

*Note*

*In order to give effect to the Cross-border Justice Act 2009, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act 2009 as if this law had been altered in that way.*

*For modifications of this law prescribed by regulation, see Part 3, Division 14 of the Cross-border Justice Regulations 2009.*

**NORTHERN TERRITORY OF AUSTRALIA**

**SENTENCING ACT 1995**

As in force at 11 December 2018

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**ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 11 December 2018

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## SENTENCING ACT 1995

**An Act to consolidate the law relating to the sentencing of offenders and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Sentencing Act 1995*.

#### **2 Commencement**

The various provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

#### **3 Interpretation**

(1) In this Act:

***aggravated property offence*** means any of the following:

- (a) an offence against section 211, 212, 213 or 215 of the Criminal Code;
- (b) an offence against section 218 of the Criminal Code if subsection (2) of the section applies to the offence;
- (c) an offence against section 226B of the Criminal Code if subsection (3) of the section applies to the offence;
- (d) an offence against section 241 of the Criminal Code;
- (e) an attempt to commit an offence against section 213 of the Criminal Code.

***approved monitoring device***, see section 164 of the *Correctional Services Act 2014*.

**approved project** means a rehabilitation program or work, or both, approved by the Commissioner under the *Correctional Services Act 2014*.

**CEO (Youth Justice)** means the Chief Executive Officer (as defined in section 19 of the *Public Sector Employment and Management Act 1993*) of the Agency responsible for youth justice.

**Commissioner** means the Commissioner of Correctional Services.

**community based order**, see section 39B(1).

**community custody order**, see section 48B(1).

**community work order** means a community work order made under Part 3, Division 4.

**community youth justice officer**, see section 5(1) of the *Youth Justice Act 2005*.

**Court of Criminal Appeal** means the Supreme Court constituted in accordance with section 407 of the Criminal Code.

**custodial correctional facility**, see section 11(1)(a) of the *Correctional Services Act 2014*.

**driver's licence** means a licence to drive a motor vehicle granted under the *Motor Vehicles Act 1949*.

**fine** means the sum of money payable by an offender under an order of a court made on the offender being convicted or found guilty of an offence and includes costs but does not include money payable by way of restitution or compensation.

**home detention order** means an order made under Part 3, Division 5, Subdivision 2.

**hospital**, see section 5 of the *Medical Services Act 1982*.

**identification information**, for Part 5, Division 1AA, see section 228A of the Criminal Code.

**impose a minimum sentence**, for Part 3, Division 6A, see section 78DH.

**impose a term of actual imprisonment**, for Part 3, Division 6A, see section 78DG.

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

- (a) is to be reviewed under Part 3, Division 5, Subdivision 4; and
- (b) is to continue until a court orders that the indefinite term of imprisonment is discharged.

**instalment order** means an order made under Part 3, Division 3 that a fine be paid by 2 or more instalments and includes such an order as varied under that Division.

**level 1 offence**, for Part 3, Division 6A, see section 78CA(5).

**level 2 offence**, for Part 3, Division 6A, see section 78CA(4).

**level 3 offence**, for Part 3, Division 6A, see section 78CA(3).

**level 4 offence**, for Part 3, Division 6A, see section 78CA(2).

**level 5 offence**, for Part 3, Division 6A, see section 78CA(1).

**motor vehicle**, see section 5(1) of the *Motor Vehicles Act 1982*.

**nominal sentence** means a sentence specified in an order under section 65(5).

**non-association order**, see section 97A(2)(a).

**non-parole period**, in relation to a sentence of imprisonment, means a period, fixed by or under Part 3, Division 5, Subdivision 3, during which an offender is not eligible to be released on parole.

**operational period**, in relation to a sentence of imprisonment suspended under section 40, means the period specified under section 40(6).

**offender** means a person found guilty of an offence.

**physical harm**, for Part 3, Division 6A, see section 78C.

**place restriction order**, see section 97A(2)(b).

**prescribed program**, for a community based order or community custody order, means a course, training, education or similar activity prescribed by regulation for the order.

**pre-sentence report**, for Part 3, Division 4A and Part 3, Division 5, Subdivision 2A, means a report by the Commissioner under section 103 or 105.

**probation and parole officer**, see section 4 of the *Correctional Services Act 2014*.

**proper officer**, in relation to a court, means the officer of the court prescribed by the rules of the court or by regulation for the provision in which the term is used.

**prosecutor** includes the Director of Public Prosecutions.

**registrar** means, as the case requires, a Registrar of the Supreme Court or a registrar of the Local Court.

**restricted area**, see section 73(1) of the *Liquor Act 1978*.

**sexual offence** means an offence specified in Schedule 3.

**undertaking** means a written undertaking in the prescribed form given by an offender to a court to conform to an order and to conditions of an order of the court.

**victim**, for Part 5, Division 1AA, see section 228A of the Criminal Code.

**violent offence** means the following:

- (a) for section 39A – see section 39A(2);
- (b) for section 48A – see section 48A(2);
- (c) for sections 65, 67, 68 and 74 – see section 65(1);
- (d) for section 52 and Part 3, Division 6A – see section 78C.

*Note for subsection (1)*

*The Interpretation Act contains definitions and other provisions that may be relevant to this Act.*

- (2) In this Act, a reference to a right of appeal includes a right to apply to obtain leave to appeal.

#### **4 Application**

This Act applies to all courts other than the Youth Justice Court continued in existence by the *Youth Justice Act 2005*.

## **Part 2            General principles**

### **5            Sentencing guidelines**

- (1) The only purposes for which sentences may be imposed on an offender are the following:
  - (a) to punish the offender to an extent or in a way that is just in all the circumstances;
  - (b) to provide conditions in the court's order that will help the offender to be rehabilitated;
  - (c) to discourage the offender or other persons from committing the same or a similar offence;
  - (d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;
  - (e) to protect the Territory community from the offender;
  - (f) a combination of 2 or more of the purposes referred to in this subsection.
  
- (2) In sentencing an offender, a court must have regard to:
  - (a) the maximum and any minimum penalty prescribed for the offence; and
  - (b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim; and
  - (ba) if the offence is a sexual offence:
    - (i) whether the victim contracted a sexually transmissible medical condition as a result of the offence; and
    - (ii) whether the offender was aware at the time of the offence that he or she had a medical condition that could be sexually transmitted; and
  - (c) the extent to which the offender is to blame for the offence; and
  - (d) any damage, injury or loss caused by the offender; and
  - (da) any harm done to a community as a result of the offence (whether directly or indirectly); and

- (e) the offender's character, age and intellectual capacity; and
- (f) the presence of any aggravating or mitigating factor concerning the offender; and
- (g) the prevalence of the offence; and
- (h) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and
- (ha) the conduct of the offender during the proceedings, including the extent to which the offender complied with a requirement imposed on the offender under Part IV, Division 2A of the *Local Court (Criminal Procedure) Act 1928*.
- (j) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; and
- (k) time spent in custody by the offender for the offence before being sentenced, including time the offender resided at a specified place in accordance with a conduct agreement under the *Bail Act 1982* that contained a provision mentioned in section 27A(1)(iaa), (iab) or (ia) of that Act; and
- (m) sentences imposed on, and served by, the offender in a State or another Territory of the Commonwealth for an offence committed at, or about the same time, as the offence with which the court is dealing; and
- (n) sentences already imposed on the offender that have not been served; and
- (p) sentences that the offender is liable to serve because of the revocation of orders made under this or any other Act for contraventions of conditions by the offender; and
- (q) if the offender is the subject of a community work order, the offender's compliance with the order; and
- (r) anything else prescribed by this Act to which the court is required to have regard; and
- (s) any other relevant circumstance.



- (3) For subsection (2)(ba):
- (a) a certificate by a medical practitioner that a person has (or had at a stated time) a sexually transmissible medical condition is evidence of the existence of that condition; and
  - (b) if:
    - (i) a certificate is tendered that the offender had at the relevant time a sexually transmissible medical condition; and
    - (ii) evidence is given that the victim contracted the medical condition at a time that is consistent with the medical condition being transmitted from the offender;

the contraction by the victim of the medical condition is to be taken to be a result of the offence.

- (4) In sentencing an offender, a court:
- (a) may have regard to any co-operation by the offender in resolving any action taken against the offender under the *Criminal Property Forfeiture Act 2002* in relation to the offence or offences for which the offender is being sentenced; and
  - (b) may have regard to a forfeiture order under the *Criminal Property Forfeiture Act 2002* to the extent that the order relates to property that is crime-used property (within the meaning of that Act) in relation to the offence or offences for which the offender is being sentenced; and
  - (c) must not make any allowance for any other property that has been or may be forfeited to the Territory by operation of the *Criminal Property Forfeiture Act 2002* or in any proceedings under that Act in which the offender is, was or may be a respondent.

## **6 Factors to be considered in determining offender's character**

In determining the character of an offender, a court may consider, among other things:

- (a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender; and
- (b) the general reputation of the offender; and
- (c) any significant contributions made by the offender to the community.

## **6A Aggravating factors**

Without limiting section 5(2)(f), any of the following circumstances in relation to the commission of an offence may be regarded as an aggravating factor for that section:

- (a) the offender committed the offence in company with one or more persons;
- (b) the offender was armed with a weapon when committing the offence;
- (c) the offence was committed during a public disturbance;
- (d) the offence was committed without regard to public safety;
- (e) the offence was motivated by hate against a group of people;
- (f) the offence involved violence or the threat of violence;
- (g) the offence involved more than one victim;
- (h) the offence involved substantial planning and organisation.

## **Part 3 Sentences**

### **Division 1 General**

#### **7 Sentencing and other orders**

Where a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and this Part, make one or more of the following sentencing orders:

- (a) without recording a conviction, order the dismissal of the charge for the offence;
- (b) without recording a conviction, order the release of the offender;
- (c) record a conviction and order the discharge of the offender;
- (d) record a conviction and order the release of the offender;
- (e) with or without recording a conviction, order the offender to pay a fine;
- (f) with or without recording a conviction, make a community work order or community based order for the offender;

- (g) record a conviction and order that the offender serve a term of imprisonment that is suspended by it wholly or partly;
- (h) record a conviction and order that the offender serve a term of imprisonment that is suspended on the offender entering into a home detention order;
- (j) record a conviction and order the offender serve a term of imprisonment, including by way of a community custody order;
- (k) impose any sentence or make any order authorised by this or any other Act.

## **8 Conviction or non-conviction**

- (1) In deciding whether or not to record a conviction, a court must have regard to the circumstances of the case including:
  - (a) the character, antecedents, age, health or mental condition of the offender; and
  - (b) the extent, if any, to which the offence is of a trivial nature; and
  - (c) the extent, if any, to which the offence was committed under extenuating circumstances.
- (2) Except as otherwise provided by this or any other Act, a finding of guilt without the recording of a conviction must not be taken to be a conviction for any purpose.
- (3) A finding of guilt without the recording of a conviction:
  - (a) does not prevent a court from making any other order that it is authorised to make in consequence of the finding by this or any other Act; and
  - (b) has the same effect as if one had been recorded for the purpose of:
    - (i) appeals against sentence; or
    - (ii) proceedings for variation or breach of sentence; or
    - (iii) proceedings against the offender for a subsequent offence; or
    - (iv) subsequent proceedings against the offender for the same offence.

## **Division 2 Dismissals, discharges and bonds**

### **Subdivision 1 General**

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

An order may be made under this Division:

- (a) to provide for the rehabilitation of an offender by allowing the sentence to be served in the community; or
- (b) to take account of the trivial, technical or minor nature of the offence committed; or
- (c) to allow for circumstances in which it is inappropriate to record a conviction; or
- (d) to allow for circumstances in which it is inappropriate to inflict any punishment other than a nominal punishment; or
- (e) to allow for the existence of other extenuating or exceptional circumstances that justify the court showing mercy to an offender.

### **Subdivision 2 Release without conviction**

#### **10 Unconditional dismissal**

A court which finds a person guilty of an offence may, without recording a conviction, dismiss the charge.

#### **11 Release on bond without conviction**

- (1) A court which finds a person guilty of an offence may, without recording a conviction, order that the person be released on his or her giving such security as the court thinks fit that the person will:
  - (a) appear before the court if called on to do so during the period of the order, being a period not longer than 5 years as is specified in the order; and
  - (b) be of good behaviour for the period of the order; and
  - (c) observe any conditions imposed by the court.
- (4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by:
  - (a) order of the court; or

- (b) notice issued by the proper officer of the court.
- (5) An application for an order under subsection (4)(a) may be made in the absence of the offender.
- (6) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.

### **Subdivision 3 Release on conviction**

#### **12 Unconditional discharge**

A court may discharge a person whom it has convicted of an offence.

#### **13 Release on bond following conviction**

- (1) A court which finds a person guilty of an offence may record a conviction and order that the person be released on his or her giving such security as the court thinks fit that the person will:
  - (a) appear before the court if called on to do so during the period of the order, being a period not longer than 5 years as is specified in the order; and
  - (b) be of good behaviour for the period of the order; and
  - (c) observe any conditions imposed by the court.
- (4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by:
  - (a) order of the court; or
  - (b) notice issued by the proper officer of the court.
- (5) An application for an order under subsection (4)(a) may be made in the absence of the offender.
- (6) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.

## **Subdivision 4 Variation and breach of orders for release on bond**

### **14 Variation of order for release on bond**

(1) A court which has made an order under section 11 or 13 may, on application under this subsection, if satisfied that:

- (a) circumstances, including those of the offender, have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or
- (b) the offender is no longer willing to comply with the conditions of the order;

vary or cancel the order and, subject to subsection (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.

(2) In determining how to deal with an offender following the cancellation by it of an order made under section 11 or 13, the court must take into account the extent to which the offender had complied with the order before its cancellation.

(3) An application under subsection (1) may be made at any time while the order is in force by:

- (a) the offender; or
- (b) a prescribed person or a member of a prescribed class of persons; or
- (c) the prosecutor.

(4) Notice of an application under subsection (1) must be given to:

- (a) the offender; and
- (b) where the sentencing court was:
  - (i) the Supreme Court, the Director of Public Prosecutions; or
  - (ii) the Local Court, the complainant or informant.

(5) The court may order that a warrant to arrest the offender be issued if he or she does not attend before the court on the hearing of the application.

## **15 Breach of order for release on bond**

- (1) Where, it appears to a prescribed person or a member of a prescribed class of persons, that an offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13, he or she may apply in the prescribed form to the court which made the order for the making of an order under this section.
- (2) Where an application is made under subsection (1):
  - (a) notice of the application must be given to the offender; or
  - (b) where a justice of the peace is satisfied that the offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13 and that the offender may not appear, the justice of the peace may issue a warrant for the arrest of the offender.
- (3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.
- (3AA) A police officer who suspects, on reasonable grounds, that an offender has failed to comply with a condition of an order made under section 11 or 13 may, without warrant, arrest the offender.
- (3AB) For the purposes of the application of sections 137 and 138 of the *Police Administration Act 1978*, a failure to comply with a condition of an order made under section 11 or 13 is to be taken to be an offence.
- (3A) Where a court is satisfied that an offender who is before the court has failed without reasonable excuse to comply with a condition of an order made by the court under section 11 or 13, the court may of its own motion make an order under this section.
- (3B) Where the Local Court is satisfied that an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Supreme Court under section 11 or 13, the Local Court may commit the offender to the Supreme Court to be dealt with by that Court under this section.
- (3C) If the Supreme Court is satisfied an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Local Court under section 11 or 13:
  - (a) for subsection (3A), the Supreme Court is taken to have made the order; and

- (b) the Supreme Court may deal with the offender under this section.
- (4) Where, on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (3A), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with a condition of the order, it may:
  - (a) vary the order; or
  - (b) confirm the order originally made; or
  - (c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to subsection (5), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.
- (5) In determining how to deal with an offender under subsection (4)(c), a court must take into account the extent to which the offender had complied with the order before its cancellation or expiration.

### **Division 3 Fines**

#### **16 Power to fine**

- (1) If a person is found guilty of an offence, the court may fine the offender.
- (2) The maximum fine that a court may impose is:
  - (a) if the only punishment specified for the offence is a sentence of imprisonment – a fine calculated in accordance with section 28; or
  - (b) if no period of imprisonment is specified for the offence:
    - (i) the maximum fine specified for the offence under a provision of this or any other Act that applies to the offence; or
    - (ii) if there is also no maximum fine specified for the offence – 20 penalty units.
- (3) Subsections (1) and (2) do not apply to the extent that a specific provision of an Act provides otherwise.



## **17 Exercise of power to fine**

- (1) Where a court decides to fine an offender, it must, in determining the amount of the fine, take into account, as far as practicable:
  - (a) the financial circumstances of the offender; and
  - (b) the nature of the burden that its payment will impose on the offender.
- (2) A court is not prevented from fining an offender only because it has not been informed about the matters referred to in subsection (1).
- (3) In considering the financial circumstances of an offender, a court must take into account any other order that it or any other court has made or that it proposes to make:
  - (a) providing for the confiscation of the proceeds of the crime; or
  - (b) requiring the offender to make restitution or pay compensation.
- (4) Where a 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 insufficient means to pay both;the court must give preference to restitution or compensation, though it may also impose a fine.
- (5) A court, in fixing the amount of a fine, may have regard to, among other things:
  - (a) the loss or destruction of or damage to property suffered by a person; and
  - (b) the value of any benefit derived by the offender;as a result of the offence.

## **18 Aggregate fines**

Where a person is found guilty of 2 or more offences which are founded on the same facts or form or are part of a series of offences of the same or a similar character, the court may impose one fine in respect of those offences that does not exceed the sum of the maximum fines that could be imposed in respect of each of those offences.

**19 Time for payment of fine**

A fine imposed by a court is to be paid within 28 days after it is imposed.

**24 Application of fine etc.**

The whole or any part of a fine, penalty or sum of money which by or under an Act is authorised or directed to be imposed on a person forms part of, and must be paid into, the Central Holding Authority if no other way of appropriating or applying it is prescribed by law.

**26 Court may order commitment in default**

- (1) If a court imposes a fine on an offender under section 16(1), the fine may be enforced under the *Fines and Penalties (Recovery) Act 2001* unless the court orders commitment in default under subsection (2).
- (2) A court may order that if a fine is not paid within 28 days the offender is to be imprisoned until his or her liability to pay the fine is discharged.
- (3) If a court makes an order under subsection (2) and the fine is not paid within 28 days, the court may issue a warrant of commitment in respect of the offender specifying the period of imprisonment calculated on the basis of the amount of the fine as follows:
  - (a) the period is to be one day for each amount (or part of that amount) prescribed for section 88 of the *Fines and Penalties (Recovery) Act 2001* that comprises the fine;
  - (b) the period is not to be less than one day;
  - (c) the period is not to exceed 3 months.
- (4) If an offender serves the total period of imprisonment under a warrant under subsection (3), the fine is taken to be satisfied.
- (5) If an offender serves part of the period of imprisonment under a warrant under subsection (3), the fine is to be taken to be partially satisfied by the amount calculated at the rate prescribed for section 88 of the *Fines and Penalties (Recovery) Act 2001* for each day served.

- (6) Unless otherwise ordered by the court, any period of imprisonment that an offender has to serve as a result of an order under subsection (2) is to be served:
- (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the offender for the default of a payment of a fine or sum of money; and
  - (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the offender other than for the default of a payment of a fine or sum of money, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

## **27 Alternative penalties**

If a provision of an Act confers a discretion to impose a fine or a period of imprisonment on a person as the penalty for the person contravening a provision of an Act, the court, on finding the person guilty of the contravention and in accordance with the penalty specified for the contravention, may:

- (a) fine the person; or
- (b) imprison the person; or
- (c) both fine and imprison the person.

## **28 Fine in addition to or instead of imprisonment**

- (1) An offence against an Act for which there is no punishment specified other than a term of imprisonment is punishable in addition to or instead of imprisonment by a maximum fine calculated in accordance with subsection (2).
- (2) The maximum fine is calculated by multiplying 100 penalty units by the term of imprisonment expressed:
  - (a) in years; or
  - (b) if the term is less than 12 months – as a fraction of a year.
- (3) Subsections (1) and (2) do not apply if the specified term of imprisonment is life.

## **29 Body corporate fines under penalty provision**

- (1) If a provision of an Act or subordinate legislation specifies a fine for an offence but does not expressly differentiate between the fine for a body corporate and the fine for an individual, the specified fine is taken to be the fine for an individual.
- (2) If a body corporate is found guilty of an offence referred to in subsection (1), the court may impose a maximum fine of an amount equal to 5 times the fine specified in the provision.

## **Division 4 Community work orders**

### **33A Purpose of community work orders**

The purpose of making a community work order is to reflect the public interest in ensuring that a person who commits an offence makes amends to the community for the offence by performing work that is of benefit to the community.

### **34 Community work order**

- (1) A court which finds a person guilty of an offence may order the person to participate, within such time as the court may order, in an approved project for such number of hours, not exceeding 480, as are specified in the order.
- (2) A community work order may require an offender to present himself or herself:
  - (a) at a place and to a person and within a time, specified in the order; or
  - (b) at a place and to a person and within the time and by the means as directed by the Commissioner in writing.
- (4) Where a court makes a community work order, it must ensure that a copy of the order is:
  - (a) given to the offender; and
  - (b) sent to the Commissioner.
- (5) Where a community work order contains a requirement in accordance with subsection (2)(b), the Commissioner must give written notice of the direction to the offender as soon as practicable after the order is made.

### **35 Circumstances in which community work order may be made**

- (1) A court must not make a community work order unless it:
  - (a) has been notified by the Commissioner that arrangements have been or will be made for the offender to participate in an approved project under the order; and
  - (b) is satisfied, after considering a report from the Commissioner about the offender and his or her circumstances, and, if the court thinks necessary, hearing the Commissioner or a person authorised by the Commissioner, that:
    - (i) the offender is a suitable person to participate in the approved project; and
    - (ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.
- (2) For subsection (1)(b), a court must order the Commissioner to prepare and provide to the court a report about an offender and his or her circumstances.

### **36 Where more than one community work order made**

- (1) Where a court makes a community work order in respect of 2 or more offences, the court must not order the offender to participate in an approved project under the order for a number of hours that exceeds 480.
- (2) Where a court makes a community work order and there is in force one or more other orders in respect of the offender, the court must not order the offender to participate in an approved project for a number of hours that would require the offender, after the making of the first-mentioned order, to participate in the project under the order and the previous order or orders for a number of hours that, in the aggregate, exceeds 480.

### **37 Duties of offender in carrying out community work order**

- (1) An offender in respect of whom a community work order is in force:
  - (a) must participate, for the number of hours specified in the order, in such approved project as a probation and parole officer directs; and
  - (b) must participate in the project in a satisfactory manner; and

- (c) must, while participating in the project, comply with any reasonable direction of a probation and parole officer; and
  - (d) must inform a probation and parole officer of a change in his or her residential address not later than 48 hours after the change.
- (2) Except where he or she consents, an offender must not be required to participate in an approved project under a community work order for more than 8 hours (exclusive of time allowed for meals) in any one day.

### **38 Review of community work order**

- (1) A court, on the application of the Commissioner or an offender, may:
- (a) discharge a community work order; or
  - (b) revoke a community work order and deal with the offender as if the offender had come before the court for sentence for the offence in respect of which the order was made; or
  - (c) reduce the number of hours the offender is required to participate in an approved project under the order; or
  - (d) vary the time within which the offender is to complete his or her participation in the approved project.
- (2) Where the Commissioner makes an application under subsection (1), the court must summons the offender to appear before it on the hearing of the application and, if the offender does not appear in answer to the summons, may order that a warrant to arrest the offender be issued.
- (3) Where an offender makes an application under subsection (1), the court must serve notice of the application and of the time and place fixed for the hearing on the Commissioner.
- (4) Without limiting the matters that a court may take into consideration in reviewing a community work order, the grounds for reviewing such an order include the fact:
- (a) that the offender is in custody on a charge for another offence; or
  - (b) that the offender's behaviour is such that the carrying out of the terms of the order is impracticable; or
  - (c) that the operation of the order offends other persons.

### **39 Breach of community work order**

- (1) An offender is in breach of a community work order if he or she:
  - (a) fails to comply with a term or condition of the order; or
  - (b) fails to carry out his or her obligations under section 37(1); or
  - (c) disturbs or interferes with any other person participating in or doing anything under a community work order; or
  - (d) assaults, threatens, insults or uses abusive language to a probation and parole officer; or
  - (e) changes his or her address for the purposes of evading the execution of this Act; or
  - (g) commits a breach of the Regulations; or
  - (h) commits an offence against a law in force in the Territory during a time when he or she is participating in an approved project under the order.
- (2) Where a justice of the peace is satisfied that an offender is in breach of a community work order, the justice of the peace may:
  - (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons; or
  - (b) where the justice of the peace is satisfied the offender may not appear, issue a warrant for the arrest of the offender.
- (3) Where an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may issue a warrant for the arrest of the offender.
- (3A) Where a court is satisfied, by evidence on oath or by affidavit, or by the admission of the offender, that the offender is in breach of a community work order, it may vary, confirm, or, (if the order is still in force) revoke the order and, whether or not it is still in force, taking into account the extent to which the offender had complied with the order, deal with him or her for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found him or her guilty of the offence or offences.
- (4) Where a court is satisfied that an offender is in breach of a community work order, the court may, whether or not the order is in force at the time the offender appears before the court, order that the offender be imprisoned for such term as would equal one day of

imprisonment for each 8 hours, or part of 8 hours, of the approved project that the offender failed to participate in under the order or for 7 days, whichever is the greater.

- (5) For the purpose of determining the number of hours under subsection (4), the court may hear evidence from a probation and parole officer or such other person as it thinks fit.
- (6) Where a court imposes a term of imprisonment under subsection (4), the community work order is taken to be revoked and the court:
  - (a) may then deal with the offender for the offence in respect of which the community work order was made in any manner in which it could deal with the offender if it had just found the offender guilty of the offence; and
  - (b) at the time of further dealing with the offender for the offence, may take into account:
    - (i) the term of imprisonment imposed for the breach of the order; and
    - (ii) the extent to which the offender had complied with the order.
- (7) Where a court is satisfied that an offender is in breach of a community work order and there is more than one community work order in force in respect of the offender, the offender is, for this section, taken:
  - (a) to be in breach of all the orders; and
  - (b) in respect of the offender's participation in the approved projects under the orders, to have participated in the projects in the order in which the orders were made.
- (8) Where a community work order is made in respect of more than one offence and a court is satisfied that the offender is in breach of the order, the court must deal with the offender under this section for all the offences in respect of which the order was made.

## **Division 4A Community based orders**

### **39A Application of Division**

- (1) This Division applies if a court, other than the Youth Justice Court, convicts an offender of an offence other than one of the following:
  - (a) a sexual offence;



- (b) a violent offence;
- (c) an offence against section 188(1) of the Criminal Code if a circumstance of aggravation specified in section 188(2) of the Criminal Code exists;
- (d) another offence prescribed by regulation.

(2) In this section:

**sexual offence**, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

**violent offence** means an offence involving the use, or threatened use, of violence.

### **39B When court may make order**

- (1) The court may make an order under this Division (a **community based order**) for an offender only if it receives a pre-sentence report.
- (2) The court may make the order in addition to imposing a fine on the offender but not in addition to a sentence of a term of imprisonment.

### **39C Copy of order to be given to offender and Commissioner**

The court must give a copy of the community based order to the offender and Commissioner.

### **39D Duration of order**

The period the community based order is in force must not exceed 2 years.

### **39E Statutory conditions of order**

- (1) The community based order is subject to the following conditions:
  - (a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;
  - (b) the offender is under the ongoing supervision of a probation and parole officer and must report to a probation officer at a specified place within 2 clear working days after the order comes into force;
  - (c) the offender must tell a probation and parole officer of any change of address or employment within 2 clear working days after the change;

- (d) the offender must not leave the Territory except with the permission of a probation and parole officer;
  - (e) the offender must:
    - (i) give a sample of the offender's voice for use with an approved monitoring device for the period specified in the order; and
    - (ii) comply with the reasonable directions of a probation and parole officer in the use of the device for the effective monitoring of the offender's activities;
  - (f) the offender must comply with:
    - (i) regulations made for this Division; and
    - (ii) all lawful directions of the Commissioner and probation and parole officers.
- (2) Without limiting subsection (1)(f)(ii), the Commissioner may, by written notice given to the offender, require the offender to:
- (a) reside at a specified place; and
  - (b) wear or have attached an approved monitoring device for the period specified in the notice (the **temporary monitoring period**); and
  - (c) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (3) However, the Commissioner may give the notice only if:
- (a) the order is not subject to the conditions imposed by the court under section 39F(2) for the temporary monitoring period; and
  - (b) the Commissioner is satisfied there is a material risk the offender will not comply with another lawful direction relating to the offender's activities.
- (4) In addition, the temporary monitoring period must not be more than 14 days.

**39F Conditions of order imposed by court – general**

- (1) The court must impose at least one (but may impose more than one) of the following conditions on the order:
  - (a) the offender must undertake prescribed programs as directed by the Commissioner for a period of not less than one month or more than one year;
  - (b) the offender must:
    - (i) undergo assessment and treatment for misuse of alcohol or drugs; or
    - (ii) submit to medical, psychological or psychiatric assessment and treatment as directed by the Commissioner;
  - (c) the offender must not consume or purchase alcohol or a drug (other than as prescribed by a medical practitioner or other health practitioner).
- (2) In addition, the court may impose all of the following conditions on the order:
  - (a) the offender must reside at a specified place;
  - (b) the offender must wear or have attached an approved monitoring device for the period the order is in force or the lesser period ordered by the court;
  - (c) the offender must allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (3) Also, the court may impose another condition the court considers necessary or desirable, other than a condition about the making of restitution or the payment of compensation, costs or damages.
- (4) A prescribed program specified in the order must be designed to address the personal factors that contribute to the offender's criminal behaviour.
- (5) Also, a prescribed program may be residential or community-based.

**39G Condition of order imposed by court – community work**

- (1) The court may impose a condition on the order that the offender must perform community work (within the meaning of Division 4) as directed by the Commissioner.

- (2) The purpose of imposing the condition requiring the offender to perform community work is to allow for the adequate punishment of the offender in the community.
- (3) The number of hours for which the offender may be required to perform community work must not exceed 250 hours for each year the order is in force.
- (4) The total number of hours to be worked in any period of 7 days must not exceed 20.
- (5) Despite subsection (4), the offender may work up to 40 hours in a period of 7 days if the offender:
  - (a) asks to do so; and
  - (b) signs a consent to working the extra number of hours.

**39H Orders for more than one offence**

- (1) If the court makes separate community based orders for 2 or more offences committed by the offender, the conditions of the orders are concurrent unless the court otherwise directs.
- (2) The conditions of the community based order made for the offender are, unless the court otherwise directs, concurrent with those of another community based order already in force for the offender.
- (3) The court must not give a direction under this section that would result in the offender being required to perform more than the number of hours of community work specified in section 39G.

**39J Commissioner may change reporting requirement**

- (1) If, because the offender has changed his or her place of residence or for another reason, it is not convenient for the offender to report at the place specified in the community based order, the Commissioner may direct the offender to report at another place.
- (2) The offender must report as directed and the order has effect as if the other place had been specified in it.

**39K Suspension of order**

- (1) If requested by the offender, the Commissioner may suspend the operation of the community based order, or any condition of the order, for a period if the Commissioner is satisfied:
  - (a) the offender is ill; or

(b) other exceptional circumstances exist.

(2) The period of the suspension must not be taken into account in working out the period for which the order is to remain in force.

**39L Review of order on application of Commissioner or offender**

(1) On the application of the Commissioner or offender, the court may do either of the following if the court is satisfied a circumstance in subsection (2) applies:

(a) revoke the community based order and deal with the offender as if the offender had come before the court for sentence for the offence for which the order was made;

(b) vary the conditions of the community based order.

(2) For subsection (1), the circumstances are:

(a) the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances;  
or

(b) material information was not presented to the Commissioner for preparing the pre-sentence report given to the court.

(3) If the Commissioner makes the application:

(a) the court must summons the offender to appear before the court at a specified time and place for hearing the application;  
and

(b) if the offender does not appear in answer to the summons – the court may issue a warrant for the offender's arrest.

(4) If the offender makes the application, the court must give notice to the Commissioner of:

(a) the application; and

(b) the time and place fixed for hearing the application.

(5) In deciding how to deal with the offender under subsection (1)(a), the court must take into account:

(a) the extent to which the offender has complied with the order;  
and

(b) any fine imposed when the order was made; and

(c) any report of the Commissioner.

- (6) In addition, in making an order under subsection (1), the court may take court may take into account:
- (a) whether the offender is in custody on a charge for another offence; and
  - (b) whether the offender's behaviour is such that the offender's compliance with the terms of the order is impracticable.

**39M Summons and warrant for arrest of offender if order breached**

- (1) This section applies if a justice of the peace is satisfied on information on oath:
- (a) the offender has breached a condition of the community based order that is still in force; or
  - (b) within 2 years after the community based order ceases to be in force, the offender breached a condition of the order when it was in force (even if a certificate of discharge of the order is issued under section 39R).
- (2) The justice of the peace may:
- (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Division; or
  - (b) if the justice of the peace is satisfied proceedings against the offender by summons might not be effective – issue a warrant for the arrest of the offender.
- (3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.
- (4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.
- (5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.
- (6) For sections 137 and 138 of the *Police Administration Act 1978*, a breach of the order is taken to be an offence.

**39N Court orders following breach**

- (1) This section applies if the court is satisfied the offender breached a condition of the community based order.

- (2) If the order is still in force, the court may:
  - (a) confirm the order; or
  - (b) vary the conditions of the order; or
  - (c) revoke the order.
- (3) If the order is no longer in force, the court may:
  - (a) deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence;  
or
  - (b) confirm the discharge of the order and take no further action.
- (4) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act 1949* for the offender (the **MVA order**), the court may revoke the MVA order.
- (5) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* because of an application made under the MVA order:
  - (a) the licence is cancelled; and
  - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and
  - (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act 1949*:
    - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and
    - (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (6) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.

- (7) If the court revokes the order, the court may deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence.
- (8) In deciding how to deal with the offender under subsection (3)(a) or (7), the court must take into account:
  - (a) the extent to which the offender had complied with the order before its revocation; and
  - (b) any fine imposed when the order was made; and
  - (c) any report of the Commissioner.

**39P Records as evidence**

A matter contained in the following records produced to a court in a proceeding under this Division is, as far as it is applicable, evidence of the offender's activities:

- (a) records generated by or through an approved monitoring device;
- (b) records comprising the notebooks or diaries of a probation and parole officer.

**39Q Certain costs recoverable by Territory**

If the offender destroys or damages an approved monitoring device or associated device, machine or equipment:

- (a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and
- (b) the costs may be recovered from the offender as a debt payable to the Territory.

**39R Discharge of order**

- (1) If the Commissioner is satisfied the offender has complied with the conditions of the community based order the Commissioner must issue a certificate that the order is discharged.
- (2) On the issue of the certificate, the order is discharged.



## **Division 5 Custodial orders**

### **Subdivision 1 Suspended sentences of imprisonment**

#### **40 Suspended sentence of imprisonment**

- (1) A court which sentences an offender to a term of imprisonment of not more than 5 years may make an order suspending the sentence where it is satisfied that it is desirable to do so in the circumstances.
- (2) An order suspending a sentence of imprisonment may suspend the whole or a part of the sentence and the order may be subject to such conditions as the court thinks fit.
- (3) A court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate in the circumstances having regard to this Act.
- (4) Where an offender is convicted of more than one offence in the same proceeding, a court may only make an order suspending a sentence of imprisonment imposed by it where the aggregate period of imprisonment imposed in respect of all the offences does not exceed 5 years.
- (5) A wholly suspended sentence of imprisonment is taken to be a sentence of imprisonment for all enactments except an enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits.
- (6) A court must specify in an order suspending a sentence of imprisonment a period of not more than 5 years from:
  - (a) if the whole of the sentence is suspended – the date of the order; or
  - (b) if a part of the sentence is suspended – the date specified in the order;during which the offender is not to commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 43.
- (7) Where an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment under section 43, then, for any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits, the offender is taken to have been sentenced to imprisonment on the day on which the order was made under that section.

- (8) A partly suspended sentence of imprisonment is taken, for all purposes, to be a sentence of imprisonment for the whole term stated by the court.
- (9) For this section, a suspended sentence of imprisonment imposed on an offender on appeal is taken to have been imposed by the appellate court.
- (10) Despite subsection (9), where a suspended sentence of imprisonment is imposed on an offender on appeal, an application under this subdivision that may be made to a court may be made to the court whose order was appealed against and that court may deal with the offender even if the court is not the court that imposed the sentence.

#### **41 Effect of suspended sentence**

An offender in respect of whom a suspended sentence has been imposed under section 40 has to serve the sentence or part sentence held in suspense only if he or she is ordered to do so under section 43.

#### **42 Variation of order conditionally suspending sentence**

- (1) A court which has made an order wholly or partially suspending a sentence of imprisonment on certain conditions may, on application under this subsection, if satisfied that:
  - (a) the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or
  - (b) the offender has failed or is no longer willing to comply with a condition of the order;vary or cancel the order and, subject to subsection (2), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just convicted the offender of the offence or those offences.
- (2) In determining how to deal with an offender following the cancellation of an order suspending a sentence of imprisonment, the court must take into account the extent to which the offender had complied with the order before its cancellation.
- (3) An application under subsection (1) may be made at any time by:
  - (a) the offender; or

- (b) a prescribed person or a member of a prescribed class of persons; or
  - (c) the prosecutor.
- (4) Notice of an application under subsection (1) must be given to:
- (a) the offender; and
  - (b) where the sentencing court was:
    - (i) the Supreme Court, the Director of Prosecutions; or
    - (ii) the Local Court, the complainant or informant.
- (5) A court may order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

#### **43 Breach of order suspending sentence**

- (1) Where:
- (a) while an order suspending a sentence of imprisonment under section 40 is in force; or
  - (b) within the period of 2 years after the expiry of the operational period of a suspended sentence;

it appears to a prescribed person or a member of a prescribed class of persons that, during the operational period, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment, he or she may apply, in the prescribed form, to the court which sentenced the offender for an order under this section.

- (2) Where it appears to a prescribed person, or a member of a prescribed class of persons, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject, he or she may apply, whether or not the order is still in force, in the prescribed form, to the court which sentenced the offender for an order under this section.
- (3) Where an application is made under subsection (1) or (2):
- (a) notice of the application must be given to the offender; or
  - (b) where the Court is satisfied:
    - (i) for an application under subsection (1) – that, during the operational period of the suspended sentence, the

offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment and that the offender may not appear; or

- (ii) for an application under subsection (2) – that the offender has breached a condition to which the order suspending the sentence is subject and that the offender may not appear;

the Court may issue a warrant for the arrest of the offender.

- (4) The court may, on the hearing of an application under this section, order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.
- (4AA) A police officer who suspects, on reasonable grounds, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject may, without warrant, arrest the offender.
- (4AB) For the application of sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition to which an order suspending a sentence imposed on an offender is subject is to be taken to be an offence.
- (4A) Where:
  - (a) an offender appears before a court:
    - (i) while an order made by the court suspending a sentence of imprisonment under section 40 is in force in respect of the offender; or
    - (ii) within the period of 2 years after the expiry of the operational period of a suspended sentence imposed by the court on the offender; and
  - (b) the court is satisfied that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment;

the court may of its own motion make an order under this section.

- (4B) Where a court is satisfied that an offender who is before the court has breached a condition to which an order made by the court suspending a sentence imposed on the offender is subject, the court may of its own motion make an order under this section.

(4C) Where the Local Court is satisfied in respect of an offender who is before that Court:

- (a) that, during the operational period of a suspended sentence imposed on the offender by the Supreme Court, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or
- (b) that the offender has breached a condition to which an order made by the Supreme Court suspending a sentence imposed on the offender is subject;

the Local Court may commit the offender to the Supreme Court to be dealt with by that Court under this section.

(4D) If the Supreme Court is satisfied in respect of an offender before that Court that, during the operational period of a suspended sentence imposed on the offender by the Local Court, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment:

- (a) for subsection (4A), the Supreme Court is taken to have imposed the suspended sentence; and
- (b) the Supreme Court may deal with the offender under this section.

(4E) If the Supreme Court is satisfied in respect of an offender before that Court that the offender has breached a condition of an order made by the Local Court suspending a sentence imposed on the offender:

- (a) for subsection (4B), the Supreme Court is taken to have made the order; and
- (b) the Supreme Court may deal with the offender under this section.

(5) Where:

- (a) on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (4A), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or
- (b) on the hearing of an application under subsection (2) or on the hearing of its own motion under subsection (4B), a court is

satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has breached a condition of the order;

the court may:

- (c) subject to subsection (7), restore the sentence or part sentence held in suspense and order the offender to serve it; or
  - (d) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or
  - (e) for a wholly suspended sentence, extend the operational period to a date after the date of the order suspending the sentence; or
  - (ea) for a partially suspended sentence – extend the operational period to a date after the date specified in the order suspending the sentence; or
  - (f) make no order with respect to the suspended sentence.
- (6) Where a court orders an offender to serve a term of imprisonment that had been held in suspense, the term must, unless the court otherwise orders, be served:
- (a) immediately; and
  - (b) concurrently with any other term of imprisonment previously imposed on the offender by that or any other court.
- (7) A court must make an order under subsection (5)(c) unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the facts of any subsequent offence and, if it is of that opinion, the court must state its reasons.
- (8) Where a court makes no order with respect to a suspended sentence, the proper officer of the court must record the fact in the records of the court.

## **Subdivision 2 Home detention orders**

### **44 Home detention order**

- (1) A court which sentences an offender to a term of imprisonment may make an order suspending the sentence on the offender entering into a home detention order where it is satisfied that it is desirable to do so in the circumstances.

- (2) A court must specify in the order the premises or place (which may include a restricted area) at which the offender is to reside or remain and the period, not exceeding 12 months, that the order is to remain in force.
- (3) A home detention order may be subject to such terms and conditions as the court thinks fit including, but not limited to, that the offender:
  - (a) not leave the premises or place specified in the order except at the times and for the periods as prescribed or as otherwise permitted by the Commissioner or a probation and parole officer; and
  - (b) wear or have attached an approved monitoring device in accordance with the directions of the Commissioner, and allow the placing, or installation in, and retrieval from, the premises or place specified in the order of such machine, equipment or device necessary for the efficient operation of the monitoring device; and
  - (c) obey the reasonable directions of the Commissioner.
- (6) Where a court makes a home detention order, it must ensure that a copy of the order is:
  - (a) given to the offender; and
  - (b) sent to the Commissioner.

**45 Circumstances in which home detention order may be made**

- (1) A court may make a home detention order only if:
  - (a) it receives a report from the Commissioner stating that:
    - (i) suitable arrangements are available for the offender to reside at the premises or place specified in the report; and
    - (ii) the premises or place specified in the report is suitable for the purposes of a home detention order; and
    - (iii) the making of the home detention order is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally; and
  - (b) the offender consents to the making of the order.

- (1A) For subsection (1)(a), a court must order the Commissioner to prepare and provide to the court a report about the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (2) In preparing a report for the purposes of subsection (1)(a), the Commissioner may take into account the views of those members of the community who, in the opinion of the Commissioner, may be affected by the making of the home detention order.

**46 Where more than one home detention order made**

- (1) Where a court makes a home detention order in respect of 2 or more offences, the aggregate period the order is to remain in force must not exceed 12 months.
- (2) Where a court makes a home detention order and there is or are in force in respect of the offender one or more other orders, the court shall not make a further order that results in the aggregate periods of the orders exceeding 12 months.

**47 Review of home detention order**

- (1) A court may, on the application of the Commissioner or the offender and having regard to circumstances which have arisen or become known since the home detention order was made:
- (a) discharge the order; or
  - (b) revoke the order and:
    - (i) confirm the sentence of imprisonment imposed on the offender; or
    - (ii) order that the sentence of imprisonment be quashed and deal with the offender as if the offender had come before the court for sentence for the offence in respect of which the home detention order was made; or
  - (c) vary the terms and conditions of the order including, subject to subsection (5), the period the order is to remain in force.
- (2) Where the Commissioner makes an application under subsection (1), the court must summons the offender to appear and, if the offender does not appear in answer to the summons, the court may issue a warrant for the offender's arrest.
- (3) Where an offender makes an application for an order under subsection (1), the court must cause notice of the application and of the time and place fixed for the hearing to be served on the Commissioner.



- (4) The court, in making an order under subsection (1)(a), may take into account:
- (a) the length of time the offender has complied with the home detention order; and
  - (b) any report of the Commissioner.
- (5) An order under subsection (1)(c) must not be made if the effect is that the period of the order, as varied, exceeds 12 months.

**48 Breach of home detention order**

- (1) For this Subdivision, an offender breaches a home detention order if he or she:
- (a) fails to reside in or remain at the premises or place specified in the order; or
  - (b) fails to comply with a term or condition of the order; or
  - (c) wilfully destroys, damages or removes, or attempts to destroy, damage or remove, any part of an approved monitoring device or any associated machine, equipment or device; or
  - (d) fails to comply with a lawful request of a probation and parole officer or police officer to undergo a breath test, breath analysis or blood or urine test; or
  - (e) disturbs or interferes with any other person residing in the premises or at the place specified in the order; or
  - (f) assaults, threatens, insults or uses abusive language to a probation and parole officer; or
  - (g) commits a breach of the Regulations; or
  - (h) commits an offence against a law in force in the Territory or elsewhere during the term of the order.
- (2) Where a justice of the peace is satisfied, on reasonable grounds by an information laid before him or her, that an offender in respect of whom a home detention order has been made has breached the order as specified in subsection (1), the justice of the peace may:
- (a) issue a summons directing the offender to appear at a court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this section; or

- (b) where the information is on oath and the justice of the peace is satisfied that proceedings against the offender by summons might not be effective, issue a warrant for the arrest of the offender.
- (3) Where an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may, on proof of service of the summons, issue a warrant for the arrest of the offender.
- (4) A police officer who suspects, on reasonable grounds, that an offender has breached a home detention order may, without warrant, arrest the offender and for that purpose may, by reasonable force if necessary, enter premises or a place.
- (5) For the application of sections 137 and 138 of the *Police Administration Act 1978*, a breach of a home detention order is taken to be an offence.
- (6) Where a court is satisfied that an offender has breached a home detention order, subject to subsection (9):
- (a) if the order is still in force, the court must revoke the order; and
- (b) whether the order is revoked under paragraph (a) or is otherwise no longer in force, the offender must be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and despite any period that the offender may have served under the order.
- (7) Where, after the expiration of the period of a home detention order, an offender in respect of whom the order was made is found guilty of an offence against a law in force in the Territory or elsewhere committed during the period of the order, the offender must be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and despite any period the offender may have served under the order.
- (8) Where records purporting to relate to the activities of an offender, being records:
- (a) generated by or through an approved monitoring device; or
- (b) comprising the notebooks or diaries of a probation and parole officer;
- are produced to a court in a proceeding under this section, the matter contained in the records is, as far as it is applicable, evidence of the activities of the offender.

(9) Where:

- (a) the offender has breached a home detention order because of subsection (1)(a), (b), (c), (d), (e), (f) or (g) and, having regard to the circumstances of the offender or the breach, the court is of the opinion that it is appropriate to do so; or
- (b) the offender has breached a home detention order because of subsection (1)(h) and the offence committed is a regulatory offence or is not punishable by imprisonment;

despite subsection (6), the court may:

- (c) if the order is still in force – direct that the order continue in force and, in so doing, may vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force; or
  - (d) if the order is no longer in force – subject to subsection (11A), make another order under section 44(1) suspending the sentence on the offender entering into a home detention order.
- (10) Where a court, in accordance with subsection (9), does not revoke a home detention order, it may, in directing that the order continue in force, vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force.
- (11) A variation of a home detention order must not be made under subsection (10) if the effect of that variation is that the period of the order exceeds 12 months.
- (11A) A home detention order must not be made for subsection (9)(d) if the aggregate of:
- (a) the period of the order made for subsection (9)(d); and
  - (b) so much of the period of the order that was breached as remained after the date of the breach;
- exceeds 12 months.
- (12) Where an offender has breached a home detention order because of subsection (1)(c), the offender is liable to pay the costs of restoring or replacing an approved monitoring device, or associated machine, equipment or device, destroyed or damaged in the breach of the order and those costs may be recovered from the offender as a debt due and payable to the Territory.

- (13) Where an offender has breached a home detention order because of subsection (1)(h) or has been found guilty of an offence in circumstances referred to in subsection (7) and the offender is sentenced to a term of imprisonment for the offence, the term commences at the expiration of the term of imprisonment suspended on the making of the order.

## Subdivision 2A Community custody orders

### 48A Application of Subdivision

- (1) This Subdivision applies if a court other than the Youth Justice Court:
- (a) convicts an offender of an offence other than one of the following:
    - (i) a sexual offence;
    - (ii) a violent offence;
    - (iii) an offence against section 188(1) of the Criminal Code if a circumstance of aggravation specified in section 188(2) of the Criminal Code exists;
    - (iv) another offence prescribed by regulation; and
  - (b) decides to impose a sentence of imprisonment on the offender of not more than 12 months.
- (2) In this section:

**sexual offence**, see section 3 of the *Sexual Offences (Evidence and Procedure) Act 1983*.

**violent offence** means an offence involving the use, or threatened use, of violence.

### 48B When court may make order

- (1) The court may order the sentence of imprisonment be served by way of an order under this Subdivision (a **community custody order**) only if it receives a pre-sentence report.
- (2) However, the court must not make the order if the court makes an order suspending the sentence.

- (3) In addition, if the offender is convicted of more than one offence in the same proceeding, the court may make the order only if the total period of imprisonment imposed for all the offences does not exceed 12 months.
- (4) Also, the court may make the order in addition to imposing a fine on the offender.

**48C Copy of order to be given to offender and Commissioner**

The court must give a copy of the community custody order to the offender and Commissioner.

**48D Duration of order**

The period the community custody order is in force is the period of the term of imprisonment imposed under section 48A(1)(b).

**48E Statutory conditions of order**

- (1) The community custody order is subject to the following conditions:
  - (a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;
  - (b) the community work and program condition mentioned in subsection (2);
  - (c) the offender must report to a probation and parole officer at a specified place within 2 clear working days after the order comes into force;
  - (d) the offender must report to, and receive visits from, a probation and parole officer at least twice during each week the order is in force or the shorter period specified in the order;
  - (e) the offender must tell a probation and parole officer of any change of address or employment within 2 clear working days after the change;
  - (f) the offender must not leave the Territory except with the permission of a probation and parole officer;
  - (g) the offender must:
    - (i) give a sample of the offender's voice for use with an approved monitoring device for the period specified in the order; and

- (ii) comply with the reasonable directions of a probation and parole officer in the use of the device for the effective monitoring of the offender's activities;
  - (h) the offender must comply with:
    - (i) regulations made for this Subdivision; and
    - (ii) all lawful directions of the Commissioner and probation and parole officers.
- (2) Subject to subsection (3), the offender must, for 12 hours during each week the order is in force, attend at the place specified in the order, or as otherwise directed by a probation and parole officer, for:
  - (a) performing community work (within the meaning of Division 4) for not less than 8 of the hours but no more than 8 hours in a day; and
  - (b) spending any balance of the hours undertaking a prescribed program, or undergoing counselling or treatment, as directed by the Commissioner.
- (3) The Commissioner may at any time, by written notice given to the offender, increase the 12 hours mentioned in subsection (2) to a maximum of 20 hours.
- (4) However, the Commissioner may give the notice only:
  - (a) if satisfied it is appropriate having regard to the offender's circumstances (including, for example, whether the offender is unemployed); and
  - (b) to require the offender to perform community work, or undertake a prescribed program targeting employment skills, as specified in the notice.
- (5) For subsection (2)(b), the counselling or treatment must relate to:
  - (a) the offender's psychological or psychiatric problem; or
  - (b) the offender's misuse of alcohol or drugs.
- (6) Without limiting subsection (1)(h)(ii), the Commissioner may, by written notice given to the offender, require the offender to:
  - (a) reside at a specified place; and

- (b) wear or have attached an approved monitoring device for the period specified in the notice (the **temporary monitoring period**); and
  - (c) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.
- (7) However, the Commissioner may give the notice only if:
- (a) the order is not subject to the conditions imposed by the court under section 48F(2) for the temporary monitoring period; and
  - (b) the Commissioner is satisfied there is a material risk the offender will not comply with another lawful direction relating to the offender's activities.
- (8) In addition, the temporary monitoring period must not be more than 14 days.

**48F Conditions of order imposed by court**

- (1) The court making a community custody order may impose either or both of the following conditions on the order:
- (a) the offender must undertake one, or more than one, specified prescribed programs during the period the order is in force, or a shorter period specified in the order, if the pre-sentence report recommends the court impose a condition of that kind for a specified purpose;
  - (b) the offender must not consume or purchase alcohol or a drug (other than as prescribed by a medical practitioner or other health practitioner).
- (2) In addition, the court may impose all of the following conditions on the order:
- (a) the offender must reside at a specified place;
  - (b) the offender must wear or have attached an approved monitoring device for the period the order is in force or the lesser period ordered by the court;
  - (c) the offender must allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.

- (3) A prescribed program specified in the order must be designed to address the personal factors that contribute to the offender's criminal behaviour.
- (4) Also, a prescribed program may be residential or community-based.

**48G Commissioner may change reporting requirement**

- (1) If, because the offender has changed his or her place of residence or for another reason, it is not convenient for the offender to report at a particular place, the Commissioner may direct the offender to report at another place.
- (2) The offender must report as directed and the community custody order has effect as if the other place had been specified in it.

**48H Suspension of order**

- (1) If requested by the offender, the Commissioner may suspend the operation of the community custody order, or any condition of the order, for a period if the Commissioner is satisfied:
  - (a) the offender is ill; or
  - (b) other exceptional circumstances exist.
- (2) The period of the suspension must not be taken into account in working out the period for which:
  - (a) the order is to remain in force; or
  - (b) a condition is to be complied with.

**48J Review of order on application of Commissioner or offender**

- (1) On the application of the Commissioner or offender, the court may do either of the following if the court is satisfied a circumstance in subsection (2) applies:
  - (a) revoke the community custody order, order the sentence of imprisonment be quashed and deal with the offender as if the offender had come before the court for sentence for the offence for which the community custody order was made;
  - (b) vary the conditions of the community custody order.
- (2) For subsection (1), the circumstances are:
  - (a) the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances;  
or



- (b) material information was not presented to the Commissioner for preparing the pre-sentence report given to the court.
- (3) If the Commissioner makes the application:
  - (a) the court must summons the offender to appear before the court at a specified time and place for hearing the application; and
  - (b) if the offender does not appear in answer to the summons – the court may issue a warrant for the offender's arrest.
- (4) If the offender makes the application, the court must give notice to the Commissioner of:
  - (a) the application; and
  - (b) the time and place fixed for hearing the application.
- (5) In deciding how to deal with the offender under subsection (1)(a), the court must take into account:
  - (a) the extent to which the offender has complied with the order before its revocation; and
  - (b) any fine imposed when the order was made; and
  - (c) any report of the Commissioner.

**48K Summons and warrant for arrest of offender if order breached**

- (1) This section applies if a justice of the peace is satisfied on information on oath:
  - (a) the offender has breached a condition of the community custody order that is still in force; or
  - (b) within 2 years after the community custody order ceases to be in force, the offender breached a condition of the order when it was in force (even if a certificate of discharge of the order is issued under section 48Q).
- (2) The justice of the peace may:
  - (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Subdivision; or

- (b) if the justice of the peace is satisfied proceedings against the offender by summons might not be effective – issue a warrant for the arrest of the offender.
- (3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.
- (4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.
- (5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.
- (6) For sections 137 and 138 of the *Police Administration Act 1978*, a breach of the order is taken to be an offence.

#### **48L Court orders following breach – commission of offence**

- (1) This section applies if the court is satisfied the offender breached the condition of the community custody order mentioned in section 48E(1)(a).
- (2) Unless the court is satisfied it would be unjust to do so because of exceptional circumstances that have arisen since the order was made, the court must:
  - (a) revoke the order if it is still in force; and
  - (b) whether or not the order is still in force, sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition.
- (3) In addition, if the court had made an order under section 25M or 25R of the *Motor Vehicles Act 1949* for the offender (the **MVA order**), the court must revoke the MVA order.
- (4) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* because of an application made under the MVA order:
  - (a) the licence is cancelled; and
  - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and

- (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act 1949*:
  - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and
  - (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (5) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.
- (6) If the court sentences the offender to serve the unexpired term of imprisonment, the term must:
  - (a) be served immediately; and
  - (b) be served cumulatively on another term of imprisonment previously imposed on the offender by any court.
- (7) If the court is satisfied there are exceptional circumstances that have arisen since the order was made, the court may:
  - (a) if the order is still in force – confirm it or vary its conditions; or
  - (b) otherwise – confirm the order is discharged and take no further action.

**48M Court orders following another breach**

- (1) This section applies if the court is satisfied the offender breached a condition of the community custody order other than the condition mentioned in section 48E(1)(a).
- (2) If the order is still in force, the court may:
  - (a) confirm the order; or
  - (b) vary the conditions of the order; or
  - (c) revoke the order and sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition.

- (3) If the order is no longer in force, the court may:
- (a) sentence the offender to imprisonment for the unexpired term of imprisonment under the order at the date of the breach of the condition; or
  - (b) confirm the discharge of the order and take no further action.
- (4) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act* for the offender (the **MVA order**), the court may revoke the MVA order.
- (5) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* because of an application made under the MVA order:
- (a) the licence is cancelled; and
  - (b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and
  - (c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act 1949*:
    - (i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and
    - (ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.
- (6) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.
- (7) If the court sentences the offender to serve the unexpired term of imprisonment, the term must:
- (a) be served immediately; and
  - (b) be served cumulatively on another term of imprisonment previously imposed on the offender by any court.

**48N Records as evidence**

A matter contained in the following records produced to a court in a proceeding under this Subdivision is, as far as it is applicable, evidence of the offender's activities:

- (a) records generated by or through an approved monitoring device;
- (b) records comprising the notebooks or diaries of a probation and parole officer.

**48P Certain costs recoverable by Territory**

If the offender destroys or damages an approved monitoring device or associated device, machine or equipment:

- (a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and
- (b) the costs may be recovered from the offender as a debt payable to the Territory.

**48Q End of sentence and discharge of order**

- (1) If the Commissioner is satisfied the offender has complied with the conditions of the community custody order the Commissioner must issue a certificate that the order is discharged.
- (2) On the issue of the certificate:
  - (a) the offender is taken to have served the sentence of imprisonment; and
  - (b) the order is discharged.

**Subdivision 3 Imprisonment**

**49 Term of imprisonment where none prescribed**

Where a person is found guilty of an offence against a law in force in the Territory punishable by imprisonment but the maximum term of imprisonment is not prescribed by law, then the maximum term which may be ordered is imprisonment for 2 years.

**50 Imprisonment to be served concurrently unless otherwise ordered**

Unless otherwise provided by this Act or the court imposing imprisonment otherwise orders, where an offender is:

- (a) serving, or has been sentenced to serve, a term of imprisonment for an offence; and
- (b) sentenced to serve another term of imprisonment for another offence;

the term of imprisonment for the other offence is to be served concurrently with the first offence.

**51 Cumulative orders of imprisonment**

(1) If an offender is:

- (a) serving, or has been sentenced to serve, a term of imprisonment for an offence; and
- (b) sentenced to serve another term of imprisonment for another offence;

the term of imprisonment for the other offence may be directed to start from the end of the term of imprisonment for the first offence or an earlier date.

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

**52 Aggregate sentences of imprisonment**

(1) Where an offender is found guilty of 2 or more offences joined in the same information, complaint or indictment, the court may impose one term of imprisonment in respect of both or all of those offences but the term of imprisonment must not exceed the maximum term of imprisonment that could be imposed if a separate term were imposed in respect of each offence.

(2) A court must not impose one term of imprisonment under subsection (1) where one of the offences in respect of which the term of imprisonment would be imposed is an offence against section 192(3) of the Criminal Code.

(3) Subsection (1) does not apply if one of the offences in the information, complaint or indictment is a violent offence or a sexual offence.

### **53 Fixing of non-parole period by sentencing court**

(1) Subject to this section and sections 53A, 54, 55 and 55A, where a court sentences an offender to be imprisoned:

- (a) for life; or
- (b) for 12 months or longer, that is not suspended in whole or part;

it must, as part of the sentence, fix a period during which the offender is not eligible to be released on parole unless it considers that the nature of the offence, the past history of the offender or the circumstances of the particular case make the fixing of such a period inappropriate.

(1A) Subject to section 57, if a court sentences an offender to be imprisoned for less than 12 months or for a term that is suspended in whole or part, the court may not, as part of the sentence, fix a non-parole period.

(2) Where a court sentences an offender to be imprisoned in respect of more than one offence, a period fixed under subsection (1) is in respect of the aggregate period of imprisonment that the offender is liable to serve under all the sentences then imposed.

### **53A Non-parole periods for offence of murder**

(1) Subject to this section, where a court (***the sentencing court***) sentences an offender to be imprisoned for life for the offence of murder, the court must fix under section 53(1):

- (a) a standard non-parole period of 20 years; or
- (b) if any of the circumstances in subsection (3) apply – a non-parole period of 25 years.

(2) The standard non-parole period of 20 years referred to in subsection (1)(a) represents the non-parole period for an offence in the middle of the range of objective seriousness for offences to which the standard non-parole period applies.

(3) The circumstances referred to in subsection (1)(b) are any of the following:

- (a) the victim's occupation was police officer, emergency services worker, correctional services officer (as defined in section 16 of the *Correctional Services Act 2014*), judicial officer, health professional, teacher, community worker or other occupation involving the performance of a public function or the provision

- of a community service and the act or omission that caused the victim's death occurred while the victim was carrying out the duties of his or her occupation or for a reason otherwise connected with his or her occupation;
- (b) the act or omission that caused the victim's death was part of a course of conduct by the offender that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim;
  - (c) the victim was under 18 years of age at the time of the act or omission that caused the victim's death;
  - (d) if the offender is being sentenced for 2 or more convictions for unlawful homicide;
  - (e) if the offender is being sentenced for one conviction for murder and one or more other unlawful homicides are being taken into account;
  - (f) at the time the offender was convicted of the offence, the offender had one or more previous convictions for unlawful homicide.
- (4) The sentencing court may fix a non-parole period that is longer than a non-parole period referred to in subsection (1)(a) or (b) if satisfied that, because of any objective or subjective factors affecting the relative seriousness of the offence, a longer non-parole period is warranted.
- (5) The sentencing court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.
- (6) The sentencing court may fix a non-parole period that is shorter than the standard non-parole period of 20 years referred to in subsection (1)(a) if satisfied there are exceptional circumstances that justify fixing a shorter non-parole period.
- (7) For there to be exceptional circumstances sufficient to justify fixing a shorter non-parole period under subsection (6), the sentencing court must be satisfied of the following matters and must not have regard to any other matters:
- (a) the offender is:
    - (i) otherwise a person of good character; and



- (ii) unlikely to re-offend;
  - (b) the victim's conduct, or conduct and condition, substantially mitigate the conduct of the offender.
- (8) In considering whether the offender is unlikely to re-offend, the matters the sentencing court may have regard to include the following:
- (a) whether the offender has a significant record of previous convictions;
  - (b) any expressions of remorse by the offender;
  - (c) any other matters referred to in section 5(2) that are relevant.
- (9) The sentencing court must give reasons for fixing, or refusing to fix, a non-parole period and must identify in those reasons each of the factors it took into account in making that decision.
- (10) The failure of the sentencing court to comply with this section when fixing, or refusing to fix, a non-parole period does not invalidate the sentence imposed on the offender.
- (11) This section applies only in relation to an offence committed:
- (a) after the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*; or
  - (b) before the commencement of that Act if, at that commencement, the offender has not been sentenced for the offence.
- (12) In subsection (3):

***unlawful homicide*** means the offence of murder or manslaughter.

#### **54 Minimum non-parole period**

- (1) Subject to this section, where a court sentences an offender to be imprisoned for 12 months or longer that is not suspended in whole or in part, the court must fix a period under section 53(1) of not less than 50% of the period of imprisonment that the offender is to serve under the sentence.
- (2) Subsection (1) does not permit a court to fix a period under section 53(1) of less than 8 months.
- (3) Subsection (1) does not apply where the court under section 53(1) considers the fixing of a non-parole period is inappropriate.

- (4) If the court is required under Division 6A to impose a minimum sentence of 12 months actual imprisonment for an offence, the period fixed under section 53(1) for that offence must be not less than 12 months.

**55 Minimum non-parole period for certain sexual offences and drug offences**

- (1) If a court sentences an offender to be imprisoned for a specified offence for 12 months or longer, that is not suspended in whole or in part, the court must, under section 53(1), fix a period of not less than 70% of the period of imprisonment that the offender is to serve under the sentence.
- (2) However, subsection (1) does not apply if, under section 53(1), the court considers that the fixing of a non-parole period is inappropriate.
- (3) In this section:

***specified offence*** means:

- (a) an offence against section 192(3) of the Criminal Code; or
- (b) an offence against section 5(1), 5B(1), 5C(1), 6(1), 6C(1), 6D(1), 6E(1), 6G(1), 7(1), 7C(1) or 7D(1) of the *Misuse of Drugs Act 1990*; or
- (c) an offence against any other provision of the *Misuse of Drugs Act 1990* if it is an offence in relation to which section 38 of that Act applies.

**55A Fixed non-parole periods for offences against persons under 16 years**

- (1) Subject to this section, if:
- (a) a court sentences an offender to be imprisoned for an offence against section 127, 130, 131, 131A, 132, 134, 177(a), 181, 184, 186, 186B, 188 or 192(4) of the Criminal Code; and
- (b) the offender was an adult when the offence was committed; and
- (c) the offence was committed on a person who was under the age of 16 years; and
- (d) the sentence is not suspended in whole or part;

the court must fix a period under section 53(1) of not less than 70% of the period of imprisonment that the offender is to serve under the sentence.

- (2) Subsection (1) does not apply where under section 53(1) the court considers that the fixing of a non-parole period is inappropriate.

**56 Fixing of non-parole period otherwise than by sentencing court**

- (1) The failure of a sentencing court to fix a non-parole period under section 53(1) does not invalidate the sentence but the court may, on the application of the offender, the Commissioner, the CEO (Youth Justice) or the prosecutor, fix a non-parole period in accordance with that section in any manner in which the sentencing court might have done so.
- (2) A court may fix a non-parole period under section 53(1) in respect of a term of imprisonment being served by an offender who, at the commencement of this subsection, is serving a sentence of imprisonment to which that subsection applies in respect of which a non-parole period had not been fixed.
- (3) A court may fix a non-parole period under subsection (2) on the application of the offender, the Commissioner, the CEO (Youth Justice) or the prosecutor and it may do so as if it had just sentenced the offender to the term of imprisonment.
- (4) Subsection (2) does not apply to a sentence of imprisonment imposed for the offence of murder if the sentence was imposed before the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*.

**57 Fixing of new non-parole period in respect of multiple sentences**

- (1) This section applies if:
- (a) an offender has been sentenced to be imprisoned for an offence and a non-parole period has been fixed in respect of the sentence; and
  - (b) before the end of the non-parole period the offender is sentenced by a court to a further term of imprisonment.
- (1A) The court must fix a new single non-parole period in respect of all the sentences the offender is to serve or complete.

- (2) The new single non-parole period fixed at the time of the imposition of the further sentence:
- (a) supersedes any previous non-parole period that the offender is to serve or complete; and
  - (b) must not be such as to render the offender eligible to be released on parole earlier than would have been the case if the further sentence had not been imposed; and
  - (c) must not be less than the non-parole period required to be fixed in accordance with section 53A, 54, 55 or 55A, as the case may be, in respect of the further sentence.

**59 Order of service of sentences of imprisonment**

Where an offender has been sentenced to several terms of imprisonment in respect of any of which a non-parole period was fixed, the offender must serve:

- (a) the term or terms in respect of which a non-parole period was not fixed; and
- (b) the non-parole period; and
- (c) unless and until released on parole, the balance of the term or terms after the end of the non-parole period;

in that order.

**60 Sentences of imprisonment – whether concurrent or cumulative**

- (1) A court which imposes a term of imprisonment for an offence against a law of the Territory on an offender already undergoing a sentence or sentences of imprisonment for an offence against a law of the Commonwealth must direct when the new term commences, which must be no later than immediately after:
- (a) the completion of that sentence or those sentences if a non-parole period or pre-release period (as defined in Part IB of the *Crimes Act 1914* (Cth)) was not fixed in respect of it or them; or
  - (b) the end of that period, if one was fixed.
- (2) This section has effect despite anything to the contrary in any other Act.

**60A Sentence of imprisonment for escaping from lawful custody**

- (1) If an offender is sentenced to a term of imprisonment for escaping from lawful custody (the **escape sentence**):
  - (a) the escape sentence must be served at the end of all other sentences the offender is liable to serve; and
  - (b) if a non-parole period has been fixed in relation to one or all of the other sentences – the non-parole period is extended by the term of imprisonment under the escape sentence.
- (2) However, if the offender is serving a life sentence and a non-parole period has not been fixed, and parole is granted on a review, the escape sentence must be served before the parole takes effect.
- (3) If a court quashes the sentence of imprisonment that the offender was serving at the time of his or her escape, the court must make the orders it considers appropriate in relation to the escape sentence.

**61 Sentence of imprisonment on default of payment of fine**

Every term of imprisonment imposed on an offender in default of payment of a fine or sum of money must, unless otherwise directed by the court, be served:

- (a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the offender for the default of a payment of a fine or sum of money; and
- (b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the offender, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

**62 Commencement of sentences of imprisonment**

- (1) Subject to this Division, a sentence of imprisonment commences on the day it is imposed unless the offender is not then in custody in which case it commences on the day he or she is apprehended under a warrant of commitment issued in respect of the sentence.

- (2) Where an offender to whom subsection (3) applies is, in the period during which service of the sentence is suspended under that subsection, imprisoned under another sentence, the unexpired portion of the suspended sentence takes effect:
  - (a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or
  - (b) in any other case, at the end of the period of suspension.
- (3) Where an offender sentenced to a term of imprisonment and allowed to be or to go at large pending an appeal or the consideration of any question of law reserved or case stated is imprisoned under another sentence at the time when the appeal, question of law or case stated is finally determined, the first-mentioned sentence or the unexpired portion of it takes effect:
  - (a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or
  - (b) in any other case, on the day on which the appeal, question of law or case stated is finally determined.
- (4) Subsection (3) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

### **63 Calculation of term of imprisonment**

- (1) Despite anything to the contrary in this or any other Act or in a rule of law or practice, a sentence of imprisonment must be calculated exclusive of any time during which service of the sentence is suspended under section 62(2) or (3).
- (3) Where an offender serving a sentence of imprisonment is subject to an order made under section 23 of the *Mental Health Act 1980* as in force before the commencement of the *Mental Health and Related Services Act 1998*, the time that the offender is subject to the order or at the hospital counts in calculating the term to be served.
- (4) Except as expressly provided or expressly ordered, a sentence of imprisonment on conviction on indictment, takes effect from the day the court passes sentence on the offender and a sentence of imprisonment on summary conviction takes effect from the commencement of the offender's custody under the sentence.
- (5) Where an offender has been in custody on account of his or her arrest for an offence and the offender is convicted of that offence

and sentenced to imprisonment it may be ordered that such imprisonment must be regarded as having commenced on the day on which the offender was arrested or on any other day between that day and the day on which the court passes sentence.

**63A Effect on term of imprisonment of absence from custodial correctional facility**

- (1) This section applies in relation to an offender who is sentenced to a term of imprisonment and is absent from a custodial correctional facility for a period (the **absence period**).
- (2) Any part of the absence period during which the offender is in the lawful custody of the Commissioner (as defined in section 9(1) of the *Correctional Services Act*) is the offender's **lawful absence period**.
- (3) Any part of the absence period during which the offender is unlawfully absent (as defined in section 9(2) of the *Correctional Services Act 2014*) is the offender's **unlawful absence period**.
- (4) In calculating the term to be served:
  - (a) the offender's lawful absence period (if any) does count as time served; and
  - (b) the offender's unlawful absence period (if any) does not count as time served.

**64 Further sentence if person on parole**

- (1) This section applies if:
  - (a) a person is sentenced in the Territory to a term of imprisonment, or is committed to prison under section 15(4), for an offence that was committed while a parole order under the *Parole Act 1971* was in force for the person; and
  - (b) the parole order:
    - (i) was revoked by the Chairperson under section 5B(1)(b) of the *Parole Act 1971* before the person was sentenced or committed; or
    - (ii) was cancelled by a court under section 6 of the *Parole Act* before the person was sentenced or committed; or
    - (iii) is taken, under section 5D of the *Parole Act 1971*, to have been revoked because of the sentence or commitment.

- (2) The court that sentences or commits the person must also order the person to be imprisoned for:
- (a) if the parole order was revoked or cancelled as mentioned in subsection (1)(b)(i) or (ii) – the term that the person had not served when released from a custodial correctional facility under the parole order minus the part of the term the person served after the parole order was revoked or cancelled; or
  - (b) otherwise – the term that the person had not served when released from a custodial correctional facility under the parole order.
- (3) The term of imprisonment to be served in accordance with subsection (2) starts at the end of the term of imprisonment to which the person is sentenced or committed for the offence mentioned in subsection (1).
- (4) In this section:

**Chairperson**, see section 3(1) of the *Parole Act 1971*.

**offence** includes an offence against an Act or regulation of the Commonwealth.

#### **Subdivision 4 Indefinite sentences for violent offenders**

##### **65 Indefinite sentence – imposition**

- (1) In this section, **violent offence** means:
- (a) an offence:
    - (i) that, in fact, involves the use, or attempted use, of violence against a person; and
    - (ii) for which an offender may be sentenced to imprisonment for life; or
  - (c) an offence against section 127, 128 or 192 of the Criminal Code.
- (2) The Supreme Court may sentence an offender convicted of a violent offence or violent offences to an indefinite term of imprisonment.
- (3) An order under this section may be made on the Supreme Court's initiative or on an application made by the prosecutor.



- (4) The Supreme Court must not fix a non-parole period in respect of an indefinite sentence.
- (5) The Supreme Court must specify in the order imposing an indefinite sentence a nominal sentence of a period equal to the period that it would have fixed had it not imposed an indefinite sentence.
- (6) Where the Supreme Court imposes more than one indefinite sentence on an offender convicted of more than one violent offence in the same proceeding, the Court must specify one nominal sentence that must apply to all the indefinite sentences.
- (7) Where an offender is serving an indefinite sentence and the offender is convicted of another violent offence, the Supreme Court must, if it imposes an indefinite sentence on the offender for the other violent offence, specify one nominal sentence that applies to all the indefinite sentences.
- (8) The Supreme Court must not impose an indefinite sentence on an offender unless it is satisfied that the offender is a serious danger to the community because of any of the following:
  - (a) the offender's antecedents, character, age, health or mental condition;
  - (b) the severity of the violent offence;
  - (c) any special circumstances.
- (9) In determining whether the offender is a serious danger to the community, the Supreme Court must have regard to the following:
  - (a) whether the nature of the offence is exceptional;
  - (b) the offender's antecedents, age and character;
  - (c) any medical, psychiatric, custodial correctional facility or other relevant report in relation to the offender;
  - (d) the risk of serious physical harm to members of the community if an indefinite sentence were not imposed;
  - (e) the need to protect members of the community from the risk referred to in paragraph (d).
- (10) Subsection (9) does not limit the matters to which the Supreme Court may have regard in determining whether to impose an indefinite sentence.

- (11) For subsection (9), the Supreme Court may order the preparation and provision to the Court of such medical, psychiatric, custodial correctional facility and other reports as the Court considers relevant.

## **66 Prosecution to inform Court**

- (1) Where a prosecutor intends to make an application under section 65(3), the prosecutor must inform the Supreme Court after the offender has been convicted of the offence.
- (2) An application under section 65(3) must be made not later than 14 days after the conviction.
- (3) On being informed under subsection (1), the Supreme Court must remand the offender in custody and must not admit the offender to bail.

## **67 Adjournment**

The Supreme Court may impose an indefinite sentence on the offender only where:

- (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 28 days or such shorter period where the offender and counsel for the prosecution agree, from the day of conviction of the violent offence so that evidence on sentence may be called by the prosecution and the offender.

## **68 Evidence**

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

- (3) In proving the severity of a violent offence, the transcript of the trial and submissions made on sentence are admissible.

**69 Court to give reasons**

- (1) Where the Supreme Court imposes an indefinite sentence it must give reasons for imposing the sentence.
- (2) Reasons referred to in subsection (1) must be given at the time an indefinite sentence is imposed.

**70 Onus of proof**

The prosecution has the onus of proving that an offender is a serious danger to the community.

**71 Standard of proof**

The Supreme Court may make a finding that an offender is a serious danger to the community only if it is satisfied:

- (a) by acceptable and cogent evidence; and
- (b) to a high degree of probability;

that the evidence is of sufficient weight to justify the finding.

**72 Review – periodic**

- (1) Where the Supreme Court imposes an indefinite sentence, it:
- (a) must for the first time review the indefinite sentence not later than 6 months after an offender has served:
- (i) 50% of the offender's nominal sentence; or
- (ii) if the offender's nominal sentence is imprisonment for life, 13 years of the nominal sentence; 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 73, the Director of Public Prosecutions must make the application that is required to be made to cause the reviews referred to in subsection (1) to be carried out.

**73 Review – application by offender**

- (1) An offender imprisoned on an indefinite sentence may apply to the Supreme Court for the indefinite sentence to be reviewed at any time after the Supreme Court makes its first review under

section 72(1)(a), if the Supreme 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) Not later than 14 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 not later than 28 days from the day on which it is made.

#### **74 Discharge of indefinite sentence**

- (1) Unless it is satisfied to a high degree of probability that the offender is still a serious danger to the community when a review is made under section 72 or 73, the Supreme Court must:
  - (a) order that the indefinite sentence is discharged; and
  - (b) sentence the offender under this Act for the violent offence for which the indefinite sentence was imposed.
- (2) Where the Supreme Court does not make an order under subsection (1)(a), the indefinite sentence continues in force.
- (3) A sentence imposed under subsection (1)(b):
  - (a) is taken to have started on the day the indefinite sentence was originally imposed; and
  - (b) takes the place of the indefinite sentence; and
  - (c) must be not less than the nominal sentence.

#### **75 Re-integration programs**

- (1) An offender sentenced under section 74(1)(b) may apply to be released to a prescribed program, of not less than 5 years duration, that is designed to assist the offender to re-integrate into the community.
- (2) Where a term of imprisonment imposed under section 74(1)(b) ends within 5 years after the offender's release to a program mentioned in subsection (1), the term of imprisonment is taken, for subsection (1), to extend until the end of the 5 years.

- (3) An offender may apply, in the prescribed manner, to be discharged from a program to which the offender was released under subsection (1) at any time after the end of the term of imprisonment imposed under section 74(1)(b).

## **76 Proper officer to give report**

- (1) On the hearing of a review under section 72 or 73, the Supreme Court may direct the proper officer of the Supreme Court to give to the Court such reports, as the Court considers appropriate, to assist the Court in conducting the review.
- (2) A person who is requested to give a report referred to in subsection (1) must comply with the request.
- (3) A report referred to in subsection (1) must be relevant to the period from the time the indefinite sentence was imposed on the offender or the last review was made by the Supreme Court.
- (4) A report referred to in subsection (1) is in addition to any other evidence that may be placed before the Supreme Court.
- (5) An offender is entitled to:
  - (a) cross examine a person who made a report referred to in subsection (1) and any other witnesses; and
  - (b) call evidence in rebuttal of a report and any other evidence.

## **77 Appeals**

- (1) An offender may appeal to the Court of Criminal Appeal against the refusal of the Supreme Court to make an order under section 74(1).
- (2) The Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an order of the Supreme Court made under section 74(1).
- (3) On an appeal under this section, the Court of Criminal Appeal may, in the case of an appeal under:
  - (a) subsection (1), confirm the refusal and dismiss the appeal or uphold the appeal and make the order that it thinks ought to have been made; or
  - (b) subsection (2), confirm the order and dismiss the appeal or uphold the appeal and quash the order made.

- (4) An indefinite sentence revives on the quashing of an order under subsection (1) and the original warrant to commit or other authority for the offender's imprisonment is to be regarded as again in force.

## **78 Hearings – offender to be present**

- (1) Subject to this section, the offender must be present during the hearing of:
  - (a) evidence under section 68; and
  - (b) an application made under section 72 or 73.
- (2) The Supreme Court may order that, at the time evidence under section 68 is to be heard, the person in charge of the place where the offender is imprisoned must bring the offender before the Supreme Court.
- (3) On the hearing of an application made under section 72 or 73, the Supreme Court may order the person in charge of the place where the offender is imprisoned to bring the offender before the Supreme Court.
- (4) Where the offender acts in a way that makes the hearing of the evidence or application in the offender's presence impracticable, the Supreme Court may order that:
  - (a) the offender be removed; and
  - (b) the hearing of the application continue in the offender's absence.
- (5) Where the Supreme 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 Supreme 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.

## **Division 6 Aggravated property offences**

### **78A Purpose**

The purpose of this Division is to ensure that community disapproval of persons committing aggravated property offences is adequately reflected in the sentences imposed on those persons.

### **78B Aggravated property offences**

- (1) A court that finds a person guilty of an aggravated property offence must take into account the purpose of this Division before sentencing the person in relation to the offence.
- (2) A court that records a conviction against an offender found guilty of an aggravated property offence must:
  - (a) order the offender to serve a term of imprisonment; or
  - (b) order the offender to participate in an approved project under a community work order;unless there are exceptional circumstances in relation to the offence or the offender.
- (3) A court that orders an offender to serve a term of imprisonment in accordance with subsection (2)(a) may only wholly suspend the sentence on the offender entering into a home detention order.
- (4) Nothing in subsection (2) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order made in accordance with the subsection.

## **Division 6A Mandatory imprisonment for violent offences**

### **Subdivision 1 Preliminary matters**

#### **78C Definitions**

In this Division:

***impose a minimum sentence***, see section 78DH.

***impose a term of actual imprisonment***, see section 78DG.

***level 1 offence***, see section 78CA(5).

***level 2 offence***, see section 78CA(4).

**level 3 offence**, see section 78CA(3).

**level 4 offence**, see section 78CA(2).

**level 5 offence**, see section 78CA(1).

**physical harm**, in relation to a person, means a physical injury that interferes with the person's health.

**violent offence** means:

- (a) an offence against a provision of the Criminal Code listed in Schedule 2; or
- (b) an offence substantially corresponding to an offence mentioned in paragraph (a) against:
  - (i) a law that has been repealed; or
  - (ii) a law of another jurisdiction (including a jurisdiction outside Australia).

#### **78CA Offence levels**

- (1) Each of the following is a **level 5 offence**:
  - (a) an offence against section 181 of the Criminal Code;
  - (b) an offence against section 155A (if the offender assaulted the other person), 186, 188 (if the offence is committed in circumstances mentioned in section 188(2), other than paragraph (k)), 188A, 189A, 190, 191, 193 or 212 of the Criminal Code if:
    - (i) commission of the offence involves the actual or threatened use of an offensive weapon (as defined in section 1 of the Criminal Code); and
    - (ii) the victim suffers physical harm as a result of the offence.
- (2) An offence against section 188A or 189A of the Criminal Code is a **level 4 offence** if:
  - (a) the victim suffers physical harm as a result of the offence; and
  - (b) the offence is not a level 5 offence.



- (3) An offence against section 188 of the Criminal Code is a **level 3 offence** if the offence:
  - (a) is committed in circumstances mentioned in section 188(2), other than paragraph (k); and
  - (b) is not a level 5 offence.
- (4) An offence against section 186 of the Criminal Code is a **level 2 offence** if:
  - (a) the victim suffers physical harm as a result of the offence; and
  - (b) the offence is not a level 5 offence.
- (5) Any other violent offence is a **level 1 offence**.

### **Subdivision 2 Mandatory imprisonment**

#### **78D Level 5 offence – first offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 5 offence; and
  - (b) the offender has not previously been convicted of a violent offence (whenever committed).
- (2) The court must impose a minimum sentence of 3 months actual imprisonment.

#### **78DA Level 5 offence – second or subsequent offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 5 offence; and
  - (b) the offender has previously been convicted of a violent offence (whenever committed).
- (2) The court must impose a minimum sentence of 12 months actual imprisonment.

#### **78DB Level 4 offence – any offence**

- (1) This section applies if a court finds an offender guilty of a level 4 offence (whether or not the offender has previously been convicted of a violent offence).
- (2) The court must impose a minimum sentence of 3 months actual imprisonment.

**78DC Level 3 offence – first offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 3 offence; and
  - (b) the victim suffers physical harm as a result of the offence; and
  - (c) the offender has not previously been convicted of a violent offence (whenever committed).
- (2) The court must impose a term of actual imprisonment.

**78DD Level 3 offence – second or subsequent offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 3 offence; and
  - (b) the offender has previously been convicted of a violent offence (whenever committed).
- (2) The court must impose a minimum sentence of 3 months actual imprisonment.

**78DE Level 2 offence – any offence**

- (1) This section applies if a court finds an offender guilty of a level 2 offence (whether or not the offender has previously been convicted of a violent offence).
- (2) The court must impose a term of actual imprisonment.

**78DF Level 1 offence – second offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 1 offence; and
  - (b) the offender has previously been convicted of a violent offence.
- (2) The court must impose a term of actual imprisonment.

**78DG Imposition of term of actual imprisonment**

If a court is required to ***impose a term of actual imprisonment*** in relation to an offender, the court:

- (a) must record a conviction against the offender; and

- (b) must sentence the offender to a term of imprisonment; and
- (c) may make an order under section 40 or 44 in relation to part, but not the whole of, the term of imprisonment.

**78DH Imposition of minimum sentence**

- (1) If a court is required to ***impose a minimum sentence*** of a specified period of actual imprisonment in relation to an offender, the court:
  - (a) must record a conviction against the offender; and
  - (b) must sentence the offender to a term of imprisonment of not less than the specified period; and
  - (c) cannot make an order under section 40 or 44 in relation to the imprisonment for the specified period.
- (2) However, if the offender is a youth (as defined in section 6 of the *Youth Justice Act 2005*):
  - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
  - (b) the court must instead comply with section 78DG as if that section applied to the case.

**78DI Exceptional circumstances exemption**

- (1) This section applies if:
  - (a) a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence; and
  - (b) the court is satisfied that the circumstances of the case are exceptional.
- (2) If this section applies:
  - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
  - (b) the court must instead comply with section 78DG as if that section applied to the case.

- (3) In deciding whether it is satisfied as mentioned in subsection (1)(b), the court may have regard to:
- (a) any victim impact statement or victim report presented to the court under section 106B; and
  - (b) any other matter the court considers relevant.
- (4) For subsection (1)(b), the following do not constitute exceptional circumstances:
- (a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;
  - (b) that another person:
    - (i) was involved in the commission of the offence; or
    - (ii) coerced the person to commit the offence.

### **Subdivision 3 General matters**

#### **78E Other powers not affected**

This Division does not prevent a court from exercising any of its powers that may be exercised consistently with this Division.

#### **78EA Division does not apply to offence committed before commencement**

This Division does not apply in relation to the sentencing of an offender for an offence committed before the commencement of section 6 of the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*.

### **Division 6B Imprisonment for sexual offences**

#### **78F Imprisonment for sexual offences**

- (1) Where a court finds an offender guilty of a sexual offence, the court must record a conviction and must order that the offender serve:
- (a) a term of actual imprisonment; or
  - (b) a term of imprisonment that is suspended by it partly but not wholly.

- (2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

## **Division 8 Perpetrators' program orders**

### **78H Interpretation**

- (1) In this Division:

**domestic relationship**, see the *Domestic and Family Violence Act 2007*.

**domestic violence order**, see the *Domestic and Family Violence Act 2007*.

**perpetrators' program** means a program in respect of which a declaration under section 78J is in force.

**perpetrators' program order** means an order under section 78K.

- (2) For this Division, an offender is to be taken to have been found guilty of a domestic violence offence:
- (a) if the offender is found guilty of an offence against section 177, 181, 182, 188, 189 or 193 of the Criminal Code in respect of a person who is in a domestic relationship with the offender; or
  - (b) if the offender is found guilty of an offence relating to damaging property owned by or in the custody of a person who is in a domestic relationship with the offender; or
  - (c) if:
    - (i) the offender is found guilty of having behaved in a provocative or offensive manner towards a person who is in a domestic relationship with the offender; and
    - (ii) the behaviour is such as is likely to lead to a breach of the peace including, but not limited to, behaviour that may cause another person to reasonably fear violence or harassment against himself or herself or another person; or
  - (d) if the offender is found guilty of a prescribed offence in respect of a person who is in a domestic relationship with the offender.

**78J Declaration of perpetrators' program**

The Minister may, by *Gazette* notice, declare a program to be a perpetrators' program for this Division.

**78K Making of perpetrators' program orders**

- (1) Where a court finds a person guilty of:
- (a) a domestic violence offence; or
  - (b) an offence under section 120 of the *Domestic and Family Violence Act 2007*;

the court may order the offender to participate in a perpetrators' program on the terms and conditions specified in the order.

- (2) A court may only make an order under subsection (1) if the court receives a report from the Commissioner stating:
- (a) that the offender is a suitable person to participate in the perpetrators' program; and
  - (b) that there is a place available in the perpetrators' program for the offender.
- (3) A court:
- (a) may only make an order under subsection (1) after it has made any other sentencing order that it thinks fit or that it is required to make in relation to the offence; and
  - (b) in making any other sentencing order, must not take into account the fact that it can make an order under subsection (1).
- (4) A court must not make an order under subsection (1) if the offender has been found guilty of the offence of murder.
- (5) A court may make an order under subsection (1) without the offender's consent.

**78L Duties of offender participating in perpetrators' program**

An offender in respect of whom a perpetrators' program order is in force:

- (a) must attend sessions of the perpetrators' program as required by the Commissioner; and

- (b) must be present at each session of the program that the offender is required to attend for the duration of the session; and
- (c) must not, while attending a session of the program or carrying out work for the program, be under the influence of alcohol or other drugs; and
- (d) must, while attending a session of the program and carrying out work for the program, co-operate with the other participants in the program, the Commissioner and the persons authorised by the Commissioner to conduct the program; and
- (e) must not, while attending a session of the program or carrying out work for the program, act in a manner that disrupts the session or work or is threatening or intimidating towards other participants in the program, the Commissioner or the persons authorised by the Commissioner to conduct the program; and
- (f) must, while attending a session of the program and carrying out work for the program, comply with any reasonable direction of the Commissioner or a person authorised by the Commissioner to conduct the program.

**78M Review of perpetrators' program orders**

- (1) A court may, on the application of the Commissioner or the offender in respect of whom a perpetrators' program order is in force:
  - (a) discharge the order; or
  - (b) vary the terms and conditions of the order.
- (2) The terms and conditions of a perpetrators' program order may be varied by the Commissioner if the Commissioner and the offender agree.
- (3) Where the Commissioner makes an application under subsection (1), the court:
  - (a) must summons the offender to appear before it on the hearing of the application; and
  - (b) if the offender does not appear in answer to the summons – may order that a warrant to arrest the offender be issued.
- (4) Where an offender makes an application under subsection (1), the court must cause notice of the application and of the time and place fixed for the hearing to be served on the Commissioner.

- (5) Without limiting the matters that a court may take into consideration in reviewing a perpetrators' program order, the grounds for review include:
- (a) that the offender is in custody; and
  - (b) that the offender's behaviour is such that the carrying out of the order is impracticable; and
  - (c) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with the order.

**78N Breach of perpetrators' program**

- (1) An offender is in breach of a perpetrators' program order if at any time while the order is in force he or she:
- (a) without reasonable excuse – contravenes a term or condition of the order; or
  - (b) without reasonable excuse – fails to carry out his or her obligations under section 78L; or
  - (c) contravenes a domestic violence order in force; or
  - (d) commits a domestic violence offence.
- (2) Where a justice of the peace is satisfied that an offender is in breach of a perpetrators' program order, the justice of the peace may:
- (a) unless the offender is in custody – issue a summons directing the offender to appear before the court on a date and at a time specified in the summons; or
  - (b) where the justice of the peace is satisfied the offender may not appear – issue a warrant for the arrest of the offender.
- (3) Where an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may issue a warrant for the arrest of the offender.
- (4) Where a court is satisfied that the offender is in breach of a perpetrators' program order, the court may confirm, vary or revoke the order if the order is still in force.
- (5) The offender has the onus of proving reasonable excuse in subsection (1).



- (6) An offender who is in breach of a perpetrators' program order commits an offence.

Maximum penalty: 40 penalty units.

- (7) An offence against subsection (6) is a regulatory offence.

## **Part 4 Mental health orders**

### **78P Interpretation**

- (1) In this Part, **offence** includes a aggravated property offence.
- (2) A word or phrase used in this Part that is defined in the *Mental Health and Related Services Act 1998* has the meaning given in that Act.

### **79 Assessment orders**

- (1) Where a person is found guilty of an offence and the court:
- (a) is of the opinion that the person:
- (i) appears to be mentally ill or mentally disturbed; and
- (ii) may benefit from being admitted to and treated in an approved treatment facility; and
- (b) receives written advice from the Chief Health Officer that facilities are available to undertake an assessment of the person's suitability for an order under section 80;

it may make an order that the person be admitted to and detained in an approved treatment facility for a period not exceeding 72 hours as specified in the order to enable an assessment to be made of his or her suitability for an order under section 80.

- (2) At the expiry of an order made under subsection (1), or at any time before then, the court may:
- (a) in accordance with section 80, make an order under that section; or
- (b) pass sentence on the person according to law.
- (3) Where at any time before the expiry of an order made under subsection (1), the court receives written advice from the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must

pass sentence on the person according to law.

## **80 Approved treatment facility orders**

- (1) Where a person is found guilty of an offence and the court:
    - (a) is satisfied by the production of a certificate, in the prescribed form, of the Chief Health Officer or by any other evidence that:
      - (i) the person appears to be mentally ill or mentally disturbed; and
      - (ii) the person may benefit from being treated in an approved treatment facility; and
    - (b) receives written advice from the Chief Health Officer that facilities are available at an approved treatment facility to treat the person and the admission, detention and treatment is appropriate;
- it may:
- (c) order that the person be admitted to and detained at the discretion of the Chief Health Officer in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act 1998*; or
  - (d) order that the person be admitted to and detained in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act 1998* for a period, not exceeding 3 months, as specified in the order; or
  - (e) order that the person be admitted to and detained in an approved treatment facility to enable the treatment of the person under the *Mental Health and Related Services Act 1998* for a period specified in the order.
- (2) The court may, after consulting with the Chief Health Officer or an approved person, impose conditions on an order under subsection (1) to ensure the security and good order of the person.
  - (3) Conditions under subsection (2) may include:
    - (a) whether the person must be detained in a particular part of the approved treatment facility; and
    - (b) whether the person must be kept under guard at the approved treatment facility; and

- (c) whether the person may be granted leave of absence from the approved treatment facility; and
  - (d) whether the person, if the person is a prisoner, is to be subject to the same restrictions as applying to the person if he or she were in a custodial correctional facility.
- (4) An order made under subsection (1) is to be consistent with recommendations made in the report provided to the court under section 79.
- (5) Where an order is made under subsection (1), the person is to be treated under the *Mental Health and Related Services Act 1998* and is entitled to exercise the rights conferred by that Act.
- (6) Unless the court orders otherwise, where:
- (a) an order made under subsection (1)(d) or (e) is in force in respect of a person; and
  - (b) the person is discharged from an approved treatment facility under this Act or the *Mental Health and Related Services Act 1998*;
- the person must be:
- (c) taken to a custodial correctional facility in accordance with section 84; and
  - (d) returned to the court on the first available sitting day.
- (7) A person returned to the court under subsection (6) may be dealt with by the court as if he or she were before the court on being found guilty of the offence in respect of which the order under subsection (1)(d) or (e) was made.
- (8) Where the court makes an order under subsection (1)(c), the person cannot be detained for longer than 3 months but may be discharged by the Chief Health Officer before the 3 months expires.
- (9) A court must not make an order under subsection (1)(e) unless, but for the mental illness or mental disturbance of the person, it would have sentenced the person to a term of imprisonment.
- (10) Where a court makes an order under subsection (1)(e), it:
- (a) must not specify a period of detention in an approved treatment facility that is longer than the period of imprisonment to which the person would have been sentenced had the order not been made; and

- (b) must, subject to Part 3, Division 5, Subdivision 3, fix a non-parole period in accordance with that Subdivision as if the order were a term of imprisonment.
- (11) At any time before the end of the period specified in an order under subsection (1)(e) an authorised psychiatric practitioner nominated by the Chief Health Officer or the Tribunal may in pursuance of the *Mental Health and Related Services Act 1998* order the discharge of the person named in the order from the approved treatment facility and the order has effect as a sentence of imprisonment for the unexpired portion of it and that unexpired portion must be served in a custodial correctional facility unless the person is released on parole.
- (12) A non-parole period fixed under subsection (10) is only relevant in the circumstances referred to in subsection (11).

## **81 Expiration of certain approved treatment facility orders**

- (1) At the expiry of an order made under section 80(1)(d), or at any time before then, the court after considering a report from an authorised psychiatric practitioner nominated by the Chief Health Officer specifying the results of the diagnosis, assessment and treatment of the person may:
- (a) make a further order in respect of the person under section 80(1)(d); or
  - (b) pass sentence, including by way of an order under section 80(1)(e), on the person according to law.
- (2) Where at any time before the expiry of an order made under section 80(1)(d), the court receives advice in writing from an authorised psychiatric practitioner nominated by the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must pass sentence on the person according to law.
- (3) Where a court in passing sentence under subsection (1)(b) imposes a term of imprisonment on the person or makes an order that the person be detained in an approved treatment facility under section 80(1)(e), it must deduct the period of time that the person was detained under the order made under section 80(1)(d).

## **82 Consent to treatment**

Subject to section 83, a court must not make an order under this Part relating to the treatment of a person unless the consent of the person to the treatment is obtained.

**83 Treatment under this Part**

A person is not to receive treatment without his or her consent except under the *Mental Health and Related Services Act 1998* relating to involuntary admission and treatment.

**84 Custody of admitted person**

- (1) A court, when making an order under this Part, may include in the order the name of the person who is to be responsible for taking the offender:
  - (a) to the approved treatment facility named in the order; and
  - (b) from the approved treatment facility to the court in connection with the exercise by the court of its powers under this Part.
- (2) A copy of the order and the advice or report, as the case may be, of the Chief Health Officer is to accompany the offender to the approved treatment facility named in the order.

**85 Variation of approved treatment facility orders**

- (1) A court that has made an order under section 80 may, on application under this subsection, if satisfied that the offender is no longer willing to comply with the order or a condition to which the order is subject, vary or cancel the order and deal with the offender for the offence with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence.
- (2) An application under subsection (1) may be made at any time while the order is in force by:
  - (a) the offender; or
  - (b) a prescribed person or a member of a prescribed class of persons; or
  - (c) the prosecutor; or
  - (d) an authorised psychiatric practitioner nominated by the Chief Health Officer.
- (3) Notice of an application under subsection (1) must be given to:
  - (a) the offender; and

- (b) where the sentencing court was:
  - (i) the Supreme Court – the Director of Public Prosecutions;  
or
  - (ii) the Local Court – the complainant or informant.
- (4) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.

## **86 Breach of approved treatment facility orders**

- (1) Where, it appears to a prescribed person or a member of a prescribed class of persons, that an offender has failed to comply with an order made under section 80, he or she may apply, in the prescribed form, to the court that made the order for the making of an order under this section.
- (2) Notice of an application under subsection (1) must be given to the offender.
- (3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.
- (4) Where, on the hearing of an application under this section, a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with the order, it may:
  - (a) vary the order; or
  - (b) cancel the order and deal with the offender for the offence with respect to which the order was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence.

## **Part 5 Orders in addition to sentence**

### **Division 1 Restitution and compensation orders**

#### **87 Application of this Division**

A court may make an order under this Division whether or not it records a conviction and where the offender is acquitted on the ground of voluntary intoxication in the circumstances set out in section 383 of the Criminal Code.

**88 Orders for restitution and compensation**

A court may order an offender do any one or more of the following:

- (a) pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;
- (b) make restitution of property taken in the course of or in connection with the commission of an offence;
- (c) pay compensation for the loss or destruction or damage to property that occurs in the course of or in connection with the commission of an offence.

**89 Reimbursement of costs of restoring property etc.**

- (1) A court may order an offender to pay the reasonable costs incurred by the Territory arising out of the commission of the offence including the costs of removing, disposing, dispersing, destroying, rehabilitating and cleaning up a thing used in or associated with the commission of the offence.
- (2) For subsection (1), a thing includes real property.

**90 Making of order**

- (1) An order under this Division is in addition to any other order to which an offender is liable.
- (2) Where an offence is taken into account under section 107 in imposing sentence on an offender for another offence, the court may make an order under this Division.
- (4) A court may make an order for restitution under this Division only where it is satisfied that there has been property loss and that the person claiming the loss is entitled to recover the property.
- (5) A court must not make an order under this Division where the person whose property was taken, lost, destroyed or damaged does not consent to the order being made.

**91 Application for order**

- (1) An order under this Division may be made on the court's own motion or on the application of the prosecutor.
- (2) Nothing in subsection (1) requires a prosecutor to make an application on behalf of a person.

## **92 Form of order**

An order under this Division may specify:

- (a) the amount to be paid by way of restitution, compensation or costs; and
- (b) the person to whom restitution is to be made or compensation is, or costs are, to be paid; and
- (c) the time within which restitution is to be made; and
- (d) the way in which restitution is to be made, compensation is, or costs are, to be paid.

## **93 Imprisonment for breach of order**

- (1) A court which makes an order under this Division may order that the offender be imprisoned if the offender fails to comply with the order.
- (2) A term of imprisonment ordered to be served under subsection (1) must not be longer than 12 months.
- (3) In making an order under subsection (1), a court may give such directions as it thinks fit for the enforcement of the order including a direction that the offender appear before the court:
  - (a) at a time and place stated in the direction; or
  - (b) when called on by notice;to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.
- (4) Where an offender fails to appear as required by a direction under subsection (3), the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause in accordance with the direction.
- (5) In addition to subsection (4), where it appears to a court that there are reasonable grounds for believing that an offender has failed to comply with an order made under this Division, the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.



## **94 Extension of time of order**

- (1) A court which makes an order under this Division for non-monetary restitution of property may extend the time stated in the order within which the restitution is to be made.

*Note for subsection (1)*

*An extension of time to pay, and enforcement of payment of, an order under this Division for the payment of money by way of restitution or compensation is dealt with by the Fines Recovery Unit under the Fines and Penalties (Recovery) Act 2001.*

- (2) A court which grants an extension of time under subsection (1) may vary the extended time.

## **97 Orders not to affect other rights**

Nothing in this Division affects the right of a person to bring and maintain a civil action except that anything done or paid under an order made under this Division must be taken into account in any award of damages.

## **Division 1AA Certificates for victims of identity crime**

### **97AA Definitions**

In this Division:

***identification information***, see section 228A of the Criminal Code.

***victim***, see section 228A of the Criminal Code.

### **97AB Court may issue certificate to victim**

- (1) The court may issue a certificate to the victim if:
- (a) the court is sentencing a person for an offence against section 228C, 228D or 228E of the Criminal Code; and
  - (b) the victim of the offence has not already obtained a certificate under section 28C of the *Local Court (Civil Procedure) Act 1989*; and
  - (c) the court is satisfied on the balance of probabilities that a certificate under this Division may assist a victim to deal with any problems the commission of the offence has caused in relation to the victim's personal or business affairs.
- (2) The court may issue a certificate on its own initiative or on application by the prosecution.

### **97AC Content of certificate**

- (1) The certificate must:
  - (a) identify the victim of the offence; and
  - (b) explain how identification information relating to the victim was used to commit the offence; and
  - (c) contain any other information the court considers appropriate in order to assist the victim to deal with any problems the commission of the offence has caused in relation to the victim's personal or business affairs.
- (2) Despite subsection (1), a certificate must not identify the person who committed the offence to which it relates.

## **Division 1A Non-association and place restriction orders**

### **97A When court may make order**

- (1) This section applies when a court sentences an offender for an offence (a **significant offence**) the maximum penalty for which is imprisonment for 12 months or more.
- (2) The court may make one or more of the following orders if the court considers doing so may prevent the offender from committing another significant offence:
  - (a) a non-association order prohibiting the offender from one or both of the following as specified in the order:
    - (i) being in company with one or more specified persons during a specified period;
    - (ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons during a specified period;
  - (b) a place restriction order prohibiting the offender, except as provided in the order, from visiting one or more specified places (including a district or specific location) during a specified period.
- (3) The period specified under subsection (2)(a) or (b):
  - (a) is not limited by any term of imprisonment imposed on the offender; but

- (b) must not exceed 12 months.
- (4) An order imposed on the offender under subsection (1):
  - (a) is in addition to, and not instead of, any other penalty for the offence; but
  - (b) must not be made if the court makes one or more orders under this Act in relation to the offence without recording a conviction for the offence.
- (5) This section does not limit the court's power to make another order or direction in relation to the offence under this or another Act.
- (6) Without limiting subsection (5), this section does not affect the court's power to impose a condition under section 13(1)(c) or 40(2).

**97B Explanation of order**

- (1) A court that has imposed a non-association order or place restriction order on an offender must ensure all reasonable steps are taken to explain to the offender (in language the offender can readily understand):
  - (a) the offender's obligations under the order; and
  - (b) the consequences of not complying with the order.
- (2) The order is not invalidated by a failure to comply with subsection (1).

**97C Commencement of order**

A non-association order or place restriction order commences on the date it is made or another date specified in the order.

**97D Contravention of order**

- (1) A person is guilty of an offence if the person:
  - (a) is subject to a non-association order or place restriction order; and
  - (b) contravenes the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person contravened the order in compliance with another court order.

- (3) It is a defence for an offence against subsection (1) if the defendant proves that:
- (a) the defendant has a reasonable excuse; or
  - (b) for a non-association order – the defendant, having unintentionally associated with a person specified in the order under section 97A(2)(a), terminated the association immediately.
- (4) In subsection (3), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the order.

**97E Variation of order on application**

- (1) A person who is subject to a non-association order or place restriction order may apply for a variation or revocation of the order.
- (2) The application must be made to the court that made the order.
- (3) The application must be accompanied by a copy of the order and each previous variation made to the order.
- (4) The application may be made only by leave of the court.
- (5) The leave may be granted only if the court is satisfied it should grant the leave in the interest of justice, having regard to changes in the applicant's circumstances since the order was made or last varied.
- (6) The court may refuse to consider granting the leave if it is satisfied the application is frivolous or vexatious.
- (7) If the leave is granted:
- (a) the court must give notice of the application to each party to the proceedings in which the order was made; and
  - (b) the party is entitled to be heard in relation to the application.
- (8) The court must deal with the application by:
- (a) varying or revoking the order as the court considers appropriate in the circumstances; or
  - (b) dismissing the application.

**97F Variation of order following conviction**

- (1) This section applies to a person who:
- (a) is subject to a non-association order or place restriction order in relation to an offence; and
  - (b) is subsequently sentenced by a court for another offence.
- (2) The court may vary or revoke the order when sentencing the person for the other offence.

**97G Order may not be extended by variation**

The power to vary an order under section 97E or 97F does not include a power to extend the period specified in the order under section 97A(2)(a) or (b).

**97H Certain information not to be published or broadcast**

- (1) A person is guilty of an offence if the person publishes or broadcasts, or otherwise discloses to someone:
- (a) the fact that a named person is specified in a non-association order under section 97A(2)(a) (whether the order is still in force); or
  - (b) any information calculated to identify such a person.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to:
- (a) the publication or broadcasting of a report that is authorised by a court; and
  - (b) the disclosure of information to any of the following persons:
    - (i) the person subject to the order (the **offender**);
    - (ii) a person involved in administering the order or other penalty imposed on the offender;
    - (iii) a person specified in the order under section 97A(2)(a);
    - (iv) a person involved in proceedings for an alleged breach of the order;
    - (v) a person to whom the information is required to be disclosed under a law in force in the Territory;

- (vi) a police officer;
- (vii) a person authorised by a court to receive the information.

## **Division 2 Other orders**

### **98 Cancellation of driver's licence**

Where a person found guilty or convicted of an offence used a motor vehicle when committing or to facilitate the commission of the offence, the court may, if the offender:

- (a) holds a driver's licence, cancel the licence and, if the court thinks fit, disqualify the offender from obtaining one for such time as it thinks fit; or
- (b) does not hold a driver's licence, disqualify the offender from obtaining one for such time as it thinks fit.

### **99 Passport orders**

- (1) Where an offender is convicted of an offence, the court may, in addition to any other order it may make under this Act, order that the offender do any of the following:
  - (a) remain in Australia or the Territory;
  - (b) not apply for or obtain an Australian passport;
  - (c) surrender every passport, whether Australian or foreign, held by the offender.
- (2) An offender who contravenes an order made under subsection (1) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

- (3) Where a court makes an order under subsection (1)(c):
  - (a) the passport or passports must be given to the proper officer of the court; and
  - (b) the proper officer of the court must keep the passport or passports in such custody as he or she thinks fit for such period, or on the occurrence of any contingency, as is specified by the court; and

- (c) the passport or passports must, in accordance with the terms specified under paragraph (b), be returned to the offender unless the court orders otherwise.
- (4) Where a court makes an order under subsection (1)(b) or (c), the proper officer of the court must, as soon as is practicable after the order is made, give a copy of it to the Minister administering the *Australian Passports Act 2005* (Cth).
- (5) An order under subsection (1) remains 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).
- (6) Where an order under subsection (1) requires the offender to surrender a passport:
  - (a) the passport must be given to the proper officer of the court; and
  - (b) the proper officer must keep the passport in such custody as the proper officer considers appropriate until:
    - (i) the passport is returned under subsection (7); or
    - (ii) the authority that issued the passport requests its return;whichever happens first.
- (7) Where a passport is still in the custody of the proper officer of the court when the order under subsection (1) finishes, the proper officer must return it to the offender.

#### **99A Forfeiture of property orders**

Where a court imposes a term of imprisonment or a fine on an offender, the court may also order that property owned by the offender and used in the commission of the offence for which the offender is being sentenced is forfeited to the Territory.

## **Part 6 Making of sentencing and other orders**

### **Division 1 Conditions, requirements and signing of orders**

#### **100 Condition of order to undertake treatment program**

Where a court may attach a condition to an order or require an offender to give an undertaking, the court may, as a condition of the order or as part of the undertaking, require an offender to undertake a prescribed treatment program.

**101 Consent of offender to conditional order**

A court must not make an order which has attached to it conditions or which requires an offender to give an undertaking unless the conditions are explained to the offender in accordance with section 102 and the offender consents to:

- (a) the order being made and to the conditions being attached; or
- (b) the conditions being included in the undertaking.

**102 Explanation of orders**

- (1) Where a court proposes to make an order which has attached to it conditions to which an offender is required to consent or which requires an offender to give an undertaking, it must, before making the order, explain or cause to be explained to the offender, in language likely to be readily understood by the offender:
  - (a) the purpose and effect of the proposed order; and
  - (b) the consequences that may follow if the offender fails without reasonable excuse to comply with the proposed order; and
  - (c) where the proposed order requires the offender to undertake a program referred to in section 100, the benefits and detriments of the program, including the medical risks and benefits of any drugs used in the program; and
  - (d) the manner in which the proposed order may be varied.
- (2) Non-compliance with subsection (1) does not affect the validity of the order.

**102A Signing of orders**

- (1) This section applies to the following orders:
  - (a) an order made under section 11, 13, 40 or 78K;
  - (b) a community work order;
  - (c) a community based order;
  - (d) a home detention order;
  - (e) a community custody order;
  - (f) an order varying or confirming an order mentioned in paragraphs (a) to (e).



- (2) On the making of the order, the offender must not leave the precincts of the court without signing the order.
- (3) A police officer may, without a warrant, arrest an offender who the police officer suspects, on reasonable grounds, has failed to comply with subsection (2).

## **Division 2 Information and reports before passing sentence**

### **Subdivision 1 Information, reports etc.**

#### **103 Assessment of offender before certain orders made**

- (1) A court must, before imposing a sentence on an offender that requires the offender to be under the supervision of a probation and parole officer or community youth justice officer, have regard to a report of the Commissioner or CEO (Youth Justice) as to the suitability of the offender to be under supervision.
- (2) A report under subsection (1) may be in writing or given orally to the court.

#### **104 Information before passing sentence or making order**

- (1) A court may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence.
- (2) A court may, before making an order for restitution or compensation under Part 5, Division 1, receive such information as it thinks fit to enable it to make the proper order.

#### **104A Special provisions regarding cultural information**

- (1) This section applies if, as part of the sentencing process, a party to proceedings seeks to present information to a court about:
  - (a) an aspect of any form of customary law (including any punishment or restitution under that law); or
  - (b) a cultural practice.
- (2) Despite section 104, before agreeing to receive the information the court must have regard to:
  - (a) whether the party intends to present the information in the form of evidence on oath, an affidavit or a statutory declaration; and

- (b) whether each other party to the proceedings:
  - (i) has been given notice that the information will be presented to the court; and
  - (ii) has had a reasonable opportunity to respond to the information.

**105 Court may order pre-sentence report**

A court may, before passing sentence on an offender, order a pre-sentence report in respect of the offender and adjourn the proceedings to enable the report to be prepared and may admit the offender to bail or remand the offender in custody.

**106 Contents of pre-sentence report**

- (1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her:
  - (a) the age of the offender;
  - (b) the social history and background of the offender;
  - (c) the medical and psychiatric history of the offender;
  - (d) the offender's educational background;
  - (e) the offender's employment history;
  - (f) the circumstances of other offences of which the offender has been found guilty and which are known to the court;
  - (g) the extent to which the offender is complying with a sentence currently imposed on the offender;
  - (h) the offender's financial circumstances;
  - (j) any special needs of the offender;
  - (k) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which the offender may benefit.
- (2) The author of a pre-sentence report shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

## **Subdivision 2 Victim impact statements and victim reports**

### **106A Definitions**

In this Subdivision:

***harm*** includes:

- (a) physical injury; and
- (b) psychological or emotional suffering, including grief; and
- (ba) contraction or fear of contraction of a sexually transmissible medical condition; and
- (c) pregnancy; and
- (d) economic loss.

***relative*** includes a relative according to Aboriginal tradition or contemporary social practice, a spouse and a de facto partner.

***victim*** means:

- (a) a person who suffers harm arising from an offence; or
- (b) where the person mentioned in paragraph (a) dies as a result of the commission of the offence, a person who was a relative of, or who was financially or psychologically dependent on, the person.

***victim impact statement*** means an oral or written statement prepared for section 106B(1) containing details of the harm suffered by a victim of an offence arising from the offence.

***victim report*** means an oral or written statement, prepared by the prosecutor for section 106B(2), containing details of the harm suffered by a victim of an offence arising from the offence.

### **106B Victim impact statements and victim reports**

- (1) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim impact statement where:
  - (a) the victim consents to its presentation; or
  - (b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – the report has been prepared by a person who, in the opinion of the court, has a sufficiently close relationship with the victim.

- (2) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim report in relation to each victim of the offence where:
- (a) the victim has not consented to the presentation to the court of a victim impact statement in relation to him or her but has been informed of the contents of the victim report and does not object to its presentation; or
  - (aa) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the victim has been informed of the contents of the victim report and does not object to its presentation; or
  - (b) the victim cannot, after reasonable attempts have been made by the prosecutor, be located;

and there are readily ascertainable details of the harm suffered by the victim arising from the offence that are not already before the court as evidence or as part of a pre-sentence report prepared under section 105 in relation to the offender.

- (3) With the permission of the court, a person other than the prosecutor may present a victim impact statement.
- (4) Subject to subsections (7) and (8), the court must consider each victim impact statement and each victim report, if any, in relation to an offence before determining the sentence to be imposed in relation to the offence.
- (5) A victim impact statement or a victim report may contain details of the harm caused to the victim of the offence to which the statement or report relates arising from another offence:
- (a) for which the offender has already been sentenced, or will be sentenced in the proceedings then before the court; or
  - (b) which, under section 107, has already been taken into account in a sentence or which may be taken into account under that section in the proceedings then before the court.
- (5A) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the offence referred to in the statement or the report.
- (6) A court must not draw an inference in favour of an offender or against a victim because a victim impact statement or victim report is not presented to the court.

- (7) A court must not take into account a written victim impact statement unless it has been signed.
- (8) A court must not take into account a victim impact statement or a victim report, where the statement or report:
  - (a) is in writing, unless a copy of the statement or report is provided to the offender; or
  - (b) is to be presented to the court orally, unless a written or oral summary of the contents of the statement or report is provided to the offender.
- (9) A legal practitioner representing the offender or, with the leave of the court, the offender:
  - (a) where a victim impact statement is in writing, may cross-examine the person who signed the statement; or
  - (b) where a victim impact statement is presented to the court orally, may cross-examine the person, not being the prosecutor, presenting the statement;about its contents.

### **Division 3 Taking alleged offences into account**

#### **107 Court may take alleged offences into account**

- (1) This section applies if:
  - (a) a court finds a person (the **offender**) guilty of an offence, not being or including murder; and
  - (b) there has been filed in court a document, in the prescribed form, that:
    - (i) lists other offences (the **listed offences**), whether indictable or summary, not being or including murder, that it is alleged the offender has committed (whether or not the offender has been charged) but in respect of which the offender has not been found guilty; and
    - (ii) is signed by the offender and either a police officer or the prosecutor; and
  - (c) a copy of the document has been given to the offender.

- (2) If the court considers it appropriate to do so and the prosecution consents, the court may ask the offender whether the offender:
  - (a) admits committing any of the listed offences; and
  - (b) wishes those listed offences to be taken into account by the court when passing sentence for the offence mentioned in subsection (1)(a).
- (3) If the offender admits committing any of the listed offences and wishes those listed offences to be taken into account, the court may do so if it considers it appropriate, but must not impose a sentence in respect of the offence mentioned in subsection (1)(a) in excess of the maximum penalty for that offence.
- (3A) Despite subsection (3), the Local Court may not take into account a listed offence unless it is:
  - (a) a summary offence; or
  - (b) an indictable offence of a type that is capable of being heard and determined in a summary manner.
- (4) If a listed offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 5 if the offender had been convicted before the court of the listed offence but must not otherwise impose any separate punishment for the listed offence.
- (5) An order made under subsection (4) in respect of a listed offence may be appealed against as if it has been made on the conviction of the offender for the listed offence.
- (7) The court must certify on the document filed in court any listed offences that have been so taken into account and the convictions in respect of which this has been done.
- (8) Proceedings must not be taken or continued in respect of any listed offence certified under subsection (7) unless each conviction in respect of which it has been taken into account has been quashed or set aside.
- (9) An admission made under and for this section is not admissible in evidence in any proceeding taken or continued in respect of the listed offence to which the admission relates.
- (10) A person must not, for any purpose, be taken to have been convicted of a listed offence taken into account under and in accordance with this section only because it was so taken into account.

- (11) Whenever, in or in relation to any criminal proceeding, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a person was convicted of an offence, reference may likewise be made to, or evidence may likewise be given of, the taking into account under this section of any listed offence when sentence was imposed in respect of that conviction.
- (12) The fact that a listed offence was taken into account under this section may be proved in the same manner as the conviction or convictions in respect of which it was taken into account may be proved.

#### **Division 4 Passing of sentence**

##### **108 Time and place of sentence**

- (1) The sentence for an offence may be imposed in open court at any time and place in the Territory.
- (2) A court at a trial of an offence or receiving a plea of guilty to an offence may, when it thinks it desirable in the interests of justice so to do and from time to time if necessary:
- (a) fix, or indicate by reference to a fact or event, the time; and
  - (b) fix the place;
- at which the sentence is to be imposed.
- (3) A court which is to impose sentence for an offence may:
- (a) admit the person to bail; or
  - (b) make an order or orders for the removal in custody of the person from one place in the Territory to another.
- (4) A person to be sentenced for an offence is taken, while in custody pending sentencing, to be in the lawful custody of the Commissioner, the CEO (Youth Justice) or the Commissioner of Police (according to whether the person is in a custodial correctional facility, in a detention centre as defined in section 5(1) of the *Youth Justice Act 2005* or in police custody).
- (5) This section does not take away from any power of a court under statute or at common law.

**108A Stating and recording requirement for sentence after guilty plea**

- (1) This section applies if:
  - (a) an offender has pleaded guilty to and been found guilty of an offence in the Local Court; and
  - (b) in sentencing the offender the Court has:
    - (i) had regard to the plea of guilty and the stage in the proceedings at which the offender pleaded guilty; and
    - (ii) imposed a sentence that is less severe than the sentence that the Court would have imposed but for the plea of guilty.
- (2) In imposing the sentence, the person constituting the Court must also state and record the sentence that would have been imposed but for the plea of guilty.
- (3) However, it is not an error of law if the person does not state and record the sentence mentioned in subsection (2).

**110 Sentences not invalidated by failure to comply with procedural requirements**

- (1) The failure of a court to give reasons or to comply with any other procedural requirement contained in this Act in sentencing an offender does not invalidate any sentence imposed by it.
- (2) Nothing in subsection (1) prevents a court on an appeal against sentence from reviewing a sentence imposed by a court in circumstances where there has been a failure that is referred to in that subsection.

**Part 7 Correction of sentences****111 Correction of sentences by Supreme Court**

- (1) Where:
  - (a) a person has been sentenced (whether at first instance or on appeal) by a court (including the Supreme Court) for an offence; or
  - (b) the sentencing court was the Local Court, application is made to the Supreme Court for relief or remedy in the nature of certiorari to remove the proceeding into the Supreme Court;



and the Supreme Court determines that the sentence imposed was beyond the power of the sentencing court or its own power, if it was the sentencing court, it may, instead of quashing the sentence, amend the sentence by substituting for the sentence imposed a sentence which the sentencing court had power to impose.

- (2) Unless the Supreme Court otherwise directs, a sentence of imprisonment imposed by it under subsection (1) commences on the day on which the sentence imposed in the earlier proceeding purported to take effect but in calculating the term to be served under the sentence any time during which the offender was at large (whether on bail or otherwise) must be disregarded.
- (3) Subsections (1) and (2) extend and apply, with necessary changes, to any order made on, but not forming part of, the sentence of an offender as if reference in those subsections to a sentence included a reference to such an order.

#### **112 Court may reopen proceeding to correct sentencing errors**

- (1) Where a court has in, or in connection with, criminal proceedings (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;

the court (whether or not differently constituted) may reopen the proceedings unless it considers the matter should more appropriately be dealt with by a proceeding on appeal.
- (2) Where a court reopens proceedings, it:
  - (a) must give the parties an opportunity to be heard; and
  - (b) may impose a sentence that is in accordance with the law; and
  - (c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).
- (3) A court may reopen proceedings:
  - (a) on its own initiative at any time; or

- (b) on the application of a party to the proceedings made not later than:
  - (i) 28 days after the day the sentence was imposed; or
  - (ii) such further time as the court allows.
- (4) An application for leave to make an application under subsection (3)(b)(ii) may be made at any time.
- (5) Subject to subsection (6), this section does not affect any right of appeal.
- (6) For the purposes of an appeal under any Act against a sentence imposed under subsection (3)(b), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (2)(b).
- (7) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

## **Part 8 Appeals against sentence imposed on variation or breach**

### **113 Appeal against sentence imposed on variation or breach**

A person sentenced by a court in a proceeding for variation or breach of a sentencing order has a right of appeal against sentence as if:

- (a) the court had immediately before imposing it found the person guilty, or convicted the person, of the offence in respect of which the sentencing order was originally made; and
- (b) the sentence was a sentence imposed on that finding of guilt or conviction.

## **Part 9 Remission of sentence**

### **114 Remission of sentence by Administrator**

- (1) In this section, **remission order** means an order made under subsection (2).
- (2) The Administrator may, by writing under his or her hand, order the remission, with or without conditions, of a sentence of imprisonment under, or in respect of an offence against, a law of the Territory.

- (3) The Administrator may, by writing under his or her hand:
- (a) vary or revoke the conditions to which a remission order is subject; or
  - (b) impose additional conditions on a remission order; or
  - (c) revoke a remission order.
- (4) Where a remission order has been:
- (a) revoked; or
  - (b) contravened or a condition to which the remission order is subject has not been complied with;
- a police officer may, without warrant, arrest the person released under the remission order.
- (5) Where information is laid before a justice of the peace alleging that a remission order has been:
- (a) revoked; or
  - (b) contravened or a condition to which the remission order is subject has not been complied with;
- the justice of the peace may issue a warrant for the arrest of the person released under the remission order.
- (6) A justice of the peace must not issue a warrant under subsection (5) unless:
- (a) the informant and any other person furnishing information required by the justice of the peace concerning the issue of the warrant furnishes the information on oath; and
  - (b) the justice of the peace is satisfied that there are reasonable grounds for issuing the warrant.
- (7) Where a person has been arrested under subsection (4)(a) or (5)(a), the person must, as soon as practicable, be brought before the Local Court and the Local Court must, if satisfied that the remission order has been revoked, issue a warrant for the commitment of the person into the custody of the Commissioner to serve the part of the term of imprisonment that the person had not served at the time the remission order was made.

- (8) Where a person has been arrested in accordance with subsection (4)(b) or (5)(b), the person must, as soon as practicable, be brought before the Local Court and, if the Local Court is satisfied that the person has, without lawful excuse, contravened a condition of the remission order, the Local Court may revoke the remission order.
- (9) A person brought before the Local Court in accordance with subsection (7) or (8) must, unless the Local Court determines otherwise, be kept in custody until the Local Court has determined the matter.
- (10) Where, under subsection (8), a remission order is revoked in respect of a person who was serving a term of imprisonment at the time that the remission order was made, the Local Court may issue a warrant for the commitment of the person into the custody of the Commissioner to serve the part of the term of imprisonment that the person had not served at the time that the remission order was made.
- (11) Where the Local Court acting in accordance with subsection (8) revokes a remission order, the person in respect of whom the remission order was made may appeal to the Supreme Court against the revocation, and the Supreme Court must, if it is:
  - (a) satisfied that the grounds under which the remission order was revoked have been established – confirm the revocation; or
  - (b) not so satisfied – order that the revocation cease to have effect.
- (12) Part VI, Division 2 of the *Local Court (Criminal Procedure) Act 1928* applies to and in relation to an appeal made under subsection (11).

## **Part 10                      Prerogative of mercy**

### **115                      Release by Administrator in exercise of prerogative of mercy**

- (1) The Administrator may, in any case in which he or she is authorised on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment, do so by directing that the person be released, even before the end of a non-parole period:
  - (a) on giving an undertaking; or
  - (b) on parole under and subject to the *Parole Act 1971*.

- (2) An undertaking under subsection (1)(a):
  - (a) must have as a condition that the person be of good behaviour; and
  - (b) may have as a condition that the person be under the supervision of an employee employed in the Agency responsible under the Minister for the administration of the *Correctional Services Act 2014*; and
  - (c) may have any other condition that the Administrator considers to be in the interests of the person or the community.
- (3) The period of an undertaking under subsection (1)(a) is the period fixed by the Administrator, which must be not less than the unexpired term of the original sentence.
- (4) A person who gives an undertaking under subsection (1)(a) must be released from custody.
- (4A) A police officer who suspects, on reasonable grounds, that a person who gave an undertaking under subsection (1)(a) has breached a condition of the undertaking may, without warrant, arrest the person.
- (4B) For the application of sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition of an undertaking given under subsection (1)(a) is to be taken to be an offence.
- (5) Where, at any time during the period of an undertaking under subsection (1)(a), the Local Court is satisfied by evidence on oath or by affidavit or by the admission of the person who gave the undertaking that that person has failed without reasonable excuse to comply with any condition of the undertaking it may impose a fine not exceeding \$1,000 and direct that the person be committed into the custody of the Commissioner for the unexpired term of the original sentence.
- (6) Except with the consent of the person who gave the undertaking, the Local Court must not deal with the person under subsection (5) unless the person has been served with a notice to attend on the hearing of the proceeding.
- (7) The Local Court may order that a warrant to arrest be issued against a person who gave an undertaking if he or she does not attend before the Court on the hearing of the proceeding under subsection (5).

- (8) A registrar of the Local Court may sign any warrant that may be necessary for subsection (5) and the period of imprisonment after committal begins on the day of the committal, if the person is then before the Court, and if not, on the day of his or her subsequent arrest.
- (9) A person who gives an undertaking under subsection (1)(a) is discharged from the original sentence at the end of the period of the undertaking if an order has not been made under subsection (5).
- (10) If the Local Court recommits a person into the custody of the Commissioner under this section, the *Correctional Services Act 2014* applies as if the person had just been convicted by the Court and sentenced to be imprisoned for a term equal to the unexpired term of the original sentence.
- (11) A fine imposed under this section is taken for all purposes to be a fine payable on a conviction of an offence.

**116 Penalties for offences may be remitted**

The Administrator may:

- (a) remit in whole or in part any sum of money which is imposed under any Act as a penalty or forfeiture; and
- (b) order the discharge from the custody of the Commissioner of any person who is imprisoned for non-payment of any sum of money so imposed;

although the sum is in whole or in part payable to a party other than the Crown.

**Part 11 Miscellaneous matters**

**117 Offender to be present when sentence imposed**

- (1) A court must not make an order under Part 3 unless the offender in respect of whom the order is to be made is before the court.
- (2) Subsection (1) does not apply to:
  - (a) an order imposing a fine under section 16; or
  - (b) an order made on the hearing of an appeal.

**120 Lesser sentence may be imposed**

Subject to anything to the contrary in this or any other Act, a court may, as it thinks fit in sentencing an offender, impose a shorter term of imprisonment or a lesser amount as a fine than that prescribed.

**121 Effect of alterations in penalties**

- (1) Where an Act, including this Act, or an instrument of a legislative or administrative character increases the penalty or the maximum or minimum penalty for an offence, the increase applies only to an offence committed after the commencement of the provision effecting the increase.
- (2) Where an Act, including this Act, or an instrument of a legislative or administrative character reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to an offence committed before the commencement of the provision effecting the reduction for which no penalty had been imposed at that commencement.

**122 Maximum penalty for indictable offence dealt with summarily**

- (1) If the Local Court hears and determines a charge of an indictable offence summarily, the court must not impose on the person found guilty of the offence a sentence of imprisonment of more than 5 years or a fine greater than 500 penalty units.
- (2) Subsection (1) does not have the effect of increasing the maximum penalty for the indictable offence.

**123 Old offences relevant in determining previous convictions**

- (1) A finding of guilt or conviction of an old offence counts as a finding of guilt or conviction of a new offence for the purpose of determining whether or not a person has previously been found guilty or convicted of the new offence.
- (2) For this section:
  - (a) an old offence is an offence under a repealed statutory provision which is constituted by the same acts, omissions, matters, circumstances or things as an offence (the new offence) under an Act or an instrument of a legislative or administrative character which substantially re-enacts (whether in the same language or not) the repealed statutory provision; and

- (b) a repealed statutory provision is an Act or a provision of an Act that has been repealed or an instrument of a legislative or administrative character or a provision of such an instrument that has been repealed or revoked.
- (3) This section applies even where the new offence differs from the old offence in:
- (a) its penalty; or
  - (b) the procedure applicable to its prosecution; or
  - (c) its classification; or
  - (d) its name;

unless a contrary intention appears in the Act or the instrument of a legislative or administrative character that creates the new offence.

### **123A Late guilty plea not relevant for sentencing for offence**

- (1) This section applies if:
- (a) an offender is charged with an offence in the Local Court; and
  - (b) the offence is listed for a trial in the Local Court; and
  - (c) a plea of guilty is received from the offender within 7 days before the date appointed for the trial.
- (2) Despite section 5(2)(j), the court, in sentencing the offender, must not:
- (a) have regard to the plea of guilty and the stage in the proceedings at which the offender pleaded guilty; and
  - (b) impose a sentence that is less severe than the sentence that the Local Court would have imposed but for the plea of guilty.
- (3) Subsection (2) does not apply if the court is satisfied that the offender could not have pleaded guilty any earlier.

### **124 Abolition of common law bonds**

A court does not have jurisdiction to release an offender on a recognisance or bond to be of good behaviour and to appear for sentence when called on.



**126            Facilitation of proof**

Where an offender is before a court to be dealt with for a breach of a sentencing order made under this Act:

- (a) an averment of the prosecutor that the offender is the person in respect of whom the order was made is evidence of the matter so averred; and
- (b) on the averring of the fact referred to in paragraph (a), the offender may be asked by the court whether the person was convicted of the offence or offences in respect of which the order was made and, if the person admits the conviction or convictions, no further proof of the conviction or convictions is necessary.

**128            Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The Regulations may:
  - (a) be of general or limited application; or
  - (b) confer a discretionary authority or impose a duty on a specified person or a specified class of person; or
  - (c) prescribe the fees payable in respect of any matter under this Act; or
  - (d) prescribe penalties, not exceeding 100 penalty units, for offences against the Regulations.

**Part 12            Repeal and transitional matters**

**Division 1            Repeal of Acts**

**129            Repeal**

The Acts and Ordinances specified in Schedule 4 are repealed.

**Division 2            Transitional matters for Sentencing Act 1995**

**130            Savings and transitional**

- (1) This Act applies to a sentence imposed after the commencement of this section, irrespective of when the offence was committed.

- (2) Where, immediately before the commencement of this section, an order under the *Criminal Law (Conditional Release of Offenders) Act 1971* or a sentence was in force in respect of a person, the person continues to be subject to the requirements of the order or sentence in all respects as if this Act has not commenced but the order or sentence may be cancelled or varied and any failure to comply with it may be dealt with under this Act (whether or not, in the case of an order, the order is still in force) as if it were made or imposed after the commencement of this section.
- (3) Where, immediately before the commencement of this section, a declaration under section 397 or a direction under section 401 of the Criminal Code detaining a person at the Administrator's pleasure was in force, the person continues to be subject to the requirements of the declaration or direction in all respects, and the declaration or direction shall be subject to, and the person may be dealt with under, the Criminal Code or section 8A of the *Criminal Law (Conditional Release of Offenders) Act 1971* as in force before that commencement, as if this Act had not commenced.
- (4) The Regulations may contain provisions of a savings or transitional nature consequent on the commencement of the various provisions of this Act.
- (5) For the purposes of this section, an order made or imposed by an appellate court after the commencement of this section on setting aside an order made or a sentence imposed before that commencement shall be taken to have been made or imposed at the time the original order was made or the sentence imposed.

**Division 3 Transitional matters for Sentencing Amendment  
(Aboriginal Customary Law) Act 2004**

**131 Application of section 104A**

Section 104A applies in relation to information presented to a court after the commencement of the *Sentencing Amendment (Aboriginal Customary Law) Act 2004*.

#### **Division 4            Transitional matters for the Criminal Code Amendment (Criminal Damage) Act 2011**

##### **132            Transitional matters for *Criminal Code Amendment (Criminal Damage) Act 2011***

The amendment made to section 3 by the *Criminal Code Amendment (Criminal Damage) Act 2010* does not affect the operation of this Act, on and after the commencement of the amendment, to an offence:

- (a) mentioned in section 3, definition ***aggravated property offence***, paragraph (d), as in force immediately before the commencement of the amendment; and
- (b) was committed or is alleged to have been committed before the commencement of the amendment.

#### **Division 5            Transitional matters for Justice (Corrections) and Other Legislation Amendment Act 2011**

##### **133            Community based orders and community custody orders for pre-commencement offences**

To avoid doubt, a court may make a community based order or community custody order for an offender for an offence committed before the commencement of this section.

#### **Division 6            Transitional matters for Justice and Other Legislation Amendment Act 2014**

##### **134            Application of section 64 to offences committed before commencement**

- (1) Section 64, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before the commencement of this section (***commencement***) if:
  - (a) the sentence is imposed in proceedings in which a court starts hearing sentencing submissions after commencement; or
  - (b) the commitment is imposed in a hearing under section 15(4) that starts after commencement.

- (2) Section 64, as in force before commencement, continues to apply in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before commencement if:
- (a) the sentence is imposed in proceedings in which a court started hearing sentencing submissions before commencement; or
  - (b) the commitment is imposed in a hearing under section 15(4) that started before commencement.

**135 Application of section 104A to offences committed before commencement**

- (1) Section 104A, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to proceedings for an offence committed before the commencement of this section (**commencement**) if a court starts hearing sentencing submissions after commencement.
- (2) Section 104A, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

**136 Application of section 107 to offences committed before commencement**

- (1) Section 107, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to proceedings for an offence committed before the commencement of this section (**commencement**) if a court starts hearing sentencing submissions after commencement.
- (2) To avoid doubt, an offence may be listed in a document filed under section 107(1)(b), as amended by the *Justice and Other Legislation Amendment Act 2014*, even if:
- (a) the charge for the offence was laid before commencement; or
  - (b) the offence is alleged to have been committed before commencement.
- (3) Section 107, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

## **Division 7            Transitional matters for Sentencing Legislation Amendment Act 2015**

### **137            Application of amendments**

- (1) Section 57, as amended by the amending Act, applies if an offender is sentenced by a court to a further term of imprisonment after the commencement, even if the offence to which the sentence relates was committed before the commencement.
- (2) Section 59, as in force immediately before the commencement, continues to apply in relation to a sentence, the service of which was suspended under section 59 before the commencement, as if the amending Act had not commenced.
- (3) In this section:

***amending Act*** means the *Sentencing Legislation Amendment Act 2015*.

***commencement*** means the commencement of the amending Act.

## **Division 8            Justice Legislation Amendment (Summary Procedure) Act 2015**

### **138            Definitions**

In this Division:

***amending Act*** means the *Justice Legislation Amendment (Summary Procedure) Act 2015*.

***commencement*** means the commencement of the amending Act.

### **139            Application of sections 5(2)(ha) and 123A**

- (1) Sections 5(2)(ha) and 123A, as inserted by the amending Act, apply only in relation to offences committed after the commencement.
- (2) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.

### **140            Application of section 108A**

Section 108A, as inserted by the amending Act, applies in relation to proceedings for an offence committed before the commencement only if a court starts hearing sentencing submissions after the commencement.

## Schedule 2 Violent offences

section 78C, definition *violent offence*

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### Criminal Code

section 54	Terrorism
section 55	Contribution towards acts of terrorism
section 155A	Assault, obstruction etc. of persons providing rescue, medical treatment or other aid if the offender assaulted the other person
section 156	Murder
section 160	Manslaughter
section 161A	Violent act causing death
section 165	Attempt to murder
section 166	Threats to kill
section 175	Disabling in order to commit indictable offence
section 176	Stupefying in order to commit indictable offence
section 177	Acts intended to cause serious harm or prevent apprehension
section 181	Serious harm
section 182	Attempting to injure by explosive substances
section 185	Setting man-traps
section 186	Harm
section 188	Common assault other than in circumstances mentioned in section 188(2)(k)
section 188A	Assaults on workers
section 189	Unlawful stalking
section 189A	Assaults on police
section 190	Assaults on the Administrator or judges
section 191	Assaults on member of crew of aircraft
section 193	Assaults with intent to commit an offence
section 194	Kidnapping for ransom
section 211	Robbery
section 212	Assault with intent to steal

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### **Schedule 3 Sexual offences**

section 3(1)

1. An offence against section 125B or 125C of the Criminal Code, where the offender is an individual.
3. An offence against section 127, 128, 130, 131, 131A, 132, 134 or 138 of the Criminal Code.
4. An offence against section 188 of the Criminal Code, where the circumstance of aggravation specified in section 188(2)(k) exists.
5. An offence against section 192 or 192B of the Criminal Code.

## Schedule 4 Acts and Ordinances repealed

section 129

<i>Criminal Law (Conditional Release of Offenders) Ordinance 1971</i>	No. 34, 1971
<i>Criminal Law (Conditional Release of Offenders) Ordinance 1978</i>	No. 68, 1978
<i>Criminal Law (Conditional Release of Offenders) Act 1979</i>	No. 35, 1979
<i>Criminal Law (Conditional Release of Offenders) Act 1980</i>	No. 11, 1980
<i>Criminal Law (Conditional Release of Offenders) Amendment Act 1982</i>	No. 61, 1982
<i>Criminal Law (Conditional Release of Offenders) Amendment Act 1986</i>	No. 57, 1986
<i>Criminal Law (Conditional Release of Offenders) Amendment Act 1987</i>	No. 53, 1987
<i>Criminal Law (Conditional Release of Offenders) Amendment Act 1989</i>	No. 24, 1989
<i>Criminal Law (Conditional Release of Offenders) Amendment Act (No. 2) 1989</i>	No. 84, 1989
<i>Criminal Law (Conditional Release of Offenders) Amendment Act 1990</i>	No. 14, 1990



## ENDNOTES

## 1 KEY

Key to abbreviations in list of legislation and amendments

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

## 2 LIST OF LEGISLATION

**Sentencing Act 1995 (Act No. 39, 1995)**

Assent date	29 September 1995
Commenced	1 July 1996 ( <i>Gaz S15</i> , 13 June 1996)

**Sentencing Amendment Act 1996 (Act No. 47, 1996)**

Assent date	31 October 1996
Commenced	1 March 1997 ( <i>Gaz G4</i> , 29 January 1997, p 2)

**Sentencing Amendment Act (No. 2) 1996 (Act No. 65, 1996)**

Assent date	31 December 1996
Commenced	8 March 1997 ( <i>Gaz S7</i> , 7 March 1997)

**Statute Law Revision Act 1997 (Act No. 17, 1997)**

Assent date	11 April 1997
Commenced	1 May 1997 ( <i>Gaz G17</i> , 30 April 1997, p 2)

**Sentencing Amendment Act 1998 (Act No. 14, 1998)**

Assent date	30 March 1998
Commenced	29 April 1998 ( <i>Gaz G16</i> , 29 April 1998, p 3)

**Sentencing Amendment Act (No. 2) 1998 (Act No. 91, 1998)**

Assent date	11 December 1998
Commenced	13 January 1999 ( <i>Gaz G1</i> , 13 January 1999, p 6)

**Sentencing Amendment Act 1999 (Act No. 4, 1999)**

Assent date	26 February 1999
Commenced	1 April 1999 (s 2, s 2 <i>Penalties Act 1999</i> (Act No. 2, 1999) and <i>Gaz G11</i> , 24 March 1999, p 3)

**Sentencing Amendment Act (No. 2) 1999 (Act No. 33, 1999)**

Assent date 18 June 1999  
 Commenced 4 July 1999 (s 2(2), Gaz S31, 1 July 1999, s 2 *Mental Health and Related Services (Consequential Amendments) Act 1999* (Act No. 11, 1999), s 2 *Mental Health and Related Services Act 1998* (Act No. 63, 1998) and Gaz G3, 26 January 2000, p 3)

**Mental Health and Related Services (Consequential Amendments) Act 1999 (Act No. 11, 1999)**

Assent date 25 March 1999  
 Commenced 1 February 2000 (s 2, s 2 *Mental Health and Related Services Act 1998* (Act No. 63, 1998) and Gaz G3, 26 January 2000, p 2)

**Sentencing of Juveniles (Miscellaneous Provisions) Act 2000 (Act No. 17, 2000)**

Assent date 30 May 2000  
 Commenced 1 June 2000 (s 2)

**Sentencing Amendment Act 2001 (Act No. 38, 2001)**

Assent date 19 July 2001  
 Commenced 26 September 2001 (Gaz G38, 26 September 2001, p 4)

**Sentencing Amendment Act (No. 2) 2001 (Act No. 39, 2001)**

Assent date 19 July 2001  
 Commenced 26 September 2001 (Gaz G38, 26 September 2001, p 4)

**Sentencing Amendment Act (No. 3) 2001 (Act No. 55, 2001)**

Assent date 19 October 2001  
 Commenced 22 October 2001 (s 2)

**Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)**

Assent date 11 December 2001  
 Commenced 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 60, 2002) and Gaz G50, 19 December 2001, p 3)

**Sentencing Amendment Act (No. 4) 2001 (Act No. 66, 2001)**

Assent date 21 December 2001  
 Commenced 21 December 2001

**Criminal Property Forfeiture (Consequential Amendments) Act 2002 (Act No. 35, 2002)**

Assent date 16 July 2002  
 Commenced 1 June 2003 (s 2, s 2 *Criminal Property Forfeiture Act 2002* (Act No. 35, 2002) and Gaz G21, 28 May 2003, p 2)

**Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)**

Assent date 7 January 2004  
 Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

**Sentencing (Crime of Murder) and Parole Reform Act 2003 (Act No. 3, 2004)**

Assent date 7 January 2004  
 Commenced 11 February 2004 (Gaz G6, 11 February 2004, p 2)

***Sentencing Amendment (Aboriginal Customary Law) Act 2004 (Act No. 1, 2005)***

Assent date 14 January 2005  
Commenced 16 February 2005 (*Gaz G7*, 16 February 2005, p 6)

***Justice Portfolio (Miscellaneous Amendments) Act 2005 (Act No. 20, 2005)***

Assent date 6 May 2005  
Commenced 13 July 2005 (*Gaz G28*, 13 July 2005, p 3)

***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date 22 September 2005  
Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz G30*, 26 July 2006, p 3)

***Antisocial Behaviour (Miscellaneous Amendments) Act 2006 (Act No. 2, 2006)***

Assent date 8 March 2006  
Commenced 14 June 2006 (*Gaz G24*, 14 June 2006, p 3)

***Justice Legislation Amendment Act 2006 (Act No. 13, 2006)***

Assent date 18 May 2006  
Commenced 1 July 2006 (s 3(2))

***Justice Legislation Amendment (Group Criminal Activities) Act 2006 (Act No. 36, 2006)***

Assent date 3 November 2006  
Commenced 20 December 2006 (*Gaz G51*, 20 December 2006, p 2)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date 8 March 2007  
Commenced 8 March 2007

***Domestic and Family Violence Act 2007 (Act No. 34, 2007)***

Assent date 12 December 2007  
Commenced 1 July 2008 (*Gaz G25*, 25 June 2008, p 4)

***Statute Law Revision Act 2008 (Act No. 6, 2008)***

Assent date 11 March 2008  
Commenced 11 March 2008

***Sentencing Amendment (Violent Offences) Act 2008 (Act No. 30, 2008)***

Assent date 21 November 2008  
Commenced 10 December 2008 (*Gaz S63*, 10 December 2008)

***Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)***

Assent date 20 May 2010  
Commenced 1 July 2010 (*Gaz G24*, 16 June 2010, p 2)

***Justice Legislation Amendment Act 2010 (Act No. 24, 2010)***

Assent date 30 June 2010  
Commenced 21 July 2010 (*Gaz G29*, 21 July 2010, p 5)

***Statute Law Revision Act 2010 (Act No. 29, 2010)***

Assent date 9 September 2010  
Commenced 13 October 2010 (*Gaz G41*, 13 October 2010, p 2)

***Criminal Code Amendment (Criminal Damage) Act 2011 (Act No. 5, 2011)***

Assent date 16 March 2011  
Commenced 1 June 2011 (*Gaz S19*, 4 May 2011)

**Public and Environmental Health Act 2011 (Act No. 7, 2011)**

Assent date 16 March 2011  
Commenced 1 July 2011 (*Gaz S28*, 3 June 2011)

**Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011 (Act No. 19, 2011)**

Assent date 20 May 2011  
Commenced 1 July 2011 (*Gaz G23*, 8 June 2011, p 6)

**Justice (Corrections) and Other Legislation Amendment Act 2011 (Act No. 24, 2011)**

Assent date 31 August 2011  
Commenced ss 3, 9 to 11, 15 to 17, 19, 20, 24, 33, 42, schs 1 and 2, sch 4 pt 1 and sch 5: 31 August 2011 (s 2); rem: 27 February 2012 (*Gaz S9*, 21 February 2012)

**Statute Law Revision Act 2011 (Act No. 30, 2011)**

Assent date 31 August 2011  
Commenced 21 September 2011 (*Gaz G38*, 21 September 2011, p 5)

**Fines and Penalties (Recovery) and Other Legislation Amendment Act 2011 (Act No. 43, 2011)**

Assent date 21 December 2011  
Commenced 1 March 2012 (*Gaz S9*, 21 February 2012)

**Criminal Code Amendment (Violent Act Causing Death) Act 2012 (Act No. 25, 2012)**

Assent date 6 December 2012  
Commenced 21 December 2012 (*Gaz S75*, 17 December 2012)

**Sentencing Amendment (Mandatory Minimum Sentences) Act 2013 (Act No. 1, 2013)**

Assent date 13 March 2013  
Commenced 1 May 2013 (s 2, s 2 *Criminal Code Amendment (Assaults on Workers) Act 2013* (Act No. 3, 2013) and *Gaz S16*, 22 April 2013)

**Alcohol Mandatory Treatment Act 2013 (Act No. 17, 2013)**

Assent date 28 June 2013  
Commenced 1 July 2013 (s 2)

**Sentencing Amendment Act 2013 (Act No. 21, 2013)**

Assent date 12 July 2013  
Commenced 12 July 2013

**Criminal Code Amendment (Identity Crime) Act 2014 (Act No. 9, 2014)**

Assent date 16 April 2014  
Commenced 1 July 2014 (*Gaz S52*, 1 July 2014)

**Justice and Other Legislation Amendment Act 2014 (Act No. 11, 2014)**

Assent date 16 April 2014  
Commenced 1 July 2014 (*Gaz S54*, 1 July 2014)

**Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)**

Assent date 4 September 2014  
Commenced 9 September 2014 (*Gaz S80*, 9 September 2014, p 2)

***Justice Legislation Amendment (Summary Procedure) Act 2015 (Act No. 20, 2015)***

Assent date 6 July 2015  
Commenced 21 September 2015 (Gaz S92, 16 September 2015)

***Sentencing Legislation Amendment Act 2015 (Act No. 22, 2015)***

Assent date 6 July 2015  
Commenced 29 July 2015 (Gaz G30, 29 July 2015, p 1)

***Local Court (Repeals and Related Amendments) Act 2016 (Act No. 9, 2016)***

Assent date 6 April 2016  
Commenced 1 May 2016 (Gaz S34, 29 April 2016)

***Justice Legislation Amendment (Drug Offences) Act 2016 (Act No. 17, 2016)***

Assent date 8 June 2016  
Commenced s 17 (to ext ins new s 15): 10 October 2016;  
rem: 18 July 2016 (Gaz S67, 18 July 2016)

***Bail Amendment Act 2017 (Act No. 5, 2017)***

Assent date 17 March 2017  
Commenced 20 March 2017 (Gaz S11, 20 March 2017)

***Parole Amendment Act 2017 (Act No. 17, 2017)***

Assent date 30 August 2017  
Commenced 13 September 2017 (Gaz G37, 13 September 2017, p 6)

***Youth Justice Legislation Amendment Act 2017 (Act No. 19, 2017)***

Assent date 30 October 2017  
Commenced 5 January 2018 (Gaz G51, 20 December 2017, p 4)

***Statute Law Revision Act 2018 (Act No. 10, 2018)***

Assent date 23 May 2018  
Commenced 20 June 2018 (Gaz S41, 20 June 2018)

***Interpretation Legislation Amendment Act 2018 (Act No. 22, 2018)***

Assent date 8 November 2018  
Commenced pt 2 and ss 19, 20 and 25 to 27: nc; rem: 11 December 2018  
(Gaz S101, 11 December 2018)

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**SAVINGS AND TRANSITIONAL PROVISIONS**

s 4 *Sentencing Amendment Act (No. 2) 1998*  
s 27 *Sentencing Amendment Act (No. 2) 1999*  
pts 3 and 4 *Sentencing of Juveniles (Miscellaneous Provisions) Act 2000*  
s 11 *Sentencing Amendment Act (No. 3) 2001*

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**GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3, 4, 5, 15, 26, 39A, 39M, 39N, 43, 48, 48A, 48K, 48L, 48M, 53A, 55, 63, 63A, 64, 78DH, 78H, 78K, 78P, 80, 83, 94, 97AB, 108, 114, 115 and 130.

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