc. for carnal knowledge)
- 12 section 218 (Procuring sexual acts by coercion etc.)
- 12A section 219 (Taking child for immoral purposes)
- 13 section 222 (Incest)
- 14 section 229B (Maintaining a sexual relationship with a child)
- 15 sections 303 (Definition of *manslaughter*) and 310 (Punishment of manslaughter)
- 16 section 306 (Attempt to murder)
- 16A section 309 (Conspiring to murder)
- 17 section 313 (Killing unborn child)
- 18 section 315 (Disabling in order to commit indictable offence)
- 19 section 316 (Stupefying in order to commit indictable offence)

Schedule 1

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- 20 section 317 (Acts intended to cause grievous bodily harm and other malicious acts)
- 21 section 317A(1) (Carrying or sending dangerous goods in a vehicle)
- 22 section 318 (Obstructing rescue or escape from unsafe premises)
- 23 section 319 (Endangering the safety of a person in a vehicle with intent)
- 25 section 320 (Grievous bodily harm)
- 26 section 320A (Torture)
- 27 section 321 (Attempting to injure by explosive or noxious substances)
- 28 section 321A (Bomb hoaxes)
- 29 section 322 (Administering poison with intent to harm)
- 30 section 323 (Wounding)
- 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)
- 40A section 364 (Cruelty to children under 16)
- 41 section 411(1) (Punishment of robbery)
- 42 section 411(2) (Punishment of robbery)
- 43 section 412 (Attempted robbery)
- 43A section 417A (Taking control of aircraft)

- 44 section 419(1) (Burglary), if section 419(3)(b)(i) or (ii) applies

## **Criminal Code (Provisions repealed by Criminal Law Amendment Act 1997)**

- 1 section 208 (Unlawful anal intercourse)
- 2 section 221 (Conspiracy to defile)
- 3 section 222 (Incest by man)
- 4 section 223 (Incest by adult female)
- 5 section 318 (Preventing escape from wreck)

## **Corrective Services Act 2006**

- 1 section 122(2) (Unlawful assembly, riot and mutiny)
- 2 section 124(a) (Other offences)

## **Corrective Services Act 2000 (Provisions repealed by Corrective Services Act 2006)**

- 1 section 92(2) (Unlawful assembly, riot and mutiny)
- 2 section 94(a) (Other offences)

## **Drugs Misuse Act 1986**

- 1 section 5 (Trafficking in dangerous drugs)
- 2 section 6 (Supplying dangerous drugs), if the offence is one of aggravated supply as mentioned in that section
- 3 section 8 (Producing dangerous drugs), if the circumstances mentioned in paragraph (a) or (b) of the penalty apply

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## Schedule 2      Qualifying offences

section 162, definition *qualifying offence*, paragraph (a)

### Criminal Code

<b>Section</b>	<b>Section heading or description of offence</b>
54A	Demands with menaces upon agencies of government
208	Unlawful sodomy
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
216	Abuse of persons with an impairment of the mind
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
229B	Maintaining a sexual relationship with a child
302, 305	Murder
303, 310	Manslaughter
306	Attempt to murder
309	Conspiring to murder
311	Aiding suicide
313	Killing unborn child
315	Disabling in order to commit indictable offence

<b>Section</b>	<b>Section heading or description of offence</b>
317	Acts intended to cause grievous bodily harm and other malicious acts
320A	Torture
321	Attempting to injure by explosive or noxious substances
322	Administering poison with intent to harm
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults
411(2)	Robbery with circumstance of aggravation
412	Attempted robbery

## **Criminal Code (Provisions repealed by Criminal Law Amendment Act 1997)**

<b>Section</b>	<b>Section heading</b>
208	Unlawful anal intercourse
221	Conspiracy to defile
222	Incest by man
223	Incest by adult female



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**Criminal Code (Provisions amended,  
renumbered or repealed by Criminal Law  
Amendment Act 2000)**

<b>Section</b>	<b>Section heading</b>
215	Carnal knowledge of girls under 16
336	Assault with intent to commit rape
337	Sexual assaults
347	Rape
349	Attempt to commit rape

**Criminal Code (Provision repealed by Criminal  
Code and Other Acts Amendment Act 2008)**

<b>Section</b>	<b>Section heading</b>
209	Attempted sodomy

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	208
3 Key . . . . .	209
4 Table of reprints . . . . .	209
5 Tables in earlier reprints . . . . .	210
6 List of legislation . . . . .	211
7 List of annotations . . . . .	217
8 List of forms notified or published in the gazette . . . . .	232
9 Table of corrected minor errors . . . . .	234

### 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 1 December 2010. 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 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 reprint with the latest effective date.

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

Reprint No.	Amendments to	Effective	Reprint date
1	1993 Act No. 36	23 July 1993	30 July 1993
2	1993 Act No. 76	14 December 1993	22 December 1993
3	1994 Act No. 6	7 March 1994	21 March 1994
4	1995 Act No. 58	18 December 1995	20 December 1995
4A	1996 Act No. 79	20 December 1996	13 February 1997
4B	1996 Act No. 79	28 February 1997	14 March 1997
4C	1997 Act No. 9	1 July 1997	4 July 1997
5	1997 Act No. 9	1 July 1997	1 August 1997
5A	1997 Act No. 46	1 September 1997	12 September 1997
5B	1997 Act No. 82	5 December 1997	10 December 1997
5C	1999 Act No. 9	1 May 1999	16 July 1999
5D	1999 Act No. 70	6 December 1999	4 February 2000
6	1999 Act No. 70	1 March 2000	7 April 2000
6A	2000 Act No. 46	27 October 2000	3 November 2000

Endnotes

Reprint No.	Amendments to	Effective	Reprint date
6B	2000 Act No. 63	27 November 2000	25 January 2001
7	2000 Act No. 63	1 July 2001	3 August 2001
7A	2001 Act No. 94	28 February 2002	8 March 2002

Reprint No.	Amendments included	Effective	Notes
7B	2001 Act No. 94	1 July 2002	
7C	2002 Act No. 23	19 July 2002	
7D	2002 Act No. 34	16 August 2002	
7E	2002 Act No. 46	24 September 2002	
7F	2002 Act No. 59	14 November 2002	
7G	2002 Act No. 6	10 March 2003	
8	2003 Act No. 3	1 May 2003	
8A	2004 Act No. 37	1 January 2005	
8B	2005 Act No. 10	29 April 2005	
8C	2004 Act No. 43	31 August 2005	
8D	2004 Act No. 43	19 November 2005	
8E	2005 Act No. 70	8 December 2005	
8F rv	2000 Act No. 5 (amd 2006 Act No. 26)	21 July 2006	
8G rv	2006 Act No. 29 (amd 2006 Act No. 41)	28 August 2006	R8G rv withdrawn, see R9
9	—	28 August 2006	
9A	2007 Act No. 3	30 April 2007	
9B	2007 Act No. 37	28 September 2007	
9C	2007 Act No. 59	15 March 2008	
9D	2008 Act No. 59	25 November 2008	
9E	2008 Act No. 55	1 December 2008	
10	2008 Act No. 66	1 January 2009	
10A	2009 Act No. 30	21 September 2009	
10B	2009 Act No. 35	1 December 2009	
10C	2009 Act No. 34	29 March 2010	
10D	2010 Act No. 42	14 October 2010	
10E	2010 Act No. 26	1 November 2010	
10F	2010 Act No. 48	26 November 2010	
10G	2010 Act No. 34 2010 Act No. 51	1 December 2010	R10G withdrawn, see R11
11	—	1 December 2010	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Changed names and titles	4
Corrected minor errors	1, 7

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## 6 List of legislation

### **Penalties and Sentences Act 1992 No. 48**

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 27 November 1992 (1992 SL No. 377)

pt 3 (ss 16–43) commenced 27 November 1992 (1992 SL No. 378)

ss 52–110, 120–142 and 207 in a certain respect commenced 18 December 1992 (1992 SL No. 393)

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

amending legislation—

### **Penalties and Sentences Legislation Amendment Act 1993 No. 36 pts 1–2, s 2 sch 1**

date of assent 23 July 1993

commenced on date of assent

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

date of assent 14 December 1993

commenced on date of assent

### **Penalties and Sentences Amendment Act 1994 No. 6**

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)

### **Electricity Act 1994 No. 64 ss 1–2, 293 sch 4**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (1994 SL No. 467)

### **Mineral Resources Amendment Act 1995 No. 21 ss 1–2, 107 sch 2**

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

remaining provisions commenced on date of assent

**Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch**

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

ss 1–2 commenced on date of assent

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

**Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2**

date of assent 3 April 1997

ss 1–2 commenced on date of assent

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

**Penalties and Sentences (Serious Violent Offences) Amendment Act 1997 No. 4 pts 1–2**

date of assent 3 April 1997

ss 1–2 commenced on date of assent

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

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(5) pt 17**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 20 June 1997 (1997 SL No. 155)

**Cooperatives Act 1997 No. 39 ss 1–2, 472 sch 7**

date of assent 25 August 1997

ss 1–2 commenced on date of assent

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 ss 1–2(1), pt 19**

date of assent 5 December 1997

commenced on date of assent

**Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

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))

**Audio Visual and Audio Links Amendment Act 1999 No. 65 pts 1, 5**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

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

**Justice Legislation (Miscellaneous Provisions) Act (No. 2) 1999 No. 66 ss 1, 2(2) pt 6**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

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

**Justice Legislation (Miscellaneous Provisions) Act (No. 3) 1999 No. 67 pts 1, 4**

date of assent 6 December 1999

commenced on date of assent

**State Penalties Enforcement Act 1999 No. 70 ss 1–2, 166 sch 1 (this Act is amended, see amending legislation below)**

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 27 November 2000 (2000 SL No. 274)

amending legislation—

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch (amends 1999 No. 70 above)**

date of assent 25 October 2000

commenced on date of assent

**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)

**Penalties and Sentences and Other Acts Amendment Act 2000 No. 42 pts 1–2**

date of assent 13 October 2000

ss 1–2 commenced on date of assent

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

**Criminal Law Amendment Act 2000 No. 43 pts 1, 8**

date of assent 13 October 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 27 October 2000 (2000 SL No. 270)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Justice and Other Legislation (Miscellaneous Provisions) Act 2000 No. 58 ss 1–2 sch**

date of assent 17 November 2000

commenced on date of assent

**Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88)

**Penalties and Sentences (Non-contact Orders) Amendment Act 2001 No. 94 pts 1–2**

date of assent 10 December 2001

ss 1–2 commenced on date of assent

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

**Domestic Violence Legislation Amendment Act 2002 No. 6 ss 1–2, 53 sch 2**

date of assent 13 March 2002

ss 1–2 commenced on date of assent

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

**Criminal Law Amendment Act 2002 No. 23 ss 1, 2(3), pt 9**

date of assent 23 May 2002

ss 1–2 commenced on date of assent

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

**Justice and Other Legislation (Miscellaneous Provisions) Act 2002 No. 34 ss 1, 74 sch 6**

date of assent 16 August 2002

commenced on date of assent

**Community Services Legislation Amendment Act 2002 No. 46 ss 1, 40 sch**

date of assent 24 September 2002

commenced on date of assent

**Drug Diversion Amendment Act 2002 No. 59 pts 1, 3**

date of assent 14 November 2002

commenced on date of assent

**Sexual Offences (Protection of Children) Amendment Act 2003 No. 3 ss 1, 2(2), pt 5**

date of assent 4 March 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2003 (2003 SL No. 52)

**Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1**

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2005 (2004 SL No. 266)

**Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–2, pt 17**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

ss 78–80 commenced 19 November 2005 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 31 August 2005 (2005 SL No. 212)



**Health Legislation Amendment Act 2005 No. 10 pt 1, s 50 sch**

date of assent 1 April 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 29 April 2005 (2005 SL No. 72)

**Justice and Other Legislation Amendment Act 2005 No. 70 ss 1, 166 sch**

date of assent 8 December 2005

commenced on date of assent

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A)  
(this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006  
No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Corrective Services Act 2006 No. 29 ss 1, 2(2), ch 8 pt 2 div 2 (this Act is amended, see  
amending legislation below)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2006 (2006 SL No. 213)

amending legislation—

**Crime and Misconduct and Other Legislation Amendment Act 2006 No. 41  
pts 1, 2A (amends 2006 No. 29 above)**

date of assent 11 August 2006

commenced on date of assent (see s 2)

**State Penalties Enforcement and Other Legislation Amendment Act 2007 No. 3 pts 1,  
7**

date of assent 16 February 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 30 April 2007 (2007 SL No. 51)

**Justice and Other Legislation Amendment Act 2007 No. 37 pts 1, 27, s 125 sch**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2007 (2007 SL No. 241)

**Local Government and Other Legislation (Indigenous Regional Councils)  
Amendment Act 2007 No. 59 pts 1, 13**

date of assent 22 November 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 15 March 2008 (2007 SL No. 336)

**Criminal Code and Other Acts Amendment Act 2008 No. 55 pts 1, 6**

date of assent 23 October 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2008 (2008 SL No. 386)

**Justice and Other Legislation Amendment Act 2008 No. 59 s 1, pt 23**

date of assent 25 November 2008

commenced on date of assent

**Penalties and Sentences and Other Acts Amendment Act 2008 No. 66 ss 1–2(1), 3**

date of assent 1 December 2008

ss 1–2 commenced on date of assent

remaining provision commenced 1 January 2009 (see s 2(1))

**Corrective Services and Other Legislation Amendment Act 2009 No. 30 pts 1, 3**

date of assent 26 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 21 September 2009 (2009 SL No. 198)

**Juvenile Justice and Other Acts Amendment Act 2009 No. 34 ss 1–2, 45(1) sch pt 1  
amdt 26**

date of assent 17 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 29 March 2010 (2010 SL No. 37)

**Victims of Crime Assistance Act 2009 No. 35 ss 1–2, ch 7 pt 5**

date of assent 17 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 277)

**Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010  
No. 26 pts 1, 14**

date of assent 13 August 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 2010 (2010 SL No. 236)

**Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act  
2010 No. 34 pts 1, 3, s 33 sch**

date of assent 8 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2010 (2010 SL No. 329)

**Justice and Other Legislation Amendment Act 2010 No. 42 s 1, pt 25**

date of assent 14 October 2010

commenced on date of assent

**Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010 No. 48**

date of assent 5 November 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 26 November 2010 (2010 SL No. 330)

**Liquor and Other Legislation Amendment Act 2010 No. 51 s 1, pt 7**

date of assent 1 December 2010

commenced on date of assent

**7 List of annotations****Commencement**

s 2 om R4 (see RA s 37)

**Purposes**

s 3 amd 1997 No. 4 s 4

**Definitions**

- s 4
- def “**approved form**” amd 1999 No. 9 s 3 sch; 2004 No. 43 s 68
  - def “**approved provider**” ins 2002 No. 59 s 6
  - def “**attend**” ins 2002 No. 59 s 6
  - def “**authorised corrective services officer**” sub 1997 No. 46 s 25  
amd 1999 No. 9 s 3 sch
  - def “**banning order**” ins 2010 No. 51 s 54(2)
  - def “**board guidelines**” ins 2010 No. 34 s 34(2)
  - def “**commission**” om 1999 No. 9 s 3 sch
  - def “**community justice group**” amd 2007 No. 59 s 138(1)  
reloc from s 9 2007 No. 59 s 138(2)
  - def “**community service**” amd 2000 No. 63 s 276 sch 2; 2006 No. 29 s 484(3)
  - def “**council**” ins 2010 No. 48 s 4
  - def “**court**” ins 2010 No. 48 s 4
  - def “**Crown prosecutor**” ins 2001 No. 94 s 4  
amd 2010 No. 51 s 54(1)
  - def “**dangerous prisoners application**” ins 2010 No. 34 s 34(2)
  - def “**disqualifying offence**” ins 2002 No. 59 s 6
  - def “**drug assessment and education session**” ins 2002 No. 59 s 6
  - def “**drug diversion condition**” ins 2002 No. 59 s 6
  - def “**drug diversion court**” ins 2002 No. 59 s 6
  - def “**eligible drug offence**” ins 2002 No. 59 s 6
  - def “**eligible drug offender**” ins 2002 No. 59 s 6
  - def “**finite sentence**” ins 2010 No. 34 s 34(2)
  - def “**finite term**” ins 2010 No. 34 s 34(2)
  - def “**guideline judgment**” ins 2010 No. 48 s 4
  - def “**indefinite sentence**” ins 2010 No. 34 s 34(2)
  - def “**licensed premises**” ins 2010 No. 51 s 54(2)
  - def “**licensee**” ins 2010 No. 51 s 54(2)
  - def “**nominal sentence**” ins 2010 No. 34 s 34(2)
  - def “**non-contact order**” ins 2001 No. 94 s 4
  - def “**offender’s community**” reloc from s 9 2007 No. 59 s 138(2)
  - def “**parole**” ins 2006 No. 29 s 484(2)
  - def “**penalty**” amd 1993 No. 36 s 2 sch 1
  - def “**period of imprisonment**” ins 1993 No. 36 s 2 sch 1

- def “**post-prison community based release**” ins 2000 No. 63 s 276 sch 2  
om 2006 No. 29 s 484(1)
- def “**prison**” amd 2000 No. 63 s 276 sch 2; 2006 No. 29 s 484(3)
- def “**proper officer**” amd 1995 No. 21 s 107 sch 2  
sub 1999 No. 67 s 12
- def “**property**” ins 1994 No. 64 s 293 sch 4
- def “**prosecutor**” ins 2001 No. 94 s 4  
amd 2010 No. 51 s 54(1)
- def “**public place**” ins 2010 No. 51 s 54(2)
- def “**qualifying offence**” ins 2010 No. 34 s 34(2)
- def “**Queensland board**” ins 2010 No. 34 s 34(2)
- def “**Queensland driver licence**” ins 2007 No. 37 s 125 sch
- def “**re-integration program**” sub 2000 No. 63 s 276 sch 2  
amd 2006 No. 29 s 484(3)–(4); 2009 No. 30 s 42
- def “**serious harm**” ins 2010 No. 34 s 34(2)
- def “**serious violent offence**” ins 1997 No. 4 s 5
- def “**SPER**” ins 2007 No. 3 s 48
- def “**term of imprisonment**” sub 2010 No. 34 s 34

**Meaning of “authorised corrective services officer”**

- prov hdg** amd 1999 No. 9 s 3 sch
- s 4A** ins 1997 No. 46 s 26  
amd 1999 No. 9 s 3 sch; 2000 No. 63 s 276 sch 2; 2006 No. 29 s 485

**Meaning of penalty unit**

- s 5** amd 1993 No. 36 s 2 sch 1; 1995 No. 54 s 45 sch 2; 1997 No. 39 s 472 sch 7;  
1999 No. 70 s 166 sch 1; 2008 No. 66 s 3(2)

**Application to children and certain courts**

- s 6** amd 2004 No. 37 s 86 sch 1; 2007 No. 59 s 137; 2009 No. 34 s 45(1) sch pt 1  
amdt 26

**Construction of references to court that made order**

- s 8** amd 1995 No. 21 s 107 sch 2

**Delegation of powers by proper officer**

- s 8A** ins 1993 No. 76 s 3 sch 1  
amd 1995 No. 21 s 107 sch 2

**Sentencing guidelines**

- s 9** amd 1997 No. 4 s 6; 1999 No. 9 s 3 sch; 2000 No. 42 s 4; 2002 No. 46 s 40  
sch; 2003 No. 3 s 28; 2004 No. 37 s 86 sch 1; 2004 No. 43 s 69; 2007 No.  
37 s 126; 2007 No. 59 s 138; 2008 No. 55 s 136; 2009 No. 35 s 211; 2010  
No. 48 s 5; 2010 No. 34 s 34A

**Court’s reasons to be stated and recorded**

- s 10** amd 1999 No. 9 s 3 sch

**Court to consider whether or not to record conviction**

- s 12** amd 2007 No. 37 s 127; 2008 No. 59 s 95

**Cooperation with law enforcement authorities to be taken into account**

**s 13A** ins 1997 No. 3 s 122 sch 2  
amd 1999 No. 66 s 30; 2007 No. 37 s 125 sch

**Information on sentence**

**s 15** amd 2000 No. 63 s 276 sch 2; 2004 No. 43 s 70; 2006 No. 29 s 486

**Audiovisual link or audio link may be used to sentence**

**s 15A** ins 1999 No. 65 s 10

**PART 2A—GUIDELINE JUDGMENTS**

**pt 2A (ss 15AA–15AL)** ins 2010 No. 48 s 6

**PART 3—RELEASES, RESTITUTION AND COMPENSATION****Division 1—Orders to release certain offenders****Subdivision 1—Interpretation**

**sdiv hdg** ins 2002 No. 59 s 7

**Definitions for div 1**

**s 15B** ins 2002 No. 59 s 7

**Meaning of “eligible drug offender”**

**s 15C** ins 2002 No. 59 s 7  
amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

**Meaning of “eligible drug offence”**

**s 15D** ins 2002 No. 59 s 7  
amd 2007 No. 37 s 128; 2010 No. 42 s 162

**Meaning of “disqualifying offence”**

**s 15E** ins 2002 No. 59 s 7  
amd 2007 No. 37 s 125 sch; 2008 No. 55 s 137

**Meaning of “approved provider”**

**s 15F** ins 2002 No. 59 s 7

**Subdivision 2—Orders**

**sdiv hdg** ins 2002 No. 59 s 7

**Making of order**

**s 17** amd 2002 No. 59 s 8

**Order of court**

**s 19** amd 2002 No. 59 s 9

**Contravention of order**

**s 20** amd 2008 No. 55 s 138

**Termination of recognisance**

**prov hdg** amd 1993 No. 36 s 2 sch 1

**s 21** amd 1993 No. 36 s 2 sch 1

**Termination of recognisance**

**prov hdg** amd 1993 No. 36 s 2 sch 1

**s 28** amd 1993 No. 36 s 2 sch 1

**Recognisance instead of imposing any other sentence**

s 32           amd 2010 No. 42 s 163

**Termination of recognisance**

prov hdg    amd 1993 No. 36 s 2 sch 1

s 33           amd 1993 No. 36 s 2 sch 1

**Failing to obey condition of recognisance**

s 33A        ins 1993 No. 36 s 3

**Division 3A—Provisions relating to forfeited recognisances**

div hdg     ins 1999 No. 70 s 166 sch 1 (amd 2000 No. 46 s 3 sch)

**Order for payment of amount under forfeited recognisance**

s 33B        ins 1999 No. 70 s 166 sch 1 (amd 2000 No. 46 s 3 sch)

sub 2007 No. 3 s 49

**Variation or revocation of order forfeiting recognisance**

s 33C        ins 1999 No. 70 s 166 sch 1 (amd 2000 No. 46 s 3 sch)

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

s 34           amd 2008 No. 59 s 96

**Order for restitution or compensation**

s 35           amd 1994 No. 14 s 234 sch 2

**What order may state**

s 36           amd 2007 No. 3 s 50; 2008 No. 59 s 97

**Extension of time**

s 38           sub 1993 No. 36 s 4

amd 2007 No. 3 s 51

**Other orders available on failure to comply**

s 39A        ins 1999 No. 70 s 166 sch 1

**Instalments—failing to pay**

s 41           amd 1999 No. 70 s 166 sch 1

**PART 3A—NON-CONTACT ORDERS**

pt hdg     ins 2001 No. 94 s 5

**Court may make order whether or not it records conviction**

s 43A        ins 2001 No. 94 s 5

**Making non-contact order**

s 43B        ins 2001 No. 94 s 5

amd 2002 No. 6 s 53 sch 2

**Requirements of non-contact order**

s 43C        ins 2001 No. 94 s 5

**Amending or revoking non-contact order**

s 43D        ins 2001 No. 94 s 5

**Order to be given to interested persons**

s 43E ins 2001 No. 94 s 5

**Contravention of non-contact order**

s 43F ins 2001 No. 94 s 5

**PART 3B—BANNING ORDERS**

pt 3B (ss 43G–43O) ins 2010 No. 51 s 55

**Single fine for 2 or more offences**

s 49 amd 1993 No. 76 s 3 sch 1

**Instalment order**

s 50 sub 2007 No. 3 s 52

**Payment of fine**

s 51 sub 2007 No. 3 s 52  
amd 2010 No. 48 s 3 sch

**Definitions**

s 52 def “fine” sub 1993 No. 36 s 2 sch 1

**Application for order if offender before court**

s 53 amd 1993 No. 36 s 2 sch 1

**Application for order generally**

s 55 amd 1993 No. 36 s 2 sch 1

**Notice to offender of right to apply for fine option order**

prov hdg sub 1993 No. 76 s 3 sch 1  
s 56 sub 1993 No. 36 s 5  
amd 1993 No. 76 s 3 sch 1; 1994 No. 6 s 3  
om 1999 No. 70 s 166 sch 1

**Offender may apply to proper officer for fine option order**

s 56A ins 1993 No. 76 s 3 sch 1  
amd 1999 No. 70 s 166 sch 1

**Matters to be considered on application**

s 57 prev s 57 om 1993 No. 36 s 2 sch 1  
pres s 57 (prev s 58) amd 1993 No. 36 s 2 sch 1  
renum 1993 No. 36 s 2 sch 1  
amd 1999 No. 9 s 3 sch; 2004 No. 43 s 71

**Proper officer must reconsider offender’s financial position**

s 58 ins 1993 No. 36 s 6  
amd 1999 No. 70 s 166 sch 1

**Determination of application**

s 59 amd 1993 No. 36 s 2 sch 1; 1999 No. 70 s 166 sch 1

**Application may be granted or refused**

s 60 amd 1993 No. 36 s 2 sch 1; 1999 No. 70 s 166 sch 1

**Making of order by proper officer of the court**

**prov hdg** amd 1993 No. 36 s 2 sch 1

**s 61** amd 1993 No. 36 s 2 sch 1

**Effect of fine option order**

**s 62** amd 1993 No. 36 s 2 sch 1; 1999 No. 70 s 166 sch 1

**No liability if warrant executed in good faith and without negligence**

**s 63** amd 2006 No. 29 s 487

**Order to be in writing**

**s 64** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch

**Requirements of fine option orders**

**s 66** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch

**Directions under fine option order**

**s 67** amd 1999 No. 9 s 3 sch; 2004 No. 43 s 72

**Period mentioned in s 66(2) may be extended**

**s 68** sub 1993 No. 36 s 7

amd 1999 No. 9 s 3 sch; 2004 No. 43 s 73

**Maximum number of hours**

**s 69** amd 1993 No. 36 s 2 sch 1; 2000 No. 58 s 2 sch

**Fine reduced proportionate to imprisonment**

**s 70** amd 1999 No. 70 s 166 sch 1

**Failing to comply with a requirement of an order**

**s 74** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch

sub 1999 No. 70 s 166 sch 1

amd 2002 No. 34 s 74 sch 6

**Matter may be heard and determined in offender's absence**

**s 75** om 1999 No. 70 s 166 sch 1

**Proper officer to determine hours of community service**

**prov hdg** amd 1999 No. 70 s 166 sch 1

**s 76** amd 1999 No. 70 s 166 sch 1

**Failing to comply not question for jury**

**s 77** om 1999 No. 70 s 166 sch 1

**Effect of revoking order under s 74**

**s 78** amd 1993 No. 36 s 2 sch 1; 1999 No. 70 s 166 sch 1

**Revocation of fine option order other than under s 74**

**s 79** amd 1993 No. 36 s 2 sch 1

**Application for revocation**

**s 81** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch



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**Imprisonment to be reduced proportionate to amount of fine paid or community service performed**

s 82            amd 2007 No. 37 s 125 sch

**Court to notify court that imposed fine option order**

s 83            sub 1993 No. 36 s 8

**Certificates**

s 84            amd 1999 No. 9 s 3 sch; 1999 No. 67 s 13

**Appeals**

s 85            amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 1999 No. 70 s 166 sch 1

**Hearing and determination of appeals**

s 86            amd 1993 No. 36 s 2 sch 1

**Rules of court**

s 87            amd 1993 No. 36 s 2 sch 1  
                  om 1995 No. 58 s 4 sch 1

**Termination of fine option order**

prov hdg    amd 1993 No. 36 s 2 sch 1

s 88            amd 1993 No. 36 s 2 sch 1; 1999 No. 70 s 166 sch 1

**Original order terminated**

prov hdg    amd 1993 No. 36 s 2 sch 1

s 89            amd 1993 No. 36 s 2 sch 1; 1993 No. 76 s 3 sch 1

**Effect of order**

s 92            amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 2002 No. 23 s 61

**General requirements of probation order**

s 93            amd 1999 No. 9 s 3 sch

**Additional requirements of probation order**

s 94            amd 2007 No. 3 s 53

**Probation order to be explained**

s 95            amd 1999 No. 9 s 3 sch

**Termination of probation order**

prov hdg    amd 1993 No. 36 s 2 sch 1

s 99            amd 1993 No. 36 s 2 sch 1

**Making of an order**

s 101          amd 1993 No. 36 s 2 sch 1

**General requirements of community service order**

s 103          amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch

**Requirements relating to restitution and compensation**

s 104          om 2007 No. 3 s 54

**Community service order to be explained**

s 105          amd 1999 No. 9 s 3 sch

**Termination of community service order**

**prov hdg** amd 1993 No. 36 s 2 sch 1

**s 108** amd 1993 No. 36 s 2 sch 1

**Making of order**

**s 112** amd 1993 No. 36 s 2 sch 1

**Effect of order**

**s 113** amd 2006 No. 29 s 488

**General requirements of intensive correction order**

**s 114** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 2004 No. 43 s 74

**Additional requirements of intensive correction order**

**s 115** amd 2007 No. 3 s 55

**Intensive correction order to be explained**

**s 116** amd 1999 No. 9 s 3 sch

**Termination of intensive correction order**

**prov hdg** amd 1993 No. 36 s 2 sch 1

**s 119** amd 1993 No. 36 s 2 sch 1

**Application for amendment or revocation**

**s 122** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch

**Powers of Magistrates Court that convicts offender of offence against s 123(1)**

**s 125** amd 2007 No. 37 s 129

**Powers of Supreme Court or District Court to deal with offender**

**s 126** amd 2007 No. 37 s 130

**Particular provision for driver licence disqualifications**

**s 126A** ins 2007 No. 37 s 131

**Summons or warrant for contravention of single community based order**

**s 128** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 2000 No. 63 s 276 sch 2; 2004 No. 43 s 75

**Summons or warrant for contravention of multiple orders made by courts of different jurisdictions**

**s 129** amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 2000 No. 63 s 276 sch 2; 2004 No. 43 s 76

**Proceedings after end of period of order**

**s 132** amd 1993 No. 36 s 2 sch 1

**Authorised corrective services officers subject to direction of court**

**prov hdg** amd 1999 No. 9 s 3 sch

**s 133** amd 1999 No. 9 s 3 sch

**Directions under community based order**

**s 135** amd 1999 No. 9 s 3 sch; 2004 No. 43 s 77

**Notifications following making of order**

s 136 amd 1999 No. 9 s 3 sch

**Facilitation of proof**

s 137 amd 1999 No. 9 s 3 sch

**Court may order summons or warrant for offender's appearance**

s 139 amd 1999 No. 9 s 3 sch

**Offence against this part—complainant**

s 142 amd 1999 No. 9 s 3 sch

**Sentence of imprisonment may be suspended**

s 144 amd 1993 No. 36 s 2 sch 1

**Consequences of committing offence during operational period**

s 146 amd 1993 No. 36 s 2 sch 1; 2002 No. 23 s 62; 2008 No. 55 s 139

**Summons or warrant for offender whose sentence of imprisonment has been suspended**

s 146A ins 1997 No. 82 s 75  
amd 1999 No. 9 s 3 sch; 2008 No. 55 s 140

**Power of court mentioned in s 146**

s 147 amd 1993 No. 36 s 2 sch 1; 1997 No. 4 s 7; 2002 No. 23 s 63; 2008 No. 55 s 141

**Imprisonment to be served immediately**

s 148 amd 1993 No. 36 s 2 sch 1

**Application of remission provisions to suspended sentences**

s 151 sub 1993 No. 36 s 9  
om 2006 No. 29 s 489

**Conditional release and parole for suspended sentences**

s 151A ins 1993 No. 36 s 10  
sub 2006 No. 29 s 490

**PART 9—IMPRISONMENT****Division 1—Liability**

div hdg ins 2006 No. 29 s 491(1)

**Proper officer to give chief executive (corrective services) record of order of imprisonment**

s 152A ins 2006 No. 29 s 492  
amd 2010 No. 26 s 107

**Term of imprisonment if none prescribed**

s 153A (prev s 160) renum and reloc 2006 No. 29 s 495

**Division 2—Calculation**

div hdg ins 2006 No. 29 s 491(2)

**Calculation of term of imprisonment**

s 154 amd 1993 No. 36 s 2 sch 1; 2004 No. 43 s 78

**Cumulative orders of imprisonment**

s 156 amd 1993 No. 36 s 2 sch 1; 1993 No. 76 s 3 sch 1

**Cumulative order of imprisonment must be made in particular circumstances**

s 156A ins 1997 No. 4 s 8  
amd 2000 No. 63 s 276 sch 2; 2002 No. 34 s 74 sch 6; 2006 No. 29 s 493;  
2010 No. 34 s 33 sch

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

prov hdg amd 2000 No. 63 s 276 sch 2

s 157 amd 1993 No. 36 s 2 sch 1; 1997 No. 4 s 9; 2000 No. 63 s 276 sch 2  
om 2006 No. 29 s 494

**Imprisonment to have effect from arrest**

s 158 amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch  
om 2004 No. 43 s 79

**Term of imprisonment does not run if offender on bail awaiting appeal**

s 158A ins 1993 No. 36 s 11

**Time held in presentence custody to be deducted**

s 159A (prev s 161) amd 1993 No. 36 s 2 sch 1; 1999 No. 9 s 3 sch; 2004 No. 43 s 80  
renum 2006 No. 29 s 496

**Division 3—Parole**

div hdg ins 2006 No. 29 s 497

**Definitions for div 3**

s 160 ins 2006 No. 29 s 497 (amd 2006 No. 41 s 35B(1)–(2))  
def “impose” amd 2008 No. 55 s 142

**Application of ss 160B–160D**

s 160A ins 2006 No. 29 s 497 (amd 2006 No. 41 s 35B(3))

**Sentence of 3 years or less and not a serious violent offence or sexual offence**

s 160B ins 2006 No. 29 s 497 (amd 2006 No. 41 s 35B(4))

**Sentence of more than 3 years and not a serious violent offence or sexual offence**

s 160C ins 2006 No. 29 s 497

**Sentence for a serious violent offence or sexual offence**

s 160D ins 2006 No. 29 s 497

**Automatic cancellation of parole release or eligibility dates**

s 160E ins 2006 No. 29 s 497

**Significance of an offender’s period of imprisonment**

s 160F ins 2006 No. 29 s 497

**Court may fix any day of sentence as parole release date**

s 160G ins 2006 No. 29 s 497

**Series of sentences involving terms of imprisonment**

s 160H ins 2006 No. 29 s 497 (amd 2006 No. 41 s 35B(5)–(7))

**PART 9A—CONVICTIONS OF SERIOUS VIOLENT OFFENCES****pt hdg** ins 1997 No. 4 s 10**When an offender is convicted of a serious violent offence****s 161A** ins 1997 No. 4 s 10  
amd 2010 No. 34 s 33 sch**Declaration of conviction of serious violent offence****s 161B** ins 1997 No. 4 s 10  
amd 2010 No. 48 s 7; 2010 No. 34 s 33 sch**Calculation of number of years of imprisonment****s 161C** ins 1997 No. 4 s 10  
amd 2010 No. 34 s 33 sch**Sentence for serious violent offence cannot be remitted****s 161D** ins 1997 No. 4 s 10  
amd 2000 No. 63 s 276 sch 2  
om 2006 No. 29 s 498**Definitions****s 162** def “**qualifying offence**” ins 2010 No. 34 s 35  
def “**violent offence**” amd 1997 No. 4 s 11; 1997 No. 9 s 50; 2000 No. 43 s 56  
om 2010 No. 34 s 35**Indefinite sentence—imposition****s 163** amd 2000 No. 16 s 590 sch 1 pt 2; 2010 No. 34 s 36**Counsel for prosecution to inform court****s 164** amd 1997 No. 4 s 12**Attorney-General’s consent****s 165** amd 2010 No. 34 s 37**Adjournment****s 166** amd 2010 No. 34 s 38**Reports about offender****s 166A** ins 2010 No. 34 s 39**Distribution of reports****s 166B** ins 2010 No. 34 s 39**Use of reports****s 166C** ins 2010 No. 34 s 39**Evidence****s 167** amd 1997 No. 4 s 13; 2010 No. 34 s 40**Review—periodic****s 171** amd 2002 No. 23 s 64**Distribution of reports****s 172A** ins 1997 No. 4 s 14  
amd 2009 No. 35 s 212

**Disputed report**

s 172B ins 1997 No. 4 s 14

**Review hearing**

s 172C ins 1997 No. 4 s 14  
amd 2009 No. 35 s 213

**Court not to have regard to possible order under Dangerous Prisoners (Sexual Offenders) Act 2003**

s 172D ins 2010 No. 34 s 41

**Indefinite sentence discharged**

s 173 amd 2010 No. 34 s 42

**Parole application if finite sentence imposed**

prov hdg sub 2009 No. 30 s 43(1)  
s 174 amd 1999 No. 9 s 3 sch  
sub 2006 No. 29 s 499  
amd 2009 No. 30 s 43(2)–(4)  
sub 2010 No. 34 s 43

**When parole order must be made**

s 174A ins 2010 No. 34 s 43

**Provisions for parole orders under part**

s 174B ins 2010 No. 34 s 43

**Parole provisions on cancellation of parole order**

s 174C ins 2010 No. 34 s 43

**Remissions not to be allowed**

s 175 amd 2000 No. 63 s 276 sch 2  
om 2006 No. 29 s 499

**Registrar of court to give report**

s 176 amd 1996 No. 61 s 15 sch; 1997 No. 4 s 15; 1999 No. 9 s 3 sch; 2000 No. 46 s 3 sch; 2005 No. 10 s 50 sch

**Hearings—offender to be present**

s 179 amd 2006 No. 29 s 500

**Meaning of certain sentence provisions**

s 180A ins 1993 No. 36 s 12

**Corporations entitled to aggrieved party payments**

prov hdg sub 1993 No. 76 s 3 sch 1  
s 181 amd 1993 No. 76 s 3 sch 1

**Corporations to be fined if imprisonment is the only penalty**

prov hdg ins 1993 No. 76 s 3 sch 1  
s 181A (prev s 181(2), (3), (6)) renum 1993 No. 76 s 3 sch 1

**Corporation fines under penalty provision**

s 181B ins 1993 No. 76 s 3 sch 1

**Corporation fines under provision authorising subordinate legislation**

s 181C ins 1993 No. 76 s 3 sch 1

**Enforcement of order for penalty for an offender dealt with on indictment**

prov hdg amd 1993 No. 36 s 2 sch 1

s 182 amd 1993 No. 36 s 2 sch 1

**Court may make order for default payment of penalty**

s 182A ins 1993 No. 36 s 13

amd 2007 No. 3 s 56

**Warrant for arrest and imprisonment**

s 182B ins 1993 No. 36 s 13

amd 1994 No. 6 s 4

om 1999 No. 70 s 166 sch 1

**Imprisonment unless penalty paid**

s 183 amd 1993 No. 36 s 2 sch 1; 1994 No. 6 s 5

**Scale of imprisonment for non-payment of penalty**

s 185 amd 1993 No. 36 s 2 sch 1; 1994 No. 6 s 6

**If offender does not pay penalty under s 182A or 185**

prov hdg amd 2007 No. 3 s 57

s 185A ins 1993 No. 36 s 14

amd 1993 No. 76 s 3 sch 1

sub 1999 No. 70 s 166 sch 1

**Power of proper officer to postpone warrant**

s 185B ins 1993 No. 36 s 14

amd 1999 No. 70 s 166 sch 1; 2007 No. 3 s 58

**Power of proper officer to recall warrant and issue new warrant on part payment of penalty**

s 185C ins 1999 No. 67 s 14

**Reduction of imprisonment**

s 186 amd 1996 No. 79 s 92; 1999 No. 70 s 166 sch 1; 2006 No. 29 s 501

**Disqualification from holding Queensland driver licence**

prov hdg amd 1999 No. 42 s 51 sch pt 3; 2010 No. 48 s 3 sch

s 187 amd 1999 No. 42 s 51 sch pt 3; 2007 No. 37 s 125 sch

**Court may reopen sentencing proceedings**

s 188 sub 1997 No. 3 s 122 sch 2

amd 2006 No. 29 s 502

**Outstanding offences may be taken into account in imposing sentence**

s 189 amd 1993 No. 36 s 2 sch 1

**Passport orders**

s 195 amd 2010 No. 48 s 3 sch

**Failure to perform community service in a satisfactory way**

s 195A ins 2004 No. 43 s 81

**Access to court files by representative of community justice group in offender's community**

s 195B ins 2007 No. 59 s 139

**Confidentiality**

s 195C ins 2007 No. 59 s 139

**Protection from liability**

s 195D ins 2007 No. 59 s 139

**Regulation-making power**

prov hdg sub 2010 No. 48 s 3 sch

s 196 amd 1995 No. 58 s 4 sch 1

**Forms**

s 197 prev s 197 om R1 (see RA s 37)

pres s 197 ins 2004 No. 43 s 82

**PART 12—SENTENCING ADVISORY COUNCIL**

pt hdg prev pt 12 hdg om R1 (see RA s 37)

pres pt 12 hdg ins 2010 No. 48 s 8

**Division 1—Establishment and functions**

div hdg ins 2010 No. 48 s 8

**Establishment**

s 198 prev s 198 om R1 (see RA s 37)

pres s 198 ins 2010 No. 48 s 8

**Function to state views to Court of Appeal**

s 199 prev s 199 om R1 (see RA s 37)

pres s 199 ins 2010 No. 48 s 8

**Other functions**

s 200 prev s 200 om R1 (see RA s 37)

pres s 200 ins 2010 No. 48 s 8

**Powers of council**

s 201 prev s 201 om R1 (see RA s 37)

pres s 201 ins 2010 No. 48 s 8

**Division 2—Membership**

div hdg ins 2010 No. 48 s 8

**Membership of council**

s 202 prev s 202 om R1 (see RA s 37)

pres s 202 ins 2010 No. 48 s 8

**Chairperson and deputy chairperson**

s 203 prev s 203 om R1 (see RA s 37)

pres s 203 ins 2010 No. 48 s 8

**Conditions of appointment**

s 203A ins 2010 No. 48 s 8



**Vacation of office of council member**

s 203B ins 2010 No. 48 s 8

**Removal from office of council members**

s 203C ins 2010 No. 48 s 8

**Defects in appointment of members**

s 203D ins 2010 No. 48 s 8

**Division 3—Proceedings**

div 3 (ss 203E–203I) ins 2010 No. 48 s 8

**Division 4—Other matters**

div 4 (ss 203J–203L) ins 2010 No. 48 s 8

**General transitional provisions**

s 204 amd 1993 No. 36 s 2 sch 1; R1 (see RA s 37)

**Savings—warrants**

s 204A ins 1994 No. 6 s 7  
om 1995 No. 58 s 4 sch 1

**Penalty Units Act 1985 references**

s 205 prev s 205 om R1 (see RA s 37)  
pres s 205 ins 1995 No. 58 s 4 sch 1

**PART 14—TRANSITIONAL PROVISIONS**

pt hdg ins 1999 No. 70 s 166 sch 1

**Transitional provisions for Penalties and Sentences (Serious Violent Offences) Amendment Act 1997**

s 206 prev s 206 om R1 (see RA s 40)  
pres s 206 ins 1997 No. 4 s 16

**Transitional provisions for State Penalties Enforcement Act 1999**

s 207 prev s 207 om R1 (see RA s 40)  
pres s 207 ins 1999 No. 70 s 166 sch 1

**Transitional provisions for Criminal Law Amendment Act 2000**

s 208 ins 2000 No. 43 s 57

**Transitional provision for Penalties and Sentences (Non-contact Orders) Amendment Act 2001**

s 209 ins 2001 No. 94 s 6

**Transitional provisions for Criminal Law Amendment Act 2002**

s 210 ins 2002 No. 23 s 65

**Transitional provision for the Sexual Offences (Protection of Children) Amendment Act 2003**

s 211 ins 2003 No. 3 s 29

**Transitional provisions for the 2004 amendments—approved forms and serious violent offences**

**prov hdg** amd 2006 No. 29 s 503  
**s 212** ins 2004 No. 43 s 83

**Transitional provision for s 157 (Eligibility for post-prison community based release)**  
**s 213** ins 2006 No. 29 s 504

**Transitional provision for pt 9, div 3**  
**s 214** ins 2006 No. 29 s 504

**Transitional provision for State Penalties Enforcement and Other Legislation Amendment Act 2007**  
**s 215** ins 2007 No. 3 s 59

**Transitional provision for Criminal Code and Other Acts Amendment Act 2008**  
**s 216** ins 2008 No. 55 s 143

**Transitional provision for Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010**  
**s 217** ins 2010 No. 34 s 44

**Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**  
**s 218** ins 2010 No. 26 s 108

**Transitional provision for the Justice and Other Legislation Amendment Act 2010**  
**s 219** ins 2010 No. 42 s 164

**Transitional provision for Liquor and Other Legislation Amendment Act 2010**  
**s 220** ins 2010 No. 51 s 56

**SCHEDULE 1—SERIOUS VIOLENT OFFENCES**

prev sch om R1 (see RA s 40)  
pres sch 1 (prev sch) ins 1997 No. 4 s 17  
amd 2000 No. 43 s 58; 2000 No. 63 s 276 sch 2; 2002 No. 34 s 74 sch 6; 2004 No. 43 s 84; 2005 No. 70 s 166 sch; 2006 No. 29 s 505; 2007 No. 37 s 132; 2008 No. 55 s 144  
num 2010 No. 34 s 33 sch

**SCHEDULE 2—QUALIFYING OFFENCES**

ins 2010 No. 34 s 45

## **8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 1 Version 2—Recognisance to be of good behaviour and appear for sentence**

pubd gaz 1 December 2006 pp 1585–6

**Form 2 Version 2—Warrant to apprehend offender for contravention of recognisance**

pubd gaz 1 December 2006 pp 1585–6

**Form 5 Version 2—Warrant to apprehend offender for failing to appear under conditions of recognisance**

pubd gaz 1 December 2006 pp 1585–6

**Form 7 Version 2—Warrant imprisoning an offender until a recognisance is entered into**

pubd gaz 8 August 1997 p 1737

**Form 9 Version 2—Recognisance to appear for sentence and keep the peace and be of good behaviour**

pubd gaz 1 December 2006 pp 1585–6

**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 21 Version 3—Fine Option Order**

pubd gaz 8 December 2006 p 1738

**Form 33 Version 4—Probation Order**

pubd gaz 8 December 2006 p 1738

**Form 35 Version 3—Community Service Order**

pubd gaz 8 December 2006 p 1738

**Form 36 Version 2—Intensive Correction Order**

pubd gaz 1 December 2006 pp 1585–6

**Form 61 Version 5—Warrant of arrest and imprisonment for non-payment of penalty**

pubd gaz 1 December 2006 pp 1585–6

**Form 62 Version 2—Warrant of commitment for an offence committed during the operational period of suspended imprisonment**

pubd gaz 1 December 2006 pp 1585–6

**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

**Form 67 Version 3—Presentence custody certificate**

pubd gaz 1 December 2006 pp 1585–6

**Form 68 Version 2—Order for commitment of offender where punishment is by imprisonment**

pubd gaz 27 July 2007 p 1644

**Form 69 Version 1—Order For Commitment Of Offender For Re-offending During Suspended Imprisonment**

pubd gaz 25 August 2006 p 1985

**Form 70 Version 1—Recognisance to appear for sentence of an offence relating to property**

pubd gaz 1 December 2006 pp 1585–6

**Form 71 Version 1—Recognisance to keep the peace and be of good behaviour**

pubd gaz 1 December 2006 pp 1585–6

**Form 73 Version 1—Court Ordered Parole Reporting Notice**

pubd gaz 27 July 2007 p 1643

**Form 74 Version 1—Warrant to Arrest Offender for Failure to Appear in Answer to a Summons**

pubd gaz 19 June 2009 p 704

**Form 74A Version 1—Banning Order – section 43J**

pubd gaz 10 December 2010 p 1081

**Form 75 Version 1—Application for amendment/revocation of a banning order – section 43L**

pubd gaz 10 December 2010 p 1081

**Form 76 Version 1—Order to amend a banning order – section 43L**

pubd gaz 10 December 2010 p 1081

**Form 77 Version 1—Order to revoke a banning order – section 43L**

pubd gaz 10 December 2010 p 1081

**Form 1024 Version 2—Notice to stop contravening a requirement of a Fine Option Order**

pubd gaz 8 December 2006 p 1738

## 9 Table of corrected minor errors

under the Reprints Act 1992 s 44

Provision	Description
185(1)(c)	om ‘apply’ ins ‘applies’
185A, hdg	om ‘ss’ ins ‘s’