TASMANIA

SENTENCING ACT 1997

No. 59 of 1997

CONTENTS

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An Act to amend and consolidate the law relating to the sentencing of offenders, to repeal the *Penalties Remission Act 1934* and for related purposes

[Royal Assent 22 December 1997]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Sentencing Act 1997*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Purpose of Act

The purpose of this Act is to –

(a) amend and consolidate the State's sentencing law; and

(b) promote the protection of the community as a primary consideration in sentencing offenders; and

(c) promote consistency in the sentencing of offenders; and

(d) establish fair procedures for –

(i) imposing sentences on offenders generally; and

(ii) imposing sentences on offenders in special cases; and

(iii) dealing with offenders who breach the conditions of sentences; and

(e) help prevent crime and promote respect for the law by allowing courts to –

(i) impose sentences aimed at deterring offenders and other persons from committing offences; and

(ii) impose sentences aimed at the rehabilitation of offenders; and

(iii) impose sentences that denounce the conduct of offenders; and

(f) promote public understanding of sentencing practices and procedures; and

(g) set out the objectives of sentencing and related orders; and

(h) recognise the interests of victims of offences.

4. Interpretation

In this Act, unless the contrary intention appears –

Administrator of Magistrates Courts means the person appointed as Administrator of Magistrates Courts under section 16 of the *Magistrates Court Act 1987*;

approved hospital has the same meaning as in the *Mental Health Act 2013*;

approved medical practitioner means an approved medical practitioner within the meaning of the *Mental Health Act 2013*;

area restriction order means an order made under Division 3 of Part 9;

assessment order has the meaning given by section 73;

Australian driver licence has the same meaning as in the *Vehicle and Traffic Act 1999*;

authorised person means –

(a) the Director of Public Prosecutions or an Australian legal practitioner acting on behalf of the Director of Public Prosecutions, or

(b) a police officer; or

(c) an Australian legal practitioner employed in the responsible Department in relation to the *Police Offences Act 1935*; or

(d) a probation officer;

breach includes fail to comply;

Chief Forensic Psychiatrist has the same meaning as in the *Mental Health Act 2013*;

child sexual offence means an offence, committed in relation to a person under the age of 17 years, against section 124, 125, 125A, 125B, 125C, 125D, 126, 127, 129, 130, 130A, 133 or 185 of the *Criminal Code*;

community correction order means a community correction order made under section 42AN;

community service means work or other activity in the community under the direction of a probation officer or supervisor;

community service order means an order of a court that the offender in respect of whom it is made must perform some work or other activity in the community under the direction of a probation officer or supervisor, but does not include a community correction order;

compensation order means an order made under Division 2 of Part 9;

court means the Supreme Court, the Court of Criminal Appeal or a court of petty sessions;

DCS means Director of Corrective Services;

Director, MPES means the Director, Monetary Penalties Enforcement Service appointed under section 8 of the *Monetary Penalties Enforcement Act 2005*;

detention period has the same meaning as in the *Youth Justice Act 1997*;

DPP means Director of Public Prosecutions;

driver licence has the same meaning as in the *Vehicle and Traffic Act 1999*;

driving disqualification order means an order of a court under section 55;

drug treatment order means a drug treatment order made under section 27B;

earliest release date has the same meaning as in the *Youth Justice Act 1997*;

enactment means –

(a) an Act; or

(b) any other instrument of a legislative character; or

(c) any provision or part of an Act or of any other instrument of a legislative character;

enforcement debtor means a person to whom an enforcement order has been issued under Part 5 of the *Monetary Penalties Enforcement Act 2005*;

escape offence means an offence under section 107 of the *Criminal Code* or an offence committed by a person who has escaped from lawful custody;

family violence offence means a family violence offence within the meaning of the *Family Violence Act 2004*;

fine means the sum of money payable by an offender under an order of a court made on the offender being found guilty, or convicted, of an offence and includes a

sum of money payable as costs, a restitution order and a compensation order;

home detention order means a home detention order made under section 42AC;

mental illness means a mental illness within the meaning of the *Mental Health Act 2013*;

monetary penalty means a monetary penalty as defined in section 3 of the *Monetary Penalties Enforcement Act 2005*;

motor vehicle has the same meaning as in the *Vehicle and Traffic Act 1999*;

MPCSO means a Monetary Penalty Community Service Order issued under section 33 of the *Monetary Penalties Enforcement Act 2005*;

non-parole period, in relation to a sentence of imprisonment, means –

(a) in a case to which section 17(2)(a) or 18(1)(a) applies, the whole of the period of the sentence; or

(b) in a case to which section 17(2)(b) or 18(1)(b) applies, the period specified in the order made under that section; or

(c) in any other case, the non-parole period specified in section 68 of the *Corrections Act 1997*;

notification means notification in writing;

Parole Board means the Parole Board established under the *Corrections Act 1997*;

pre-sentence program means a program aimed at addressing the underlying causes of offending;

prison offence means an offence specified in Schedule 1 to the *Corrections Act 1997*;

probation officer means a probation officer within the meaning of the *Corrections Act 1997*;

probation order means an order of a court that the offender in respect of whom it is made be of good behaviour during the period of the order or do or refrain from doing such things as are specified in the order;

proper officer, in relation to a court, means the officer or officers of that court prescribed by the rules of that court for the purpose of the provision in which the term is used;

rehabilitation program means a structured treatment program designed to reduce the likelihood of a person who has

committed a family violence offence re-offending;

rehabilitation program order means an order to attend and participate in a rehabilitation program and in doing so comply with the reasonable directions of a person employed or engaged to conduct such a program;

responsible medical officer means a person appointed as responsible medical officer under section 7 of the *Criminal Justice (Mental Impairment) Act 1999*;

restitution order means an order made under Division 1 of Part 9;

restriction order has the meaning given by section 77;

secure mental health unit has the same meaning as in the *Mental Health Act 2013*;

supervision order has the meaning given by section 77A;

supervisor means a supervisor within the meaning of the *Corrections Act 1997*;

treatment order has the meaning given by section 76.

5. Application of Act

This Act, other than Division 3 of Part 9, does not apply to –

(a) the Magistrates Court (Youth Justice Division); or

(b) a court of summary jurisdiction within the meaning of the *Justices Act 1959* that is hearing a charge against a person who has not attained the age of 18 years.

6. Act is not a code

This Act is a consolidation, not a codification, of the State's sentencing law and it does not derogate from the powers that a court may exercise, or the rights that a person may have, under any other enactment or law for or in relation to the sentencing of offenders.

PART 2 – GENERAL SENTENCING POWERS

7. Sentencing orders

A court that finds a person guilty of an offence may, in accordance with this Act and subject to any enactment relating specifically to the offence –

(a) record a conviction and order that the offender serve a term of imprisonment; or

(ab) if the court is constituted by a magistrate or is the Supreme Court or the Court of Criminal Appeal,, record a conviction and make a drug treatment order under Part 3A in respect of the offender; or

(b) record a conviction and order that the offender serve a term of imprisonment that is wholly or partly suspended; or

(c) record a conviction and make a home detention order under section 42AC in respect of the offender, if the offender has attained the age of 18 years; or

(d) with or without recording a conviction, make a community correction order under section 42AN in respect of the offender, if the offender has attained the age of 18 years; or

(e) with or without recording a conviction, order the offender to pay a fine; or

(ea) in the case of a family violence offence, with or without recording a conviction, make a rehabilitation program order; or

(eb) adjourn the proceedings, grant bail under the *Bail Act 1994* and, by order, defer, in accordance with Division 1 of Part 8, sentencing the offender until a date specified in the order; or

(f) with or without recording a conviction, adjourn the proceedings for a period not exceeding 60 months and, on the offender giving an undertaking with conditions attached, order the release of the offender; or

(g) record a conviction and order the discharge of the offender; or

(h) without recording a conviction, order the dismissal of the charge for the offence; or

(i) impose any other sentence or make any order, or any combination of orders, that the court is authorised to impose or make by this Act or any other enactment.

7A. Adjournment for deferral of sentencing

(1) Subject to section 57C(3), proceedings in relation to an offence may not be adjourned under section 7(eb) for a period of more than 2 years from the date on which the order under section 7(eb) deferring the sentencing is made.

(2) Section 7(eb) does not limit the power of a court to adjourn proceedings, grant bail in relation to a period of adjournment or defer sentencing an offender otherwise than under section 7(eb).

8. Combined sentencing orders

(1) A court that orders that an offender serve a term of imprisonment may also do any one or more of the following:

(a) make a community correction order in respect of the offender, but only if the sentence of imprisonment is not for a term of more than 2 years;

(b) . . . . . .

(c) order the offender to pay a fine;

(ca) make a rehabilitation program order in respect of the offender;

(d) make a driving disqualification order in respect of the offender.

(2) A court that makes a home detention order in respect of an offender may also do any one or more of the following:

(a) make a community correction order in respect of the offender;

(b) order the offender to pay a fine;

(c) make a rehabilitation program order in respect of the offender;

(d) make a driving disqualification order in respect of the offender.

(3) A court that makes a community correction order in respect of an offender may also do any one or more of the following:

(a) order the offender to pay a fine;

(b) make a rehabilitation program order in respect of the offender;

(c) if the court records a conviction, make a driving disqualification order in respect of the offender.

(4) A court that orders an offender to pay a fine may also do either or both of the following:

(a) make a rehabilitation program order in respect of the offender;

(b) if the court records a conviction, make a driving disqualification order in respect of the offender.

9. Conviction or non-conviction

In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including –

(a) the nature and circumstances of the offence; and

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

(c) the impact that a conviction would have on the offender's economic or social wellbeing or employment prospects.

10. Effect of finding of guilt without recording of conviction

(1) Except as otherwise provided by this Act or any other enactment, a finding of guilt without the recording of a conviction is not to be taken to be a conviction for any purpose.

(2) 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 by this Act or any other enactment in consequence of the finding; and

(b) has the same effect as if a conviction had been recorded for the purpose of –

(i) appeals against sentence; or

(ii) proceedings for variation or breach of sentence; or

(iii) subsequent proceedings against the offender for the same offence; or

(iv) enactments providing for the mandatory forfeiture of property on conviction; or

(v) enactments providing for any other kind of mandatory penalty on conviction, not involving disqualification for, or loss of, office or the forfeiture, or suspension, of pensions or other benefits.

11. Court may impose single, general or mixed sentence

(1) A court may impose on an offender who has been convicted of more than one offence specified in one or more complaints or indictments –

(a) one sentence for all of those offences; or

(b) a separate sentence for each of those offences; or

(c) one sentence for a group of those offences determined by the court and –

(i) one sentence for all of the remaining offences; or

(ii) a separate sentence for each of the remaining offences; or

(iii) a separate sentence for each other group of the offences remaining as the court determines and a separate sentence for each offence remaining, if any, as is not within any such group.

(2) In imposing a single sentence on an offender for more than one offence, a court must not impose a penalty exceeding the sum of the maximum penalties that could otherwise have been imposed for those offences.

(3) If a court imposes a single sentence on an offender for more than one child sexual offence, the court is to identify the sentence that would have been imposed for each child sexual offence, had separate sentences been imposed.

11A. Matters to be taken or not taken into account in sentencing certain sexual offenders

(1) In this section –

aggravating circumstance, in relation to a sexual offence, includes, but is not limited to, the following:

(a) the victim being under the care, supervision or authority of the offender;

(b) the victim being a person with a disability;

(c) the victim being under the age of 13 years;

(d) the offender committing the offence in whole or in part in the presence of any other person or persons, besides the victim;

(e) the offender subjecting the victim to violence or the threat of violence;

(f) the offender supplying the victim with alcohol or drugs with the intention of facilitating the commission of the offence;

(g) the offender making forced or uninvited entry into the victim's home or other premises;

(h) the offender doing, in the course of committing the sexual offence, an act likely to seriously and substantially degrade or humiliate the victim;

(i) the offender causing any other person or persons to carry out an act referred to in paragraph (e), (f), (g) or (h) of this definition;

disability means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner;

sexual offence means –

(a) a crime under section 124, 125, 125A, 125B, 125C, 126, 127, 127A, 129, 130, 130A, 133 or 185 of the *Criminal Code*; or

(b) an attempt to commit a crime referred to in paragraph (a) of this definition.

(2) In determining the appropriate sentence for an offender convicted of a sexual offence –

(a) the court is to take into account any aggravating circumstance in relation to the sexual offence; and

(b) the court is not to take into account the offender's good character or lack of previous convictions if the court is satisfied that the offender's alleged good character or lack of previous convictions was of assistance to the offender in the commission of the sexual offence.

(3) In determining the appropriate sentence for an offender convicted of a child sexual offence, the court is to take into account the sentencing patterns and practices at the time of sentencing.

11B. Racial motivation to be taken into account in sentencing offenders

In determining the appropriate sentence for an offender, the court is to take into account, as an aggravating circumstance in relation to the offence, whether the offence was motivated to any degree by –

(a) hatred for or prejudice against, on racial grounds, any victim of the offence; or

(b) hatred for or prejudice against, on racial grounds, a person or group of persons with whom at the relevant time any victim of the offence was associated or believed by the offender to have been associated.

11C. Self-induced intoxication not to be mitigating factor in sentencing

(1) In determining the appropriate sentence for an offence, the self-induced intoxication of the offender at the time the offence was committed is not to be taken into account as a mitigating factor.

(2) Subsection (1) has effect despite any Act or rule of law to the contrary.

(3) In this section –

drug includes –

(a) a controlled substance within the meaning of the *Misuse of Drugs Act 2001*; and

(b) a poison, drug of dependence or restricted substance, each within the meaning of the *Poisons Act 1971*;

intoxication means intoxication because of the influence of alcohol, a drug or any other substance;

self-induced intoxication, in relation to a person, means any intoxication of the person except intoxication that –

(a) is involuntary; or

(b) results from fraud, sudden or extreme emergency, accident, reasonable mistake, duress or force; or

(c) results from the administration of a drug –

(i) for which a prescription from a person authorised under an Act to prescribe the drug is required; and

(ii) which is administered for the purpose, and in accordance with the dosage level, recommended by the person prescribing the drug or in the instructions, in relation to the drug, of the manufacturer of the drug; or

(d) results from the administration of a drug –

(i) for which no prescription is required; and

(ii) which is administered for the purpose, and in accordance with the dosage level, recommended in the instructions, in relation to the drug, of the manufacturer of the drug.

PART 3 – CUSTODIAL SENTENCES

Division 1 – General

12. Mitigation of imprisonment

(1) In this section,

custodial offence means an offence that is created under an enactment and has imprisonment as its only penalty.

(2) If a court that sentences an offender for a custodial offence considers that the justice of the case will be better met by a non-custodial sentence than by imprisonment, the court may, notwithstanding the penalty provided for the offence, make any other sentencing order that it could have made in respect of the offender had the offence not been a custodial offence.

13. Maximum prison term imposable by court of petty sessions for crime triable summarily

The maximum term of imprisonment that a court of petty sessions may impose on an offender convicted of a crime that is triable summarily is –

(a) 3 years for a first offence; or

(b) 5 years for a second or subsequent offence.

14. Commencement of custodial sentence

(1) Subject to sections 15 and 16, a sentence of imprisonment commences on the day on which it is imposed unless the offender is not then in custody.

(2) If the offender is not then in custody, the sentence of imprisonment commences on the day on which the offender is apprehended under a warrant to imprison issued in respect of the sentence.

(3) If an offender who is sentenced to a term of imprisonment is allowed to be or go at large for any reason, the period between then and the day on which the offender is taken into custody to undergo the sentence does not count in calculating the term to be served and service of the sentence is suspended during that period.

(4) If an offender who is lawfully imprisoned under a sentence escapes or fails to return after an authorised absence, the period between then and the day on which the offender surrenders or is apprehended does not count in calculating the term to be served and service of the sentence is suspended during that period.

(5) Despite anything to the contrary in this Act or any other enactment or in any rule of law or practice, a sentence of imprisonment is to be calculated exclusive of any time during which service of it is suspended under subsection (3) or (4).

(6) If an offender to whom subsection (4) 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 the offender is then undergoing, on the day that sentence is completed; or

(b) in any other case, at the end of the period of suspension.

(7) If an offender who is sentenced to a term of imprisonment and allowed to be or 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 reserved 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 the offender is then undergoing, on the day that sentence is completed; or

(b) in any other case, on the day the appeal, question of law reserved or case stated is finally determined.

(8) Subsection (7) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

15. Custodial sentence: whether concurrent or cumulative

(1) Except as provided in this section, an offender who is sentenced to a term of imprisonment must serve the sentence concurrently with any uncompleted sentence of imprisonment or detention period that the offender is then serving or liable to serve unless the court imposing the sentence directs otherwise.

(1A) If a court –

(a) sentences an offender to a term of imprisonment and the offender is already serving or liable to serve a detention period; and

(b) determines that the sentence of imprisonment ought not to be served concurrently with the uncompleted detention period –

the court may order that the sentence of imprisonment commence on the earliest release date in respect of the detention period.

(2) An offender who is sentenced to a term of imprisonment for an escape offence or for non-payment of a fine must serve the sentence cumulatively on any uncompleted sentence of imprisonment, other than a sentence of life imprisonment, that the offender is then serving or liable to serve.

(3) An offender who is sentenced to a term of imprisonment for a prison offence must serve the

sentence cumulatively on any uncompleted sentence of imprisonment that the offender is then serving or liable to serve unless the court imposing the sentence directs otherwise because of exceptional circumstances.

(4) If a court sentences an offender to a term of imprisonment for an offence against a law of Tasmania and the offender is already serving or liable to serve a sentence of imprisonment for an offence against a law of the Commonwealth, the court must direct when the new term of imprisonment is to commence.

(5) For the purposes of subsection (4), the new term of imprisonment is to commence no later than immediately after –

(a) the completion of the sentence for the Commonwealth offence if a non-parole period or pre-release period, as defined in Part 1B of the *Crimes Act 1914* of the Commonwealth, was not fixed in respect of it; or

(b) the end of that period if a non-parole period or pre-release period was fixed.

(6) This section has effect despite anything to the contrary in this Act or any other enactment other than section 9(5) of the *Criminal Code Amendment (Life Prisoners and Dangerous Criminals) Act 1994*.

16. Time held in custody before trial, &c., to be taken into account

(1) A court that is sentencing an offender to a term of imprisonment for an offence –

(a) must take into account any period of time during which the offender was held in custody in relation to proceedings for, or arising from, that offence; and

(b) may order that the sentence of imprisonment is to commence on a day earlier than the day on which it is imposed.

(2) Subsection (1) does not apply to –

(a) a period of custody of less than one day; or

(b) a sentence of imprisonment of less than one day; or

(c) a sentence of imprisonment that has been wholly suspended or the suspended part of a partly suspended sentence of imprisonment.

(d) . . . . . .

16A. Mandatory imprisonment for offence causing serious bodily harm to police officer

(1) Despite section 7, if –

(a) a person is convicted of an offence, against a provision of an Act, committed in relation to a police officer while the police officer was on duty; and

(b) the police officer suffered serious bodily harm caused by, or arising from, the offence –

a court that convicts the person, and a court that imposes a sentence upon the conviction of the person, in respect of the offence must, unless there are exceptional circumstances, order the person to serve in respect of the offence a term of imprisonment of not less than 6 months.

(2) For the purposes of this section, an offence is to be taken to be committed in relation to a police officer only if the person who committed the offence knows, or ought reasonably be expected to know, that bodily harm to a police officer may be caused by, or arise from, the offence.

(3) Subsection (1) applies in relation to an offence against a provision of an Act even if the Act –

(a) does not indicate that the offence is punishable by imprisonment; or

(b) indicates that the offence is punishable by imprisonment for a term of less than 6 months –

but, in either such case, the term of imprisonment that is, in accordance with subsection (1), to be imposed in respect of the offence is to be 6 months.

(4) If an order has been made, in accordance with subsection (1), that a person must serve in respect of an offence a term of imprisonment of not less than 6 months, a court must not –

(a) make any other order in respect of the offence; or

(b) amend an order in respect of the offence –

if the effect of that other order or amendment would be that the person is not imprisoned for a term of at least 6 months in respect of the offence.

(5) Section 10(2)(b)(v) does not apply in relation to an offence to which subsection (1) applies, to the extent that section 10(2)(b)(v) might otherwise be taken to require subsections (1) and (3) to apply to an offence in relation to which a finding of guilt has been made but a conviction has not been recorded.

(6) Nothing in this section, apart from subsection (7), is to be taken to prevent the application of section 11 in relation to an offence to which subsection (1) applies.

(7) Subsection (3) and section 11(2) are each not to be taken to prevent the making of an order imposing, in respect of an offence to which subsection (1) applies, a term of imprisonment of more than 6 months if the order is imposed, in accordance with section 11(1), in respect of more than one offence, including but not limited

to more than one offence to which subsection (1) applies.

(8) Section 12 does not apply in relation to an offence to which subsection (1) applies.

(9) Nothing in this section, apart from subsections (4) and (8), is to be taken to prevent a court making, in respect of an offence to which subsection (1) applies, an order (including an order imposing a penalty) that is an order in addition to an order imposing in respect of the offence a term of imprisonment in accordance with this section.

Division 2 – Parole

17. Court may bar or limit eligibility for parole

(1) This section does not apply to a sentence of imprisonment for the term of an offender's natural life.

(2) A court that imposes a sentence of imprisonment on an offender, either on the conviction of the offender or on the determination of an appeal, or, on appeal, confirms the imposition of such a sentence, may order –

(a) that the offender is not eligible for parole in respect of that sentence; or

(b) that the offender is not eligible for parole in respect of that sentence before the expiration of such period as is specified in the order.

(2A) A court that imposes a sentence of imprisonment on an offender may not make an order under subsection (2)(b) in respect of the offender if the court –

(a) makes in respect of the offender a community correction order; and

(b) orders that the operational period, within the meaning of section 42AM, of the community correction order is to commence at the end of the sentence of imprisonment.

(3) The period specified in an order under subsection (2)(b) is not to be less than one-half of the period of that sentence.

(3A) Where a court imposes a sentence of imprisonment and does not make an order under subsection (2), the offender is not eligible for parole in respect of that sentence.

(4) In exercising its discretion under subsection (2), a court may have regard to such matters as it considers necessary or appropriate and, without limiting the generality of this, may have regard to all or any of the following:

(a) the nature and circumstances of the offence;

(b) the offender's antecedents or character;

(c) any other sentence to which the offender is subject.

(5) An order under subsection (2) forms, for all purposes, part of the sentence to which it relates.

(6) An offender in respect of whom –

(a) an order has been made under subsection (2)(a); or

(b) subsection (3A) applies –

is not eligible to be released on parole in respect of his or her sentence.

(7) A court must give reasons for making an order under subsection (2).

(8) If the whole or part of a sentence of imprisonment is suspended, only the operative sentence is to be taken into account for the purposes of this section.

(9) In subsection (8),

operative sentence means that part of a sentence of imprisonment which has not been suspended.

18. Court to make order on eligibility of life prisoner for parole

(1) A court that sentences an offender to imprisonment for the term of the offender's natural life, either on the conviction of the offender or on the determination of an appeal, must order –

(a) that the offender is not eligible for parole in respect of that sentence; or

(b) that the offender is not eligible for parole in respect of that sentence before the expiration of such period as is specified in the order.

(2) For the purposes of subsection (1), a court may have regard to such matters as it considers necessary or appropriate and, without limiting the generality of this, may have particular regard to all or any of the following:

(a) the nature and circumstances of the offence;

(b) the offender's antecedents or character;

(c) any other sentence to which the offender is subject.

(3) An order made under subsection (1) forms, for all purposes, part of the sentence to which it relates.

(4) An offender in respect of whom an order has been made under subsection (1)(a) is not eligible to be released on parole in respect of the offender's sentence.

(5) A court must give reasons for making an order under this section.

Division 3 – . . . . . .

19 - 23**.** . . . . . .

Division 4 – Suspended sentences

24. Suspended sentence to be conditional

(1) If a court makes an order suspending the whole or a part of a sentence of imprisonment, the order is subject to the condition that the offender does not commit another offence punishable by imprisonment during the period the order is in force.

(2) In addition to the conditions specified in subsection (1), an order suspending the whole or a part of a sentence of imprisonment may be subject to any one or more of the following conditions:

(a) that the offender is to perform community service for the number of hours, specified in the order, that are within a period specified in the order;

(b) that the offender is subject to the supervision of a probation officer;

(c) that the offender is required to undertake a rehabilitation program;

(d) any other condition as the court considers necessary or expedient.

(3) A condition imposed under subsection (1) or (2) may in itself be made subject to any condition as the court considers necessary or expedient.

(4) If a suspended sentence is, before the commencement of section 27Y, made

conditional on the performance of community service, the following sections apply with such modifications as are necessary and, in particular, a reference to a community service order in those sections is taken to be a reference to the condition imposing community service:

(a) section 28(b), (c), (d), (e), (f) and (g);

(b) sections 30, 31, 32 and 33;

(c) section 34(a);

(d) section 36A.

(5) If a suspended sentence is, before the commencement of Part 5B, made conditional on supervision of the offender by a probation officer, the following sections apply with such modifications as are necessary and, in particular, a reference to a probation order in those sections is taken to be a reference to the condition imposing probation:

(a) section 37(1)(b), (c), (d), (e), (f) and (g);

(b) section 37(2) and (3);

(c) sections 38, 39 and 40.

(5A) If a suspended sentence is, after the commencement of Part 5B, made conditional on the performance of community service, the following sections apply with such modifications as are necessary and, in particular, a reference to a community correction order in those sections is

taken to be a reference to the condition imposing community service:

(a) section 42AO(b), (c), (d), (e) and (f);

(b) section 42AP(1)(d);

(c) section 42AQ(1), (2) and (3);

(d) sections 42AR, 42AS and 42AT;

(e) sections 42AX and 42AZ.

(5B) If a suspended sentence is, after the commencement of Part 5B, made conditional on supervision of the offender by a probation officer, the following sections apply with such modifications as are necessary and, in particular, a reference to a community correction order in those sections is taken to be a reference to the condition imposing probation:

(a) section 42AO(b), (c), (d), (e) and (f);

(b) sections 42AP(1)(b),
sections 42AP(1)(c),
sections 42AP(1)(e),
sections 42AP(1)(f),
sections 42AP(1)(g), sections 42AP(1)(i) and section 42AP(1)(j);

(c) section 42AQ(1), (2) and (3);

(d) section 42AR.

(6) Nothing in this section is intended to affect the operation of section 8(1).

25. Effect of suspended sentence

(1) 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.

(2) A wholly suspended sentence of imprisonment is taken to be a sentence of imprisonment for the purposes of all enactments other than enactments providing for disqualification for, or loss of, office or the forfeiture, or suspension, of pensions or other benefits.

(3) If, under section 27, an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment then, for the purposes of 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.

(4) An offender in respect of whom a suspended sentence has been imposed is not required to serve the sentence or part sentence held in suspense unless the offender is ordered to do so under section 27.

26. Variation of order conditionally suspending sentence

(1) A court that has made an order suspending a sentence of imprisonment on conditions may, on application under this subsection –

(a) vary the order; or

(b) cancel the order and deal with the offender for the offence or offences in respect of which the order was made in any manner in which the court could deal with the offender had it just convicted the offender of that offence or those offences.

(2) Before the court varies or cancels the order it must be satisfied that –

(a) the circumstances of the offender have materially altered since the order was made, as a result of which the offender will not be able to comply with any one or more of the conditions of the order; or

(b) the offender is no longer willing to comply with the order.

(3) If the court cancels the order it must, in determining how to deal with the offender, take into account the extent to which the offender had complied with the order before its cancellation.

(4) An application under subsection (1) may be made by –

(a) the offender or DPP if the sentencing court was the Supreme Court; or

(b) the offender, complainant or police prosecutor if the sentencing court was a court of petty sessions.

(5) Notice of an application under subsection (1) by an offender is to be given to –

(a) the DPP if the sentencing court was the Supreme Court; or

(b) the complainant or police prosecutor if the sentencing court was a court of petty sessions.

(6) Notice of an application under subsection (1) by a complainant or police prosecutor or the DPP is to be given to the offender.

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

27. Breach of order suspending sentence

(1) If it appears to an authorised person that, during the period an order suspending a sentence of imprisonment is in force in relation to an offender, the offender has breached a condition of the suspended sentence, the authorised person may apply to the court, which made the order suspending the sentence of imprisonment, for an order under this section.

(2) The authorised person must give notice of the application under subsection (1) to the offender.

(3) The court may issue a warrant for the arrest of the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) the court is satisfied that reasonable efforts to give the offender notice of the application have been made but those efforts have been unsuccessful.

(4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period an order suspending a sentence of imprisonment is in force in respect of the offender (in this section called the "**new offence**"), an authorised person –

(a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(4A) If an application is made under subsection (4) to a court that is not the court that imposed the suspended sentence on the offender, the court hearing the application may do either of the following:

(a) deal with the application under this section;

(b) adjourn the application to the court that imposed the suspended sentence and either grant the offender bail or remand the offender in custody.

(4B) If, on the hearing of an application under this section, the court is satisfied that the offender has been found guilty of a new offence, the court must activate the sentence of imprisonment that is held in suspense and order the offender to serve it.

(4C) If the court is of the opinion that an order under subsection (4B) would be unjust, the court may instead –

(a) activate part of the sentence that is held in suspense and order the offender to serve it; or

(b) order that a sentence (in this section called the "**substituted sentence**") take effect in place of the suspended sentence; or

(c) by order, vary the conditions on which the execution of the sentence was suspended, including extending the period of suspension in the order to a day no later than 12 months after the day the offender was found guilty of the new offence; or

(d) make no order in respect of the suspended sentence.

(4D) If the court decides not to exercise the power referred to in subsection (4B) it must state the reasons for so deciding.

(4E) If, on the hearing of an application under this section, the court is satisfied that the offender

has breached, without reasonable excuse, a condition of the suspended sentence other than by committing a new offence, the court may –

(a) activate all or part of the sentence that is held in suspense and order the offender to serve it; or

(b) order that a sentence (in this section called the "**substituted sentence**") take effect in place of the suspended sentence; or

(c) by order, vary the conditions on which the execution of the sentence was suspended, including extending the period of suspension in the order to a day no later than 12 months after the day the offender was found guilty of the breach; or

(d) make no order in respect of the suspended sentence.

(5) A substituted sentence may be any sentence that the court could have imposed on the offender had it just found the offender guilty of the offence in respect of which the suspended sentence was imposed, but no greater term of imprisonment is to be imposed by the substituted sentence than was imposed by the suspended sentence.

(6) If a court orders an offender to serve a term of imprisonment that had been held in suspense, the term of imprisonment must, unless the court otherwise orders, be served –

(a) immediately; and

(b) cumulatively with any other term of imprisonment previously imposed on the offender by that court or any other court.

(6A) If, under subsection (4B), (4C) or (4E), a court orders a sentence to take effect –

(a) the sentence is taken to be a sentence imposed on the offender as if the court had just found the offender guilty of the offence in respect of which the suspended sentence was imposed; and

(b) section 17 applies to that sentence.

(6B) If, under subsection (4C) or (4E), a court orders that a substituted sentence is to take effect, section 17 applies to the substituted sentence.

(7) If it is not possible for the court to immediately deal with an application under subsection (1) or (4) in respect of the offender, the court may –

(a) adjourn the proceedings; and

(b) either grant the offender bail or remand the offender in custody.

PART 3A – DRUG TREATMENT ORDERS

27A. Interpretation of Part

In this Part, unless the contrary intention appears –

case manager means a person appointed or authorised under section 27X as a case manager for the purposes of this Part;

core conditions of a drug treatment order – see sections 27E and 27G;

court means a court constituted by a magistrate, the Supreme Court or the Court of Criminal Appeal;

court diversion officer means a person appointed or authorised under section 27X as a court diversion officer for the purposes of this Part;

custodial part, of a drug treatment order – see sections 27E and 27F;

drug treatment order assessment report or "**report**" means a report under section 27D;

family violence order means a family violence order within the meaning of the *Family Violence Act 2004*;

imprisonable offence means an offence that is punishable by a sentence of imprisonment;

interim family violence order means an interim family violence order within the meaning of the *Family Violence Act 2004*;

police family violence order means a police family violence order within the meaning of the *Family Violence Act 2004*;

program conditions of a drug treatment order – see sections 27E and 27H;

sexual offence means –

(a) a crime under section 122, 124, 125, 125A, 126, 127, 127A, 129, 133 or 185 of the *Criminal Code*; or

(b) a crime under section 298, 299 or 300 of the *Criminal Code* relating to a crime specified in paragraph (a); or

(c) an offence under section 35(3) of the *Police Offences Act 1935*;

treatment and supervision part, of a drug treatment order – see section 27E.

27AB. Court constituted by magistrate may refer sentencing to other magistrate

Despite any other provision of this or any other Act, if an offender, who is before a court that is to sentence the offender and is constituted by a magistrate, has pleaded guilty to, or been found

guilty of, an offence, and the magistrate is of the opinion that the court should consider making a drug treatment order –

(a) the magistrate may refer the offence to another magistrate for sentencing; and

(b) the magistrate may provide, to the magistrate to whom the sentencing is referred, the information, in relation to the offender and the offence, that the magistrate thinks fit; and

(c) any sentence imposed by the magistrate to whom an offence is referred under paragraph (a) has for all purposes the same effects and consequences as if it had been passed by the magistrate who presided at the hearing or trial, or received the plea, in relation to the offence.

27B. Court may make drug treatment order

(1) A court may make a drug treatment order in respect of an offender if –

(a) it finds the offender guilty of one or more imprisonable offences other than –

(i) sexual offences; or

(ii) offences involving the infliction of actual bodily harm that, in the court's opinion, was not minor harm; and

(b) it is satisfied on the balance of probabilities that –

(i) the offender has a demonstrable history of illicit drug use; and

(ii) illicit drug use contributed to the commission of the imprisonable offence or offences; and

(c) it considers that, were it not making the drug treatment order –

(i) it would have sentenced the offender to a term of imprisonment; and

(ii) it would not have suspended the sentence, either in whole or in part; and

(d) it has received and considered a drug treatment order assessment report on the offender; and

(e) the offender is not subject to –

(i) . . . . . .

(ii) a parole order under the *Corrections Act 1997*; or

(iii) another drug treatment order; and

(f) no proceedings are pending against the offender, in any court, for –

(i) sexual offences; or

(ii) offences involving the infliction of actual bodily harm.

(2) The court may make the drug treatment order regardless of whether –

(a) the offender's illicit drug use contributed to the offender breaching, on one or more previous occasions, a sentencing order or bail conditions; or

(b) the offender has been previously sentenced to one or more terms of imprisonment.

(3) However, the court must not make the drug treatment order unless –

(a) it is satisfied in all the circumstances that it is appropriate to do so; and

(b) it is satisfied that the facilities likely to be used for the treatment and supervision part of the order are reasonably accessible to the offender; and

(ba) it is satisfied that –

(i) there are sufficient staff, in respect of a facility that is likely to be used for the treatment and supervision part of the order, to be able to provide the treatment and supervision; and

(ii) there will be sufficient staff and resources to enable treatment and

supervision of the offender to be provided when he or she is not being treated in the facility; and

(c) the offender agrees in writing to the making of the order and to comply with the treatment and supervision part of the order.

27C. Purpose of drug treatment order

A drug treatment order is a sentencing order that aims to do one or more of the following in respect of an offender with a demonstrable history of illicit drug use:

(a) provide an alternative sanction to imprisonment;

(b) through an integrated, supervised and reviewable treatment regime, facilitate the offender's rehabilitation and reintegration into the community;

(c) reduce the incentive for the offender to resort to criminal activity;

(d) reduce risks to the offender's health and well-being.

27D. Drug treatment order assessment report

(1) A court that is considering making a drug treatment order in respect of a defendant must –

(a) order a drug treatment order assessment report on the defendant; and

(b) adjourn the proceedings to enable a court diversion officer to provide the report.

(2) The purpose of the report is to establish whether the defendant is a suitable subject for a drug treatment order, and, if so, make recommendations to the court on what program conditions to attach to the treatment and supervision part of the order.

(3) The report may set out such of the following matters as, on investigation, appear to its authors to be relevant to its purpose and are readily ascertainable:

(a) the age of the defendant;

(b) the social history and background of the defendant;

(c) the defendant's history of drug use;

(d) the defendant's medical, psychological and psychiatric history and condition, including details of any treatment the defendant has undergone for drug or alcohol dependency;

(e) the defendant's educational background;

(f) the defendant's employment history;

(g) the circumstances of any other offences, known to the court, of which the defendant has been found guilty;

(h) the extent of the defendant's compliance with any sentence currently in force in respect of the defendant;

(i) the defendant's financial circumstances;

(j) any special needs of the defendant.

(4) The report is to include such other matters, relevant to the defendant, as the court may direct.

(5) Also, if the authors of the report consider that the defendant may be a suitable subject for a drug treatment order, the report is to advise on programs, courses and treatments that may be able to address the defendant's drug use problem and other social needs.

(6) The authors of the report must file it with the court within such time as the court directs.

(7) Within a reasonable time after the report is filed, and before the drug treatment order is made, the court must ensure that a copy of the report is given to –

(a) the prosecutor; and

(b) the defendant's legal representative or, if the defendant is not legally represented, the defendant.

(8) The prosecution or defence may dispute all or any part of the report.

(9) If the whole or any part of the report is disputed, the court must not take the disputed report or

disputed part into consideration in making the drug treatment order unless the disputing party has been given the opportunity to –

(a) cross-examine the authors of the report on the disputed matters; and

(b) lead evidence on the disputed matters.

(10) If the court grants the defendant bail on an adjournment under subsection (1)(b), it must, for the purpose of facilitating the provision of the report, impose a condition of bail requiring the defendant to –

(a) report to a court diversion officer, or to a specified person or body, within a specified period; and

(b) comply with any requirements of the court diversion officer or specified person or body.

27E. Parts of drug treatment order

(1) A drug treatment order has –

(a) a custodial part; and

(b) a treatment and supervision part.

(2) The custodial part consists of the sentence of imprisonment imposed under section 27F.

(3) The treatment and supervision part consists of –

(a) the core conditions attached under section 27G; and

(b) the program conditions attached under section 27H.

(4) The treatment and supervision part operates until it is cancelled under section 27L, 27O or 27Q.

(5) However, section 27R applies if the treatment and supervision part is not, within 2 years after the making of the drug treatment order, cancelled under section 27L, 27O or 27Q.

27F. Custodial part of drug treatment order and its activation

(1) A court that is making a drug treatment order must impose on the offender the sentence of imprisonment it would have imposed were it not making the order.

(2) The sentence of imprisonment so imposed is the custodial part of the drug treatment order.

(3) However, the offender is not required to serve all or any of the custodial part of the drug treatment order unless it is activated by some other order under this Part.

(4) The court must not fix a non-parole period for the sentence of imprisonment imposed under subsection (1).

27G. Core conditions of drug treatment order

(1) A court that is making a drug treatment order must attach the following conditions to the treatment and supervision part of the order:

(a) the offender must not, in Tasmania or elsewhere, commit another imprisonable offence;

(b) the offender must attend a court whenever the court directs;

(c) the offender must report to a court diversion officer at a specified place within 2 clear working days after the order is made;

(d) the offender must undergo such treatment for the offender's illicit drug use problem as is specified in the order or from time to time specified by a court;

(e) the offender must report to, and accept visits from –

(i) the offender's case manager; or

(ii) court diversion officers;

(f) the offender must, unless there are special circumstances, give the offender's case manager at least 2 clear working days' notice before any change of address;

(g) the offender must not leave Tasmania except with the permission, granted

either generally or in a particular case, of a court;

(h) the offender must comply with all lawful directions of a court;

(i) the offender must comply with all reasonable directions of the offender's case manager and court diversion officers concerning the core conditions and program conditions of the order.

(2) Also, if the offence in respect of which the drug treatment order is made is a family violence offence, the court must attach the following additional conditions to the order:

(a) the offender must not commit another family violence offence;

(b) the offender must comply with any family violence order, interim family violence order or police family violence order;

(ba) the offender must comply with any recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016* in force under that Act;

(c) the offender must attend and undergo assessment for, and treatment under, rehabilitation programs as directed by court diversion officers;

(d) the offender, if directed to undergo any rehabilitation programs, must attend and satisfactorily complete those programs and comply with the reasonable directions of the persons employed or engaged to conduct them.

(3) Conditions attached to the drug treatment order under subsection (1) or (2) are the core conditions of the order.

(4) While the treatment and supervision part of the drug treatment order is operating, the offender must comply with its core conditions.

(5) A court may issue a warrant for the arrest of the offender if, on any occasion, he or she fails to comply with the condition referred to in subsection (1)(b).

(6) A court or a justice may remand in custody an offender arrested under a warrant issued under subsection (5) to appear before a court as soon as practicable.

27H. Program conditions of drug treatment order

(1) A court that is making a drug treatment order may attach one or more of the following conditions to the treatment and supervision part of the order:

(a) the offender must submit to drug testing as specified in the order;

(b) the offender must submit to detoxification or other treatment, whether or not residential in nature, as specified in the order;

(c) the offender must attend vocational, educational, employment, rehabilitation or other programs specified in the order;

(d) the offender must submit to medical, psychiatric or psychological treatment specified in the order;

(e) the offender must not associate with persons or classes of persons specified in the order;

(f) the offender must reside at such place, and for such period, as is specified in the order;

(g) the offender must do or not do anything else that the court considers necessary or appropriate concerning –

(i) the offender's illicit drug use; or

(ii) the personal factors that the court considers contributed to the offender's criminal behaviour.

(2) Conditions attached to the drug treatment order under subsection (1) are the program conditions of the order.

(3) The court must attach at least one program condition to the drug treatment order but not

more than it considers necessary to achieve the purpose for which the order is made.

(4) While the treatment and supervision part of the drug treatment order is operating, the offender must comply with its program conditions.

27I. Case conferences

(1) A court constituted by a magistrate may convene a case conference from time to time to find out how an offender subject to a drug treatment order (including such an order made by a court not constituted by a magistrate) is progressing.

(2) The case conference –

(a) may be held in such place as the court considers suitable; but

(b) is not to be held by way of, or as part of, proceedings in an open court.

(3) The following persons may attend the case conference:

(a) the offender's legal representative;

(b) the offender's case manager;

(c) a prosecutor;

(d) any court diversion officer who has had dealings with the offender in connection with the order;

(e) at the request of or with the consent of the court, any other person.

(4) The court, by whatever means it considers most suitable, may direct the offender or any other person to attend the case conference and the offender or other person must comply with that direction.

(5) Where proceedings for any offence are being heard by a magistrate, no objection can be taken to the magistrate on the ground that he or she has previously convened a case conference in relation to the offender.

27J. Variation of drug treatment order on assessment of progress

(1) A court constituted by a magistrate may from time to time vary the treatment and supervision part of a drug treatment order (including such an order made by a court not constituted by a magistrate) if it considers it appropriate to do so based on its assessment of the offender's progress.

(2) The court may act under subsection (1) on its own motion or on the application of –

(a) the offender or the offender's legal representative; or

(b) a police officer or prosecutor; or

(c) a court diversion officer.

(3) When acting under subsection (1), the court must ensure that the offender is present.

(4) Under subsection (1), the court may do any one or more of the following:

(a) add or remove program conditions;

(b) vary core or program conditions, other than the core condition attached under section 27G(1)(a), for example to adjust –

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug testing; or

(iv) the type or frequency of vocational, educational, employment or other programs that the offender must attend;

(c) add, if applicable, core conditions of the kind referred to in section 27G(2).

27K. Compliance reward

(1) A court, on its own motion, may from time to time confer a reward on an offender who has been fully or substantially complying with the conditions of a drug treatment order (including such an order made by another court) by doing one or more of the following:

(a) varying the treatment and supervision part of the order;

(b) varying or cancelling an order under section 27M(1)(c);

(c) making an order that some or all of a period for which the custodial part of the drug treatment order is activated under section 27M(1)(d), but which the offender is yet to serve in a prison, is no longer activated;

(d) conferring on the offender any other reward that the court considers appropriate.

(2) Under subsection (1)(a), the court may do one or more of the following:

(a) add or remove program conditions;

(b) vary core or program conditions, other than the core condition attached under section 27G(1)(a), for example to reduce –

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug testing.

27L. Cancellation reward

(1) A court, on its own motion, may cancel a drug treatment order (including such an order made

by another court) as a reward if it is satisfied that –

(a) the offender has been fully or substantially complying with the conditions of the order; and

(b) the continuation of the order is no longer necessary to meet the purposes for which it was made; and

(c) the period of imprisonment that the offender would have had to serve had the order been fully activated at the time of sentencing has expired.

(2) To avoid doubt, if a drug treatment order is cancelled under this section, any earlier orders activating the custodial part of the order cease to have effect forthwith.

27M. Contravention of order

(1) If a court is satisfied that an offender has failed to comply with a condition of a drug treatment order (including such an order made by another court), other than by committing an offence punishable by a term of imprisonment exceeding 12 months, the court must take one of the following actions:

(a) confirm the treatment and supervision part of the drug treatment order;

(b) vary the treatment and supervision part of the drug treatment order;

(c) make an order requiring the offender to perform up to 20 hours of community work under the supervision of the offender's case manager;

(d) subject to section 27N, order that the custodial part of the drug treatment order is activated for a specified period, of not less than one day and not more than 7 days, to be served in prison.

(2) In deciding which action to take under subsection (1), the court must –

(a) consider each of the actions in the order in which they appear; and

(b) only take the first action that it considers to be appropriate in the circumstances –

unless the court is satisfied, having regard to information available to the court as to the therapeutic value of the actions that it may take under subsection (1), that taking another action under subsection (1) is more likely to achieve the purpose or purposes of a drug treatment order set out in section 27C.

(3) However, the court may only act under subsection (1)(d) if it is satisfied beyond reasonable doubt that the offender has failed to comply with the relevant condition.

(3A) Despite subsection (3), the court may take action under subsection (1)(d) despite only being satisfied on the balance of probabilities that the offender has failed to comply with the relevant

condition, if the court is satisfied, having regard to information available to the court as to the therapeutic value of taking such action, that it is appropriate to do so.

(4) To act under subsection (1)(a), (b) or (c), the court need only be satisfied on the balance of probabilities that the offender has failed to comply with the relevant condition.

(5) Under subsection (1)(b), the court may do one or more of the following:

(a) add or remove program conditions;

(b) vary core or program conditions, other than the core condition attached under section 27G(1)(a), for example to increase –

(i) the frequency of treatment; or

(ii) the degree of supervision; or

(iii) the frequency of drug testing;

(c) add, if applicable, core conditions of the kind referred to in section 27G(2).

(6) If the court is satisfied on the balance of probabilities that an offender who is subject to an order under subsection (1)(c) has failed to comply with the order, the court may take any action under subsection (1).

(7) The court may act under subsection (1) or (6) on its own motion or on the application of –

(a) a police officer or prosecutor; or

(b) a court diversion officer.

(8) Section 36A applies, with such adaptation and modification as necessary, to an offender performing community work as required by an order made under subsection (1)(c) as if that order were a community service order.

27N. Imprisonment

(1) An offender is only required to serve a period of imprisonment pursuant to an order under section 27M(1)(d) once the total of the custodial periods activated under all such orders in respect of the offender, and which he or she is yet to serve, exceeds 13 days exclusive of any de-activated parts of those custodial periods.

(2) If a court makes an order under section 27M(1)(d) that will have the effect of activating the accumulated custodial periods of a drug treatment order, it may, to give effect to the order under section 27M(1)(d), issue a warrant for the imprisonment of the offender.

(3) In this section –

custodial period, of a drug treatment order, means the period, of imprisonment, for which the custodial part of the order is activated under section 27M(1)(d);

de-activated part, of a custodial period of a drug treatment order, means such part of

the custodial period as is no longer activated because of an order under section 27K(1)(c).

27O. Commission of certain offences

(1) If a court is satisfied beyond reasonable doubt that an offender has failed to comply with a condition of a drug treatment order (including such an order made by another court) by committing an offence punishable by a term of imprisonment exceeding 12 months, the court must –

(a) take one of the actions under section 27M(1) as though the offender had failed to comply with any other condition of the order; or

(b) cancel the treatment and supervision part of the order and, after taking into account the extent of the offender's compliance with that part –

(i) make an order activating some or all of the custodial part of the drug treatment order; or

(ii) subject to subsection (2A), cancel the custodial part of the drug treatment order and, other than by making an order under section 7(a), deal with the offender for each offence in respect of which the drug treatment order was made in any

way in which it could deal with the offender had it just found the offender guilty of each such offence.

(2) The court may act under subsection (1) on its own motion or on the application of –

(a) a police officer or prosecutor; or

(b) a court diversion officer.

(2A) A court constituted by a magistrate may only take action under subsection (1)(b)(ii) in relation to a drug treatment order if the court made the order.

(3) Before the court cancels the treatment and supervision part of the drug treatment order under subsection (1), whether or not it also cancels the custodial part, it must give the offender an opportunity to make a submission on the matter.

(4) To avoid doubt, if under this section the court cancels the treatment and supervision part or custodial part of the drug treatment order, any earlier orders activating the custodial part of the drug treatment order cease to have effect forthwith.

27P. Hearing and determining certain offences

(1) This section applies if an offender subject to a drug treatment order is charged with an offence,

whether committed before or after the making of the order, and –

(a) a court finds the offender guilty of the offence; and

(b) for the offence, the court imposes a sentence of imprisonment on the offender; and

(c) the court does not suspend the sentence, either in whole or in part; and

(d) the length of the sentence is less than the remaining length of the custodial part of the drug treatment order; and

(e) the offence is one for which the court could have made a drug treatment order if the offender were not already subject to such an order.

(2) The court, in imposing the sentence, may order that it is subsumed within the custodial part of the drug treatment order.

(3) However, unless subsection (2) applies, the court must cancel the treatment and supervision part of the drug treatment order under paragraph (b) of section 27O(1) and take an action under subparagraph (i) or (ii) of that paragraph.

(4) Despite subsection (3), a court constituted by a magistrate may only take, in accordance with that subsection, an action under section 27O(1)(b)(ii) in relation to a drug treatment order if the court made the order.

27Q. Cancellation

(1) A court may cancel the treatment and supervision part of a drug treatment order made by the court if it is satisfied on the balance of probabilities that –

(a) before the order was made, the offender's circumstances were not accurately presented to the court or the authors of the relevant drug treatment order assessment report; or

(b) the offender will be unable to comply with a condition of the order because his or her circumstances have materially changed since it was made; or

(c) the offender is no longer willing to comply with one or more conditions of the order; or

(d) the continuation of the treatment and supervision part of the order is unlikely to achieve one or more of the purposes for which the order was made.

(2) When cancelling the treatment and supervision part of the order under subsection (1), the court, after taking into account the extent of the offender's compliance with that part, must –

(a) make an order activating some or all of the custodial part of the drug treatment order; or

(b) cancel the custodial part of the drug treatment order and, other than by making an order under section 7(a), deal with the offender for each offence in respect of which the drug treatment order was made in any way in which it could deal with the offender had it just convicted him or her of each such offence.

(3) The court may act under subsection (1) or (2) on its own motion or on the application of –

(a) the offender; or

(b) a police officer or prosecutor; or

(c) a court diversion officer.

(4) Before the court cancels the treatment and supervision part of the drug treatment order, whether or not it also cancels the custodial part, it must give the offender an opportunity to make a submission on the matter.

(5) When making an order under subsection (2)(a), the court may fix a non-parole period for the sentence of imprisonment, or partial sentence of imprisonment, activated by the order.

(6) Subsection (5) has effect notwithstanding any other provision of this Part.

(7) To avoid doubt, if under this section the court cancels the treatment and supervision part or custodial part of the drug treatment order, any earlier orders activating the custodial part of the

drug treatment order cease to have effect forthwith.

27QA. Referral of matters to other courts

(1) Despite any other provision of this or any other Act, if –

(a) a drug treatment order that is in force in relation to an offender has been made by a court constituted by a magistrate, by the Supreme Court or by the Court of Criminal Appeal; and

(b) the offender is before the Supreme Court or the Court of Criminal Appeal –

the Supreme Court or the Court of Criminal Appeal, as the case may be, may, if it is of the opinion that a court constituted by a magistrate ought to consider whether to deal with the offender under a provision of this Part, remand the offender on bail, or in custody, to appear before a court constituted by a magistrate.

(2) Despite any other provision of this or any other Act, if –

(a) a drug treatment order that is in force in relation to an offender has been made by the Supreme Court or the Court of Criminal Appeal; and

(b) the offender is before a court constituted by a magistrate –

the court constituted by a magistrate may, if it is of the opinion that the Supreme Court ought to consider whether to deal with the offender under a provision of this Part, remand the offender on bail, or in custody, to appear before the Supreme Court.

(3) If an offender is remanded by a court (***the transferring court***) to appear before another court (***the receiving court***) in accordance with this section –

(a) the receiving court is to consider whether to deal with the offender under a provision of this Part; and

(b) if the receiving court considers that –

(i) it ought to deal with the offender under a provision of this Part, the receiving court may take any action in relation to the offender that it may take under the provision; or

(ii) it is not appropriate for the offender to be dealt with by the receiving court, the receiving court may remand the offender on bail, or in custody, to appear before the transferring court to be dealt with as if the offender had not been remanded to appear before the receiving court.

(4) Without limiting the generality of subsection (3)(b)(i), the action that a receiving

court may take under subsection (3)(b)(i) includes, if an application to the transferring court in relation to the offender has not been disposed of by the transferring court, any action that the receiving court could take if the application had been made to the receiving court.

27R. Second anniversary review

(1) This section applies if the treatment and supervision part of a drug treatment order is not cancelled under section 27L, 27O or 27Q within the 2-year period immediately following the making of the order.

(2) As soon as practicable after the 2-year period, a court constituted by a magistrate must review the treatment and supervision part to determine whether, notwithstanding any other provision of this Part, it should continue to operate.

(3) The court may conduct the review in the same manner as a case conference convened under section 27I and, if it does so, subsections (2), (3) and (4) of that section apply, with necessary modifications, to the review.

(4) On completion of a review in relation to a drug treatment order, the court must –

(a) if the court that made the order was constituted by a magistrate, cancel the treatment and supervision part of the order and exercise the court's powers under section 27Q(2); or

(b) if the Supreme Court or the Court of Criminal Appeal made the order, provide to the court that made the order a report in relation to the review.

(5) A court that is provided under subsection (4)(b) with a report in relation to an order must cancel the treatment and supervision part of the order and exercise the court's powers under section 27Q(2).

27S. Motions to review

(1) On the hearing of a motion to review a sentencing order made by a court constituted by a magistrate, the Supreme Court may itself make a drug treatment order.

(2) For a sentencing order made by a court constituted by a magistrate, Part XI of the *Justices Act 1959* applies with the following modifications:

(a) a motion to review does not lie against –

(i) a refusal to make a drug treatment order; or

(ii) a finding that an offender has failed to comply with a condition of a drug treatment order; or

(iii) the variation of the treatment and supervision part of a drug treatment order; or

(iv) the cancellation of the treatment and supervision part, or the custodial part, of a drug treatment order;

(b) if a motion to review concerns the custodial part of a drug treatment order, and not its treatment and supervision part, the motion does not operate as a stay of the treatment and supervision part of the order unless the Supreme Court so orders.

(3) For the purposes of section 7, an order under this Part activating some or all of the custodial part of a drug treatment order is taken to be a sentencing order.

(4) If, on the hearing of a motion to review a sentencing order made by a court constituted by a magistrate, the Supreme Court considers that the making of a drug treatment order may be appropriate, it may make such an order under this Part or, with or without directions, refer the matter to that court to consider the making of such an order.

(5) If a court to which a matter is referred under subsection (4) determines not to make a drug treatment order, it must remit the matter to the Supreme Court for the making of an order under section 7.

(6) If a court to which a matter is referred under subsection (4) makes a drug treatment order –

(a) the order has effect for section 7 as if it were a sentencing order made by the Supreme Court on the hearing of the motion to review; but

(b) for all other purposes has effect as an order made by a magistrate.

27T. Immunity from prosecution for certain drug offences

(1) A person is not liable to be prosecuted for an offence involving controlled drugs within the meaning of the *Misuse of Drugs Act 2001* –

(a) as a result of any admission made in connection with any assessment of the eligibility of the person for the making of a drug treatment order; or

(b) as a result of any admission made in connection with the assessment by a court, or at a case conference convened by that court under section 27I, of the person's progress under a drug treatment order.

(2) However, subsection (1) does not prevent a prosecution for any offence involving controlled drugs within the meaning of the *Misuse of Drugs Act 2001* if there is evidence, other than the admission or evidence obtained as a result of the admission, to support a charge.

(3) The admission, and any evidence obtained as a result of the admission, is not admissible against

the person in a prosecution referred to in subsection (2).

27U. Information sharing

A person who is a personal information custodian within the meaning of the *Personal Information Protection Act 2004* is not taken to contravene that Act by reason only of collecting, using or disclosing or otherwise dealing with personal information for the purposes of this Part.

27V. Random drug testing

If a drug treatment order includes a program condition relating to the requirement for random drug testing, the offender's case manager may decide when and where the offender is to report from time to time for such testing.

27W. Disclosure of compliance information

(1) A judge, magistrate, court diversion officer or case manager may request any person involved in the treatment or supervision of the offender to disclose any compliance information in the person's possession and the person must comply with that request.

(2) Subsection (1) has effect notwithstanding the *Personal Information Protection Act 2004* or any legislation relating to the confidentiality or privacy of information.

(3) Where a person discloses compliance information in good faith under this section –

(a) the person does not, by reason of that disclosure, incur any criminal, civil or administrative liability; and

(b) the person is not, by reason of that disclosure –

(i) taken to have breached any rule of law or practice that would otherwise prohibit the person from disclosing the compliance information; or

(ii) taken to have broken any professional or other oath, or breached any professional or other code, standard or guideline of ethics or etiquette that might otherwise bar the person from, or condemn the person for, disclosing the compliance information; or

(iii) liable to condemnation or disciplinary action by any professional body or other person.

(4) In this section –

compliance information means information about an offender's compliance with the conditions of a drug treatment order.

27X. Court diversion officers and case managers

(1) The Secretary may –

(a) appoint a State Service officer or State Service employee employed in the Department to be a court diversion officer or case manager for the purposes of this Part; and

(b) with the consent of the Head of another State Service Agency, appoint a State Service officer or State Service employee employed in that Agency to be a court diversion officer or case manager for the purposes of this Part.

(2) A person appointed as a court diversion officer or case manager under this section may hold that office in conjunction with State Service employment.

(3) The Secretary may authorise a person who is not a State Service officer or State Service employee to perform the functions and exercise the powers of a court diversion officer or case manager for the purposes of this Part.

PART 4 – COMMUNITY SERVICE ORDERS

27Y. No new community service orders to be made

Despite any other provision of this Act, a court may not impose a community service order on an offender after the day on which Part 5B commences.

28. Conditions of community service order

A community service order is subject to the following conditions:

(a) the offender must not commit an offence punishable by imprisonment while the order is in force;

(b) the offender must report within one clear working day to a probation officer or supervisor, at the place specified in the order;

(c) the offender must satisfactorily perform community service, as directed by a probation officer or supervisor, for the number of hours specified in the order;

(d) the offender must comply with the reasonable directions of a probation officer or supervisor;

(e) the offender must give notification to a probation officer of any change of address or employment before, or within 2 clear working days after, the change;

(f) the offender must not leave or stay outside Tasmania without the permission of a probation officer;

(g) the offender must attend educational and other programs as directed by a probation officer.

29. Court may consider compliance with previous order

In determining whether to make a community service order in respect of an offender, a court may have regard to the extent to which the offender complied with any previous community service order.

30. Multiple community service orders

(1) A court may make –

(a) 2 or more community service orders in respect of an offender in relation to 2 or more offences; and

(b) a community service order in respect of an offender who is already subject to a community service order.

(2) If a court makes separate community service orders in relation to 2 or more offences committed by an offender, the conditions of the orders are concurrent unless the court directs otherwise.

(3) The conditions of a community service order made in respect of a person are, unless the court

making the order directs otherwise, concurrent with those of any other community service order in force in respect of that person.

31. Limitation on number of hours of community service

(1) The maximum number of hours that a court may order community service to be performed under a community service order imposed in respect of one offence is 240.

(2) The maximum number of hours that a court may order community service to be performed under a community service order imposed in respect of 2 or more offences is 240.

(3) A court that makes a community service order in respect of an offender who is already subject to such an order must not require the offender to do community service for a number of hours that, aggregated with the number of hours of community service remaining to be completed under the subsisting order, would exceed 240.

(4) This section does not apply to an MPCSO.

32. Attendance at educational program

If an offender who is subject to a community service order attends an educational or other program in accordance with the directions of a probation officer, the time that the offender spends attending that program is taken to be

performance of community service under the order.

33. Community service for benefit of victim of offence

(1) A probation officer may arrange for an offender who is subject to a community service order to perform community service for the benefit of the victim of the offender's offence.

(2) Community service that an offender performs under subsection (1) is taken to be performance of community service under the order.

34. Duration of community service order

A community service order remains in force until the first of the following occurs:

(a) the offender finishes performing community service in accordance with the order for the number of hours specified in the order;

(b) the order is cancelled under section 35 or 36 or under another provision of this Act.

35. Review of community service order

(1) An offender who is subject to a community service order, or an authorised person, may apply to have the order reviewed.

(2) The application is to be made to the court that made the community service order.

(3) A copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –

(a) the offender if the applicant is an authorised person; or

(b) the DPP and the offender's probation officer if the application is made by the offender to the Supreme Court; or

(c) the complainant or police prosecutor, and the offender's probation officer, if the application is made by the offender to a court of petty sessions.

(4) If the applicant is an authorised person, the court may issue a warrant to arrest the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the offender but have been unsuccessful.

(5) Subject to subsection (6), at the hearing of the application, the court may –

(a) vary the community service order; or

(b) cancel the community service order and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found

the offender guilty of that offence or those offences.

(6) The court must not vary or cancel the community service order unless it is satisfied that –

(a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or

(b) the offender is no longer willing or able to comply with the order.

(7) In determining how to deal with an offender following the cancellation by it of a community service order, the court must take into account the extent to which the offender had complied with the order before its cancellation.

36. Breach of community service order

(1) If it appears to an authorised person that, during the period a community service order is in force in relation to an offender, the offender has breached a condition of the community service order, the authorised person may apply to the court, which made the community service order, for an order under this section.

(2) The authorised person must give notice of the application under subsection (1) to the offender.

(3) The court may issue a warrant for the arrest of the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) the court is satisfied that reasonable efforts to give the offender notice of the application have been made but those efforts have been unsuccessful.

(4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a community service order is in force in respect of the offender (in this section called the "**new offence**"), an authorised person –

(a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(5) If an application is made under subsection (4) to a court that is not the court that imposed the community service order on the offender, the court hearing the application may do either of the following:

(a) deal with the application under this section;

(b) adjourn the application to the court that imposed the community service order

and either grant the offender bail or remand the offender in custody.

(6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached a community service order, it may –

(a) confirm the order as originally made; or

(b) increase the number of hours of community service that the offender is required to perform under the order; or

(c) cancel the order and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or

(d) cancel the order and, if it considers it appropriate, any other order made by the court in respect of the offence in respect of which the community service order was made, and deal with the offender for that offence in any manner in which the court could deal with the offender had it just found the offender guilty of that offence.

(7) In determining how to deal with an offender who is found to have breached a community service order under this section, the court must take into account the extent to which the offender had

complied with the community service order before committing the breach.

36AA. Offences relating to community service orders

(1) An offender who is subject to a community service order who assaults, threatens, insults or uses abusive language to a probation officer or supervisor is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) A person is guilty of an offence if he or she –

(a) disturbs or interferes with a person performing an activity under a community service order; or

(b) prevents a person from performing such an activity.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

36A. Offender discharging order is taken to be Crown employee for certain purposes

(1) An offender discharging a community service order is, for the purposes of the *Workers Rehabilitation and Compensation Act 1988* and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, taken to be a

worker employed by the Crown and being paid at the greater of the following rates:

(a) a rate equal to the basic salary within the meaning of that Act;

(b) the rate of the offender's normal weekly earnings, if any, within the meaning of section 69 of that Act.

(1A) Despite subsection (1), an offender discharging a community service order is not to be taken to be a worker for the purposes of section 84(3) of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* if he or she is a worker for the purposes of section 84(3) of that Act by reason only of the application of subsection (1) of this section.

(2) An offender is taken to be discharging a community service order for the purposes of this section if he or she is –

(a) performing a required activity; or

(b) making a required journey.

(3) For subsection (2)(a), an offender is taken to be performing a required activity if he or she is –

(a) reporting to the offender's probation officer or supervisor for the purposes of the order; or

(b) doing community service in accordance with the order; or

(c) attending an educational, rehabilitation or other program in accordance with the order; or

(d) doing something else at the request or direction of, or with the express or implied authority of, the offender's probation officer or supervisor.

(4) For subsection (2)(b) –

(a) a required journey is a journey made for the purposes of, or in connection with, a required activity; but

(b) a journey is not taken to be a required journey by reason only of the fact that it is for the purpose of enabling an offender to travel –

(i) from his or her place of residence to the place at which he or she is required to perform a required activity; or

(ii) from the place at which he or she is required to perform a required activity to his or her place of residence.

PART 5 – PROBATION ORDERS

36B. No new probation orders to be made

Despite any other provision of this Act, a court may not impose a probation order on an offender after the day on which Part 5B commences.

37. Conditions of probation order

(1) A probation order is subject to the following conditions:

(a) during the period of probation the offender must not commit an offence punishable by imprisonment;

(b) the offender must report within one clear working day to a probation officer at the place specified in the order;

(c) during the period of probation the offender must submit to the supervision of a probation officer as required by that probation officer;

(d) during the period of probation the offender must report to a probation officer as required by that probation officer;

(e) during the period of probation the offender must not leave or stay outside Tasmania without the permission of a probation officer;

(f) during the period of probation the offender must comply with reasonable and lawful directions given by a probation officer;

(g) the offender must give notification to a probation officer of any change of address or employment before, or within 2 working days after, the change.

(2) A probation order may also include any or all of the following special conditions:

(a) the offender must attend educational and other programs as directed by the court or a probation officer;

(b) the offender must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer;

(c) the offender must submit to testing for alcohol or drug use as directed by a probation officer;

(d) the offender must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;

(e) such other special conditions as the court thinks necessary or expedient.

(3) A special condition may apply during the whole or any part of the period of probation as specified in the order.

38. Multiple probation orders

(1) A court may make –

(a) 2 or more probation orders in respect of an offender in relation to 2 or more offences; and

(b) a probation order in respect of an offender who is already subject to a probation order.

(2) If a court makes separate probation orders in respect of 2 or more offences committed by an offender, the conditions of those orders are concurrent unless the court directs otherwise.

(3) The conditions of a probation order made in respect of an offender are, unless the court making the order directs otherwise, concurrent with those of any other probation order in force in respect of that offender.

39. Limitation on duration of probation order

(1) Subject to subsection (2), the period of a probation order made against an offender is to be such period not exceeding 3 years as the court specifies.

(2) A court must not make a probation order against an offender for such a period that, as a result of the making of the order, the total consecutive period of probation imposed on that person at one time would exceed 3 years.

40. Commencement of probation order

The period of a probation order made against an offender commences on the day on which the order is made or on such later date as the court, by the order, may specify.

41. Review of probation order

(1) An offender who is subject to a probation order, or an authorised person, may apply to have the order reviewed.

(2) The application is to be made to the court that made the probation order.

(3) A copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –

(a) the offender if the applicant is an authorised person; or

(b) the DPP and the offender's probation officer if the application is made by the offender to the Supreme Court; or

(c) the complainant or police prosecutor, and the offender's probation officer, if the application is made by the offender to a court of petty sessions.

(4) If the applicant is an authorised person, the court may issue a warrant to arrest the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the offender but have been unsuccessful.

(5) Subject to subsections (6) and (7), at the hearing of the application, the court may –

(a) vary the probation order; or

(b) cancel the probation order and deal with the offender for the offence or offences in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

(6) The court must not vary or cancel the probation order unless it is satisfied that –

(a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or

(b) the offender is no longer willing or able to comply with the order.

(7) If the period during which a probation order has effect is extended under subsection (5)(a), the court must not extend that period so that it continues for more than the relevant period specified in section 39.

(8) In determining how to deal with an offender following the cancellation by it of a probation order, the court must take into account the extent to which the offender had complied with the order before its cancellation.

42. Breach of probation order

(1) If it appears to an authorised person that, during the period a probation order is in force in relation to an offender, the offender has breached a condition of the probation order, the authorised person may apply to the court, which made the probation order, for an order under this section.

(2) The authorised person must give notice of the application under subsection (1) to the offender.

(3) The court may issue a warrant for the arrest of the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) the court is satisfied that reasonable efforts to give the offender notice of the application have been made but those efforts have been unsuccessful.

(4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a probation order is in force in respect of the offender (in this section called the "**new offence**"), an authorised person –

(a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for an order under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(5) If an application is made under subsection (4) to a court that is not the court that imposed the probation order on the offender, the court hearing the application may do either of the following:

(a) deal with the application under this section;

(b) adjourn the application to the court that imposed the probation order and either grant the offender bail or remand the offender in custody.

(6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached the probation order, it may –

(a) confirm the order as originally made; or

(b) increase the period during which the order has effect; or

(c) vary the special conditions to which the order is subject; or

(d) cancel the order and deal with the offender for the offence or offences in

respect of which the order was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or

(e) cancel the order and, if it considers it appropriate, any other order made by the court in respect of the offence in respect of which the probation order was made, and deal with the offender for that offence in any manner in which the court could deal with the offender had it just found the offender guilty of that offence.

(7) If the period during which a probation order has effect is increased under subsection (6), the court is not to extend that period so that it continues for more than the relevant period in section 39.

(8) In determining how to deal with an offender who is found to have breached a probation order under this section, the court must take into account the extent to which the offender had complied with the probation order before committing the breach.

42A. Offence relating to a probation order

An offender who is subject to a probation order who assaults, threatens, insults or uses abusive language to a probation officer is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

PART 5A – HOME DETENTION ORDERS

42AB. Interpretation of Part

In this Part, unless the contrary intention appears –

boarding premises means a room, and any other facilities provided with the room, if –

(a) the room is occupied as a principal place of residence; and

(b) any of the bathroom, toilet or kitchen facilities are shared with other persons –

but does not include premises that are located in a building that is occupied predominantly by –

(c) secondary or tertiary students; or

(d) TasTAFE students within the meaning of the *TasTAFE (Skills and Training Business) Act 2021*;

core condition in relation to a home detention order, means a condition specified in section 42AD;

group premises means premises that –

(a) are boarding premises; or

(b) are provided for the purposes of enabling care, or mental health rehabilitation or treatment, to be provided to persons; or

(c) are provided for the purposes of assisting in the rehabilitation of persons who are addicted to alcohol or drugs; or

(d) are situated in a caravan park; or

(e) are of a type of premises that is prescribed;

home detention premises, in relation to a home detention order, means the premises specified, in accordance with section 42AC(5), in the home detention order;

operational period, in relation to a home detention order, means the period specified, in accordance with section 42AF(1), in the order, as that period is varied, if at all, under this Part;

prescribed officer means a person prescribed, for the purposes of this definition, by the regulations;

relevant drug offence means an offence against section 6(1), 7(1), 10(1) or (2), 11, 12(1), 13(1) or 14 of the *Misuse of Drugs Act 2001*;

special condition, in relation to a home detention order, means a condition that is imposed under section 42AE on the order;

violent offence means an offence (which may include a family violence offence) that involves violence, an element of violence or a threat of violence.

42AC. Home detention orders

(1) A court may make a home detention order in relation to an offender if the court –

(a) convicts the offender of an offence or offences; and

(b) considers that, were it not to make a home detention order, it would have sentenced the offender to a term of imprisonment in relation to the offence or offences, whether or not it would have, or could have, but for the operation of section 23A, suspended all or part of the sentence.

(2) A court may only make a home detention order in relation to an offender if –

(a) it is of the opinion that, in all the circumstances, it is appropriate to make the order; and

(b) it has considered a pre-sentence report as to whether the offender is suitable for a home detention order; and

(c) the offender consents to the order being made; and

(d) the offender is to reside, during the operational period of the order, at premises in relation to which the court is satisfied it is suitable for a home detention order to be made; and

(e) each person who has attained the age of 18 years and who resides at the premises (other than group premises) at which the offender is to reside during the operational period of the order has consented to a home detention order being made in relation to the offender; and

(f) the relevant circumstances do not exist in relation to the offender.

(3) For the purposes of subsection (2)(f), the relevant circumstances exist in relation to an offender if –

(a) any one of the offences in relation to which the offender is being sentenced by the court is a family violence offence, a violent offence or a sexual offence and the premises at which the offender would reside during the intended operational period of the order are premises at which a victim of the offence is to, or is likely

to, reside during all or part of that period; or

(b) the court is of the opinion that there is a significant risk that the offender may commit a violent offence, or a sexual offence, during the intended operational period of the order.

(4) A court may make –

(a) more than one home detention order in relation to an offender, except in relation to the same offence; and

(b) a home detention order in relation to an offender who is already subject to a home detention order; and

(c) a home detention order in relation to an offender who is, or is to be, subject to a community correction order; and

(d) a home detention order in relation to an offender who is subject to a community service order or a probation order.

(5) A home detention order in relation to an offender must specify the premises (the ***home detention premises***) that are to be the premises at which the offender must, in accordance with section 42AD(1)(b), reside during the operational period of the order.

42AD. Core conditions of home detention order

(1) A home detention order is subject to the following conditions:

(a) the offender must not, during the operational period of the order, commit an offence that is punishable by imprisonment;

(b) the offender must, during the operational period of the order, reside at the home detention premises;

(c) the offender must, during the operational period of the order, be at the home detention premises during the times, specified in the order, of the days of the week specified in the order, except if the offender is, for a relevant reason, not on those premises;

(d) the offender must, during the operational period of the order, permit a police officer, probation officer or prescribed officer to enter the home detention premises;

(e) the offender must, during the operational period of the order, permit a police officer to –

(i) conduct a search of the home detention premises; and

(ii) conduct a frisk search, within the meaning of the *Search Warrants*

Act 1997, of the offender, at the home detention premises or at any other place or premises; and

(iii) take a sample of a substance found on the home detention premises or on the person of the offender;

(f) the offender must comply with any reasonable and lawful directions of a probation officer or prescribed officer, including any directions as to the kind of employment, or the place of employment, of the offender;

(g) subject to subsection (2), the offender must, during all of the operational period of the order or such periods, within the operational period, as are determined from time to time by a court, submit to electronic monitoring, including by wearing or carrying an electronic device;

(h) if the offender is, in accordance with paragraph (g), required to submit to electronic monitoring –

(i) the offender must not tamper with, damage or disable any device used for the purpose of the electronic monitoring; and

(ii) the offender must comply with all reasonable and lawful directions given to the offender in relation to the electronic monitoring;

(i) the offender must, during the operational period of the order, if directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of an illicit drug;

(j) if the order is subject to a special condition referred to in section 42AE(1)(c), the offender must, during the operational period of the order, when directed to do so by a police officer, probation officer or prescribed officer, submit to a breath test, urine test, or other test, for the presence of alcohol;

(k) the offender must, during the operational period of the order, if directed by a probation officer or prescribed officer to engage in a personal development activity, counselling, or treatment, engage in the activity, counselling or treatment in accordance with any directions given by the probation officer or prescribed officer.

(2) If a court makes a home detention order in relation to an offender –

(a) the court may determine, and specify in the order, that there are suitable reasons for the offender not to be required to submit to electronic monitoring; and

(b) where such a determination is made, the condition referred to in subsection (1)(g)

is not a condition of the order unless a court varies the order by revoking the determination.

(3) A home detention order may specify different times, for different days of the week, at which the offender to whom the order relates is to be at the home detention premises during the operational period of the order.

(4) For the purposes of subsection (1)(c), an offender is, for a relevant reason, not on the home detention premises if the offender is not on the premises –

(a) because the offender is travelling to or from, or is at, premises at which the offender is seeking urgent medical treatment or dental treatment; or

(b) because it is necessary to not be on the premises in order to avoid, or minimise a serious risk of, the death of, or injury to, the offender or another person; or

(c) with the approval, of a probation officer or prescribed officer, given –

(i) so as to enable the offender to comply with a special condition; or

(ii) so as to enable the offender to seek or engage in employment; or

(iii) so as to enable the offender to attend an educational or training course or activity; or

(iv) so as to enable the offender to attend a rehabilitative or re-integrative activity or program; or

(v) so as to enable the offender to attend a court; or

(vi) for any other purpose approved by the probation officer or prescribed officer.

(5) For the purposes of subsection (1)(h), a direction in relation to electronic monitoring means a direction, given by –

(a) a police officer; or

(b) a probation officer or prescribed officer; or

(c) another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring –

in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring.

42AE. Special conditions of home detention orders

(1) A home detention order may also include any one or more of the following conditions:

(a) the offender must, during the operational period of the order, appear before the court at the places, days and times, that the court specifies in the order;

(b) the offender must, during the operational period of the order, take medication as required by a psychiatrist or a medical practitioner or by another person specified by the court;

(c) the offender must not, during the operational period of the order, consume alcohol;

(d) a condition, or conditions, with which the offender must comply, that the court considers appropriate for the purposes of reducing the likelihood of the offender re-offending during the operational period of the order.

(2) A special condition of a home detention order may specify that the condition applies during the whole or any part of the operational period of the order.

(3) Unless the court making the order directs otherwise, the special conditions of a home detention order made in respect of a person are, during the operational period of the order, concurrent with the conditions, of each other home detention order, community correction order, community service order, or probation order, in relation to that person, that are in force

during the operational period of the home detention order.

42AF. Operational period of home detention order

(1) A court that imposes a home detention order on an offender must specify the period during which the offender must comply with the order (the ***operational period***).

(2) The operational period of a home detention order may not be specified to be more than 18 months.

(3) A court must not specify, when making or varying a home detention order, an operational period, the effect of which would be that the total consecutive operational periods of all the home detention orders in relation to the offender would be more than 18 months.

(4) A home detention order remains in force until the operational period expires or the order is cancelled under this Act, whichever occurs first.

42AG. Commencement of operational period of home detention order

The operational period of a home detention order in relation to an offender commences on the day on which the order is made or on a later day specified in the order.

42AH. Applications to vary or cancel home detention orders

(1) An offender who is subject to a home detention order, or an authorised person, may apply, to the court that made the order, for the order to be varied or cancelled.

(2) A copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –

(a) the offender, if the applicant is an authorised person; or

(b) the DPP and the offender's probation officer, if the application is made by the offender to the Supreme Court or the Court of Criminal Appeal; or

(c) the complainant or police prosecutor, and the offender's probation officer, if the application is made by the offender to a court of petty sessions.

(2A) Despite subsection (2) and if –

(a) the applicant and all appropriate persons referred to in paragraph (a), (b) or (c) of that subsection consent to it; or

(b) the court considers it appropriate to do so in the circumstances –

the court to which the application is made may hear and determine the application at any time

before the expiration of the 7-day period following service as required by that subsection or without such service having been effected.

(3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(4) Subject to subsection (6), at the hearing of the application, the court to which the application is made may –

(a) vary the home detention order by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) altering, subject to section 42AF, the operational period of the order;

(iv) altering which premises are to be the home detention premises in relation to the order;

(v) altering the times, specified in the order, of the days of the week specified in the order, or alter the days of the week specified in the order, or both, at which the

offender must be at the home detention premises;

(vi) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

(b) cancel the home detention order and deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(c) cancel the home detention order and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made, and, whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(d) refuse to vary or cancel the home detention order.

(5) The court may, under subsection (4), vary or cancel a home detention order to which an application relates, whether or not the application was to vary or cancel the order.

(6) The court must not vary or cancel the home detention order under subsection (4) unless the court is satisfied that –

(a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or

(b) the offender is no longer willing or able to comply with the order; or

(c) it is otherwise appropriate to do so.

(7) In determining how to deal with an offender after the cancellation by the court of a home detention order or any other order under this section, the court must take into account the extent to which the offender had complied with the home detention order, or other order, respectively, before its cancellation or while it was still in force.

42AI. Breach of condition of home detention orders

(1) If it appears to an authorised person that, during the operational period of a home detention order

in relation to an offender, the offender has breached a condition of the order, the authorised person may, during or after that period, apply to the court that made the order for the court to deal with the application under this section.

(2) If the offender to whom an application relates is not before the court at the time at which the application is made, a copy of the application and notification of the time and place of the hearing of the application is to be served on the offender at least 7 days before the hearing.

(2A) Despite subsection (2) and if –

(a) the applicant and offender have consented to it, in writing; or

(b) the court considers it appropriate to do so in the circumstances –

the court to which the application is made may hear and determine the application at any time before the expiration of the 7-day period following service as required by that subsection or without such service having been effected.

(3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(4) The court to which an application is made under subsection (1) must, if the court finds that the offender has, during the operational period of the order, breached a condition of a home detention

order in relation to the offender, other than a condition referred to in section 42AD(1)(a) –

(a) confirm the home detention order, if it is still in force; or

(b) vary the home detention order, if it is still in force, by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) extending, subject to section 42AF, the operational period of the order;

(iv) altering which premises are to be the home detention premises in relation to the order;

(v) altering the times, specified in the order, of the days of the week specified in the order, or alter the days of the week specified in the order, or both, at which the offender must be at the home detention premises;

(vi) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or

revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

(c) if the home detention order is still in force –

(i) cancel the home detention order; and

(ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(d) if the home detention order is still in force –

(i) cancel the home detention order; and

(ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the home detention order was made; and

(iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which

the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(e) if the home detention order is not still in force –

(i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

(5) In determining how to deal with an offender after the cancellation by the court of a home detention order or any other order under this section, the court must take into account the extent to which the offender had complied with the home detention order, or other order, respectively, before its cancellation or while it was still in force.

(6) If –

(a) an application is made under subsection (1) in relation to an offender in respect of whom a home detention order is or was in force; and

(b) a court has found the offender guilty of an offence; and

(c) the offender has, by committing the offence, breached a condition of the home detention order referred to in section 42AD(1)(a); and

(d) an application was not made under section 42AJ in relation to the offence –

the court to which the application is made under subsection (1) must deal with the application as if the application were an application made to the court under section 42AJ and the court were the court that found the offender guilty of the offence.

42AJ. Breach of condition of home detention order where offender found guilty of offence

(1) If a court finds an offender guilty of an offence (in this section called the "**new offence**") committed during the operational period of a home detention order in relation to the offender, an authorised person –

(a) may make an oral application to the court, while the offender is before the

court in relation to the new offence, for the court to deal with the application under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(2) If the court that finds an offender guilty of a new offence committed during the operational period of a home detention order is unable to immediately deal with an application to the court under subsection (1), the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(3) If an application under subsection (1) is made to a court that is not the court that imposed the home detention order on the offender, the court may –

(a) deal with the application under this section; or

(b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.

(4) The court to which an application is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must, if the new offence of which the offender to whom the order relates or related has been found guilty is not an offence that is punishable by imprisonment –

(a) confirm the home detention order, if it is still in force; or

(b) vary the home detention order, if it is still in force, by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) extending, subject to section 42AF, the operational period of the order;

(iv) altering which premises are to be the home detention premises in relation to the order;

(v) specifying or altering the period or periods during which the offender is required, under section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

(c) if the home detention order is still in force –

(i) cancel the home detention order; and

(ii) deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(d) if the home detention order is still in force –

(i) cancel the home detention order; and

(ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the home detention order was made; and

(iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(e) if the home detention order is not still in force –

(i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

(5) A court to which an application in relation to an offender is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must, if the new offence of which the offender has been found guilty is an offence that is punishable by imprisonment –

(a) cancel the home detention order, if it is still in force, and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and

(b) whether or not the home detention order is still in force, impose on the offender any sentence (other than a home detention order) that the court could have

imposed on the offender had it just found the offender guilty of the offence, or offences, in respect of which the home detention order was made.

(6) Despite subsection (5), a court to which an application is made under subsection (1) or adjourned under subsection (3) must, if the new offence of which the offender has been found guilty is an offence that is punishable by imprisonment and the court is satisfied that there are exceptional circumstances –

(a) confirm the home detention order, if it is still in force; or

(b) vary the home detention order, if it is still in force, by doing any one or more the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) extending, subject to section 42AF, the operational period of the order;

(iv) altering which premises are to be the home detention premises in relation to the order;

(v) specifying or altering the period or periods during which the offender is required, under

section 42AD(1)(g), to submit to electronic monitoring, or revoking a specification under section 42AD(2) in a home detention order that an offender is not required to submit to electronic monitoring; or

(c) if the home detention order is not still in force –

(i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the home detention order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the home detention order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

(7) In determining how to deal with an offender after the cancellation by it of a home detention order or any other order under this section, the court must take into account the extent to which the offender had complied with the home detention order, or other order, respectively, before its cancellation or while it was still in force.

42AK. Offence relating to home detention order

An offender who is subject to a home detention order must not assault, threaten, insult or use abusive language to a probation officer or prescribed officer.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

42AL. Power of arrest

(1) A court to which an application in relation to an offender is made or adjourned under this Part may issue a warrant to arrest the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the offender but have been unsuccessful –

and the application was not made by or on behalf of the offender.

(2) Without limiting the generality of subsection (1)(b), reasonable efforts are to be taken to have been made to serve the application on an offender to whom a home detention order relates if a copy of the application is, during the operational period of the order, left at the home detention premises in relation to the offender.

(3) A court may issue a warrant to arrest an offender to whom a home detention order relates if the

offender has failed to comply with a condition of the order referred to in section 42AE(1)(a).

(3A) If an offender to whom a home detention order made by a court of petty sessions relates is arrested by a police officer under a warrant issued under subsection (1) or (3) –

(a) the police officer is, as soon as practicable, to bring the offender before a justice or a magistrate; and

(b) a justice or a magistrate may remand the offender in custody, or admit the offender to bail, to appear before the court, at a time specified by the justice or magistrate, so that the application under this Part or the breach of a condition of the order, in relation to which the warrant was issued, may be dealt with.

(4) A police officer may arrest an offender to whom a home detention order relates if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order.

(5) If an offender to whom a home detention order relates is arrested under subsection (4) –

(a) as soon as practicable, the offender is –

(i) if the order was made by the Supreme Court – to be brought before the Supreme Court; or

(ii) if the order was made by a court of petty sessions – to be brought before a justice or a magistrate –

unless the offender is released by a police officer unconditionally; and

(b) a police officer may release the offender unconditionally; and

(c) despite section 42AH(2), an oral application may be made under section 42AH(1) in relation to the offender; and

(d) a court, justice or magistrate before which the offender is brought may remand the offender in custody, or on bail, to appear before the court that made the order, at a time specified by the court, justice or magistrate, respectively, so that the application under section 42AH(1) may be dealt with.

PART 5B – COMMUNITY CORRECTION ORDERS

42AM. Interpretation

In this Part, unless the contrary intention appears –

core condition, in relation to a community correction order, means a condition specified in section 42AO;

operational period, in relation to a community correction order, means the period specified, in accordance with section 42AQ(1), in the order, as that period is varied, if at all, under this Part;

special condition, in relation to a community correction order, means a condition that is imposed on the order under section 42AP(1).

42AN. Community correction orders

(1) A court may make a community correction order in relation to an offender if the court has found the offender guilty of, or convicted the offender of, an offence.

(2) Without limiting the discretion of the court, it may be appropriate to impose a community correction order in relation to an offender in circumstances where a court –

(a) would otherwise have sentenced the offender to a wholly or partly suspended sentence of imprisonment; or

(b) but for the operation of section 23A, would otherwise have sentenced the offender to a wholly or partly suspended sentence of imprisonment.

42AO. Core conditions of community correction orders

A community correction order is subject to the following conditions:

(a) the offender must not, during the operational period of the order, commit an offence punishable by imprisonment;

(b) the offender must report, on or before a day specified in the order, to a probation officer at the place specified in the order;

(c) the offender must, during the operational period of the order, report to a probation officer as required by the probation officer;

(d) the offender must, during the operational period of the order, comply with the reasonable and lawful directions of a probation officer or a supervisor;

(e) the offender must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer;

(f) the offender must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within 2 working days after, the change.

42AP. Special conditions

(1) A community correction order may include any or all of the following conditions:

(a) the offender must, during the operational period of the order, appear before the court at the places, days and times, that the court specifies in the order;

(b) the offender must, during the operational period of the order, attend educational and other programs as directed by the court or a probation officer;

(c) the offender must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer;

(d) the offender must, within a period specified in the condition as the period within which the offender must complete community service, satisfactorily perform community service, as directed by a probation officer or a supervisor, for the number of hours specified in the order;

(e) the offender must, during the operational period of the order, undergo assessment and treatment for drug dependency as directed by a probation officer;

(f) the offender must, during the operational period of the order, submit to testing for drug use as directed by a probation officer;

(g) the offender must, during the operational period of the order, undergo assessment and treatment for alcohol dependency as directed by a probation officer;

(h) the offender must not, during the operational period of the order, consume alcohol;

(i) if a condition referred to in paragraph (g) or (h) is imposed on the order, the offender must, during the operational period of the order, submit to testing for alcohol use as directed by a probation officer;

(j) the offender must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer;

(k) the offender must not, during the operational period of the order, be present at a place, or places, specified in the condition;

(l) the offender must not, during the operational period of the order, in any way, directly or indirectly, communicate with, or be in the presence of, a person, or a member of a class of persons, specified in the condition;

(m) the offender must not, during the operational period of the order, be, during the periods, of the days, specified in the condition, at a place other than the premises at which the offender resides;

(n) any other condition, with which the offender must comply, that the court thinks appropriate.

(2) A court must impose on a community correction order at least one of the special conditions referred to in subsection (1)(c) or (d).

(3) A special condition of a community correction order may specify that the condition applies during the whole, or any part, of the operational period of the order, but, at any time during the operational period of such an order, at least one of the conditions referred to in subsection (1)(c) or (d) must apply in relation to the order.

(4) Unless the court making the order directs otherwise, the special conditions of a community correction order made in respect of a person are, during the operational period of the order, concurrent with the conditions, of each other community correction order, home detention order, community service order or probation

order in relation to that person, that are in force during the operational period of the community correction order.

42AQ. Operational period of community correction order

(1) A court that makes a community correction order in relation to an offender must specify the period during which the offender must comply with the order (the ***operational period***).

(2) The operational period of a community correction order may not be specified to be more than 3 years.

(3) A court must not specify, when making or varying a community correction order, an operational period, the effect of which would be that the total consecutive operational periods of all the community correction orders in relation to the offender would be more than 3 years.

(4) A community correction order remains in force until –

(a) the operational period expires; or

(b) the order is cancelled under this Act –

whichever occurs first.

42AR. Commencement of operational period of community correction order

(1) Subject to subsection (4), a court that makes a community correction order must specify in the

order when the operational period of the order commences.

(2) For the purposes of subsection (1), a court may specify in a community correction order that the operational period of the order commences –

(a) on the day on which the order is made or a later day specified in the order; or

(b) when the operational period of a home detention order in relation to the offender ceases; or

(c) when the offender lawfully ceases to be imprisoned under a sentence of imprisonment that has not been wholly suspended.

(3) If a sentence of imprisonment has been imposed on an offender by a court and the sentence has not been wholly suspended, the court may not specify in a community correction order that the operational period of the order commences on a day that is to occur during a period when the offender would be in prison or in detention.

(4) A court may specify, in a community correction order in relation to an offender, an operational period of the order that is to commence before, during or after the operational period of a home detention order in relation to the offender.

42AS. Limitation on number of hours of community service

(1) The maximum number of hours that a court may order community service to be performed, in accordance with a special condition, referred to in section 42AP(1)(d), that is imposed on a community correction order in relation to one or more offences, is 240.

(2) A court that makes a community correction order in relation to an offender must not require the offender to perform, under the community correction order, community service for a number of hours that, aggregated with the number of hours of community service remaining to be completed under a community correction order, or a community service order, to which the offender is already subject, would exceed 240.

(3) This section does not apply to an MPCSO.

42AT. Forms of community service

(1) A probation officer may arrange for an offender, who is subject to a community correction order on which is imposed a special condition referred to in section 42AP(1)(d), to perform community service for the benefit of a victim of an offence in relation to which the order was imposed.

(2) Community service that an offender performs under subsection (1) is taken to be performance of community service under the community correction order.

(3) If an offender, who is subject to a community correction order on which is imposed a special condition referred to in section 42AP(1)(d), attends an educational or other program in accordance with the directions of a probation officer, the time that the offender spends attending that program is taken to be performance of community service under the order.

42AU. Application to vary or cancel community correction order

(1) An offender who is subject to a community correction order, or an authorised person, may apply to the court that made the order to vary or cancel the order.

(2) A copy of the application and notification of the time and place of the hearing of the application is to be served, at least 7 days before the hearing, on –

(a) the offender, if the applicant is an authorised person; or

(b) the DPP and the offender's probation officer, if the application is made by the offender to the Supreme Court or the Court of Criminal Appeal; or

(c) the complainant or police prosecutor, and the offender's probation officer, if the application is made by the offender to a court of petty sessions.

(3) If the offender to whom an application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(4) Subject to subsection (6), at the hearing of the application, the court to which the application is made may –

(a) vary the community correction order by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) altering, subject to section 42AQ, the operational period of the order; or

(b) cancel the community correction order and deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(c) cancel the community correction order, and, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the community correction order was made,

and, whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(d) cancel the community correction order if –

(i) a special condition, requiring the offender to perform community service, was imposed on the order under section 42AP(1)(d); and

(ii) the court is satisfied that the offender has completed the performance of community service under the order; and

(iii) the court considers that it is appropriate for the order to cease to be in force; or

(e) refuse to vary or cancel the community correction order.

(5) The court may vary or cancel a community correction order to which an application relates whether or not the application was to vary or cancel the order.

(6) The court must not vary or cancel the community correction order, except under

subsection (4)(d), unless the court is satisfied that –

(a) changes in the offender's circumstances since the making of the order have rendered the offender unable to comply with any one or more of the conditions of the order; or

(b) the offender is no longer willing or able to comply with the order; or

(c) it is otherwise appropriate to do so.

(7) In determining how to deal with an offender under this section after the cancellation by the court of a community correction order or any other order under this section, other than in accordance with subsection (4)(d), the court must take into account the extent to which the offender had complied with the community correction order, or other order, respectively, before its cancellation or while it was still in force.

42AV. Breach of condition of community correction order

(1) If it appears to an authorised person that, during the operational period of a community correction order in relation to an offender, the offender has breached a condition of the order, the authorised person may, during or after that period, apply to the court that made the order for the court to deal with the application under this section.

(2) If the offender to whom an application relates is not before the court at the time at which the application is made, a copy of the application and notification of the time and place of the hearing of the application is to be served on the offender at least 7 days before the hearing.

(3) If the offender to whom the application relates is before the court and the court is unable to immediately deal with the application, the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(4) A court to which an application is made under subsection (1) must, if the court finds that the offender has, during the operational period of the order, breached a condition of a community correction order in relation to the offender, other than a condition referred to in section 42AO(a) –

(a) confirm the community correction order, if it is still in force; or

(b) vary the community correction order, if it is still in force, by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) extending, subject to section 42AQ, the operational period of the order; or

(c) if the community correction order is still in force –

(i) cancel the order; and

(ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(d) if the community correction order is still in force –

(i) cancel the community correction order; and

(ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and

(iii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(e) if the community correction order is not still in force –

(i) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences.

(5) In determining how to deal with an offender under this section after the cancellation by the court of a community correction order or any other order under this section, the court must take into account the extent to which the offender had complied with the community correction order, or other order, respectively, before its cancellation or while it was still in force.

(6) If –

(a) an application is made under subsection (1) in relation to an offender in respect of whom a community correction order is or was in force; and

(b) a court has found the offender guilty of an offence; and

(c) the offender has, in committing the offence, breached a condition, of a community correction order that is or was in force, that is specified in section 42AO(a); and

(d) an application was not made under section 42AW(1) in relation to the offence –

the court to which the application is made under subsection (1) must deal with the application as if the application were an application made to the court under section 42AW(1) and the court were the court that found the offender guilty of the offence.

42AW. Breach of condition of community correction order where offender found guilty of offence

(1) If a court finds an offender guilty of an offence (in this section called the "**new offence**") committed during the operational period of a community correction order in relation to the offender, an authorised person –

(a) may make an oral application to the court, while the offender is before the court in relation to the new offence, for the court to deal with the application under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(2) If the court that finds an offender guilty of an offence committed during the operational period of a community correction order is unable to immediately deal with an application to the court under subsection (1), the court may adjourn the proceedings and either grant the offender bail or remand the offender in custody.

(3) If an application under subsection (1) is made to a court that is not the court that imposed the community correction order on the offender, the court may –

(a) deal with the application under this section; or

(b) adjourn the proceedings to the court that made the order and either grant the offender bail or remand the offender in custody.

(4) A court to which an application is made under subsection (1) or, if the application is adjourned under subsection (3) to another court, that other court, must –

(a) confirm the community correction order, if it is still in force; or

(b) vary the community correction order, if it is still in force, by doing any one or more of the following:

(i) adding a special condition to the order;

(ii) removing or altering a special condition of the order;

(iii) extending, subject to section 42AQ, the operational period of the order; or

(c) if the community correction order is still in force –

(i) cancel the order; and

(ii) deal with the offender, in respect of the offence or offences in relation to which the order was made, in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences; or

(d) if the community correction order is still in force –

(i) cancel the order; and

(ii) if it considers it appropriate, cancel any other order in respect of the offence or offences in relation to which the community correction order was made; and

(iii) whether or not it cancels any other order, deal with the

offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences; or

(e) if the community correction order is not still in force –

(i) cancel, if it considers it appropriate, any other order in respect of the offence or offences in relation to which the community correction order was made; and

(ii) whether or not it cancels any other order, deal with the offender, in respect of the offence or offences in relation to which the community correction order was made, in any manner in which the court could deal with the offender had the court just found the offender guilty of that offence or those offences.

(5) In determining how to deal with an offender after the cancellation by the court of a community correction order or any other order under this section, the court must take into account the extent to which the offender had complied with the community correction order,

or other order, respectively, before its cancellation or while it was still in force.

42AX. Offences relating to community correction orders

(1) An offender who is subject to a community correction order must not assault, threaten, insult or use abusive language to a probation officer or a supervisor.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) A person must not –

(a) disturb or interfere with a person performing an activity under a community correction order; or

(b) prevent a person from performing an activity under a community correction order.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

42AY. Arrest for failure to appear at certain applications, or for breach, or suspected breach, of order

(1) A court to which an application in relation to an offender is made or adjourned under this Part may issue a warrant to arrest the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) reasonable efforts have been made to serve the application on the offender but have been unsuccessful –

and the application was not made by or on behalf of the offender.

(2) Without limiting the generality of subsection (1)(b), reasonable efforts are to be taken to have been made to serve the application on an offender to whom a community correction order relates if a copy of the application is, during the operational period of the order, left at the premises which the person who makes the application believes to be the premises at which the offender resides or was last known to reside.

(3) A police officer may arrest an offender to whom a community correction order relates if the police officer believes on reasonable grounds that the offender has breached, is breaching, or is about to breach, a condition of the order by leaving, or attempting to leave, the State.

42AZ. Offender discharging order is taken to be Crown employee for certain purposes

(1) An offender performing community work in compliance with a community correction order is, for the purposes of the *Workers Rehabilitation and Compensation Act 1988* and the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*, taken to be a

worker employed by the Crown and being paid at the greater of the following rates:

(a) a rate equal to the basic salary within the meaning of the *Workers Rehabilitation and Compensation Act 1988*;

(b) the rate of the offender's normal weekly earnings, if any, within the meaning of section 69 of the *Workers Rehabilitation and Compensation Act 1988*.

(2) Despite subsection (1), an offender performing community work in compliance with a community correction order is not to be taken to be a worker for the purposes of section 84(3) of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* if he or she is a worker for the purposes of section 84(3) of that Act by reason only of the application of subsection (1) of this section.

(3) An offender is taken to be performing community work for the purposes of this section if he or she is –

(a) performing a required activity; or

(b) making a required journey.

(4) For subsection (3)(a), an offender is taken to be performing a required activity if he or she is –

(a) reporting to the offender's probation officer for the purposes of performing community service in accordance with a community correction order; or

(b) performing community service in accordance with a community correction order; or

(c) in accordance with a condition imposed under section 42AP(1)(d), attending an educational, rehabilitation or other program in accordance with a community correction order; or

(d) doing something else –

(i) at the request or direction of, or with the express or implied authority of, the offender's probation officer or supervisor; and

(ii) that is related to performing community service in accordance with a community correction order.

(5) For subsection (3)(b) –

(a) a required journey is a journey made for the purposes of, or in connection with, a required activity; but

(b) a journey is not taken to be a required journey by reason only of the fact that it is for the purpose of enabling an offender to travel –

(i) from his or her place of residence to the place at which he or she is

required to perform a required activity; or

(ii) from the place at which he or she is required to perform a required activity to his or her place of residence.

PART 6 – FINES

42B. Conviction not required for imposition of penalty

(1) Despite any other enactment, if –

(a) a court has found a person guilty of an offence against a provision of an enactment; and

(b) the provision, or another provision of the enactment, (***the relevant penalty provision***) contains a statement to the effect that a fine may or must be imposed if a person is convicted of the offence –

the court may impose, in relation to the offence, a fine in accordance with the relevant penalty provision even though the court has not convicted the person of the offence.

(2) Despite any other enactment, if –

(a) a court has found a person guilty of an offence (a ***first offence***) against a provision of an enactment; and

(b) a court, after a court has found the person guilty of the first offence, finds the person guilty of another offence (the ***further offence***) against the provision; and

(c) the provision, or another provision of the enactment, (***the penalty provision***) contains a statement to the effect that a fine may or must be imposed in relation

to such an offence against the provision if a person is convicted of the offence and has previously been convicted of such an offence or another offence –

the court may impose, in relation to the further offence, a fine in accordance with the penalty provision even though a court has not convicted the person of either the first offence or the further offence, or both.

(3) Nothing in this section is to be taken to authorise a court to impose, in relation to an offence committed by a person, a fine of an amount that is greater than the amount that could have been imposed if the person had been convicted of the offence.

43. Priority of fine and restitution or compensation order

If a court considers that –

(a) it would be appropriate both to impose a fine and to make a restitution or compensation order; but

(b) the offender has insufficient means to pay both –

the court must give preference to restitution or compensation, though it may impose the fine as well.

44. Period for payment of fine

(1) Subject to subsection (2), a court that orders an offender to pay a fine must also order that the fine be paid within 28 days.

(2) In special and unusual circumstances, a court may order that the fine be paid within a period of less than 28 days.

(2A) If a court that orders an offender to pay a fine does not order that the fine be paid within a period of 28 days or less, the court is to be taken to have ordered that the fine be paid within a period of 28 days.

(3) A court is not to impose any condition of payment other than the period within which payment is to be made.

(4) An order under subsection (1) or (2) may be made so as to apply from –

(a) the date of conviction or on which the finding of guilt was made; or

(b) if the offender is sentenced to a term of imprisonment that is not wholly suspended, the date on which the offender is released in respect of that term.

45. Enforcement of Supreme Court fine

(1) If the Supreme Court orders an offender to pay a fine it must cause a sealed copy of the order to

be sent to the Administrator of Magistrates Courts.

(2) When the Administrator of Magistrates Courts receives the sealed copy of the order it is taken, for all purposes, to have been made by a court of petty sessions.

(3) On receipt of the sealed copy of the order, the Administrator of Magistrates Courts is to –

(a) refer the order to the Director, Monetary Penalties Enforcement Service, appointed under section 8 of the *Monetary Penalties Enforcement Act 2005*; and

(b) notify that Director of the date that the order setting out the fine takes effect.

PART 6AA – WARRANT OF COMMITMENT FOR NON-PAYMENT OF MONETARY PENALTY

46. Warrant of commitment for non-payment of monetary penalty

(1) On application by the Director, MPES for a warrant of commitment against an enforcement debtor for non-payment of a monetary penalty, a magistrate may issue, or decline to issue, the warrant.

(2) If a warrant of commitment is to be issued, it may be issued in chambers *ex parte*.

(3) A warrant of commitment against an enforcement debtor is to be issued for a term of imprisonment calculated in accordance with section 48.

(4) A decision on whether or not to issue a warrant of commitment is to be made within 28 days after the application is made.

(5) If a magistrate declines to issue a warrant of commitment, he or she is to forward a written report to the Attorney-General detailing the reasons why the warrant was not issued.

(6) A term of imprisonment to which an offender is sentenced under this section is not to be served concurrently with any other term of imprisonment to which the offender has been, or is liable to be, sentenced.

(7) The DCS may execute a warrant of commitment issued under this section.

47. Failure of defendant outside jurisdiction to pay monetary penalty

(1) If –

(a) an enforcement debtor is in default in payment of a monetary penalty; and

(b) a magistrate is satisfied that the enforcement debtor is no longer in Tasmania or that the usual place of residence of the enforcement debtor is outside Tasmania –

the magistrate may, on the application of the Director, MPES, issue a warrant of commitment against the enforcement debtor for a term of imprisonment for a period calculated in accordance with section 48 in respect of the outstanding amount of the monetary penalty.

(2) Section 46(4), (5) and (6) apply in respect of a warrant of commitment issued under this section.

(3) Section 26 of the *Justices Act 1959* does not apply to the issue of a warrant of commitment under this section.

48. Calculation of prison term for default in payment of monetary penalty

(1) A term of imprisonment to which an offender is sentenced under section 46 or 47 is to be calculated at the rate of one day of imprisonment for each prescribed unit or part prescribed unit of the monetary penalty outstanding.

(2) Subject to subsection (3), the maximum term of imprisonment to which a person may be sentenced under section 46 or 47 is 12 months.

(3) The maximum term of imprisonment to which a person convicted of an offence under the *Living Marine Resources Management Act 1995* in respect of which a special penalty under section 267 of that Act has been imposed and remains outstanding, is 12 months for a first offence and 2 years for a subsequent offence.

49 - 50**.** . . . . . .

51. Amount in default reduced by imprisonment

(1) If an offender is committed to prison pursuant to a warrant of commitment issued under this Part, the amount in respect of which the warrant was issued is reduced by one prescribed unit for each day served in prison pursuant to the warrant.

(2) If the offender at any time pays to the DCS the amount then outstanding under the warrant, together with the costs of issuing and executing

the warrant, the sentence of imprisonment is wholly extinguished.

(3) If the offender at any time pays to the DCS a part of the amount then outstanding under the warrant, the balance of the term of imprisonment remaining to be served is reduced by the proportion that the amount so paid bears to that outstanding amount, ignoring any fraction or part of a day.

(4) The DCS must issue a receipt for the payment of a sum of money made under this section and forward the sum to the Director, MPES.

(4A) Where an offender is received into prison under a warrant of commitment issued under this Part, the DCS must notify the Director, MPES of that fact within 5 days of that receipt into prison.

(5) When an offender has served a term of imprisonment fixed under this Part, the whole of the amount in respect of which the warrant of commitment was issued is extinguished.

(6) Nothing in this section affects a term of imprisonment other than that imposed in respect of the matter in connection with which the total or partial payment is made.

52. Satisfaction of execution by payment

A police officer who is charged with executing a warrant of commitment under section 46 must not execute that warrant if the person –

(a) pays or tenders to the police officer the sum mentioned in the warrant and the amount of the prescribed costs and charges of the warrant; or

(b) produces to the police officer the receipt of the Director, MPES for that sum and that amount.

53. Enforcement of fine by civil process

(1) If an offender who has been ordered by a court to pay a fine is in default in payment of that fine, the fine is taken to be a judgment of the Magistrates Court (Civil Division) and enforceable under the *Magistrates Court (Civil Division) Act 1992*.

(2) An action to enforce the fine under the *Magistrates Court (Civil Division) Act 1992* pursuant to this section does not preclude action being taken or continued under section 47 or the *Monetary Penalties Enforcement Act 2005* against the offender in default.

54**.** . . . . . .

PART 6A – REHABILITATION PROGRAMS

54A. Contravention of rehabilitation program order

(1) If it appears to an authorised person that, during the period a rehabilitation program order is in force in relation to an offender, the offender has breached a condition of the rehabilitation program order, the authorised person may apply to the court, that made the rehabilitation program order, for an order under this section.

(2) The authorised person must give notice of the application under subsection (1) to the offender.

(3) The court may issue a warrant for the arrest of the offender if –

(a) the offender fails to appear at the hearing of the application; or

(b) the court is satisfied that reasonable efforts to give the offender notice of the application have been made but those efforts have been unsuccessful.

(4) If a court finds an offender guilty of an offence punishable by imprisonment committed during the period a rehabilitation program order is in force in respect of the offender (in this section called the "**new offence**"), an authorised person –

(a) may make an oral application to the court, while the offender is before the

court in relation to the new offence, for an order under this section; and

(b) is to provide the offender in writing with the grounds for the oral application, if directed to do so by the court.

(5) If an application is made under subsection (4) to a court that is not the court that imposed the rehabilitation program order on the offender, the court hearing the application may do either of the following:

(a) deal with the application under this section;

(b) adjourn the application to the court that imposed the rehabilitation program order and either grant the offender bail or remand the offender in custody.

(6) If, on the hearing of an application under this section, the court is satisfied that the offender has breached, without reasonable excuse, the rehabilitation program order or committed the new offence, the court may –

(a) order the offender to resume undertaking the program; or

(b) cancel the rehabilitation program order and deal with the offender in any manner in which the court could deal with the offender had it just found the offender guilty of the offence which gave rise to the order.

(7) In determining how to deal with an offender found guilty of a breach of a rehabilitation program order under this section, the court must take into account the extent to which the offender had undertaken the rehabilitation program before committing the breach.

PART 7 – DRIVING DISQUALIFICATION ORDERS

55. Power of court to disqualify driver on conviction for certain offences

(1) In this section –

motor vehicle offence means –

(a) an offence against section 32 of the *Traffic Act 1925* ; or

(b) an indictable offence arising out of the driving, operation or use of a motor vehicle or in the commission of which a vehicle was used or the commission of which was facilitated by a motor vehicle, including any such indictable offence that is triable by a court of petty sessions.

(2) A court that convicts an offender of a motor vehicle offence may, in addition to imposing any other penalty to which the offender is liable –

(a) order that the offender be disqualified, either for a specified period or until further ordered by a court, from driving; and

(b) if the court thinks fit order that the offender is not, at the end of the period of disqualification or on the removal of the disqualification, to be granted a driver licence unless the offender passes such

driving test or attends such driver training course, or both, as the Registrar of Motor Vehicles may direct or approve.

(3) If an order is made under this section requiring an offender who is disqualified from driving to pass a driving test or to attend a driver training course, then the offender may not obtain a driver licence until whichever of the following last occurs:

(a) the expiration of the period of disqualification;

(b) if the person has been ordered to pass a driving test– the passing of the test;

(c) if the person has been ordered to attend a driver training course– the completion of the course;

(d) if the person has been ordered to pass a driving test and attend a driver training course– the passing of the test and the completion of the course.

(4) Subject to subsection (5), if a court imposes a disqualification from driving under this section against the holder of an Australian driver licence, the court must either suspend or cancel the licence as follows:

(a) if the disqualification is for 4 months or less– the licence is to be suspended;

(b) if the disqualification is for more than 4 months– the licence is to be cancelled.

(5) The court may, instead of cancelling a licence that is liable to cancellation under subsection (4), suspend the licence if the court thinks there is good reason to do so.

56. Court may delay disqualification

A court that makes a driving disqualification order may, if it thinks fit, order that the disqualification imposed by the order is to take effect from a day or hour subsequent to the making of the order.

57. Restricted driver licences

If a court makes a driving disqualification order in respect of an offender, a magistrate may make an order under section 18 of the *Vehicle and Traffic Act 1999* as if the offender had been convicted of an offence under that Act.

PART 8 – ADJOURNMENTS, DISCHARGES, DEFERRALS AND DISMISSALS

Division 1 – Deferral of sentencing

57A. When sentence may be deferred under section 7(eb)

(1) A court may adjourn proceedings in relation to an offender under section 7(eb) so as to defer, in accordance with this Division, sentencing the offender.

(2) The court may, for any one or more of the following purposes, defer, in accordance with this Division, sentencing an offender:

(a) to allow for the assessment of the offender's capacity, and prospects, for rehabilitation;

(b) to allow the offender to demonstrate that the offender is being, or has been, rehabilitated;

(c) to allow the offender to participate in a pre-sentence program;

(d) for any other purpose that the court considers appropriate having regard to the offender and the circumstances of the offending.

(3) The court may only defer, in accordance with this Division, sentencing an offender, if –

(a) the offender is not serving a term of imprisonment for another offence; and

(b) the court is satisfied it may grant the offender bail; and

(c) the court defers sentencing the offender for all the offences for which the court may sentence the offender, whether or not the offences are punishable by imprisonment.

(4) The sentencing of an offender may be deferred in accordance with this Division whether or not the court considers that the seriousness of the offence justifies a sentence of imprisonment.

(5) The court must give reasons for deferring the sentencing of an offender in accordance with this Division.

57B. Grant of bail and review

(1) Bail granted to an offender for the purposes of section 7(eb) in relation to an offence has effect for the period for which the sentence in relation to the offence is deferred, unless the bail is revoked earlier.

(2) Without limiting the conditions that may be imposed in accordance with section 7 of the *Bail Act 1994* on the grant of bail to an offender, the conditions on which bail is granted to an offender for the purposes of section 7(eb) –

(a) may include a condition that the offender appear before the court on a date or dates, specified in the conditions of bail, that are earlier than the date to which the

sentencing has been deferred, so as to enable the court to consider the extent to which the offender is complying with any conditions of the bail; and

(b) may include any other conditions that the court considers appropriate for a purpose referred to in section 57A(2).

(3) If an offender to whom bail has been granted for the purposes of section 7(eb) appears before the court, the court may amend the conditions of the bail by varying, adding to or substituting any of the conditions.

(4) In determining whether, under this section, to amend a condition of bail, the court may consider –

(a) any report on the offender prepared by a person who has been managing or administering a pre-sentence program in which the offender has participated while on bail; and

(b) the extent to which, and the manner in which, the offender has complied with the conditions of the bail granted to the offender in respect of the offence.

57C. Alteration of date to which sentencing deferred

(1) A court, on its own motion or on application under this subsection, may alter an order made under section 7(eb) in relation to an offender by

altering the date to which the sentencing of the offender for the offence is deferred.

(2) The date, referred to in subsection (1), that is specified in an order under section 7(eb) in relation to an offender may be altered under subsection (1) –

(a) to an earlier date than the date specified in the order; or

(b) to a later date than the date specified in the order –

(i) so as to enable the offender to complete a pre-sentence program; or

(ii) because the court is of the opinion that there are special circumstances in relation to the offender that justify the alteration.

(3) The alteration of the date to which the sentencing of an offender may be deferred must not be such that the total period for which the sentencing is deferred is more than 30 months from the date on which the order was made.

(4) Without limiting the matters that a court may consider in determining whether, under this section, to alter a date specified in an order, the court must consider –

(a) any report on the offender prepared by a person who has been managing or

administering a pre-sentence program in which the offender has participated while on bail; and

(b) the extent to which, and the manner in which, the offender has complied with the conditions of the bail granted to the offender in respect of the offence.

(5) An application under subsection (1) may be made by the offender or the prosecutor.

(6) An application under subsection (1) is to be in writing.

(7) A copy of an application under subsection (1) and notice of the time and place of the hearing in relation to the application are to be, at least 7 days before the hearing of the application –

(a) served on the prosecutor, if the application is made by the offender; or

(b) served on the offender, if the application is made by the prosecutor.

(8) Subsections (6) and (7) do not apply in relation to an application under subsection (1) and the notice of the time and place of the hearing in relation to the application, if the prosecutor and the offender agree that those subsections are not to apply.

(9) A court must not, under this section, alter an order in relation to an offender unless the offender is before the court.

(10) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of an application under subsection (1).

(11) A court may remand an offender on bail, or in custody, to appear before another court for the purposes of a hearing if –

(a) an application under subsection (1) is made in relation to the offender; or

(b) the court is of the opinion that the offender or the prosecutor intends to make an application under subsection (1) in relation to the offender.

57D. When order deferring sentence may be revoked

(1) A court, on its own motion or on application under this subsection, may revoke an order made under section 7(eb) in relation to an offender in respect of an offence and proceed to sentence the offender under section 7 in respect of the offence.

(2) An application under subsection (1) may be made by the offender or the prosecutor.

(3) An application under subsection (1) is to be in writing.

(4) A copy of an application under subsection (1) and notice of the time and place of the hearing in relation to the application are to be, at least 7 days before the hearing of the application –

(a) served on the prosecutor, if the application is made by the offender; or

(b) served on the offender, if the application is made by the prosecutor.

(5) Subsections (3) and (4) do not apply in relation to an application under subsection (1) and the notice of the time and place of the hearing in relation to the application, if the prosecutor and the offender agree that those subsections are not to apply.

(6) A court must not, under this section, revoke an order in relation to an offender unless the offender is before the court.

(7) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of an application under subsection (1).

(8) A court may remand an offender on bail, or in custody, to appear before another court if –

(a) an application under subsection (1) is made in relation to the offender; or

(b) the court is of the opinion that the offender or the prosecutor intends to make an application under subsection (1) in relation to the offender.

57E. Referral of offender to Supreme Court when that court made order deferring sentence

(1) If an order that is in force in relation to an offender is made by the Supreme Court or the Court of Criminal Appeal under section 7(eb) in relation to an offence and the offender appears, in relation to another offence, before a court constituted by a magistrate, the court constituted by a magistrate may, if it thinks it is appropriate to do so, remand the offender, on bail, or in custody, to appear before the Supreme Court.

(2) If an offender is remanded, by a court constituted by a magistrate, to appear before the Supreme Court in accordance with this section –

(a) the Supreme Court is to consider whether to deal with the offender under section 57C or 57D; and

(b) if the Supreme Court considers that –

(i) it ought to deal with the offender under section 57C or 57D, the Supreme Court may take any action in relation to the offender that it may take under section 57C or 57D, as the case may be; or

(ii) it is not appropriate for the offender to be dealt with by the Supreme Court, the Supreme Court may remand the offender on bail, or in custody, to appear before a court constituted by a

magistrate as if the offender had not been remanded to appear before the Supreme Court.

(3) Without limiting the generality of subsection (2)(b)(i), the action that the Supreme Court may take under subsection (2)(b)(i) in relation to an offender includes dealing with the offender as if an application under section 57C or 57D made, in relation to the offender, to the court that remanded the offender to appear before the Supreme Court, but not disposed of by that court, had been made to the Supreme Court.

Division 2 – Adjournments, discharge or dismissal

58. Purpose of orders to adjourn, discharge or dismiss

An order under section 7(f), (g) or (h) may be made for such one or more of the following purposes, as is relevant in the circumstances, as the court thinks fit:

(a) to provide for the rehabilitation of an offender by allowing the offender's sentence to be served in the community unsupervised;

(b) to take account of the trivial, technical or minor nature of the offence committed by an offender;

(c) to allow for circumstances in which it may be inappropriate to record a conviction against an offender;

(d) to allow for circumstances in which it may be inappropriate to inflict any punishment other than a nominal punishment on an offender;

(e) to allow for the existence of other extenuating or exceptional circumstances that may justify the court showing mercy to an offender.

59. Conditions of undertaking given by released offender

An undertaking given by an offender under section 7(f) is subject to the following conditions:

(a) that the offender must appear before the court during the period of the adjournment if called on to do so and, if the court so specifies, at the time to which the further hearing is adjourned;

(b) that the offender must be of good behaviour during the period of the adjournment;

(c) that the offender must observe any conditions imposed by the court.

60. Released offender may be called on to appear

(1) An offender who has given an undertaking under section 7(f) may be called on to appear before the court –

(a) by order of the court; or

(b) by notice issued by the proper officer of the court.

(2) An order or notice under subsection (1) is to be served on the offender not less than 4 days before the time specified in it for the appearance.

(3) If, at the time to which the further hearing of a proceeding is adjourned, the court is satisfied that the offender has observed the conditions of the undertaking, the court must –

(a) if a conviction was recorded under section 7(f), discharge the offender without any further hearing of the proceedings; or

(b) if a conviction was not recorded under section 7(f), dismiss the charge without any further hearing of the proceedings.

(4) If, at the time to which the further hearing of a proceeding is adjourned, the court is not satisfied that the offender has observed the conditions of the undertaking, the court may cancel the order and deal with the offender for the offence or offences in respect of which the order was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

61. Discharge of order for release on adjournment

(1) If a court makes an order under section 7(f) and records a conviction, the offender is discharged when the period specified in the order expires, unless –

(a) the court specifies a time under section 59(a) to which the further hearing is adjourned; or

(b) the offender is called on to appear before the court under section 60; or

(c) an application has been made under section 62.

(2) If a court makes an order under section 7(f) without recording a conviction, the charge is dismissed when the period specified in the order expires, unless –

(a) the court specifies a time under section 59(a) to which the further hearing is adjourned; or

(b) the offender is called on to appear before the court under section 60; or

(c) an application has been made under section 62.

62. Breach of order for release on adjournment

(1) An authorised person who considers that an offender has failed without reasonable excuse to comply with a condition of an undertaking given

under section 7(f) may apply to the court that made the relevant order for the making of an order under this section.

(2) Notice of the application is to be given to the offender.

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

(4) If, on the hearing of the application, the 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 undertaking, it may –

(a) confirm the order as originally made; or

(b) vary the order; or

(c) cancel the order if it is still in force and, whether or not the order is still in force, deal with the offender for the offence or offences in respect of which the order was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence or those offences.

(5) The court may, in addition to exercising its power under subsection (4), impose a fine of such amount as the court considers appropriate.

(6) A fine imposed under this section is to be taken for all purposes to be a fine payable on a conviction of an offence or a finding of guilt in relation to an offence.

(7) In determining how to deal with an offender following the cancellation by it of an order made under section 7(f), a court must take into account the extent to which the offender had complied with the order before its cancellation.

63. Effect of certain orders

An order under section 7(f) in the case where a conviction is not recorded, or an order under section 7(h), has, for the purposes of –

(a) section 29 of the *Sale of Goods Act 1896*; and

(b) awards of costs against offenders generally –

the effect of a conviction for the offence in respect of which the order was made.

64. Compensation or restitution

A court may make an order for compensation or restitution in addition to making an order under section 7(f), (g) or (h).

PART 9 – ORDERS IN ADDITION TO SENTENCE

Division 1 – Restitution

65. Restitution order

(1) If goods are stolen and a person is found guilty or convicted of an offence connected with the theft, whether or not stealing is the gist of the offence, the court may make an order –

(a) that the person who has possession or control of the stolen goods restore them to the person entitled to them; or

(b) that the offender deliver or transfer to another person goods that directly or indirectly represent the stolen goods (that is, goods that are the proceeds of any disposal or realisation of the whole or part of the stolen goods or of goods so representing them); or

(c) that a sum not exceeding the value of the stolen goods be paid to another person out of money taken from the offender's possession on arrest if the court is satisfied that the money so taken belongs to the offender.

(2) An order under subsection (1)(b) or (c) may only be made in favour of a person who, if the stolen goods were in the offender's possession, would be entitled to recover them from the offender.

(3) The court may make an order under both subsection (1)(b) and (c) if the person in whose favour the order is made does not thereby recover more than the value of the stolen goods.

(4) If the court makes an order under subsection (1)(a) against a person and it appears to the court that that person in good faith bought the stolen goods from, or loaned money on the security of the stolen goods to, the offender, the court may, on the application of that person, order that a sum not exceeding the purchase price or the amount loaned, as the case requires, be paid to that person out of money taken from the offender's possession on arrest if the court is satisfied that the money so taken belongs to the offender.

(5) An order under this section may be made by the court –

(a) on its own motion; or

(b) on an application made –

(i) by a person in whose favour the order is sought; or

(ii) on that person's behalf by the DPP, if the sentencing court was the Supreme Court, or the complainant or police prosecutor, if the sentencing court was a court of petty sessions.

(6) An application under subsection (5)(b) is to be made as soon as practicable after the offender is found guilty or convicted of an offence.

(7) A court may exercise its powers under this section if the facts sufficiently appear from any evidence or material presented to the court, or from the available documents, together with admissions made by or on behalf of any person in connection with the proposed exercise of the powers.

(8) In subsection (7),

the available documents means –

(a) any written statements or admissions that were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

(c) any written statements or admissions used as evidence in the committal proceeding.

(9) References in this section to goods include references to a motor vehicle.

(10) References in this section to stealing or theft are taken to be references to offences contained in Chapters XXIV, XXV, XXVI, XXVII and XXIX of the *Criminal Code*.

66. Enforcement of restitution order

(1) A restitution order made by the Supreme Court is taken to be a judgment of that court and is enforceable under the *Supreme Court Civil Procedure Act 1932*.

(2) A restitution order made by a court of petty sessions is taken to be a judgment of the Magistrates Court (Civil Division) and is enforceable under the *Magistrates Court (Civil Division) Act 1992*.

Division 2 – Compensation

67. Interpretation of Division

In this Division –

burglary means an offence contained in Chapter XXVII of the *Criminal Code*;

stealing means an offence contained in Chapter XXIV, XXV, XXVI or XXIX of the *Criminal Code*;

unlawfully injuring property means an offence contained in Chapter XXXI of the *Criminal Code* or section 37 of the *Police Offences Act 1935*.

68. Compensation order

(1) If a person is found guilty or convicted of an offence and the court finds that another person

has suffered injury, loss, destruction or damage as a result of the offence, the court –

(a) must, if the offence is burglary, stealing or unlawfully injuring property; and

(b) may, in the case of any other offence –

order the offender to pay compensation for that injury, loss, destruction or damage.

(2) . . . . . .

(3) An order under subsection (1) may be made by the court –

(a) on its own motion; or

(b) on an application made –

(i) by a person in whose favour the order is sought; or

(ii) on that person's behalf by the DPP, if the sentencing court was the Supreme Court, or the complainant or police prosecutor, if the sentencing court was a court of petty sessions.

(4) An application under subsection (3)(b) is to be made as soon as practicable after the offender is found guilty or convicted of an offence.

(5) Nothing in subsection (3)(b)(ii) requires the DPP or the complainant or police prosecutor to make an application on behalf of a person.

(6) A court may exercise its powers under this section if the facts sufficiently appear from any evidence or material presented to the court, or from the available documents, together with admissions made by or on behalf of any person in connection with the proposed exercise of the powers.

(7) In subsection (6),

the available documents means –

(a) any written statements or admissions that were made for use, and would have been admissible, as evidence on the hearing of the charge; or

(b) the depositions taken at the committal proceeding; or

(c) any written statements or admissions used as evidence in the committal proceeding.

(8) Nothing in this section takes away from, or affects the right of, any person to recover damages for, or to be indemnified against, any injury, loss, destruction or damage so far as it is not satisfied by payment or recovery of compensation under this section.

(9) In determining, for the purposes of this section, the amount of compensation for injury, loss, destruction or damage to property that a person has suffered as a result of an offence, the court is not bound by the rules of evidence and it may

inform itself in any matter in any way it considers appropriate.

69. Enforcement of compensation order

(1) . . . . . .

(2) A compensation order is taken to be a fine enforceable under the *Monetary Penalties Enforcement Act 2005*.

(3) If the amount payable under a compensation order has been deemed uncollectable in full or in part under section 109 of the *Monetary Penalties Enforcement Act 2005*, the order –

(a) in the case of a compensation order made by the Supreme Court, is taken to be a judgment of the Supreme Court and is enforceable under the *Supreme Court Civil Procedure Act 1932*; or

(b) in the case of a compensation order made by a court of petty sessions, is taken to be a judgment of the Magistrates Court (Civil Division) and is enforceable under the *Magistrates Court (Civil Division) Act 1992*.

Division 3 – Area restriction

70. Area restriction order

(1) A court that finds a person guilty of an offence may make an area restriction order in respect of that person.

(2) An area restriction order is an order of the court that the offender in respect of whom it is made must not, while the order is in force, loiter in an area or class of area specified in the order at any time, or at such times or during such periods as are specified in the order.

(3) An area restriction order –

(a) comes into force when it is made or at such later time or on such later day as is specified in the order; and

(b) remains in force for such period or until such time or day as is specified in the order.

71. Breach of area restriction order

(1) An offender who breaches an area restriction order without reasonable excuse is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months.

(2) Proceedings for an offence under subsection (1) are to be commenced by a complaint under the *Justices Act 1959*.

(3) The complaint is to be made by an authorised person.

(4) A sentence imposed under this section does not affect the continuance of the area restriction order if it is still in force.

(5) A police officer who believes on reasonable grounds that a person has breached an area restriction order may arrest that person without warrant.

PART 10 – ASSESSMENT, TREATMENT, SUPERVISION AND RESTRICTION ORDERS

72. Court may make assessment order

A court that finds a person guilty of an offence may make an assessment order in respect of that person if –

(a) the court is of the opinion that –

(i) the person appears to be suffering from a mental illness that may require treatment; and

(ii) the treatment can be obtained by admission to and detention in an approved hospital or a secure mental health unit; and

(iii) the person should be so admitted for the person's own health or safety or for the protection of members of the public; and

(b) the court has received advice in writing from an approved medical practitioner at the approved hospital to which it is proposed to admit the person, or from the Chief Forensic Psychiatrist if it is proposed to admit the person to a secure mental health unit, that –

(i) it is appropriate for the person to be so admitted; and

(ii) the approved hospital or secure mental health unit has the facilities and staff to undertake an assessment of the person's suitability for an order under section 75.

73. What is an assessment order?

An assessment order is an order of the court that the person in respect of whom it is made be admitted to and detained in an approved hospital or secure mental health unit, for the period specified in the order, to enable an assessment to be made of the person's suitability for an order under section 75.

74. Termination of assessment order

(1) On the expiry of an assessment order, or at any time before that expiry if an approved medical practitioner or responsible medical officer applies, the court, after considering a report from the practitioner or officer specifying the results of the assessment, may –

(a) make an order under section 75; or

(b) pass sentence on the person.

(2) If the sentence referred to in subsection (1)(b) is a term of imprisonment, the court must deduct the period of time that the person was detained under the assessment order from that term.

75. Treatment order, supervision order and restriction order

(1) If, on the trial of a person for an offence –

(a) the person is found guilty; and

(b) the court is satisfied, by the production of the report of the Chief Civil Psychiatrist, Chief Forensic Psychiatrist or another psychiatrist and any other evidence that it may require, that –

(i) the person appears to be suffering from a mental illness that requires treatment; and

(ii) the treatment can be obtained by admission to and detention in an approved hospital or secure mental health unit; and

(iii) the person should be admitted as a patient for the person's own health or safety or for the protection of members of the public; and

(c) the court has received a report in writing from the Chief Civil Psychiatrist if it is proposed to admit the person to an approved hospital, or from the Chief Forensic Psychiatrist if it is proposed to admit the person to a secure mental health unit, recommending the proposed admission –

the court may –

(d) instead of, or in addition to, any sentence it may impose, make a treatment order in respect of the person; and

(e) if the court is the Supreme Court, make a restriction order in respect of the offender.

(2) The Supreme Court must not make a restriction order in respect of a person who, had he or she not been found to be suffering from a mental illness, would not have been sentenced to a term of imprisonment.

(2A) If, on the trial of a person for an offence –

(a) the person is found guilty; and

(b) the court is satisfied, by the production of the report of the Chief Forensic Psychiatrist and any other evidence that it may require, that –

(i) the person appears to be suffering from a mental illness that requires treatment; and

(ii) the treatment can be obtained by releasing the person under the supervision of the Chief Forensic Psychiatrist; and

(c) the report of the Chief Forensic Psychiatrist recommends the release of the person under his or her supervision –

the court, if it is the Supreme Court, may make a supervision order instead of, or in addition to, any sentence it may impose.

(3) If a magistrate is of the opinion, after taking into account the matters required to be considered in determining the order to be made, that a restriction order or supervision order should be made in respect of an offender, the magistrate may refer the matter to the Supreme Court for determination.

(4) On a referral of a matter to the Supreme Court under subsection (3), the court must enquire into the circumstances of the case and it has the same powers to deal with the offender as if the offender had been dealt with in that court.

(5) The court may make such orders as to the distribution and security of the report provided by the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist as it considers necessary or appropriate.

(6) Unless the court orders otherwise, the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist must give, as soon as practicable, a copy of his or her report to –

(a) the prosecutor; and

(b) the Australian legal practitioner representing the person in respect of whom the report is made or, if that person is unrepresented, that person.

(7) The prosecution or the defence may dispute the whole or any part of the report of the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist.

(8) If the whole or any part of the report of the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist is disputed, the court must not take into consideration the report or the part in dispute unless the party disputing the report or the part has had the opportunity –

(a) to lead evidence on the disputed matters; and

(b) to cross-examine on the disputed matters the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist or, if the Chief Civil Psychiatrist or the Chief Forensic Psychiatrist has delegated his or her function of writing the report, the author of the report.

76. What is a treatment order?

(1) A treatment order is an order for the detention of the person in respect of whom it is made as an involuntary patient in the approved hospital specified in the order for the term not exceeding 6 months specified in the order.

(2) Once made, a treatment order is taken to be a treatment order made under the *Mental Health Act 2013*.

77. What is a restriction order?

(1) A restriction order is an order requiring the person in respect of whom it is made to be admitted to and detained in a secure mental health unit until the order is discharged by the Supreme Court.

(2) Once made, a restriction order is taken to be a restriction order made under the *Criminal Justice (Mental Impairment) Act 1999*.

77A. What is a supervision order?

(1) A supervision order is an order releasing the person in respect of whom it is made under the supervision of the Chief Forensic Psychiatrist subject to any conditions specified in the order.

(2) Without limiting the conditions that may be specified in a supervision order, such conditions may include any one or more of the following conditions:

(a) a condition requiring the person to whom it applies to take medication or submit to the administration of medical treatment as specified in the order or as determined by the Chief Forensic Psychiatrist;

(b) a condition requiring the person to whom it applies to comply with any directions as to supervision given by the Chief Forensic Psychiatrist.

(3) Once made, a supervision order is taken to be a supervision order made under the *Criminal Justice (Mental Impairment) Act 1999*.

77B. Principle on which courts are to act

In making an order under this Part in respect of a person, a court is to apply, where appropriate, the principle that restrictions on the person's freedom and personal autonomy should be kept to the minimum consistent with the safety of the community when determining –

(a) which order to make under this Part; or

(b) the conditions of such an order.

78. Custody of admitted person

(1) In this section –

specified means specified in an order under this Part that commits a person to, or otherwise requires the detention of a person in, an approved hospital or a secure mental health unit.

(2) If a court makes an order under this Part that commits a person to, or otherwise requires the detention of a person in, an approved hospital, the court may specify that a specified person, or a person of a specified class of person, is to be responsible for taking that person –

(a) to the specified approved hospital; and

(b) from the specified approved hospital to the court in connection with the exercise by the court of its powers under this Part.

(3) If a court makes an order under this Part that commits a person to, or otherwise requires the detention of a person in, a secure mental health unit –

(a) it is to specify in the order that the specified person, or a person of a specified class of person, is to be responsible for taking the defendant to the specified secure mental health unit; and

(b) it may specify in the order that that specified person or another specified person, or a person of that specified class or another specified class of person, is to be responsible for bringing the defendant from the specified secure mental health unit before the court in connection with the exercise by the court of its powers under this Act.

(4) A copy of the order and the advice or report, as the case requires, of the psychiatrist, Chief Civil Psychiatrist or Chief Forensic Psychiatrist are to accompany the offender to the specified approved hospital or specified secure mental health unit.

(5) While an offender is the responsibility of a person as specified in an order referred to in

subsection (2), that person has the custody of the offender.

(6) While an offender is the responsibility of a person as specified in an order referred to in subsection (3) –

(a) that person has the custody of the offender; and

(b) the offender is taken to be a forensic patient for the purposes of the application of relevant provisions of Parts 4 and 5 of Chapter 2 of the *Mental Health Act 2013*.

79. Effect of treatment order

(1) If a treatment order is made in respect of a person who is liable to serve a sentence of imprisonment, any powers and authorities that may be exercised in pursuance of that treatment order may be so exercised notwithstanding that the person is liable to serve that sentence of imprisonment or any sentence imposed so as to run concurrently or cumulatively with that sentence.

(2) For the purposes of this section, if a treatment order is made on the conviction of a person for any offence or any offences and a sentence of imprisonment is also passed upon that person for that offence or any of those offences, that person is to be taken, at the time the treatment order is made, to be liable to serve that sentence of imprisonment.

(3) Nothing in subsection (1) prevents –

(a) the putting into execution in respect of a person in respect of whom a treatment order is in force, of any sentence of imprisonment passed on that person the execution of which has been suspended; or

(b) the carrying out in respect of that person of any sentence, order or other determination of a court other than such a sentence as is referred to in that subsection.

(4) If a treatment order has been made in respect of a person who is liable to serve a sentence of imprisonment, that person may, until admitted to an approved hospital under that order, be detained or otherwise dealt with as if that treatment order had not been made.

79A. Arrest of assessment order detainees who abscond

(1) If a court by which a person is made the subject of an assessment order is satisfied that there are proper grounds to suspect that the person has escaped or is absent without proper authority from the approved hospital in which he or she has been detained under the order, the court may issue a warrant for the arrest of the person and for his or her return to the court.

(2) When the person is returned under the warrant, the court may make a new assessment order in respect of the person if the court is satisfied that,

because of the escape or unauthorised absence, its original assessment order –

(a) expired before the person's assessment under that order could be completed; or

(b) will expire before the person's assessment under that order is completed.

79B. Arrest of detainees who flee the State

(1) . . . . . .

(2) If a court by which a person is made the subject of a treatment order is satisfied that there are proper grounds to suspect that the person –

(a) has escaped or is absent without leave of absence from an approved hospital; and

(b) has left the State –

the court may issue a warrant for the arrest of the person and for his or her return to the approved hospital.

(3) If a court by which a person is committed to detention under a restriction order is satisfied that there are proper grounds to suspect that the person –

(a) has escaped or is absent without proper authority from the place of detention; and

(b) has left the State –

the court may issue a warrant for the arrest of that person and for his or her return to the place of detention.

PART 11 – SENTENCING PROCEDURE

Division 1 – Preliminary matters

80. Parties may address court on sentence

(1) Before a court passes sentence on an offender found guilty of an offence, both the prosecutor and the offender, or counsel on the offender's behalf, may address the court in relation to that sentence.

(2) Without limiting the generality of subsection (1), in an address pursuant to that subsection the prosecutor may do all or any of the following:

(a) draw the attention of the court to any aggravating circumstances or the presence or absence of any extenuating circumstances in relation to the offence;

(b) if the court has a choice with regard to the kind of sentence that it may impose for the offence, comment on the appropriateness of those kinds of sentence;

(c) if the court has a choice with regard to those kinds of sentence, recommend that the court impose one of those kinds of sentence.

(3) The failure by a prosecutor to exercise the right conferred by subsection (1) is not to be taken into account by a court in determining any

appeal against the sentence or in determining any motion to review the sentence.

81. Court may receive information before sentencing

(1) Before a court passes sentence on an offender found guilty of an offence, it may receive such information, in oral or documentary form, as it thinks fit and in so doing it is not bound by the rules of evidence.

(2) The court must ensure that the offender has knowledge of, and the opportunity to challenge, the information received by the court under subsection (1).

(3) Subsection (2) does not apply to information furnished by a medical practitioner that the court considers should not, in the interests of the offender, be disclosed to the offender.

(4) If the offender challenges the truth of any information received by the court under subsection (1), the court may require that information to be proved in like manner as if it were to be received at a trial.

81A. Court may receive victim impact statement

(1) In this section –

immediate family, in respect of a deceased victim, includes –

(a) the spouse or partner, within the meaning of the *Relationships Act 2003*, of the deceased victim; and

(b) a parent, guardian or step-parent of the deceased victim; and

(c) a child or stepchild of the deceased victim; and

(d) a brother, sister, stepbrother or stepsister of the deceased victim;

indictable offence means –

(a) an offence that is punishable on indictment even though in some instances it may be dealt with summarily; or

(b) any other offence that is prescribed for the purposes of this section;

victim, in respect of an offence, means –

(a) a person who has suffered injury, loss or damage as a direct consequence of the offence; and

(b) a member of the immediate family of a deceased victim of the offence.

(2) If a court finds a person guilty of an indictable offence, or a summary offence that has resulted in the death or serious injury of a person, or a family violence offence, a victim of that offence

may furnish to the court a written statement that –

(a) gives particulars of any injury, loss or damage suffered by the victim as a direct consequence of the offence; and

(b) describes the effects on the victim of the commission of the offence.

(2A) If a court finds a person guilty of an indictable offence, or a summary offence that has resulted in the death or serious injury of a person, or a family violence offence, the court may, if it considers it appropriate to do so, allow a person, other than the victim of that offence, to furnish to the court a written statement, in lieu of a statement under subsection (2), that –

(a) gives particulars of the injury, loss or damage suffered by the victim as a direct consequence of the offence; and

(b) describes the effects on the victim of the commission of the offence.

(3) A statement referred to in subsection (2) or (2A) must comply with, and be furnished in accordance with, applicable Rules of Court or rules made under subsection (6).

(4) If the court finds a person guilty of an offence, the court must allow the victim, or the person who has furnished a statement under subsection (2A) (the "other person"), or another person nominated by the victim or the other person, to read his or her statement to the court if

the victim or the other person has so requested at the time of furnishing the statement to the court.

(5) . . . . . .

(6) For the purposes of this section –

(a) Rules of Court may be made under section 12 of the *Criminal Code Act 1924*; and

(b) rules may be made under section 144 of the *Justices Act 1959*.

(7) This section does not derogate from section 81 and subsections (2) and (4) of that section apply to a statement furnished under this section.

82. Court may order pre-sentence report

(1) A court that finds an offender guilty of an offence may, before passing sentence –

(a) receive an oral statement of a probation officer; or

(b) order a pre-sentence report and adjourn the proceedings to enable the report to be prepared.

(1A) If an offender pleads guilty to an indictable offence before a court of summary jurisdiction, the court, on committing the offender to the Supreme Court for sentencing, may order a pre-sentence report to be prepared for consideration by the Supreme Court.

(1B) On ordering a pre-sentence report, the court may require the report to be prepared by such person, body or organisation, or a person, body or organisation of a class, that the court considers appropriate.

(2) The court may direct that particular matters are to be investigated for the purposes of the pre-sentence report and may give such other directions as it considers necessary or appropriate in connection with the report.

(3) If the matters the court wishes to have investigated include the medical, psychological or psychiatric condition of the offender, the court may further direct that the offender submit to an assessment for that purpose and the court may give such other directions in relation to the nature and means of obtaining the assessment as the court considers necessary or appropriate.

(4) The author of a pre-sentence report –

(a) may conduct any investigation that he or she thinks necessary or appropriate for the purposes of the report; and

(b) must conduct any investigation required by the court in such manner as the court may direct.

83. Contents of pre-sentence report

(1) The pre-sentence report may set out all or any of the following matters which, on investigation, are ascertainable and appear to the author of the

report to be relevant to the sentencing of the offender:

(a) the age of the offender;

(b) the social history and background of the offender;

(c) the medical, psychological and psychiatric history and condition of the offender;

(d) the offender's educational background;

(e) the offender's employment history;

(f) the circumstances of any 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 any sentence currently in force in respect of the offender;

(ga) whether the offender is a suitable person for a home detention order to be made in relation to the person and the opinion, in respect of whether the offender ought to reside at the premises while the order is in force, of each person who –

(i) will reside at the premises that, if such an order were made, would be the home detention premises, within the meaning of section 42AB, in relation to the offender; and

(ii) is a person who is considered by the person making the report to be a person whose opinion ought to be considered;

(h) the offender's financial circumstances;

(i) any special needs of the offender;

(j) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit;

(k) the nature and history of the relationship, if any, between the offender and the victim of the offence.

(2) The author of the pre-sentence report must include in the report any other matter relevant to the sentencing of the offender that the court has directed be set out in the report.

84. Court may order mediation report

(1) Before a court passes sentence on an offender found guilty of an offence it may, if the victim agrees, order a mediation report and adjourn the proceedings to enable the report to be prepared.

(2) A court that commits an offender to another court for sentencing may, if it thinks fit, order a mediation report for the assistance of that other court.

(3) Whether or not a mediation report has been ordered, a court may receive such a report.

(4) A court may rule that the whole or any part of a mediation report is inadmissible.

85. Contents of mediation report

(1) A mediation report is a written or oral report by a mediator about any mediation or attempted mediation between the offender and a victim.

(2) In particular, a mediation report is to report on –

(a) the attitude of the offender to mediation, to the victim and to the effects on the victim of the commission of the offence; and

(b) any agreement between the offender and the victim as to actions to be taken by the offender by way of reparation.

86. Preparation of mediation report

The Secretary of the Department is to ensure that –

(a) appropriate people are available to conduct mediations; and

(b) any mediation between offenders and victims occurs, and a mediation report is prepared, as soon as practicable after such a report is ordered.

87. Distribution of pre-sentence and mediation reports

(1) A pre-sentence report or mediation report is to be filed with the court no later than the time directed by the court.

(2) The court may make such orders regarding the distribution and security of the report as it considers necessary or appropriate.

(3) Unless the court orders otherwise, the author of the report must give a copy of the report, a reasonable time before sentencing is to take place, to –

(a) the prosecutor; and

(b) the Australian legal practitioner representing the offender or, if the offender is unrepresented, the offender.

88. Disputed pre-sentence and mediation reports

(1) The prosecution or the defence may dispute the whole or any part of a pre-sentence report or mediation report.

(2) If the whole or any part of a pre-sentence report or mediation report is disputed, the court must not take the report or the part in dispute into consideration in determining sentence unless the party disputing the report or the part has had the opportunity to lead evidence on the disputed matters and to cross-examine the author of the report on the disputed matters.

89. Disposal of other pending charges

(1) If a court finds a person guilty of an offence (in this section called "**the principal offence**") and the court is satisfied that –

(a) there has been filed in court a document in the prescribed form showing a list of other offences, whether indictable or summary, not being or including treason or murder, that the offender is believed to have committed; and

(b) a copy of that document has been provided to the offender; and

(c) in all the circumstances it is proper to do so –

the court may, with the consent of the prosecution, before passing sentence, ask the offender whether the offender admits having committed any or all of the listed offences and wishes them to be taken into account by the court when passing sentence for the principal offence.

(2) A document referred to in subsection (1) is to be signed by –

(a) the DPP or prosecuting counsel on the DPP's behalf; and

(b) the offender.

(3) If the offender admits to having committed any or all of the listed offences and wishes them to

be taken into account, the court may, if it thinks fit, do so but it must not impose a sentence in respect of the principal offence in excess of the maximum sentence that might have been imposed if no listed offence had been taken into account.

(4) If an offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 9 had the offender been convicted before the court of the offence but it must not otherwise impose any separate punishment for the offence.

(5) An order made under subsection (4) in respect of an offence taken into account may be appealed against as if it had been made on the conviction of the offender for that offence.

(6) Notwithstanding subsection (3), a court must not take into account any charge of an indictable offence that it would not have jurisdiction to try even with the consent of the person charged with that offence.

(7) The court must certify, on the relevant part of the document referred to in subsection (1)(a), any listed offences that have been so taken into account and the principal offence in respect of which this has been done.

(8) Proceedings are not to be taken or continued in respect of any listed offence certified under subsection (7) unless each finding of guilt of a principal offence in respect of which it has been taken into account has been quashed or set aside.

(9) An admission made under and for the purposes of this section is not admissible in evidence in any proceeding taken or continued in respect of the offence to which it relates.

(10) A person is not to be taken, for any purpose, to have been convicted of an offence that has been taken into account under this section by reason only that it has been 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 has been found guilty 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 other offence or offences when sentence was imposed in respect of the offence of which the person was found guilty.

(12) The fact that an offence has been taken into account under this section may be proved in the same manner as the finding of guilt for the principal offence in respect of which it has been taken into account may be proved.

89A. Pre-sentence report includes rehabilitation program assessment

In this Division, in the case of a family violence offence –

pre-sentence report includes a rehabilitation program assessment.

Division 2 – Sentencing and related matters

90. Time and place of sentencing

(1) The sentence for an offence may be imposed in open court at any time and at any place in Tasmania.

(2) The judge or magistrate presiding at the trial of an offence or receiving a plea of guilty to an offence, or any other judge or magistrate empowered to impose sentence, may, when he or she considers 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 when sentence is to be imposed; and

(b) fix the place where sentence is to be imposed.

(3) The judge or magistrate who is to impose sentence for an offence may –

(a) remand the offender in custody; or

(b) admit the offender to bail; or

(c) orally order the defendant to appear before the court at the time and place to which the proceedings are adjourned.

(4) A person who is to be sentenced for an offence is, while in custody pending sentencing, taken to be in the lawful custody of the DCS.

91. Sentence by another judge or magistrate

(1) This section applies if, on the trial of an offence –

(a) a verdict of guilty has been found or a plea of guilty has been received but no judgment or sentence has been given or passed on it; and

(b) the judge or magistrate who presided at the trial or received the plea goes out of office or it appears probable that, because of incapacitating illness or other serious cause, he or she will be unable to give judgment or pass sentence within a reasonable time.

(2) If this section applies, any other judge of the Supreme Court or magistrate, as the case requires, may, in open court –

(a) take all necessary steps preliminary to the giving of judgment or the passing of sentence; and

(b) give judgment or pass sentence.

(3) In all cases where it is possible to do so, the judge or magistrate referred to in subsection (1)(b) is to be consulted before judgment is given or sentence is passed.

(4) Non-compliance with subsection (3) does not affect the validity of the judgment or sentence.

(5) The question whether it appears probable that a judge or magistrate will be unable, for the reasons referred to in subsection (1)(b), to give judgment or pass sentence within a reasonable time is to be decided by the Chief Justice or the Chief Magistrate, as the case requires, and that decision is final.

(6) If, on the trial of an offence –

(a) a verdict of guilty has been found or a plea of guilty has been received; and

(b) all steps preliminary to the giving of judgment or the passing of sentence have been taken but no judgment or sentence has been given or passed –

any other judge of the Supreme Court or any other magistrate, as the case requires, may give the judgment or pass the sentence determined by the judge or magistrate who presided at the trial or received the plea.

(7) If, at any time before the commencement of the trial of an indictable offence, including one heard summarily, the accused person pleads guilty, any judge of the Supreme Court or any magistrate, as the case requires, other than the one receiving the plea may take all necessary steps preliminary to the giving of judgment or passing of sentence and may give judgment or pass sentence.

(8) A judgment given or sentence passed under subsection (2), (6) or (7) has, for all purposes, the same effects and consequences as if it had

been given or passed by the judge or magistrate who presided at the trial or received the plea.

92. Court must explain certain orders

(1) In this section,

order means an order that has conditions attached to it or which requires an offender to give an undertaking.

(2) If a court makes an order in relation to an offender it must explain, or cause to be explained, to the offender in simple language –

(a) the purpose and effect of the order; and

(b) the consequences that may follow if the offender fails, without reasonable excuse, to comply with the order; and

(c) the way in which the order may be varied.

92A. Certain matters to be specified when sentence of imprisonment imposed, confirmed or activated

(1) If a court –

(a) on conviction or on the determination of an appeal, imposes a sentence of imprisonment on an offender, other than a sentence of imprisonment that is wholly suspended or that is imposed in accordance with section 27F; or

(b) on appeal, confirms the imposition on an offender of a sentence, other than a sentence of imprisonment that is wholly suspended or that is imposed in accordance with section 27F;

the court, when imposing or confirming the sentence –

(c) is to specify the term of imprisonment that is being imposed or confirmed; and

(d) if it suspends part of the sentence, is to specify the period, of the term of imprisonment that is being imposed or confirmed, that is so suspended; and

(e) is to specify, in the case of a sentence of imprisonment being imposed, whether the sentence is to be served cumulatively on, or is to be served concurrently with, any other sentence of imprisonment or detention that is uncompleted and that the offender is then serving or liable to serve; and

(f) is to specify that –

(i) the offender is not eligible for parole in respect of the sentence of imprisonment being imposed or confirmed; or

(ii) the offender is not eligible for parole, in respect of the sentence of imprisonment being imposed or confirmed, before the

expiration of a period specified in that sentence.

(2) If a court –

(a) activates, under section 27(4B), (4C) or (4E), all or part of a sentence of imprisonment that has been suspended; or

(b) activates, under section 27O(1)(b)(i) or section 27Q(2)(a) , all or part of a sentence of imprisonment that has been suspended –

the court, when activating the sentence of imprisonment –

(c) is to specify the term of imprisonment that is being activated; and

(d) is to specify whether the sentence of imprisonment being activated is to be served cumulatively on, or is to be served concurrently with, any other sentence of imprisonment or detention that is uncompleted and that the offender is then serving or liable to serve; and

(e) is to specify that –

(i) the offender is not eligible for parole in respect of the sentence of imprisonment being activated; or

(ii) the offender is not eligible for parole in respect of the sentence of imprisonment being activated before the expiration of a period specified in that sentence.

(3) If subsection (1) or (2) applies to a court when imposing, confirming or activating a sentence and there is more than one sentence of imprisonment that is being imposed, confirmed or activated by the court, the court, in addition to the requirements of subsection (1) or (2)

(a) is to specify the total term of imprisonment that the offender is liable to serve for all the sentences of imprisonment that are being imposed, confirmed or activated; and

(b) is to specify the following:

(i) the sentences of imprisonment, if any, that are being imposed, confirmed or activated, in respect of which the offender is not eligible for parole;

(ii) the period, in relation to the sentences of imprisonment that are being imposed, confirmed or activated, before the expiration of which the offender is not eligible for parole.

(4) Nothing in this section is to be taken to confer a power to make a sentence.

(5) A failure by a court to comply with this section in relation to a sentence of imprisonment is not to be taken to invalidate the sentence.

93. Sentence 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 of this Act in sentencing an offender does not invalidate a 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.

94. Correction of sentence

(1) In this section –

compensation levy means a compensation levy within the meaning of the *Victims of Crime Compensation Act 1994*;

sentence includes a forfeiture, compensation levy, compensation order, restitution order, exclusion order, disqualification and loss or suspension of a licence or privilege.

(2) Subject to subsections (3) and (4), a sentence passed by a court on an offender may be varied or rescinded by the court –

(a) on its own motion initiated within the 3 month period after the sentence was passed; or

(b) on an application made within that period by the prosecutor or offender.

(3) A court must not vary or rescind a sentence under this section unless it has determined that –

(a) the sentence is contrary to the law; or

(b) the court failed to impose a sentence that was in conformity with the law; or

(c) the sentence included an order that was based on, or contained, an error of fact; or

(d) the offender's circumstances were wrongly stated or not accurately presented to the court and it is in the interests of justice to vary or rescind the sentence.

(4) A sentence is not to be varied or rescinded under this section except by the court constituted as it was when the sentence was passed, and after it has given the parties an opportunity to be heard.

(5) Nothing in this section affects the operation of Chapter XLVI of the *Criminal Code* or Part XI of the *Justices Act 1959*.

95. Appeal against sentence imposed on variation or breach

A person who is sentenced by a court in proceedings for variation or breach of a sentencing order has a right of appeal against that sentence as if –

(a) the court had, immediately before imposing that sentence, 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 were a sentence imposed on that finding of guilt or conviction.

PART 12 – MISCELLANEOUS

96. Disqualification of offender holding public office

An offender who has been sentenced to imprisonment for a term exceeding 2 years and who has not undergone the punishment to which he or she has been sentenced or such other punishment as may have been lawfully substituted for that punishment, or has not received a free pardon, is incapable, while subject to any such sentence, of holding a public office in this State.

97. Saving of royal prerogative of mercy

This Act does not affect in any manner the royal prerogative of mercy.

98. Penalty for offence may be remitted

(1) The Governor may –

(a) remit, in whole or in part, a sum of money that is imposed under an enactment as a penalty or forfeiture; and

(b) order the discharge from prison of a person who is imprisoned for non-payment of a sum of money so imposed.

(2) Subsection (1) has effect even if the sum is, in whole or in part, payable to a party other than the Crown.

(3) Where a sum of money imposed on a person under an enactment as a penalty or forfeiture is remitted by the Governor, the sum, if already paid, is to be repaid to that person as soon as practicable and, in default of such repayment, the sum is recoverable by that person in a court of competent jurisdiction.

(4) The provisions of subsection (3) are in addition to, and not in substitution for, the right of the person referred to in that subsection to apply to the Supreme Court for an order of review under the *Judicial Review Act 2000* to compel repayment of the sum of money.

(5) A notification, signed by any Minister, that a sum of money has been remitted by the Governor is –

(a) sufficient evidence that the sum has been so remitted; and

(b) sufficient authority to repay the sum to the person from whom it was recovered.

99. Effect of alteration in statutory penalty

(1) If an enactment increases the penalty for an offence or the maximum or minimum penalty for an offence, the increase applies only to offences committed after the commencement of the provisions of the enactment effecting the increase.

(2) If an enactment reduces the penalty for an offence or the maximum or minimum penalty for

an offence, the reduction extends to offences committed before the commencement of the provisions of the enactment effecting the reduction for which no penalty had been imposed at that commencement.

100. Old offence relevant in determining previous conviction

(1) A finding of guilt or conviction for an old offence counts as a finding of guilt or conviction for 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 the purposes of this section an old offence is an offence under a repealed enactment that is constituted by the same acts, omissions, matters, circumstances or things as an offence (in this section called

the new offence) under an enactment that substantially re-enacts, whether in the same language or not, the repealed enactment.

(3) Unless the contrary intention appears in the enactment creating the new offence, this section has effect even if 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.

101. Abolition of common law bonds

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

102. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for or in relation to all or any of the following:

(a) the supply of copies of sentencing orders to specified persons and the obligations of offenders subject to those orders;

(b) the conditions, operation and control of home detention orders, community correction orders, community service orders and probation orders;

(c) the payment of fines by or on behalf of offenders required to perform community service orders;

(d) applications for variation or breach of sentencing orders.

(3) Regulations made under this Act may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(4) A provision of a regulation made pursuant to subsection (3) may, if the regulation so provides, take effect on the day referred to in section 2 or a later date.

103**.** *See Schedule 1*.

104. Savings and transitional

The savings and transitional provisions set out in Schedule 2 have effect.

104AA. Transitional provision in relation to *Sentencing Amendment (Fines Without Recording Convictions) Act 2017*

A provision of this Act that is amended by the *Sentencing Amendment (Fines Without Recording Convictions) Act 2017* applies, as so amended, in relation to an offence whether the offence was committed before or after the provision was so amended.

104AB. Savings and transitional provisions in relation to *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017*

(1) In this section –

amending Act means the *Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017*.

(2) A provision of this Act, as inserted or amended by the amending Act, applies in relation to –

(a) a court imposing a sentence on an offender in relation to an offence; or

(b) a court making an order in relation to an offence or offender or a breach of an order or sentence; or

(c) a person or court taking an action under this Act in relation to an offence or a breach of an order or a sentence –

whether the offence or breach was committed before or after the day on which the provision is inserted or amended.

(3) A sentence or order imposed or made before the day on which a provision of this Act is amended, repealed or substituted by the amending Act is not to be taken to be invalid by reason only that, after that day, a court could not, under this Act, have imposed the sentence or made the order.

104AC. Transitional provision in relation to *Justice Legislation Amendments (Criminal Responsibility) Act 2020*

Section 11C, as inserted by the *Justice Legislation Amendments (Criminal Responsibility) Act 2020*, does not apply in

relation to an offence committed before the day on which the section commences.

104A. Validation and saving of certain orders

(1) In this section –

expiration period means the period beginning on 30 June 2014 and ending on the day on which this section commences;

relevant action or decision means an action, decision, direction or requirement of a court or a person;

relevant order or warrant means –

(a) a drug treatment order; and

(b) any other order; and

(c) a sentence of imprisonment; and

(d) a warrant –

that, during or after the expiration period, was or is made, imposed, or issued, under this Act or was or is purportedly made, imposed, or issued, under this Act;

validated order or warrant means –

(a) a relevant order or warrant; and

(b) a condition of a relevant order or warrant; and

(c) a variation, cancellation or suspension of a relevant order or warrant; and

(d) a confirmation, variation or cancellation of one or more conditions of a relevant order or warrant or the addition of a condition to the conditions of a relevant order or warrant; and

(e) the fixing of a non-parole period.

(2) A validated order or warrant is not to be taken to be invalid or of no effect, or to have been invalid or of no effect, by reason only that during the expiration period section 27Y(3) of this Act was in force.

(3) A relevant action or decision that was taken or made in anticipation of, in relation to, or subsequent to, the making, imposition or issuing, or the purported making, imposition or issuing, of a validated order or warrant is not to be taken –

(a) to be invalid or of no effect or to have been invalid or of no effect; or

(b) to contravene, or to have contravened, this or any other Act –

by reason only that during the expiration period section 27Y(3) of this Act was in force.

105. *Penalties Remission Act 1934* repealed

The *Penalties Remission Act 1934* is repealed.

106. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Justice; and

(b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1

The amendments effected by Section 103 and this Schedule have been incorporated into the authorised version of the appropriate Acts.

SCHEDULE 2 – SAVINGS AND TRANSITIONAL

Section 104

1. In this Schedule –

commencement day means the day referred to in section 2;

sentencing order includes a compensation order and restitution order.

2. This Act applies to any sentencing order made on or after the commencement day, irrespective of when the offence to which the sentencing order relates was committed.

3. A person in respect of whom a sentencing order is in force immediately before the commencement day continues to be subject to the requirements of that sentencing order in all respects as if this Act had not been enacted, but that sentencing order may be cancelled or varied, and any failure to comply with it may be dealt with, under this Act as if it were a sentencing order made on or after the commencement day.

4. For the purposes of this section a sentencing order made by an appellate court on or after the commencement day on setting aside a sentencing order made before that day is taken to have been made at the time the original sentencing order was made.

5. Notwithstanding the repeal by this Act of section 92C of the *Justices Act 1959* as in force immediately before the commencement day, a proclamation made under that section remains in force and is valid for the purposes of section 47 of this Act until it is revoked by a proclamation made under that section of this Act.

NOTES

The foregoing text of the *Sentencing Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 22 August 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
Sentencing Act 1997	No. 59 of 1997	1.8.1998
Sentencing Amendment Act 1999	No. 17 of 1999	14.5.1999
Criminal Justice (Mental Impairment) Act 1999	No. 21 of 1999	1.11.1999
Sentencing Amendment Act (No. 2) 1999	No. 22 of 1999	1.11.1999 (ss. 4, 8, 9, 10, 11 and 12) 1.2.2000 (ss. 5, 6 and 7)
Criminal Law (Aggravated Burglary and Repeat Offenders) Act 2000	No. 12 of 2000	28.4.2000
Vehicle and Traffic (Transitional and Consequential) Act 1999	No. 90 of 1999	14.8.2000
Sentencing Amendment Act 2001	No. 60 of 2001	19.9.2001
Judicial Review Act 2000	No. 54 of 2000	1.12.2001
Justice Legislation (Miscellaneous Amendments) Act 2001	No. 91 of 2001	5.12.2001
Vehicle and Traffic Amendment (Excessive Speeding and Disqualified Drivers) Act 2001	No. 69 of 2001	10.12.2001
Sentencing Amendment Act 2002	No. 25 of 2002	1.10.2002 (ss. 4, 5 and 6)
Justice (Amendment of Custody Legislation) Act 2002	No. 35 of 2002	14.11.2002
Police Service (Consequential Amendments) Act 2003	No. 76 of 2003	1.1.2004
Criminal Code Amendment (Appeals) Act 2004	No. 31 of 2004	27.10.2004
Justice and Related Legislation (Miscellaneous Amendments) Act 2004	No. 44 of 2004	16.11.2004
Sentencing Amendment Act 2002	No. 25 of 2002	29.12.2004 (s. 7)

Act	Number and year	Date of commencement
Family Violence Act 2004	No. 67 of 2004	30.3.2005
Justice and Related Legislation (Miscellaneous Amendments) Act 2005	No. 6 of 2005	6.5.2005
Mental Health Amendment (Secure Mental Health Unit) Act 2005	No. 72 of 2005	20.2.2006
Justice and Related Legislation (Miscellaneous Amendments) Act 2006	No. 16 of 2006	1.11.2006
Sentencing Amendment Act 2007	No. 21 of 2007	20.8.2007
Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007	No. 72 of 2007	28.4.2008
Monetary Penalties Enforcement (Consequential Amendments) Act 2008	No. 6 of 2008	28.4.2008
Justice and Related Legislation (Miscellaneous Amendments) Act 2008	No. 18 of 2008	26.6.2008
Legal Profession (Miscellaneous and Consequential Amendments) Act 2007	No. 66 of 2007	31.12.2008
Legislation Publication Act 1996	No. 17 of 1996	17.10.2010 Part 6A heading (as inserted by Act 72 of 2007) renumbered as Part 6AA
Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009	No. 76 of 2009	1.1.2011
Justice and Related Legislation (Further Miscellaneous Amendments) Amendment Act 2010	No. 43 of 2010	1.1.2011
Monetary Penalties Enforcement (Miscellaneous Amendments) Act 2011	No. 4 of 2011	1.6.2011
Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011	No. 28 of 2011	31.10.2011
Justice and Related Legislation (Miscellaneous Amendments) Act 2013	No. 20 of 2013	20.6.2013
Mental Health (Transitional and Consequential Provisions) Act 2013	No. 69 of 2013	17.2.2014

Act	Number and year	Date of commencement
Sentencing Amendment (Assaults on Police Officers) Act 2014	No. 26 of 2014	17.12.2014
Crimes (Miscellaneous Amendments) Act 2016	No. 21 of 2016	11.7.2016
Sentencing Amendment (Drug Treatment Orders) Act 2016	No. 20 of 2016	11.7.2016
Sentencing Amendment (Sexual Offences) Act 2016	No. 36 of 2016	7.10.2016
Sentencing Amendment Act 2016	No. 48 of 2016	8.2.2017
Sentencing Amendment (Fines Without Recording Convictions) Act 2017	No. 2 of 2017	31.3.2017
Sentencing Amendment (Racial Motivation) Act 2017	No. 1 of 2017	31.3.2017
Domestic Violence Orders (National Recognition) Act 2016	No. 29 of 2016	25.11.2017
Sentencing Amendment (Sentences of Imprisonment) Act 2017	No. 56 of 2017	1.7.2018
Justice and Related Legislation (Miscellaneous Amendments) Act 2018	No. 29 of 2018	10.12.2018
[1]*Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017*	No. 51 of 2017	14.12.2018 The Act except ss. 8, 10 & 19
Criminal Code and Related Legislation Amendment (Child Abuse) Act 2019	No. 29 of 2019	2.10.2019
Justice Legislation Amendments (Criminal Responsibility) Act 2020	No. 10 of 2020	1.7.2020
Justice Miscellaneous (Court Backlog and Related Matters) Act 2020	No. 27 of 2020	1.7.2021
Dangerous Criminals and High Risk Offenders Act 2021	No. 2 of 2021	13.12.2021
TasTAFE (Skills and Training Business) Act 2021	No. 32 of 2021	1.7.2022
Justice Legislation Miscellaneous Amendments Act 2020	No. 19 of 2020	22.8.2022
[2]*Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017*	No. 51 of 2017	not commenced (ss. 8, 10 and 19)

[1]As amended by Act 29 of 2018
[2]Section 19 (insertion of Schedule 3 to the Sentencing Act) was amended by Act No. 8 of 2020, effective 6.4.2020

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Amended by No. 21 of 1999, s. 47, No. 22 of 1999, s. 4,

Provision affected	How affected
	No. 90 of 1999, Sched. 1, No. 76 of 2003, Sched. 1, No. 67 of 2004, Sched. 1, No. 72 of 2005, s. 128, No. 16 of 2006, s. 36, No. 72 of 2007, Sched. 1, No. 6 of 2008, Sched. 1, No. 43 of 2010, s. 4, No. 69 of 2013, Sched. 1, No. 20 of 2016, s. 4, No. 48 of 2016, s. 4, No. 2 of 2017, s. 4, No. 51 of 2017, s. 4 and No. 29 of 2019, s. 20
Section 5	Amended by No. 22 of 1999, s. 5
Section 7	Amended by No. 22 of 1999, s. 6, No. 67 of 2004, Sched. 1, No. 21 of 2007, s. 4, No. 48 of 2016, s. 5, No. 2 of 2017, s. 5 and No. 51 of 2017, s. 5
Section 7A	Inserted by No. 48 of 2016, s. 6
Section 8	Amended by No. 22 of 1999, s. 7, No. 67 of 2004, Sched. 1, No. 2 of 2017, s. 6 and No. 51 of 2017, s. 6
Section 11	Amended by No. 29 of 2019, s. 21
Section 11A	Inserted by No. 36 of 2016, s. 4 Amended by No. 29 of 2019, s. 22
Section 11B	Inserted by No. 1 of 2017, s. 4
Section 11C	Inserted by No. 10 of 2020, s. 6
Section 13	Amended by No. 12 of 2000, s. 5 and No. 27 of 2020, s. 32
Section 15	Amended by No. 44 of 2004, s. 46 and No. 16 of 2006, s. 37
Section 16	Amended by No. 17 of 1999, s. 4 and No. 31 of 2004, s. 8
Section 16A	Inserted by No. 26 of 2014, s. 4
Section 17	Amended by No. 25 of 2002, s. 4 and No. 51 of 2017, s. 7
Section 18	Amended by No. 25 of 2002, s. 5
Division 3 of Part 3	Repealed by No. 2 of 2021, Sched. 2
Section 19	Repealed by No. 2 of 2021, Sched. 2
Section 20	Repealed by No. 2 of 2021, Sched. 2
Section 21	Repealed by No. 2 of 2021, Sched. 2
Section 22	Repealed by No. 2 of 2021, Sched. 2
Section 23	Repealed by No. 2 of 2021, Sched. 2
Section 24	Substituted by No. 76 of 2009, s. 31 Amended by No. 51 of 2017, s. 9
Section 27	Amended by No. 25 of 2002, s. 6, No. 76 of 2009, s. 32 and No. 20 of 2013, s. 85
Section 27A	Inserted by No. 21 of 2007, s. 5 Amended by No. 48 of 2016, s. 7
Section 27AB	Inserted by No. 48 of 2016, s. 8
Section 27B	Inserted by No. 21 of 2007, s. 5 Amended by No. 48 of 2016, s. 9
Section 27C	Inserted by No. 21 of 2007, s. 5
Section 27D	Inserted by No. 21 of 2007, s. 5
Section 27E	Inserted by No. 21 of 2007, s. 5
Section 27F	Inserted by No. 21 of 2007, s. 5
Section 27G	Inserted by No. 21 of 2007, s. 5 Amended by No. 29 of 2016, Sched. 1 and No. 48 of 2016,

Provision affected	How affected
	s. 10
Section 27H	Inserted by No. 21 of 2007, s. 5
Section 27I	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 11
Section 27J	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 12
Section 27K	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 13
Section 27L	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 14
Section 27M	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 15 and No. 29 of 2018, s. 6
Section 27N	Inserted by No. 21 of 2007, s. 5
Section 27O	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 16
Section 27P	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 17
Section 27Q	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 18
Section 27QA	Inserted by No. 48 of 2016, s. 19
Section 27R	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 20
Section 27S	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 21
Section 27T	Inserted by No. 21 of 2007, s. 5
Section 27U	Inserted by No. 21 of 2007, s. 5
Section 27V	Inserted by No. 21 of 2007, s. 5
Section 27W	Inserted by No. 21 of 2007, s. 5
	Amended by No. 48 of 2016, s. 22
Section 27X	Inserted by No. 21 of 2007, s. 5
Section 27Y	Inserted by No. 21 of 2007, s. 5
	Substituted by No. 18 of 2008, s. 43
	Repealed by No. 20 of 2016, s. 5
	Inserted by No. 51 of 2017, s. 11
Section 31	Amended by No. 72 of 2007, Sched. 1
Section 34	Amended by No. 51 of 2017, s. 12
Section 36	Subsection (3A) inserted by No. 17 of 1999, s. 5
	Subsection (4) substituted by No. 16 of 2006, s. 38
	Subsection (5) substituted by No. 16 of 2006, s. 38
	Subsection (6) substituted by No. 16 of 2006, s. 38
	Subsection (10) omitted by No. 72 of 2007, Sched. 1
	Substituted by No. 76 of 2009, s. 33
	Amended by No. 20 of 2013, s. 86
Section 36AA	Inserted by No. 76 of 2009, s. 33
Section 36A	Inserted by No. 60 of 2001, s. 4
	Amended by No. 28 of 2011, s. 46
Section 36B	Inserted by No. 51 of 2017, s. 13
Section 42	Amended by No. 6 of 2005, s. 41

Provision affected	How affected
	Subsection (4) substituted by No. 16 of 2006, s. 39
	Subsection (5) substituted by No. 16 of 2006, s. 39
	Subsection (6) substituted by No. 16 of 2006, s. 39
	Substituted by No. 76 of 2009, s. 34
	Amended by No. 20 of 2013, s. 87
Section 42A	Inserted by No. 76 of 2009, s. 34
Section 42AB	Inserted by No. 51 of 2017, s. 14
	Amended by No. 32 of 2021, Sched. 4
Section 42AC	Inserted by No. 51 of 2017, s. 14
Section 42AD	Inserted by No. 51 of 2017, s. 14
Section 42AE	Inserted by No. 51 of 2017, s. 14
Section 42AF	Inserted by No. 51 of 2017, s. 14
Section 42AG	Inserted by No. 51 of 2017, s. 14
Section 42AH	Inserted by No. 51 of 2017, s. 14
Section 42AI	Inserted by No. 51 of 2017, s. 14
Section 42AJ	Inserted by No. 51 of 2017, s. 14
Section 42AK	Inserted by No. 51 of 2017, s. 14
Section 42AL	Inserted by No. 51 of 2017, s. 14
	Amended by No. 19 of 2020, s. 8
Section 42AM	Inserted by No. 51 of 2017, s. 15
Section 42AN	Inserted by No. 51 of 2017, s. 15
Section 42AO	Inserted by No. 51 of 2017, s. 15
Section 42AP	Inserted by No. 51 of 2017, s. 15
Section 42AQ	Inserted by No. 51 of 2017, s. 15
Section 42AR	Inserted by No. 51 of 2017, s. 15
Section 42AS	Inserted by No. 51 of 2017, s. 15
Section 42AT	Inserted by No. 51 of 2017, s. 15
Section 42AU	Inserted by No. 51 of 2017, s. 15
Section 42AV	Inserted by No. 51 of 2017, s. 15
Section 42AW	Inserted by No. 51 of 2017, s. 15
Section 42AX	Inserted by No. 51 of 2017, s. 15
Section 42AY	Inserted by No. 51 of 2017, s. 15
Section 42AZ	Inserted by No. 51 of 2017, s. 15
Section 42B	Inserted by No. 2 of 2017, s. 7
Section 44	Substituted by No. 72 of 2007, Sched. 1
	Amended by No. 6 of 2008, Sched. 1, No. 2 of 2017, s. 8 and No. 19 of 2020, s. 9
Section 45	Amended by No. 4 of 2011, s. 51
Part 6AA	Heading inserted by No. 17 of 1996
Section 46	Substituted by No. 72 of 2007, Sched. 1
Section 47	Subsection (7A) inserted by No. 91 of 2001, s. 22
	Subsection (7B) inserted by No. 91 of 2001, s. 22
	Substituted by No. 72 of 2007, Sched. 1
Section 48	Substituted by No. 72 of 2007, Sched. 1
Section 49	Repealed by No. 72 of 2007, Sched. 1
Section 50	Repealed by No. 72 of 2007, Sched. 1
Section 51	Amended by No. 72 of 2007, Sched. 1
Section 52	Amended by No. 72 of 2007, Sched. 1 and No. 6 of 2008,

Provision affected	How affected
	Sched. 1
Section 53	Amended by No. 6 of 2008, Sched. 1
Section 54	Repealed by No. 72 of 2007, Sched. 1
Section 54A	Inserted by No. 67 of 2004, Sched. 1 Substituted by No. 76 of 2009, s. 35 Amended by No. 20 of 2013, s. 88
Section 55	Amended by No. 90 of 1999, Sched. 1 and No. 69 of 2001, s. 15
Section 57	Amended by No. 90 of 1999, Sched. 1
Part 8	Heading amended by No. 48 of 2016, s. 23
Section 57A of Part 8	Inserted by No. 48 of 2016, s. 24
Section 57B of Part 8	Inserted by No. 48 of 2016, s. 24
Section 57C of Part 8	Inserted by No. 48 of 2016, s. 24
Section 57D of Part 8	Inserted by No. 48 of 2016, s. 24
Section 57E of Part 8	Inserted by No. 48 of 2016, s. 24
Division 2 of Part 8	Heading inserted by No. 48 of 2016, s. 25
Section 62	Amended by No. 2 of 2017, s. 9
Section 68	Amended by No. 76 of 2009, s. 36, No. 4 of 2011, s. 52 and No. 20 of 2013, s. 89
Section 69	Amended by No. 4 of 2011, s. 53 and No. 20 of 2013, s. 90
Part 10	Heading amended by No. 35 of 2002, s. 15, No. 72 of 2005, s. 129 and No. 69 of 2013, Sched. 1
Section 72	Amended by No. 21 of 1999, s. 47, No. 22 of 1999, s. 8 and No. 72 of 2005, s. 130
Section 73	Amended by No. 72 of 2005, s. 131
Section 74	Amended by No. 21 of 1999, s. 47
Section 75	Amended by No. 21 of 1999, s. 47, No. 22 of 1999, s. 9, No. 72 of 2005, s. 132, No. 66 of 2007, Sched. 1 and No. 69 of 2013, Sched. 1
Section 76	Substituted by No. 22 of 1999, s. 10, No. 72 of 2005, s. 133 and No. 69 of 2013, Sched. 1
Section 77	Substituted by No. 21 of 1999, s. 47 and No. 72 of 2005, s. 133
Section 77A	Inserted by No. 72 of 2005, s. 133
Section 77B	Inserted by No. 72 of 2005, s. 133
Section 78	Substituted by No. 72 of 2005, s. 133 Amended by No. 69 of 2013, Sched. 1
Section 79	Amended by No. 22 of 1999, s. 11, No. 72 of 2005, s. 134 and No. 69 of 2013, Sched. 1
Section 79A	Inserted by No. 35 of 2002, s. 16 Amended by No. 72 of 2005, s. 135
Section 79B	Inserted by No. 35 of 2002, s. 16

Provision affected	How affected
	Amended by No. 72 of 2005, s. 136 and No. 69 of 2013, Sched. 1
Section 81A	Inserted by No. 25 of 2002, s. 7
	Amended by No. 6 of 2005, s. 42 and No. 21 of 2016, s. 16
Section 82	Amended by No. 29 of 2018, s. 7
Section 83	Amended by No. 51 of 2017, s. 16
Section 87	Amended by No. 66 of 2007, Sched. 1
Section 89A	Inserted by No. 67 of 2004, Sched. 1
Section 92A	Inserted by No. 56 of 2017, s. 4
Section 94	Amended by No. 91 of 2001, s. 23
Section 98	Amended by No. 54 of 2000, Sched. 4
Section 102	Amended by No. 51 of 2017, s. 17
Section 104AA	Inserted by No. 2 of 2017, s. 10
Section 104AB	Inserted by No. 51 of 2017, s. 18
Section 104AC	Inserted by No. 10 of 2020, s. 7
Section 104A	Inserted by No. 20 of 2016, s. 6