*Note*

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

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

**NORTHERN TERRITORY OF AUSTRALIA**

# SENTENCING ACT 1995

As in force at 1 July 2026

## Table of provisions


### Part 1 Preliminary matters

1 Short title ..... 1
2 Commencement ..... 1
3 Interpretation ..... 1
4 Application ..... 5

### Part 2 General principles

5 Sentencing guidelines ..... 5
6 Factors to be considered in determining offender's character ..... 9
6A Aggravating factors ..... 9

### Part 3 Sentences

#### Division 1 General

7 Sentencing and other orders ..... 10
8 Conviction or non-conviction ..... 11

#### Division 2 Dismissals and discharges

9 Purpose of orders under this Division ..... 12
10 Unconditional dismissal ..... 12
12 Unconditional discharge ..... 12

#### Division 3 Fines

16 Power to fine ..... 13
17 Exercise of power to fine ..... 13
18 Aggregate fines ..... 14
19 Time for payment of fine ..... 14

24 Application of fine etc. ..... 14
26 Court may order commitment in default ..... 14
27 Alternative penalties ..... 15
28 Fine in addition to or instead of imprisonment ..... 16
29 Body corporate fines under penalty provision ..... 16

**Division 4 Community correction orders**

30 Purpose of community correction orders ..... 16
31 When court may make order ..... 16
32 Duration of order and day order commences ..... 17
33 Statutory conditions of order ..... 17
34 Conditions of order imposed by court ..... 17
35 Condition requiring monitoring ..... 18
36 Condition to participate in approved project ..... 18
37 Copy of order to be given to offender and Commissioner ..... 18
38 Orders for more than one offence ..... 19
39 Revocation or variation of order on application ..... 19
39A Breach of community correction order ..... 20
39B Court orders following breach ..... 21
39C Records as evidence ..... 22
39D Certain costs recoverable by Territory ..... 22

**Division 5 Custodial orders**

**Subdivision 1 Suspended sentences of imprisonment**

40 Suspended sentence of imprisonment ..... 23
41 Effect of suspended sentence ..... 24
42 Variation of order conditionally suspending sentence ..... 24
43 Breach of order suspending sentence ..... 25

**Subdivision 2 Intensive community correction orders**

44 Purpose of intensive community correction orders ..... 29
45 When court may make order ..... 29
46 Duration of order and day order commences ..... 29
47 Statutory conditions of order ..... 30
48 Conditions of order imposed by court ..... 31
48A Home detention condition ..... 31
48B Condition to participate in approved project ..... 32
48C Copy of order to be given to offender and Commissioner ..... 32
48D Orders for more than one offence ..... 32
48E Revocation or variation of order on application ..... 33
48F Breach of intensive community correction order ..... 34
48G Court orders following breach ..... 34
48H Records as evidence ..... 36
48J Certain costs recoverable by Territory ..... 36

## Subdivision 3 Imprisonment


49 Term of imprisonment where none prescribed ..... 37
50 Imprisonment to be served concurrently unless otherwise ordered ..... 37
51 Cumulative orders of imprisonment ..... 37
52 Aggregate term of imprisonment ..... 37
53 Fixing of non-parole period by sentencing court ..... 38
53AA Non-parole periods generally ..... 39
53A Non-parole periods for offence of murder ..... 39
55 Minimum non-parole period for offence of sexual intercourse without consent ..... 41
55A Minimum non-parole periods for offences against persons under 16 years ..... 42
56 Fixing of non-parole period otherwise than by sentencing court ..... 43
57 Fixing of new non-parole period in respect of multiple sentences ..... 43
59 Order of service of sentences of imprisonment ..... 44
60 Sentences of imprisonment – whether concurrent or cumulative ..... 44
60A Sentence of imprisonment for escaping from lawful custody ..... 44
61 Sentence of imprisonment on default of payment of fine ..... 45
62 Commencement of sentences of imprisonment ..... 45
63 Calculation of term of imprisonment ..... 46
63A Effect on term of imprisonment of absence from custodial correctional facility ..... 46
64 Further sentence if person on parole ..... 47


## Subdivision 4 Indefinite sentences for violent offenders


65 Indefinite sentence – imposition ..... 48
66 Prosecution to inform Court ..... 50
67 Adjournment ..... 50
68 Evidence ..... 50
69 Court to give reasons ..... 51
70 Onus of proof ..... 51
71 Standard of proof ..... 51
72 Review – periodic ..... 51
73 Review – application by offender ..... 51
74 Discharge of indefinite sentence ..... 52
75 Re-integration programs ..... 52
76 Proper officer to give report ..... 53
77 Appeals ..... 53
78 Hearings – offender to be present ..... 54


## Division 6 Aggravated property offences


78AA Aggravated property offences ..... 54
78A Purpose ..... 55

78B Aggravated property offences ..... 56

**Division 6A Mandatory sentencing for certain offences**

**Subdivision 1 Preliminary matters**

78C Definitions ..... 56
78CA Imposition of minimum sentence ..... 57
78CB Imposition of term of actual imprisonment ..... 57

**Subdivision 2 Mandatory sentencing**

78D Offence against section 155A of Criminal Code involving assault ..... 58
78DAA Offence against section 188A of Criminal Code – imprisonment ..... 59
78DAB Offence against section 188A of Criminal Code – community correction order ..... 59
78DA Offence against section 189A of Criminal Code – imprisonment ..... 59
78DBA Offence against section 189A of Criminal Code – community correction order ..... 60
78DB Exceptional circumstances exemption ..... 61

**Division 6B Imprisonment for sexual offences**

78F Imprisonment for sexual offences ..... 61

## Part 4 Mental health orders

78P Interpretation ..... 62
79 Assessment orders ..... 62
80 Approved treatment facility orders ..... 63
81 Expiration of certain approved treatment facility orders ..... 65
82 Consent to treatment ..... 65
83 Treatment under this Part ..... 66
84 Custody of admitted person ..... 66
85 Variation of approved treatment facility orders ..... 66
86 Breach of approved treatment facility orders ..... 67

## Part 5 Orders in addition to sentence

**Division 1 Restitution and compensation orders**

87 Application of this Division ..... 67
88 Orders for restitution and compensation ..... 68
89 Reimbursement of costs of restoring property etc. ..... 68
90 Making of order ..... 68
91 Application for order ..... 68

92 Form of order ... 69
93 Imprisonment for breach of order ... 69
94 Extension of time of order ... 70
97 Orders not to affect other rights ... 70

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

97AA Definitions ... 70
97AB Court may issue certificate to victim ... 70
97AC Content of certificate ... 71

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

97A When court may make order ... 71
97B Explanation of order ... 72
97C Commencement of order ... 72
97D Contravention of order ... 72
97E Variation of order on application ... 73
97F Variation of order following conviction ... 74
97G Order may not be extended by variation ... 74
97H Certain information not to be published or broadcast ... 74

**Division 2 Other orders**

98 Cancellation of driver's licence ... 75
99 Passport orders ... 75
99A Forfeiture of property orders ... 76

## Part 6 Making of sentencing and other orders

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

100 Condition of order to undertake treatment program ... 77
101 Consent of offender to conditional order ... 77
102 Explanation of orders ... 77
102A Signing of orders ... 77

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

**Subdivision 1 Information, reports etc.**

103 Assessment of offender before certain orders made ... 78
104 Information before passing sentence or making order ... 78
104A Special provisions regarding cultural information ... 78
105 Court may order pre-sentence report ... 79
106 Contents of pre-sentence report ... 79

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

106A Definitions ..... 80
106B Victim impact statements and victim reports ..... 81

**Division 3 Taking alleged offences into account**

107 Court may take alleged offences into account ..... 82

**Division 3A Community court sentencing procedure**

107A Definitions ..... 84
107B Aboriginal experience report ..... 84
107C Law and Justice Group ..... 85
107D Application for community court sentencing procedure ..... 86
107E Community court sentencing procedure ..... 86
107F Information in Aboriginal experience report and responses of Law and Justice Group ..... 87

**Division 4 Passing of sentence**

108 Time and place of sentence ..... 87
108A Stating and recording requirement for sentence after guilty plea ..... 88
110 Sentences not invalidated by failure to comply with procedural requirements ..... 89

**Part 7 Correction of sentences**

111 Correction of sentences by Supreme Court ..... 89
112 Court may reopen proceeding to correct sentencing errors ..... 90

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

113 Appeal against sentence imposed on variation or breach ..... 91

**Part 9 Remission of sentence**

114 Remission of sentence by Administrator ..... 91

**Part 10 Prerogative of mercy**

115 Release by Administrator in exercise of prerogative of mercy ..... 93
116 Penalties for offences may be remitted ..... 95

**Part 11 Miscellaneous matters**

117 Offender to be before court when sentence imposed ..... 95

120 Lesser sentence may be imposed ..... 95
121 Effect of alterations in penalties ..... 95
122 Maximum penalty for indictable offence dealt with summarily ..... 96
123 Old offences relevant in determining previous convictions ..... 96
124 Abolition of common law bonds ..... 97
126 Facilitation of proof ..... 97
128 Regulations ..... 97

**Part 12 Repeal and transitional matters**

**Division 1 Repeal of Acts**

129 Repeal ..... 97

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

130 Savings and transitional ..... 98

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

131 Application of section 104A ..... 98

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

132 Transitional matters for *Criminal Code Amendment (Criminal Damage) Act 2011* ..... 99

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

133 Community based orders and community custody orders for pre-commencement offences ..... 99

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

134 Application of section 64 to offences committed before commencement ..... 99
135 Application of section 104A to offences committed before commencement ..... 100
136 Application of section 107 to offences committed before commencement ..... 100

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

137 Application of amendments ..... 101

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

138 Definitions ..... 101
139 Application of sections 5(2)(ha) and 123A ..... 101
140 Application of section 108A ..... 101

**Division 9 Transitional matter for Criminal Code Amendment (Property Offences) Act 2022**

141 Definition *aggravated property offence* ..... 102

**Division 10 Transitional matters for Sentencing and Other Legislation Amendment Act 2022**

142 Definition ..... 102
143 Community correction orders and intensive community correction orders ..... 102
144 Mandatory sentencing before and after commencement ..... 102
145 Application of Act to old orders ..... 103
146 Application of section 5 ..... 104
147 Application of section 42 ..... 104
148 Non-parole period for offences committed before the commencement ..... 104

**Division 11 Transitional matters for Sentencing Legislation Amendment Act 2023**

149 Application of Part 6, Division 3A ..... 105

**Division 12 Transitional matter for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023**

150 Application of section 5 ..... 105

**Division 13 Transitional matters for Justice Legislation Amendment (Domestic and Family Violence) Act 2023**

151 Definitions ..... 106
152 Application of amendment to section 6A ..... 106
153 Application of section 52 ..... 106

**Division 14 Transitional matters for Justice and Other Legislation Further Amendment Act 2024**

154 Definitions ..... 107
155 Continuation of approved places for Law and Justice Groups ..... 107
156 Continuation of appointed members as approved members of Law and Justice Groups ..... 107

**Division 15 Transitional matters for Sentencing Amendment Act 2024**

157 Mandatory sentencing before and after commencement ..... 107

**Division 16 Transitional matters for Sentencing Amendment (Murder) Act 2026**

158 Application of amendments to section 53A ..... 108

**Schedule 2 Violent offences**

**Schedule 3 Sexual offences**

**Schedule 4 Acts and Ordinances repealed**

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2026

## SENTENCING ACT 1995

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

## Part 1 Preliminary matters

### 1 Short title

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

### 2 Commencement

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

### 3 Interpretation

(1) In this Act:

***Aboriginal experience report***, for Part 6, Division 3A, see section 107B.

***aggravated property offence***, see section 78AA.

***approved member***, for Part 6, Division 3A, see section 107A.

***approved monitoring device***, see section 165 of the *Correctional Services Act 2014.*

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

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

***coercive control***, see section 5B of the *Domestic and Family Violence Act 2007*.

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

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

***community court sentencing procedure***, for Part 6, Division 3A, see section 107A.

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

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

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

***domestic relationship***, see section 9 of the *Domestic and Family Violence Act 2007*.

***domestic violence***, see section 5 of the *Domestic and Family Violence Act 2007*.

***domestic violence order*** means an order made in the nature of a domestic violence order under the *Domestic and Family Violence Act 2007*.

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

***family relationship***, see section 10 of the *Domestic and Family Violence Act 2007.*

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

***home detention condition*** means a condition in an intensive community correction order that an offender must:

(a) reside or remain in premises or a place specified in the order for:

(i) a period of at least 12 hours per day for each day the condition is in force; or

(ii) a period of time per day determined by the Commissioner for each day the condition is in force; and

(b) not leave the premises or place specified in the order for the period mentioned in paragraph (a) except at the times and for the periods as specified in the order or as otherwise permitted by the Commissioner or a probation and parole officer; and

(c) obey the reasonable directions of the Commissioner.

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

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

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

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

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

(a) is to be reviewed under Part 3, Division 5, Subdivision 4; and

(b) is to continue until a court orders that the indefinite term of imprisonment is discharged.

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

***intensive community correction order*** means an intensive community correction order made under Part 3, Division 5, Subdivision 2.

***Law and Justice Group***, for Part 6, Division 3A, see section 107C(2).

***motor vehicle***, see section 5(1) of the *Motor Vehicles Act 1949*.

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

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

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

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

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

***offensive weapon***, for Part 3, Division 6A, see section 78C.

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

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

***prescribed program***, for a community correction order or an intensive community correction order, means a course, training, education or similar activity prescribed by regulation for the order.

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

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

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

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

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

***rehabilitation program in relation to domestic and family violence*** means a program declared under section 85A(1) of the *Domestic and Family Violence Act 2007*.

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

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

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

***violent offence*** means the following:

(a) for sections 65, 67, 68 and 74 – see section 65(1);

(b) for section 52 and Part 3, Division 6A – see section 78C.

*Note for subsection (1)*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

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

### 4 Application

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

## Part 2 General principles

### 5 Sentencing guidelines

(1) The only purposes for which sentences may be imposed on an offender are the following:

(a) to punish the offender to an extent or in a way that is just in all the circumstances;

(b) to provide conditions in the court's order that will help the offender to be rehabilitated;

(c) to discourage the offender or other persons from committing the same or a similar offence;

(d) to make it clear that the community, acting through the court, does not approve of the sort of conduct in which the offender was involved;

(e) to protect the Territory community from the offender;

(f) a combination of 2 or more of the purposes referred to in this subsection.

*Note for subsection (1)(e)*

*This includes the protection of any person who is in a family relationship or a domestic relationship with the offender.*

(2) In sentencing an offender, a court must have regard to:

(a) the maximum and any minimum penalty prescribed for the offence; and

(b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim; and

(ba) if the offence is a sexual offence:

(i) whether the victim contracted a sexually transmissible medical condition as a result of the offence; and

(ii) whether the offender was aware at the time of the offence that he or she had a medical condition that could be sexually transmitted; and

(c) the extent to which the offender is to blame for the offence; and

(d) any damage, injury or loss caused by the offender; and

(da) any harm done to a community as a result of the offence (whether directly or indirectly); and

(e) the offender's character, age and intellectual capacity; and

(f) the presence of any aggravating or mitigating factor concerning the offender; and

(g) the prevalence of the offence; and

(h) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences; and

(ha) the conduct of the offender during the proceedings, including the extent to which the offender complied with a requirement imposed on the offender under Part IV, Division 2A of the *Local Court (Criminal Procedure) Act 1928*; and

(j) whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; and

(k) time spent in custody by the offender for the offence before being sentenced, including time the offender resided at a specified place in accordance with a conduct agreement under the *Bail Act 1982* that contained a provision mentioned in section 27A(1)(iaa), (iab) or (ia) of that Act; and

(m) sentences imposed on, and served by, the offender in a State or another Territory of the Commonwealth for an offence committed at, or about the same time, as the offence with which the court is dealing; and

(n) sentences already imposed on the offender that have not been served; and

(p) sentences that the offender is liable to serve because of the revocation of orders made under this or any other Act for contraventions of conditions by the offender; and

(q) if the offender is the subject of a community correction order or an intensive community correction order, the offender's compliance with the order; and

(r) anything else prescribed by this Act to which the court is required to have regard; and

(s) any other relevant circumstance.

(3) For subsection (2)(ba):

(a) a certificate by a medical practitioner that a person has (or had at a stated time) a sexually transmissible medical condition is evidence of the existence of that condition; and

(b) the contraction by the victim of the medical condition is to be taken to be a result of the offence if:

(i) a certificate is tendered that the offender had at the relevant time a sexually transmissible medical condition; and

(ii) evidence is given that the victim contracted the medical condition at a time that is consistent with the medical condition being transmitted from the offender.

(3A) Despite subsection (2)(e), in sentencing an offender for an offence against Part V, Division 2 or Part VIA of the Criminal Code, a court must disregard the good character of the offender if:

(a) the person against whom the offence was committed was, at the time the offence was committed, under 18 years of age; and

(b) the court is satisfied that the offender's alleged good character was of assistance to the offender in the commission of the offence.

*Examples for subsection (3A)(b)*

1 *The offender's good character was one reason the offender was selected to supervise children at a camp. The offender began to establish a relationship with children at the camp to obtain their compliance in sexual activities.*

2 *A child's parent trusted the offender to care for the child because of the offender's authority in their community. The offender held authority in the community in part due to the offender's good character. The offender sexually abused the child including while the child was in the offender's care.*

(4) In sentencing an offender, a court:

(a) may have regard to any co-operation by the offender in resolving any action taken against the offender under the *Criminal Property Forfeiture Act 2002* in relation to the offence or offences for which the offender is being sentenced; and

(aa) may have regard to a forfeiture order under the *Liquor Act 2019* to the extent that the property that is subject to the order relates to the offence or offences for which the offender is being sentenced; and

(b) may have regard to a forfeiture order under the *Criminal Property Forfeiture Act 2002* to the extent that the order relates to property that is crime-used property (within the meaning of that Act) in relation to the offence or offences for which the offender is being sentenced; and

(c) must not make any allowance for any other property that has been or may be forfeited to the Territory by operation of the *Criminal Property Forfeiture Act 2002* or in any proceedings under that Act in which the offender is, was or may be a respondent.

(5) In addition to subsections (2) and (4), in sentencing an offender in relation to an offence that involves domestic violence, a court must have regard to whether there is an unacceptable risk that the offender may commit domestic violence against a person.

(6) If the court is satisfied there is an unacceptable risk that the offender may commit domestic violence against a person, in sentencing the offender in relation to the offence that involves domestic violence, the court must:

(a) have regard to whether making an order in relation to the offender, including whether a condition of the order, would mitigate any unacceptable risk of the offender committing domestic violence against a person; and

(b) have regard to whether a domestic violence order should be made against the offender to mitigate any unacceptable risk of the offender committing domestic violence against a person; and

(c) if the court makes a domestic violence order against the offender – ensure any order or a condition of the order is consistent with any conditions of the domestic violence order; and

(d) if a domestic violence order is in force against the offender at the time of the sentencing:

(i) have regard to whether any conditions or the duration of the order should be varied; and

(ii) ensure any order or a condition of the order is consistent with any conditions of the domestic violence order.

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

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

(a) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions of the offender; and

(b) the general reputation of the offender; and

(c) any significant contributions made by the offender to the community.

## 6A Aggravating factors

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

(a) the offender committed the offence in company with one or more persons;

(b) the offender was armed with a weapon when committing the offence;

(c) the offence was committed during a public disturbance;

(d) the offence was committed without regard to public safety;

(e) the offence was motivated by hate against a group of people;

(f) the offence involved violence or the threat of violence;

(fa) if the offender and the victim are, or were at the time of the commission of the offence, in a domestic relationship:

(i) the offence included domestic violence in the nature of conduct that is physically or sexually abusive; or

(ii) the offence involved coercive control of the victim; or

(iii) the offence included domestic violence in the nature of exposing a child to conduct that constitutes domestic violence;

(g) the offence involved more than one victim;

(ga) a victim of the offence was a police officer or emergency worker in the execution of the officer's or worker's duty at the time the offence was committed;

(gb) the offence included spitting by the offender;

(h) the offence involved substantial planning and organisation.

(2) In this section:

***emergency worker***, see section 187(2) of the Criminal Code.

# Part 3 Sentences

## Division 1 General

### 7 Sentencing and other orders

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

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

(b) without recording a conviction, order the release of the offender;

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

(d) record a conviction and order the release of the offender;

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

(f) with or without recording a conviction, make a community correction order for the offender;

(fa) with or without recording a conviction, make a community correction order for the offender and order the offender to pay a fine;

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

(h) record a conviction and make an intensive community correction for the offender;

(k) impose any sentence or make any order authorised by this or any other Act.

**8 Conviction or non-conviction**

(1) In deciding whether or not to record a conviction, a court must have regard to the circumstances of the case including:

(a) the character, antecedents, age, health or mental condition of the offender; and

(b) the extent, if any, to which the offence is of a trivial nature; and

(c) the extent, if any, to which the offence was committed under extenuating circumstances.

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

(3) A finding of guilt without the recording of a conviction:

(a) does not prevent a court from making any other order that it is authorised to make in consequence of the finding by this or any other Act; and

(b) has the same effect as if one had been recorded for the purpose of:

(i) appeals against sentence; or

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

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

(iv) subsequent proceedings against the offender for the same offence.

## Division 2 Dismissals and discharges

### 9 Purpose of orders under this Division

An order may be made under this Division:

(a) to provide for the rehabilitation of an offender by allowing the sentence to be served in the community; or

(b) to take account of the trivial, technical or minor nature of the offence committed; or

(c) to allow for circumstances in which it is inappropriate to record a conviction; or

(d) to allow for circumstances in which it is inappropriate to inflict any punishment other than a nominal punishment; or

(e) to allow for the existence of other extenuating or exceptional circumstances that justify the court showing mercy to an offender.

### 10 Unconditional dismissal

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

### 12 Unconditional discharge

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

## Division 3 Fines

### 16 Power to fine

(1) If a person is found guilty of an offence, the court may fine the offender.

(2) The maximum fine that a court may impose is:

(a) if the only punishment specified for the offence is a sentence of imprisonment – a fine calculated in accordance with section 28; or

(b) if no period of imprisonment is specified for the offence:

(i) the maximum fine specified for the offence under a provision of this or any other Act that applies to the offence; or

(ii) if there is also no maximum fine specified for the offence – 20 penalty units.

(3) Subsections (1) and (2) do not apply to the extent that a specific provision of an Act provides otherwise.

### 17 Exercise of power to fine

(1) Where a court decides to fine an offender, it must, in determining the amount of the fine, take into account, as far as practicable:

(a) the financial circumstances of the offender; and

(b) the nature of the burden that its payment will impose on the offender.

(2) A court is not prevented from fining an offender only because it has not been informed about the matters referred to in subsection (1).

(3) In considering the financial circumstances of an offender, a court must take into account any other order that it or any other court has made or that it proposes to make:

(a) providing for the confiscation of the proceeds of the crime; or

(b) requiring the offender to make restitution or pay compensation.

(4) Where a court considers that:

(a) it would be appropriate both to impose a fine and to make a restitution or compensation order; and

(b) the offender has insufficient means to pay both;

the court must give preference to restitution or compensation, though it may also impose a fine.

(5) A court, in fixing the amount of a fine, may have regard to, among other things:

(a) the loss or destruction of or damage to property suffered by a person; and

(b) the value of any benefit derived by the offender;

as a result of the offence.

**18 Aggregate fines**

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

**19 Time for payment of fine**

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

**24 Application of fine etc.**

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

**26 Court may order commitment in default**

(1) If a court imposes a fine on an offender under section 16(1), the fine may be enforced under the *Fines and Penalties (Recovery) Act 2001* unless the court orders commitment in default under subsection (2).

(2) A court may order that if a fine is not paid within 28 days the offender is to be imprisoned until his or her liability to pay the fine is discharged.

(3) If a court makes an order under subsection (2) and the fine is not paid within 28 days, the court may issue a warrant of commitment in respect of the offender specifying the period of imprisonment calculated on the basis of the amount of the fine as follows:

(a) the period is to be one day for each amount (or part of that amount) prescribed for section 88 of the *Fines and Penalties (Recovery) Act 2001* that comprises the fine;

(b) the period is not to be less than one day;

(c) the period is not to exceed 3 months.

(4) If an offender serves the total period of imprisonment under a warrant under subsection (3), the fine is taken to be satisfied.

(5) If an offender serves part of the period of imprisonment under a warrant under subsection (3), the fine is to be taken to be partially satisfied by the amount calculated at the rate prescribed for section 88 of the *Fines and Penalties (Recovery) Act 2001* for each day served.

(6) Unless otherwise ordered by the court, any period of imprisonment that an offender has to serve as a result of an order under subsection (2) is to be served:

(a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the offender for the default of a payment of a fine or sum of money; and

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

**27 Alternative penalties**

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

(a) fine the person; or

(b) imprison the person; or

(c) both fine and imprison the person.

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

(1) An offence against an Act for which there is no punishment specified other than a term of imprisonment is punishable in addition to or instead of imprisonment by a maximum fine calculated in accordance with subsection (2).

(2) The maximum fine is calculated by multiplying 100 penalty units by the term of imprisonment expressed:

(a) in years; or

(b) if the term is less than 12 months – as a fraction of a year.

(3) Subsections (1) and (2) do not apply if the specified term of imprisonment is life.

### 29 Body corporate fines under penalty provision

(1) If a provision of an Act or subordinate legislation specifies a fine for an offence but does not expressly differentiate between the fine for a body corporate and the fine for an individual, the specified fine is taken to be the fine for an individual.

(2) If a body corporate is found guilty of an offence referred to in subsection (1), the court may impose a maximum fine of an amount equal to 5 times the fine specified in the provision.

## Division 4 Community correction orders

### 30 Purpose of community correction orders

A community correction order may be made under this Division to allow for flexibility in the sentencing of an offender by imposing a sentence that provides for the offender to be based in the community.

### 31 When court may make order

(1) A court may make a community correction order under this Division for an offender if the court considers it appropriate.

(2) The court may make the community correction order in addition to imposing a fine on the offender but not in addition to a sentence of a term of imprisonment.

## 32 Duration of order and day order commences

(1) A community correction order commences on the day it is made.

(2) The period a community correction order is in force must not exceed 2 years.

## 33 Statutory conditions of order

A community correction order is subject to the following conditions:

(a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;

(b) the offender must be of good behaviour for the period the order is in force.

## 34 Conditions of order imposed by court

(1) Subject to this section and section 35, a court may impose conditions on a community correction order, including the following:

(a) subject to section 36 – the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer;

(b) the offender must satisfactorily complete a rehabilitation program in relation to domestic and family violence;

(c) another condition prescribed by regulation;

(d) any other condition the court considers appropriate.

*Note for subsection (1)(b)*

*Section 5(5) and (6) sets out the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.*

(2) Despite section 101, the court may impose the condition mentioned in subsection (1)(b) without the offender's consent.

(3) The regulations may make provision about matters in relation to the condition mentioned in subsection (1)(b).

(4) The court must not impose a home detention condition on a community correction order.

### 35 Condition requiring monitoring

(1) A court must not make a community correction order in relation to an offender subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition unless the court has had regard to a pre-sentence report in relation to the offender.

(2) A report under subsection (1) may be in writing or given orally to the court.

(3) If the court makes an order subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition, the offender must comply with Chapter 4 of the *Correctional Services Act 2014* and any regulations made for that Chapter.

### 36 Condition to participate in approved project

A court must not make a community correction order in relation to an offender subject to the condition mentioned in section 34(1)(a) unless the court:

(a) has been notified by the Commissioner that arrangements have been or will be made for the offender to participate in an approved project under the order; and

(b) is satisfied that:

(i) the offender is a suitable person to participate in the approved project; and

(ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.

### 37 Copy of order to be given to offender and Commissioner

A court must give a copy of a community correction order to the following:

(a) the offender to whom it applies;

(b) if the order is subject to a condition of a type that requires the Commissioner (or a probation and parole officer) to monitor compliance with the condition – the Commissioner.

### 38 Orders for more than one offence

(1) If a court makes separate community correction orders for 2 or more offences committed by the offender, the conditions of the orders are concurrent unless the court otherwise directs.

(2) The conditions of the community correction order made for the offender are, unless the court otherwise directs, concurrent with those of any other community correction order already in force for the offender.

### 39 Revocation or variation of order on application

(1) A court which has made a community correction order in relation to an offender may, on application by the Commissioner or offender:

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

(b) vary the conditions of the community correction order; or

(c) confirm the community correction order.

(2) If the Commissioner makes the application:

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

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

(3) If the offender makes the application, the court may only make an order under subsection (1) if the court is satisfied that the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances.

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

(a) the application; and

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

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

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

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

(c) any report of the Commissioner.

(6) In addition, in making an order under subsection (1), the court may take into account:

(a) whether the offender is in custody on a charge for another offence; and

(b) whether the offender's behaviour is such that the offender's compliance with the terms of the order is impracticable.

**39A Breach of community correction order**

(1) If a justice of the peace is satisfied on information on oath that an offender has breached a condition of a community correction order, the justice of the peace may:

(a) issue to the offender a summons to appear before a court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Division; or

(b) if the justice of the peace is satisfied that the offender may not appear before the court in response to a summons – issue a warrant for the arrest of the offender.

(2) The justice of the peace may issue the summons or warrant under subsection (1):

(a) if the offender has breached a condition of the community correction order that is still in force; or

(b) within 2 years after the community correction order ceases to be in force, if the offender had breached a condition of the order when it was in force.

(3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.

(4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.

(5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.

(6) For sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition of the order is taken to be an offence.

### 39B Court orders following breach

(1) If a court is satisfied that an offender breached a condition of a community correction order, the court may:

(a) if the order is still in force:

(i) confirm the order; or

(ii) vary the conditions of the order; or

(iii) revoke the order and deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence; or

(iv) subject to subsection (2) – extend the period of the order; or

(v) confirm the discharge of the order and take no further action; or

(b) if the order is no longer in force:

(i) deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence; or

(ii) confirm the discharge of the order and take no further action.

(2) For subsection (1)(a)(iv), the court may only extend the period of the order to provide for the order to be in force for no longer than 2 years in total.

(3) For subsection (1)(b)(i), the court may, in dealing with the offender, take into account the extent to which the offender had complied with the order before the offender breached the condition of the order.

(4) If an offender has breached a condition of a community correction order because the offender committed domestic violence, the court must take into account the matters mentioned in section 5(5) and (6) when considering the breach as if the court is sentencing the offender for an offence that involves domestic violence.

(5) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act 1949* for the offender (the ***MVA order***), the court may revoke the MVA order.

(6) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* because of an application made under the MVA order:

(a) the licence is cancelled; and

(b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and

(c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act 1949*:

(i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and

(ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.

(7) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.

**39C Records as evidence**

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

(a) records generated by or through an approved monitoring device;

(b) records comprising the notebooks or diaries of a probation and parole officer.

**39D Certain costs recoverable by Territory**

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

(a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and

(b) the costs may be recovered from the offender as a debt payable to the Territory.

# Division 5 Custodial orders

## Subdivision 1 Suspended sentences of imprisonment

### 40 Suspended sentence of imprisonment

(1) A court which sentences an offender to a term of imprisonment of not more than 5 years may make an order suspending the sentence where it is satisfied that it is desirable to do so in the circumstances.

(2) An order suspending a sentence of imprisonment may suspend the whole or a part of the sentence and the order may be subject to such conditions as the court thinks fit.

*Note for subsection (2)*

*For example, the order could be subject to a condition mentioned in the Regulations for a community correction order or an intensive community correction order.*

(3) A court must not impose a suspended sentence of imprisonment unless the sentence of imprisonment, if unsuspended, would be appropriate in the circumstances having regard to this Act.

(4) Where an offender is convicted of more than one offence in the same proceeding, a court may only make an order suspending a sentence of imprisonment imposed by it where the aggregate period of imprisonment imposed in respect of all the offences does not exceed 5 years.

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

(6) A court must specify in an order suspending a sentence of imprisonment a period of not more than 5 years from:

(a) if the whole of the sentence is suspended – the date of the order; or

(b) if a part of the sentence is suspended – the date specified in the order;

during which the offender is not to commit another offence punishable by imprisonment if the offender is to avoid being dealt with under section 43.

(7) Where an offender is ordered to serve the whole or part of a wholly suspended sentence of imprisonment under section 43, then, for

any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits, the offender is taken to have been sentenced to imprisonment on the day on which the order was made under that section.

(8) A partly suspended sentence of imprisonment is taken, for all purposes, to be a sentence of imprisonment for the whole term stated by the court.

(9) For this section, a suspended sentence of imprisonment imposed on an offender on appeal is taken to have been imposed by the appellate court.

(10) Despite subsection (9), where a suspended sentence of imprisonment is imposed on an offender on appeal, an application under this subdivision that may be made to a court may be made to the court whose order was appealed against and that court may deal with the offender even if the court is not the court that imposed the sentence.

**41 Effect of suspended sentence**

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

**42 Variation of order conditionally suspending sentence**

(1) A court which has made an order wholly or partially suspending a sentence of imprisonment on certain conditions may, on application under this subsection, if satisfied that a circumstance in subsection (2) applies:

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

(b) vary the conditions of the order; or

(c) confirm the order.

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

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

(b) the offender has failed or is no longer willing to comply with a condition of the order.

(3) An application under subsection (1) may be made at any time by:

(a) the offender; or

(b) a prescribed person or a member of a prescribed class of persons; or

(c) the prosecutor.

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

(a) the offender; and

(b) where the sentencing court was:

(i) the Supreme Court, the Director of Prosecutions; or

(ii) the Local Court, the complainant or informant.

(5) A court may order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

(6) In deciding how to deal with the offender under subsection (1)(a), the court must take into account the extent to which the offender has complied with the order.

**43 Breach of order suspending sentence**

(1) Where:

(a) while an order suspending a sentence of imprisonment under section 40 is in force; or

(b) within the period of 2 years after the expiry of the operational period of a suspended sentence;

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

(2) Where it appears to a prescribed person, or a member of a prescribed class of persons, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject, he or she may apply, whether or not the order is still in force, in the prescribed form, to the court which sentenced the offender for an order under this section.

(3) Where an application is made under subsection (1) or (2):

(a) notice of the application must be given to the offender; or

(b) where the Court is satisfied:

(i) for an application under subsection (1) – that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment and that the offender may not appear; or

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

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

(4) The court may, on the hearing of an application under this section, order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

(4AA) A police officer who suspects, on reasonable grounds, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject may, without warrant, arrest the offender.

(4AB) For the application of sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition to which an order suspending a sentence imposed on an offender is subject is to be taken to be an offence.

(4A) Where:

(a) an offender appears before a court:

(i) while an order made by the court suspending a sentence of imprisonment under section 40 is in force in respect of the offender; or

(ii) within the period of 2 years after the expiry of the operational period of a suspended sentence imposed by the court on the offender; and

(b) the court is satisfied that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment;

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

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

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

(a) that, during the operational period of a suspended sentence imposed on the offender by the Supreme Court, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or

(b) that the offender has breached a condition to which an order made by the Supreme Court suspending a sentence imposed on the offender is subject;

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

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

(a) for subsection (4A), the Supreme Court is taken to have imposed the suspended sentence; and

(b) the Supreme Court may deal with the offender under this section.

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

(a) for subsection (4B), the Supreme Court is taken to have made the order; and

(b) the Supreme Court may deal with the offender under this section.

(5) Where:

(a) on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (4A), a court is satisfied, by evidence on oath or by affidavit or by the

admission of the offender, that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or

(b) on the hearing of an application under subsection (2) or on the hearing of its own motion under subsection (4B), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has breached a condition of the order;

the court may:

(c) subject to subsection (7), restore the sentence or part sentence held in suspense and order the offender to serve it; or

(d) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or

(e) for a wholly suspended sentence, extend the operational period to a date after the date of the order suspending the sentence; or

(ea) for a partially suspended sentence – extend the operational period to a date after the date specified in the order suspending the sentence; or

(f) make no order with respect to the suspended sentence.

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

(a) immediately; and

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

(7) A court must make an order under subsection (5)(c) unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the facts of any subsequent offence and, if it is of that opinion, the court must state its reasons.

(8) Where a court makes no order with respect to a suspended sentence, the proper officer of the court must record the fact in the records of the court.

## Subdivision 2 Intensive community correction orders

### 44 Purpose of intensive community correction orders

An intensive community correction order may be made under this Subdivision to provide for an offender to serve a term of imprisonment in the community and, in doing so:

(a) ensure that a person who commits an offence is held accountable; and

(b) address the personal factors that contribute to the offender's criminal behaviour.

### 45 When court may make order

(1) A court that sentences an offender to a term of imprisonment may order the sentence of imprisonment be served by way of an intensive community correction order if the court considers it appropriate.

(2) The court must not make an intensive community correction order in relation to an offender unless the court has had regard to a pre-sentence report in relation to the offender.

(3) A report under subsection (2) may be in writing or given orally to the court.

(4) The court must not fix a non-parole period in relation to a sentence of imprisonment served by way of an intensive community correction order.

(5) A sentence of imprisonment to be served by way of an intensive community correction order starts on the day the order commences and, despite section 51(1), the court must not direct otherwise.

### 46 Duration of order and day order commences

(1) An intensive community correction order commences:

(a) on the day that the order is made; or

(b) if the order is made at the same time that another sentence of imprisonment for another offence is imposed on the offender – immediately after the offender is released from custody under that other sentence.

(2) An intensive community correction order may not commence on a day before the order is made.

(3) The period an intensive community correction order is in force must not exceed 2 years.

(4) A court may consider any period of time the offender was remanded in custody for the offence in determining the period the order is in force.

**47 Statutory conditions of order**

(1) An intensive community correction order is subject to the following conditions:

(a) the offender must not, during the period the order is in force, commit another offence (whether in or outside the Territory) punishable on conviction by imprisonment;

(b) the offender must be of good behaviour for the period the order is in force;

(c) the offender:

(i) is under the ongoing supervision of a probation and parole officer; and

(ii) must report to a probation and parole officer at a specified place within 2 business days after the order comes into force; and

(iii) must comply with Chapter 4 of the *Correctional Services Act 2014* and any regulations made for that Chapter;

(d) if the Commissioner has reasonable grounds to do so – the offender may be required, by the Commissioner, to:

(i) reside at a specified place for the period specified in the notice; and

(ii) wear or have attached an approved monitoring device for the period specified in the notice (the ***temporary monitoring period***); and

(iii) allow the placing or installation in, and retrieval from, a specified place of anything necessary for the effective operation of the monitoring device.

(2) For subsection (1)(d), the temporary monitoring period must not be more than 14 days.

## 48 Conditions of order imposed by court

(1) A court may impose conditions on an intensive community correction order, including the following:

(a) subject to section 48A – a home detention condition;

(b) subject to section 48B – the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer;

(c) the offender must satisfactorily complete a rehabilitation program in relation to domestic and family violence;

(d) another condition prescribed by regulation;

(e) any other condition the court considers appropriate.

*Note for subsection (1)(c)*

*Section 5(5) and (6) sets out the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.*

(1A) The court may impose a home detention condition under subsection (1)(a) for all or part of the duration of the intensive community correction order.

(2) Despite section 101, the court may impose the condition mentioned in subsection (1)(c) without the offender's consent.

(3) The regulations may make provision about matters in relation to the condition mentioned in subsection (1)(c).

## 48A Home detention condition

A court must not make an intensive community correction order in relation to an offender subject to a home detention condition unless the court is satisfied that:

(a) suitable arrangements are available for the offender to reside at premises or a place; and

(b) the premises or place is suitable for the purposes of the order subject to the condition; and

(c) the making of the order subject to the condition is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally.

*Notes for section 48A(c)*

*1 This includes the protection of any person who is in a family relationship or a domestic relationship with the offender.*

*2 See section 5(5) and (6) for the sentencing guidelines for sentencing an offender in relation to an offence that involves domestic violence.*

### 48B Condition to participate in approved project

A court must not make an intensive community correction order in relation to an offender subject to the condition mentioned in section 48(1)(b) unless the court:

(a) has been notified by the Commissioner that arrangements have been or will be made for the offender to participate in an approved project under the order; and

(b) is satisfied that:

(i) the offender is a suitable person to participate in the approved project; and

(ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.

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

A court must give a copy of an intensive community correction order to the offender to whom it applies and the Commissioner.

### 48D Orders for more than one offence

(1) If the court makes separate intensive community correction orders for 2 or more offences committed by the offender, the conditions of the orders are concurrent unless the court otherwise directs.

(2) The conditions of the intensive community correction order made for the offender are, unless the court otherwise directs, concurrent with those of any other intensive community correction order already in force for the offender.

### 48E Revocation or variation of order on application

(1) A court which has made an intensive community correction order in relation to an offender may, on application by the Commissioner or offender:

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

(b) vary the conditions of the intensive community correction order; or

(c) confirm the intensive community correction order.

(2) If the Commissioner makes the application:

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

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

(3) If the offender makes the application, the court may only make an order under subsection (1) if the court is satisfied that the offender is not able to comply with a condition of the order because of a material change in the offender's circumstances.

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

(a) the application; and

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

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

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

(b) any report of the Commissioner.

(6) In addition, in making an order under subsection (1), the court may take into account:

(a) whether the offender is in custody on a charge for another offence; and

(b) whether the offender's behaviour is such that the offender's compliance with the terms of the order is impracticable.

### 48F Breach of intensive community correction order

(1) If a justice of the peace is satisfied on information on oath that an offender has breached a condition of an intensive community correction order, the justice of the peace may:

(a) issue to the offender a summons to appear before a court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this Subdivision; or

(b) if the justice of the peace is satisfied that the offender may not appear before the court in response to a summons – issue a warrant for the arrest of the offender.

(2) The justice of the peace may issue the summons or warrant under subsection (1):

(a) if the offender has breached a condition of the intensive community correction order that is still in force; or

(b) within 3 years after the intensive community correction order ceases to be in force, if the offender had breached a condition of the order when it was in force.

(3) If the offender fails to attend before the court in accordance with a summons, the court may issue a warrant for the offender's arrest.

(4) A police officer who suspects on reasonable grounds the offender has breached a condition of the order may arrest the offender without a warrant.

(5) A police officer may, using reasonable force if necessary, enter any place to arrest the offender.

(6) For sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition of the order is taken to be an offence.

### 48G Court orders following breach

(1) If a court is satisfied that an offender breached a condition of an intensive community correction order, the court may:

(a) if the order is still in force:

(i) confirm the order; or

(ii) vary the conditions of the order; or

(iii) revoke the order and deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence; or

(iv) sentence the offender to imprisonment for the unexpired term of the order at the date of the breach of the condition; or

(v) confirm the discharge of the order and take no further action; or

(b) if the order is no longer in force:

(i) deal with the offender for the offence for which the order was made as if it had just found the offender guilty of the offence; or

(ii) confirm the discharge of the order and take no further action.

(2) For subsection (1)(b)(i), the court may, in dealing with the offender, take into account the extent to which the offender had complied with the order before the offender breached the condition of the order.

(3) If an offender has breached a condition of an intensive community correction order because the offender committed domestic violence, the court must take into account the matters mentioned in section 5(5) and (6) when considering the breach as if the court is sentencing the offender for an offence that involves domestic violence.

(4) If the court sentences the offender to imprisonment for the unexpired term of the order, the term of imprisonment must, unless the court orders otherwise, be served:

(a) immediately; and

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

(5) If the court revokes the order, or the order is no longer in force, and the court had made an order under section 25M or 25R of the *Motor Vehicles Act 1949* for the offender (the ***MVA order***), the court may revoke the MVA order.

(6) If the court revokes the MVA order for the offender and a licence was granted under the *Motor Vehicles Act 1949* because of an application made under the MVA order:

(a) the licence is cancelled; and

(b) the court must give notice of the cancellation to the Registrar of Motor Vehicles; and

(c) for the revocation of the MVA order made under section 25R of the *Motor Vehicles Act 1949*:

(i) all disqualifications applying to the offender in relation to holding a licence, or the offender's ability to apply for a licence or renewal of a licence, under that Act when the MVA order was made are reinstated as if the MVA order had not been made; and

(ii) the demerit points entered in the register against the offender's name for offences committed in the Territory that ceased to have effect under section 25S(1)(b) of that Act when the MVA order was made are again active demerit points for that Act.

(7) To avoid doubt, the period from the making of the MVA order to its revocation must be disregarded in working out the reinstated disqualifications applying to the offender.

**48H Records as evidence**

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

(a) records generated by or through an approved monitoring device;

(b) records comprising the notebooks or diaries of a probation and parole officer.

**48J Certain costs recoverable by Territory**

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

(a) the offender is liable to pay the costs of restoring or replacing the device, machine or equipment; and

(b) the costs may be recovered from the offender as a debt payable to the Territory.

## Subdivision 3 Imprisonment

### 49 Term of imprisonment where none prescribed

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

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

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

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

(b) sentenced to serve another term of imprisonment for another offence;

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

### 51 Cumulative orders of imprisonment

(1) If an offender is:

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

(b) sentenced to serve another term of imprisonment for another offence;

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

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

### 52 Aggregate term of imprisonment

(1) A court may impose one term of imprisonment in respect of a person found guilty of 2 or more offences.

(2) Despite subsection (1), a court must not impose an aggregate term of imprisonment under subsection (1) if one of the offences is a sexual offence.

(3) An aggregate term of imprisonment may be imposed under subsection (1) whether or not the offences are laid on complaint, information or indictment or any combination of them.

(4) A court that imposes an aggregate sentence of imprisonment under subsection (1) must indicate to the guilty person the following:

(a) the fact that an aggregate sentence is being imposed;

(b) the sentence that would have been imposed for each offence if separate sentences were imposed instead of an aggregate sentence.

(5) Subsection (3) does not limit any other requirement that a court has to record the reasons for its decision.

(6) The term, and any non-parole period, of an aggregate sentence of imprisonment imposed under subsection (1) is not revoked or varied by a later sentence of imprisonment that the same or some other court later imposes in relation to another offence.

(7) An aggregate sentence of imprisonment imposed under subsection (1) is not invalidated by a failure to comply with this section.

(8) To avoid doubt, the Local Court may impose an aggregate sentence of imprisonment under subsection (1) that does not exceed 5 years.

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

(1) Subject to this section and sections 53AA, 53A, 55, 55A and 148, if a court sentences an offender to be imprisoned:

(a) for life; or

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

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

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

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

### 53AA Non-parole periods generally

(1) This section applies in relation to the sentencing of an offender if:

(a) the offender has committed an offence that is not an offence to which section 53A, 55, 55A or 148 applies; and

(b) a court sentences the offender to be imprisoned for 12 months or longer that is not suspended in whole or in part.

(2) The court may fix a non-parole period under section 53(1) of 50% of the period of imprisonment that the offender is to serve under the sentence.

(3) If the court fixes a non-parole period of less or more than the period specified in subsection (2), the court must give reasons for doing so.

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

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

(a) a standard non-parole period of 20 years; or

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

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

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

(a) the victim's occupation was police officer, emergency services worker, correctional services officer (as defined in section 16 of the *Correctional Services Act 2014*), judicial officer, health professional, teacher, community worker or other occupation involving the performance of a public function or the provision of a community service and the act or omission that caused the victim's death occurred while the victim was carrying out the duties of his or her occupation or for a reason otherwise

connected with his or her occupation;

(b) the act or omission that caused the victim's death was part of a course of conduct by the offender that included conduct, either before or after the victim's death, that would have constituted a sexual offence against the victim;

(c) the victim was under 18 years of age at the time of the act or omission that caused the victim's death;

(d) if the offender is being sentenced for 2 or more convictions for unlawful homicide;

(e) if the offender is being sentenced for one conviction for murder and one or more other unlawful homicides are being taken into account;

(f) at the time the offender was convicted of the offence, the offender had one or more previous convictions for unlawful homicide;

(g) the victim was, at the time of the act or omission that caused the victim's death, or had previously been:

(i) in an intimate personal relationship (as defined in section 11 of the *Domestic and Family Violence Act 2007*) with the offender; or

(ii) the spouse or de facto partner of the offender.

(4) The sentencing court may fix a non-parole period that is longer than a non-parole period referred to in subsection (1)(a) or (b) if satisfied that, because of any objective or subjective factors affecting the relative seriousness of the offence, a longer non-parole period is warranted.

(5) The sentencing court may refuse to fix a non-parole period if satisfied the level of culpability in the commission of the offence is so extreme the community interest in retribution, punishment, protection and deterrence can only be met if the offender is imprisoned for the term of his or her natural life without the possibility of release on parole.

(6) The sentencing court may fix a non-parole period that is shorter than the standard non-parole period of 20 years referred to in subsection (1)(a) or the non-parole period of 25 years required by the circumstances specified in subsection (3)(g) if satisfied there are exceptional circumstances that justify fixing a shorter non-parole period.

(7) For there to be exceptional circumstances sufficient to justify fixing a shorter non-parole period under subsection (6), the sentencing court must be satisfied of the following matters and must not have regard to any other matters:

(a) the offender is:

(i) otherwise a person of good character; and

(ii) unlikely to re-offend;

(b) the victim's conduct, or conduct and condition, substantially mitigate the conduct of the offender.

(8) In considering whether the offender is unlikely to re-offend, the matters the sentencing court may have regard to include the following:

(a) whether the offender has a significant record of previous convictions;

(b) any expressions of remorse by the offender;

(c) any other matters referred to in section 5(2) that are relevant.

(9) The sentencing court must give reasons for fixing, or refusing to fix, a non-parole period and must identify in those reasons each of the factors it took into account in making that decision.

(10) The failure of the sentencing court to comply with this section when fixing, or refusing to fix, a non-parole period does not invalidate the sentence imposed on the offender.

(11) This section applies only in relation to an offence committed:

(a) after the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*; or

(b) before the commencement of that Act if, at that commencement, the offender has not been sentenced for the offence.

(12) In subsection (3):

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

**55 Minimum non-parole period for offence of sexual intercourse without consent**

(1) If a court sentences an offender to be imprisoned for a specified offence for 12 months or longer, that is not suspended in whole or

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

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

(3) In this section:

***specified offence*** means:

(a) an offence against section 208H of the Criminal Code; or

(b) an offence against section 192(3) of the Criminal Code, as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

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

(1) Subject to this section, if:

(a) a court sentences an offender to be imprisoned for an offence against:

(i) section 177(a), 181, 184, 186, 186B, 188, 208H, 208HA, 208HB, 208J, 208JA, 208JB, 208JC, 208JD, 208JE, 208JF, 208JG, 208JH, 208JI, 208LB, 208LC, 208LD or 208MA of the Criminal Code; or

(ii) section 127, 130, 131, 131A, 132, 134, 188 or 192(4) of the Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*; and

(b) the offender was an adult when the offence was committed; and

(c) the offence was committed on a person who was under the age of 16 years; and

(d) the sentence is not suspended in whole or part;

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

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

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

(1) The failure of a sentencing court to fix a non-parole period under section 53(1) does not invalidate the sentence but the court may, on the application of the offender, the Commissioner, the CEO (Youth Justice) or the prosecutor, fix a non-parole period in accordance with that section in any manner in which the sentencing court might have done so.

(2) A court may fix a non-parole period under section 53(1) in respect of a term of imprisonment being served by an offender who, at the commencement of this subsection, is serving a sentence of imprisonment to which that subsection applies in respect of which a non-parole period had not been fixed.

(3) A court may fix a non-parole period under subsection (2) on the application of the offender, the Commissioner, the CEO (Youth Justice) or the prosecutor and it may do so as if it had just sentenced the offender to the term of imprisonment.

(4) Subsection (2) does not apply to a sentence of imprisonment imposed for the offence of murder if the sentence was imposed before the commencement of the *Sentencing (Crime of Murder) and Parole Reform Act 2003*.

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

(1) This section applies if:

(a) an offender has been sentenced to be imprisoned for an offence and a non-parole period has been fixed in respect of the sentence; and

(b) before the end of the non-parole period the offender is sentenced by a court to a further term of imprisonment.

(1A) The court must fix a new single non-parole period in respect of all the sentences the offender is to serve or complete.

(2) The new single non-parole period fixed at the time of the imposition of the further sentence:

(a) supersedes any previous non-parole period that the offender is to serve or complete; and

(b) must not be such as to render the offender eligible to be released on parole earlier than would have been the case if the further sentence had not been imposed; and

(c) must not be less than the non-parole period required to be fixed in accordance with section 53AA, 53A, 55, 55A or 148, as the case may be, in respect of the further sentence.

### 59 Order of service of sentences of imprisonment

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

(a) the term or terms in respect of which a non-parole period was not fixed; and

(b) the non-parole period; and

(c) unless and until released on parole, the balance of the term or terms after the end of the non-parole period;

in that order.

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

(1) A court which imposes a term of imprisonment for an offence against a law of the Territory on an offender already undergoing a sentence or sentences of imprisonment for an offence against a law of the Commonwealth must direct when the new term commences, which must be no later than immediately after:

(a) the completion of that sentence or those sentences if a non-parole period or pre-release period (as defined in Part IB of the *Crimes Act 1914* (Cth)) was not fixed in respect of it or them; or

(b) the end of that period, if one was fixed.

(2) This section has effect despite anything to the contrary in any other Act.

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

(1) If an offender is sentenced to a term of imprisonment for escaping from lawful custody (the ***escape sentence***):

(a) the escape sentence must be served at the end of all other sentences the offender is liable to serve; and

(b) if a non-parole period has been fixed in relation to one or all of the other sentences – the non-parole period is extended by the term of imprisonment under the escape sentence.

(2) However, if the offender is serving a life sentence and a non-parole period has not been fixed, and parole is granted on a review, the escape sentence must be served before the parole takes effect.

(3) If a court quashes the sentence of imprisonment that the offender was serving at the time of his or her escape, the court must make the orders it considers appropriate in relation to the escape sentence.

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

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

(a) cumulatively on any incomplete sentence or sentences of imprisonment imposed on the offender for the default of a payment of a fine or sum of money; and

(b) concurrently with any incomplete sentence or sentences of imprisonment imposed on the offender, whether the other sentence was or the other sentences were imposed before or at the same time as that term.

**62 Commencement of sentences of imprisonment**

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

(2) Where an offender to whom subsection (3) applies is, in the period during which service of the sentence is suspended under that subsection, imprisoned under another sentence, the unexpired portion of the suspended sentence takes effect:

(a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or

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

(3) Where an offender sentenced to a term of imprisonment and allowed to be or to go at large pending an appeal or the consideration of any question of law reserved or case stated is imprisoned under another sentence at the time when the appeal, question of law or case stated is finally determined, the first-mentioned sentence or the unexpired portion of it takes effect:

(a) if it is to be served cumulatively on the sentence or sentences the offender is then undergoing, on the day that sentence is, or those sentences are, completed; or

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

(4) Subsection (3) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

### 63 Calculation of term of imprisonment

(1) Despite anything to the contrary in this or any other Act or in a rule of law or practice, a sentence of imprisonment must be calculated exclusive of any time during which service of the sentence is suspended under section 62(2) or (3).

(3) Where an offender serving a sentence of imprisonment is subject to an order made under section 23 of the *Mental Health Act 1980* as in force before the commencement of the *Mental Health and Related Services Act 1998*, the time that the offender is subject to the order or at the hospital counts in calculating the term to be served.

(4) Except as expressly provided or expressly ordered, a sentence of imprisonment on conviction on indictment, takes effect from the day the court passes sentence on the offender and a sentence of imprisonment on summary conviction takes effect from the commencement of the offender's custody under the sentence.

(5) Subject to section 45(5), if an offender has been in custody on account of the offender's arrest for an offence and the offender is convicted of that offence and sentenced to imprisonment it may be ordered that such imprisonment must be regarded as having commenced on the day on which the offender was arrested or on any other day between that day and the day on which the court passes sentence.

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

(1) This section applies in relation to an offender who is sentenced to a term of imprisonment and is absent from a custodial correctional facility for a period (the ***absence period***).

(2) Any part of the absence period during which the offender is in the lawful custody of the Commissioner (as defined in section 9(1) of the *Correctional Services Act 2014*) is the offender's ***lawful absence period***.

(3) Any part of the absence period during which the offender is unlawfully absent (as defined in section 9(2) of the *Correctional Services Act 2014*) is the offender's ***unlawful absence period***.

(4) In calculating the term to be served:

(a) the offender's lawful absence period (if any) does count as time served; and

(b) the offender's unlawful absence period (if any) does not count as time served.

**64 Further sentence if person on parole**

(1) This section applies if:

(a) a person is sentenced in the Territory to a term of imprisonment for an offence that was committed while a parole order under the *Parole Act 1971* was in force for the person; and

(b) the parole order:

(i) was revoked by the Chairperson under section 5B(1)(b) of the *Parole Act 1971* before the person was sentenced or committed; or

(ii) was cancelled by a court under section 6 of the *Parole Act 1971* before the person was sentenced or committed; or

(iii) is taken, under section 5D of the *Parole Act 1971*, to have been revoked because of the sentence or commitment.

(2) The court that sentences or commits the person must also order the person to be imprisoned for:

(a) if the parole order was revoked or cancelled as mentioned in subsection (1)(b)(i) or (ii) – the term that the person had not served when released from a custodial correctional facility under the parole order minus the part of the term the person served after the parole order was revoked or cancelled; or

(b) otherwise – the term that the person had not served when released from a custodial correctional facility under the parole order.

(3) The term of imprisonment to be served in accordance with subsection (2) starts at the end of the term of imprisonment to which the person is sentenced or committed for the offence mentioned in subsection (1).

(4) In this section:

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

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

## Subdivision 4 Indefinite sentences for violent offenders

### 65 Indefinite sentence – imposition

(1) In this section, ***violent offence*** means:

(a) an offence:

(i) that, in fact, involves the use, or attempted use, of violence against a person; and

(ii) for which an offender may be sentenced to imprisonment for life; or

(c) an offence against section 208HB, 208J, 208JA, 208JB, 208K, 208KA or 208KB of the Criminal Code; or

(d) an offence of attempting to commit an offence against section 208H of the Criminal Code; or

(e) an offence against section 127, 128 or 192 of the Criminal Code as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

(2) The Supreme Court may sentence an offender convicted of a violent offence or violent offences to an indefinite term of imprisonment.

(3) An order under this section may be made on the Supreme Court's initiative or on an application made by the prosecutor.

(4) The Supreme Court must not fix a non-parole period in respect of an indefinite sentence.

(5) The Supreme Court must specify in the order imposing an indefinite sentence a nominal sentence of a period equal to the period that it would have fixed had it not imposed an indefinite sentence.

(6) Where the Supreme Court imposes more than one indefinite sentence on an offender convicted of more than one violent offence in the same proceeding, the Court must specify one nominal sentence that must apply to all the indefinite sentences.

(7) Where an offender is serving an indefinite sentence and the offender is convicted of another violent offence, the Supreme Court must, if it imposes an indefinite sentence on the offender for the other violent offence, specify one nominal sentence that applies to all the indefinite sentences.

(8) The Supreme Court must not impose an indefinite sentence on an offender unless it is satisfied that the offender is a serious danger to the community because of any of the following:

(a) the offender's antecedents, character, age, health or mental condition;

(b) the severity of the violent offence;

(c) any special circumstances.

(9) In determining whether the offender is a serious danger to the community, the Supreme Court must have regard to the following:

(a) whether the nature of the offence is exceptional;

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

(c) any medical, psychiatric, custodial correctional facility or other relevant report in relation to the offender;

(d) the risk of serious physical harm to members of the community if an indefinite sentence were not imposed;

(e) the need to protect members of the community from the risk referred to in paragraph (d).

(10) Subsection (9) does not limit the matters to which the Supreme Court may have regard in determining whether to impose an indefinite sentence.

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

### 66 Prosecution to inform Court

(1) Where a prosecutor intends to make an application under section 65(3), the prosecutor must inform the Supreme Court after the offender has been convicted of the offence.

(2) An application under section 65(3) must be made not later than 14 days after the conviction.

(3) On being informed under subsection (1), the Supreme Court must remand the offender in custody and must not admit the offender to bail.

### 67 Adjournment

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

(a) the offender is advised at, or shortly after, the time of conviction that the court may consider imposing an indefinite sentence on:

(i) its own initiative; or

(ii) an application made by counsel for the prosecution; and

(b) the court has, after advising the offender under paragraph (a), adjourned the offender's sentencing for not less than 28 days or such shorter period where the offender and counsel for the prosecution agree, from the day of conviction of the violent offence so that evidence on sentence may be called by the prosecution and the offender.

### 68 Evidence

(1) Subject to the admissibility of the evidence, before the Supreme Court imposes an indefinite sentence it must hear evidence:

(a) called by the prosecutor; and

(b) given or called by the offender, if the offender elects to give or call evidence.

(2) Subject to subsection (3), the rules of evidence apply to evidence given or called under subsection (1).

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

### 69 Court to give reasons

(1) Where the Supreme Court imposes an indefinite sentence it must give reasons for imposing the sentence.

(2) Reasons referred to in subsection (1) must be given at the time an indefinite sentence is imposed.

### 70 Onus of proof

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

### 71 Standard of proof

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

(a) by acceptable and cogent evidence; and

(b) to a high degree of probability;

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

### 72 Review – periodic

(1) Where the Supreme Court imposes an indefinite sentence, it:

(a) must for the first time review the indefinite sentence not later than 6 months after an offender has served:

(i) 50% of the offender's nominal sentence; or

(ii) if the offender's nominal sentence is imprisonment for life, 13 years of the nominal sentence; and

(b) must review the indefinite sentence at subsequent intervals of not more than 2 years from when the last review was made.

(2) Subject to section 73, the Director of Public Prosecutions must make the application that is required to be made to cause the reviews referred to in subsection (1) to be carried out.

### 73 Review – application by offender

(1) An offender imprisoned on an indefinite sentence may apply to the Supreme Court for the indefinite sentence to be reviewed at any time after the Supreme Court makes its first review under section 72(1)(a), if the Supreme Court gives leave to apply, on the ground that there are exceptional circumstances that relate to the offender.

(2) The court must immediately forward a copy of the application to the Director of Public Prosecutions.

(3) Not later than 14 days after the making of the application, the court must give directions to enable the application to be heard.

(4) Subject to any directions given by the court, the application must be heard not later than 28 days from the day on which it is made.

### 74 Discharge of indefinite sentence

(1) Unless it is satisfied to a high degree of probability that the offender is still a serious danger to the community when a review is made under section 72 or 73, the Supreme Court must:

(a) order that the indefinite sentence is discharged; and

(b) sentence the offender under this Act for the violent offence for which the indefinite sentence was imposed.

(2) Where the Supreme Court does not make an order under subsection (1)(a), the indefinite sentence continues in force.

(3) A sentence imposed under subsection (1)(b):

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

(b) takes the place of the indefinite sentence; and

(c) must be not less than the nominal sentence.

### 75 Re-integration programs

(1) An offender sentenced under section 74(1)(b) may apply to be released to a prescribed program, of not less than 5 years duration, that is designed to assist the offender to re-integrate into the community.

(2) Where a term of imprisonment imposed under section 74(1)(b) ends within 5 years after the offender's release to a program mentioned in subsection (1), the term of imprisonment is taken, for subsection (1), to extend until the end of the 5 years.

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

### 76 Proper officer to give report

(1) On the hearing of a review under section 72 or 73, the Supreme Court may direct the proper officer of the Supreme Court to give to the Court such reports, as the Court considers appropriate, to assist the Court in conducting the review.

(2) A person who is requested to give a report referred to in subsection (1) must comply with the request.

(3) A report referred to in subsection (1) must be relevant to the period from the time the indefinite sentence was imposed on the offender or the last review was made by the Supreme Court.

(4) A report referred to in subsection (1) is in addition to any other evidence that may be placed before the Supreme Court.

(5) An offender is entitled to:

(a) cross examine a person who made a report referred to in subsection (1) and any other witnesses; and

(b) call evidence in rebuttal of a report and any other evidence.

### 77 Appeals

(1) An offender may appeal to the Court of Criminal Appeal against the refusal of the Supreme Court to make an order under section 74(1).

(2) The Director of Public Prosecutions may appeal to the Court of Criminal Appeal against an order of the Supreme Court made under section 74(1).

(3) On an appeal under this section, the Court of Criminal Appeal may, in the case of an appeal under:

(a) subsection (1), confirm the refusal and dismiss the appeal or uphold the appeal and make the order that it thinks ought to have been made; or

(b) subsection (2), confirm the order and dismiss the appeal or uphold the appeal and quash the order made.

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

### 78 Hearings – offender to be present

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

(a) evidence under section 68; and

(b) an application made under section 72 or 73.

(2) The Supreme Court may order that, at the time evidence under section 68 is to be heard, the person in charge of the place where the offender is imprisoned must bring the offender before the Supreme Court.

(3) On the hearing of an application made under section 72 or 73, the Supreme Court may order the person in charge of the place where the offender is imprisoned to bring the offender before the Supreme Court.

(4) Where the offender acts in a way that makes the hearing of the evidence or application in the offender's presence impracticable, the Supreme Court may order that:

(a) the offender be removed; and

(b) the hearing of the application continue in the offender's absence.

(5) Where the Supreme Court is satisfied that the offender is unable to be present during the hearing of the evidence or application because of the offender's illness or another reason, the Supreme Court may allow the offender to be absent during the whole or a part of the hearing if it is satisfied that:

(a) the offender's interests will not be prejudiced by the hearing continuing in the offender's absence; and

(b) the interests of justice require that the hearing should continue in the offender's absence.

## Division 6 Aggravated property offences

### 78AA Aggravated property offences

Each of the following is an ***aggravated property offence***:

(a) an offence against section 193B, 218, 220, 221 or 225(3) of the Criminal Code;

(b) an offence against section 224 of the Criminal Code if the damage or interference causes damage of a serious nature or that results in a loss of more than $5 000;

(c) an offence against section 228AB of the Criminal Code if:

(i) in committing the offence, the offender:

(A) caused any injury to another person; or

(B) endangered the life or safety of the public or a member of the public; or

(ii) the vehicle, vessel or aircraft is worth $20 000 or more; or

(iii) the vehicle, vessel or aircraft is damaged by the offender and either of the following applies:

(A) the cost of repairing or compensating for the damage is $1 000 or more;

(B) the value of the vehicle, vessel or aircraft is reduced by $1 000 or more; or

(iv) the vehicle, vessel or aircraft was taken with the intention of being used for or in connection with the commission of another offence other than a regulatory offence or an offence of strict liability; or

(v) as a result of the commission of the offence, the whereabouts of the vehicle, vessel or aircraft is unknown to the person entitled to possession of it for 48 hours or longer;

(d) an offence against section 241 or 241A of the Criminal Code;

(e) an attempt to commit an offence against section 220 or 221 of the Criminal Code.

**78A Purpose**

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

### 78B Aggravated property offences

(1) A court that finds a person guilty of an aggravated property offence must take into account the purpose of this Division before sentencing the person in relation to the offence.

(2) Unless there are exceptional circumstances in relation to the offence or the offender, a court that records a conviction against an offender found guilty of an aggravated property offence must:

(a) order the offender to serve a term of imprisonment that is not suspended in whole or in part; or

(b) make an intensive community correction order in relation to the offender and make the order subject to a home detention condition; or

(c) make a community correction order or an intensive community correction order in relation to the offender and make the order subject to a condition that the offender must participate, for the number of hours specified in the order not exceeding 480 hours, in an approved project as directed by a probation and parole officer.

(4) Nothing in subsection (2) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act, including a community correction order or an intensive community correction order subject to other conditions in addition to the conditions mentioned in subsection (2), in addition to an order made in accordance with the subsection.

## Division 6A Mandatory sentencing for certain offences

## Subdivision 1 Preliminary matters

### 78C Definitions

In this Division:

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

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

***offensive weapon***, see section 1 of the Criminal Code.

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

***violent offence*** means:

(a) an offence against a provision of the Criminal Code listed in Schedule 2; or

(b) an offence substantially corresponding to an offence mentioned in paragraph (a) against:

(i) a law that has been repealed; or

(ii) a law of another jurisdiction (including a jurisdiction outside Australia).

### 78CA Imposition of minimum sentence

(1) If a court is required to ***impose a minimum sentence*** of a specified period of actual imprisonment in relation to an offender, the court:

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

(b) must sentence the offender to a term of imprisonment of not less than the specified period; and

(c) must not make an order under section 40 in relation to the term of imprisonment; and

(d) must not make an intensive community correction order in relation to the offender.

(2) Despite subsection (1), if the offender is a youth:

(a) a provision of Subdivision 2 requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and

(b) the court must instead comply with section 78CB as if that section applied to the case.

(3) In this section:

***youth***, see section 6 of the *Youth Justice Act 2005*.

### 78CB Imposition of term of actual imprisonment

(1) If a court is required to ***impose a term of actual imprisonment*** in relation to an offender the court must:

(a) record a conviction against the offender; and

(b) sentence the offender to a term of imprisonment.

(2) In addition to subsection (1), the court may:

(a) make an order under section 40 in relation to part, but not the whole of, the term of imprisonment; or

(b) make an intensive community correction order, subject to a home detention condition, in relation to the offender.

## Subdivision 2 Mandatory sentencing

### 78D Offence against section 155A of Criminal Code involving assault

(1) A court must sentence an offender in accordance with this section if the court finds the offender guilty of an offence against section 155A of the Criminal Code that was committed by assaulting a person.

(2) The court must impose a minimum sentence of 12 months actual imprisonment in relation to the offender if:

(a) the commission of the offence involved the actual or threatened use of an offensive weapon; and

(b) the victim suffered physical harm as a result of the offence; and

(c) the offender has previously been convicted of a violent offence (whenever committed).

(3) The court must impose a minimum sentence of 3 months actual imprisonment in relation to the offender if:

(a) the commission of the offence involved the actual or threatened use of an offensive weapon; and

(b) the victim suffered physical harm as a result of the offence; and

(c) the offender has not previously been convicted of a violent offence.

(4) The court must impose a term of actual imprisonment in relation to the offender if the offender has previously been convicted of a violent offence (whenever committed) but the court is not required to impose a minimum sentence under subsection (2).

### 78DAA Offence against section 188A of Criminal Code – imprisonment

(1) A court must sentence an offender in accordance with this section if the court finds the offender guilty of an offence against section 188A of the Criminal Code.

(2) The court must impose a term of actual imprisonment in relation to the offender if:

(a) the victim suffered physical harm as a result of the offence; and

(b) the offender has previously been convicted of a violent offence (whenever committed).

### 78DAB Offence against section 188A of Criminal Code – community correction order

(1) The court must sentence an offender in accordance with this section if:

(a) the court finds the offender guilty of an offence against section 188A of the Criminal Code; and

(b) the victim suffered physical harm as a result of the offence; and

(c) the court is not required to impose a term of actual imprisonment under section 78DAA in relation to the offender; and

(d) the court has decided not to impose a custodial order under Division 5 for the offence.

(2) The court must:

(a) make a community correction order in relation to the offender (with or without recording a conviction); and

(b) if the conditions mentioned in section 36 can be satisfied in relation to the offender – impose a condition mentioned in section 34(1)(a) on the community correction order.

### 78DA Offence against section 189A of Criminal Code – imprisonment

(1) A court must sentence an offender in accordance with this section if the court finds the offender guilty of an offence against section 189A of the Criminal Code.

(2) The court must impose a minimum sentence of 12 months actual imprisonment in relation to the offender if:

(a) the commission of the offence involved the actual or threatened use of an offensive weapon; and

(b) the victim suffered physical harm as a result of the offence; and

(c) the offender has previously been convicted of a violent offence (whenever committed).

(3) The court must impose a minimum sentence of 3 months actual imprisonment in relation to the offender if the victim suffered physical harm as a result of the offence but the court is not required to impose a minimum sentence under subsection (2).

(3A) The court must impose a minimum sentence of 3 months actual imprisonment in relation to the offender if the circumstances mentioned in section 189A(2)(ab) of the Criminal Code apply in relation to the offence but the court is not required to impose a minimum sentence under subsection (2) or (3).

(4) The court must impose a term of actual imprisonment in relation to the offender if the offender has previously been convicted of a violent offence (whenever committed) but the court is not required to impose a minimum sentence under subsection (2), (3) or (3A).

**78DBA Offence against section 189A of Criminal Code – community correction order**

(1) The court must sentence an offender in accordance with this section if:

(a) the court finds the offender guilty of an offence against section 189A of the Criminal Code; and

(b) the court is not required to impose a minimum sentence of actual imprisonment or impose a term of actual imprisonment under section 78DA in relation to the offender; and

(c) the court has decided not to impose a custodial order under Division 5 for the offence.

(2) The court must:

(a) make a community correction order in relation to the offender (with or without recording a conviction); and

(b) if the conditions mentioned in section 36 can be satisfied in relation to the offender – impose a condition mentioned in section 34(1)(a) on the community correction order.

### 78DB Exceptional circumstances exemption

(1) If a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence and the court is satisfied that the circumstances of the case are exceptional:

(a) a provision of this Subdivision requiring the court to impose a minimum sentence of a specified period does not apply in relation to the offender; and

(b) the court must instead comply with section 78CB as if that section applied to the case.

(2) In deciding whether it is satisfied that circumstances of a case are exceptional, the court may have regard to:

(a) any victim impact statement or victim report presented to the court under section 106B; and

(b) any other matter the court considers relevant.

(3) The following do not constitute exceptional circumstances of a case:

(a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;

(b) that another person:

(i) was involved in the commission of the offence; or

(ii) coerced the person to commit the offence.

## Division 6B Imprisonment for sexual offences

### 78F Imprisonment for sexual offences

(1) Where a court finds an offender guilty of a sexual offence, the court must record a conviction and must order that the offender serve:

(a) a term of actual imprisonment; or

(b) a term of imprisonment that is suspended by it partly but not wholly.

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

# Part 4 Mental health orders

## 78P Interpretation

(1) In this Part, ***offence*** includes a aggravated property offence.

(2) A word or phrase used in this Part that is defined in the *Mental Health and Related Services Act 1998* has the meaning given in that Act.

## 79 Assessment orders

(1) Where a person is found guilty of an offence and the court:

(a) is of the opinion that the person:

(i) appears to be mentally ill or mentally disturbed; and

(ii) may benefit from being admitted to and treated in an approved treatment facility; and

(b) receives written advice from the Chief Health Officer that facilities are available to undertake an assessment of the person's suitability for an order under section 80;

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

(2) At the expiry of an order made under subsection (1), or at any time before then, the court may:

(a) in accordance with section 80, make an order under that section; or

(b) pass sentence on the person according to law.

(3) Where at any time before the expiry of an order made under subsection (1), the court receives written advice from the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must pass sentence on the person according to law.

## 80 Approved treatment facility orders

(1) Where a person is found guilty of an offence and the court:

(a) is satisfied by the production of a certificate, in the prescribed form, of the Chief Health Officer or by any other evidence that:

(i) the person appears to be mentally ill or mentally disturbed; and

(ii) the person may benefit from being treated in an approved treatment facility; and

(b) receives written advice from the Chief Health Officer that facilities are available at an approved treatment facility to treat the person and the admission, detention and treatment is appropriate;

it may:

(c) order that the person be admitted to and detained at the discretion of the Chief Health Officer in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act 1998*; or

(d) order that the person be admitted to and detained in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act 1998* for a period, not exceeding 3 months, as specified in the order; or

(e) order that the person be admitted to and detained in an approved treatment facility to enable the treatment of the person under the *Mental Health and Related Services Act 1998* for a period specified in the order.

(2) The court may, after consulting with the Chief Health Officer or an approved person, impose conditions on an order under subsection (1) to ensure the security and good order of the person.

(3) Conditions under subsection (2) may include:

(a) whether the person must be detained in a particular part of the approved treatment facility; and

(b) whether the person must be kept under guard at the approved treatment facility; and

(c) whether the person may be granted leave of absence from the approved treatment facility; and

(d) whether the person, if the person is a prisoner, is to be subject to the same restrictions as applying to the person if he or she were in a custodial correctional facility.

(4) An order made under subsection (1) is to be consistent with recommendations made in the report provided to the court under section 79.

(5) Where an order is made under subsection (1), the person is to be treated under the *Mental Health and Related Services Act 1998* and is entitled to exercise the rights conferred by that Act.

(6) Unless the court orders otherwise, where:

(a) an order made under subsection (1)(d) or (e) is in force in respect of a person; and

(b) the person is discharged from an approved treatment facility under this Act or the *Mental Health and Related Services Act 1998*;

the person must be:

(c) taken to a custodial correctional facility in accordance with section 84; and

(d) returned to the court on the first available sitting day.

(7) A person returned to the court under subsection (6) may be dealt with by the court as if he or she were before the court on being found guilty of the offence in respect of which the order under subsection (1)(d) or (e) was made.

(8) Where the court makes an order under subsection (1)(c), the person cannot be detained for longer than 3 months but may be discharged by the Chief Health Officer before the 3 months expires.

(9) A court must not make an order under subsection (1)(e) unless, but for the mental illness or mental disturbance of the person, it would have sentenced the person to a term of imprisonment.

(10) Where a court makes an order under subsection (1)(e), it:

(a) must not specify a period of detention in an approved treatment facility that is longer than the period of imprisonment to which the person would have been sentenced had the order not been made; and

(b) must, subject to Part 3, Division 5, Subdivision 3, fix a non-parole period in accordance with that Subdivision as if the order were a term of imprisonment.

(11) At any time before the end of the period specified in an order under subsection (1)(e) an authorised psychiatric practitioner nominated by the Chief Health Officer or the Tribunal may in pursuance of the *Mental Health and Related Services Act 1998* order the discharge of the person named in the order from the approved treatment facility and the order has effect as a sentence of imprisonment for the unexpired portion of it and that unexpired portion must be served in a custodial correctional facility unless the person is released on parole.

(12) A non-parole period fixed under subsection (10) is only relevant in the circumstances referred to in subsection (11).

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

(1) At the expiry of an order made under section 80(1)(d), or at any time before then, the court after considering a report from an authorised psychiatric practitioner nominated by the Chief Health Officer specifying the results of the diagnosis, assessment and treatment of the person may:

(a) make a further order in respect of the person under section 80(1)(d); or

(b) pass sentence, including by way of an order under section 80(1)(e), on the person according to law.

(2) Where at any time before the expiry of an order made under section 80(1)(d), the court receives advice in writing from an authorised psychiatric practitioner nominated by the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must pass sentence on the person according to law.

(3) Where a court in passing sentence under subsection (1)(b) imposes a term of imprisonment on the person or makes an order that the person be detained in an approved treatment facility under section 80(1)(e), it must deduct the period of time that the person was detained under the order made under section 80(1)(d).

**82 Consent to treatment**

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

### 83 Treatment under this Part

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

### 84 Custody of admitted person

(1) A court, when making an order under this Part, may include in the order the name of the person who is to be responsible for taking the offender:

(a) to the approved treatment facility named in the order; and

(b) from the approved treatment facility to the court in connection with the exercise by the court of its powers under this Part.

(2) A copy of the order and the advice or report, as the case may be, of the Chief Health Officer is to accompany the offender to the approved treatment facility named in the order.

### 85 Variation of approved treatment facility orders

(1) A court that has made an order under section 80 may, on application under this subsection, if satisfied that the offender is no longer willing to comply with the order or a condition to which the order is subject, vary or cancel the order and deal with the offender for the offence with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence.

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

(a) the offender; or

(b) a prescribed person or a member of a prescribed class of persons; or

(c) the prosecutor; or

(d) an authorised psychiatric practitioner nominated by the Chief Health Officer.

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

(a) the offender; and

(b) where the sentencing court was:

(i) the Supreme Court – the Director of Public Prosecutions; or

(ii) the Local Court – the complainant or informant.

(4) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.

### 86 Breach of approved treatment facility orders

(1) Where, it appears to a prescribed person or a member of a prescribed class of persons, that an offender has failed to comply with an order made under section 80, he or she may apply, in the prescribed form, to the court that made the order for the making of an order under this section.

(2) Notice of an application under subsection (1) must be given to the offender.

(3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.

(4) Where, on the hearing of an application under this section, a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with the order, it may:

(a) vary the order; or

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

# Part 5 Orders in addition to sentence

## Division 1 Restitution and compensation orders

### 87 Application of this Division

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

## 88 Orders for restitution and compensation

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

(a) pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;

(b) make restitution of property taken in the course of or in connection with the commission of an offence;

(c) pay compensation for the loss or destruction or damage to property that occurs in the course of or in connection with the commission of an offence.

## 89 Reimbursement of costs of restoring property etc.

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

(2) For subsection (1), a thing includes real property.

## 90 Making of order

(1) An order under this Division is in addition to any other order to which an offender is liable.

(2) Where an offence is taken into account under section 107 in imposing sentence on an offender for another offence, the court may make an order under this Division.

(4) A court may make an order for restitution under this Division only where it is satisfied that there has been property loss and that the person claiming the loss is entitled to recover the property.

(5) A court must not make an order under this Division where the person whose property was taken, lost, destroyed or damaged does not consent to the order being made.

## 91 Application for order

(1) An order under this Division may be made on the court's own motion or on the application of the prosecutor.

(2) Nothing in subsection (1) requires a prosecutor to make an application on behalf of a person.

### 92 Form of order

An order under this Division may specify:

(a) the amount to be paid by way of restitution, compensation or costs; and

(b) the person to whom restitution is to be made or compensation is, or costs are, to be paid; and

(c) the time within which restitution is to be made; and

(d) the way in which restitution is to be made, compensation is, or costs are, to be paid.

### 93 Imprisonment for breach of order

(1) A court which makes an order under this Division may order that the offender be imprisoned if the offender fails to comply with the order.

(2) A term of imprisonment ordered to be served under subsection (1) must not be longer than 12 months.

(3) In making an order under subsection (1), a court may give such directions as it thinks fit for the enforcement of the order including a direction that the offender appear before the court:

(a) at a time and place stated in the direction; or

(b) when called on by notice;

to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.

(4) Where an offender fails to appear as required by a direction under subsection (3), the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause in accordance with the direction.

(5) In addition to subsection (4), where it appears to a court that there are reasonable grounds for believing that an offender has failed to comply with an order made under this Division, the court may issue a warrant to arrest the offender and for the offender to be brought before the court to show cause why the offender should not be imprisoned because of the offender's failure to comply with the order.

### 94 Extension of time of order

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

*Note for subsection (1)*

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

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

### 97 Orders not to affect other rights

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

## Division 1AA Certificates for victims of identity crime

### 97AA Definitions

In this Division:

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

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

### 97AB Court may issue certificate to victim

(1) The court may issue a certificate to the victim if:

(a) the court is sentencing a person for an offence against section 228C, 228D or 228E of the Criminal Code; and

(b) the victim of the offence has not already obtained a certificate under section 28C of the *Local Court (Civil Procedure) Act 1989*; and

(c) the court is satisfied on the balance of probabilities that a certificate under this Division may assist a victim to deal with any problems the commission of the offence has caused in relation to the victim's personal or business affairs.

(2) The court may issue a certificate on its own initiative or on application by the prosecution.

### 97AC Content of certificate

(1) The certificate must:

(a) identify the victim of the offence; and

(b) explain how identification information relating to the victim was used to commit the offence; and

(c) contain any other information the court considers appropriate in order to assist the victim to deal with any problems the commission of the offence has caused in relation to the victim's personal or business affairs.

(2) Despite subsection (1), a certificate must not identify the person who committed the offence to which it relates.

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

### 97A When court may make order

(1) This section applies when a court sentences an offender for an offence (a ***significant offence***) the maximum penalty for which is imprisonment for 12 months or more.

(2) The court may make one or more of the following orders if the court considers doing so may prevent the offender from committing another significant offence:

(a) a non-association order prohibiting the offender from one or both of the following as specified in the order:

(i) being in company with one or more specified persons during a specified period;

(ii) communicating in any way (including by post, fax, phone and other electronic means, and whether directly or indirectly) with one or more specified persons during a specified period;

(b) a place restriction order prohibiting the offender, except as provided in the order, from visiting one or more specified places (including a district or specific location) during a specified period.

(3) The period specified under subsection (2)(a) or (b):

(a) is not limited by any term of imprisonment imposed on the offender; but

(b) must not exceed 12 months.

(4) An order imposed on the offender under subsection (1):

(a) is in addition to, and not instead of, any other penalty for the offence; but

(b) must not be made if the court makes one or more orders under this Act in relation to the offence without recording a conviction for the offence.

(5) This section does not limit the court's power to make another order or direction in relation to the offence under this or another Act.

(6) Without limiting subsection (5), this section does not affect the court's power to impose a condition under section 40(2).

### 97B Explanation of order

(1) A court that has imposed a non-association order or place restriction order on an offender must ensure all reasonable steps are taken to explain to the offender (in language the offender can readily understand):

(a) the offender's obligations under the order; and

(b) the consequences of not complying with the order.

(2) The order is not invalidated by a failure to comply with subsection (1).

### 97C Commencement of order

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

### 97D Contravention of order

(1) A person is guilty of an offence if the person:

(a) is subject to a non-association order or place restriction order; and

(b) contravenes the order.

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

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

(3) It is a defence for an offence against subsection (1) if the defendant proves that:

(a) the defendant has a reasonable excuse; or

(b) for a non-association order – the defendant, having unintentionally associated with a person specified in the order under section 97A(2)(a), terminated the association immediately.

(4) In subsection (3), a reference to an association with the specified person is a reference to being in company, or communicating, with the specified person in contravention of the order.

**97E Variation of order on application**

(1) A person who is subject to a non-association order or place restriction order may apply for a variation or revocation of the order.

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

(3) The application must be accompanied by a copy of the order and each previous variation made to the order.

(4) The application may be made only by leave of the court.

(5) The leave may be granted only if the court is satisfied it should grant the leave in the interest of justice, having regard to changes in the applicant's circumstances since the order was made or last varied.

(6) The court may refuse to consider granting the leave if it is satisfied the application is frivolous or vexatious.

(7) If the leave is granted:

(a) the court must give notice of the application to each party to the proceedings in which the order was made; and

(b) the party is entitled to be heard in relation to the application.

(8) The court must deal with the application by:

(a) varying or revoking the order as the court considers appropriate in the circumstances; or

(b) dismissing the application.

### 97F Variation of order following conviction

(1) This section applies to a person who:

(a) is subject to a non-association order or place restriction order in relation to an offence; and

(b) is subsequently sentenced by a court for another offence.

(2) The court may vary or revoke the order when sentencing the person for the other offence.

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

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

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

(1) A person is guilty of an offence if the person publishes or broadcasts, or otherwise discloses to someone:

(a) the fact that a named person is specified in a non-association order under section 97A(2)(a) (whether the order is still in force); or

(b) any information calculated to identify such a person.

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply in relation to:

(a) the publication or broadcasting of a report that is authorised by a court; and

(b) the disclosure of information to any of the following persons:

(i) the person subject to the order (the ***offender***);

(ii) a person involved in administering the order or other penalty imposed on the offender;

(iii) a person specified in the order under section 97A(2)(a);

(iv) a person involved in proceedings for an alleged breach of the order;

(v) a person to whom the information is required to be disclosed under a law in force in the Territory;

(vi) a police officer;

(vii) a person authorised by a court to receive the information.

## Division 2 Other orders

### 98 Cancellation of driver's licence

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

(a) holds a driver's licence, cancel the licence and, if the court thinks fit, disqualify the offender from obtaining one for such time as it thinks fit; or

(b) does not hold a driver's licence, disqualify the offender from obtaining one for such time as it thinks fit.

### 99 Passport orders

(1) Where an offender is convicted of an offence, the court may, in addition to any other order it may make under this Act, order that the offender do any of the following:

(a) remain in Australia or the Territory;

(b) not apply for or obtain an Australian passport;

(c) surrender every passport, whether Australian or foreign, held by the offender.

(2) An offender who contravenes an order made under subsection (1) is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(3) Where a court makes an order under subsection (1)(c):

(a) the passport or passports must be given to the proper officer of the court; and

(b) the proper officer of the court must keep the passport or passports in such custody as he or she thinks fit for such period, or on the occurrence of any contingency, as is specified by the court; and

(c) the passport or passports must, in accordance with the terms specified under paragraph (b), be returned to the offender unless the court orders otherwise.

(4) Where a court makes an order under subsection (1)(b) or (c), the proper officer of the court must, as soon as is practicable after the order is made, give a copy of it to the Minister administering the *Australian Passports Act 2005* (Cth).

(5) An order under subsection (1) remains in force for the duration of the sentence (whether or not the sentence is one that involves, in whole or part, a term of imprisonment).

(6) Where an order under subsection (1) requires the offender to surrender a passport:

(a) the passport must be given to the proper officer of the court; and

(b) the proper officer must keep the passport in such custody as the proper officer considers appropriate until:

(i) the passport is returned under subsection (7); or

(ii) the authority that issued the passport requests its return;

whichever happens first.

(7) Where a passport is still in the custody of the proper officer of the court when the order under subsection (1) finishes, the proper officer must return it to the offender.

**99A Forfeiture of property orders**

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

(2) If a court finds a person guilty of a forfeiture offence as defined in the *Liquor Act 2019*, the court must determine any forfeiture of a vehicle, vessel or aircraft as if a forfeiture application were made by a police officer under Part 12, Division 2, of that Act.

# Part 6 Making of sentencing and other orders

## Division 1 Conditions, requirements and signing of orders

### 100 Condition of order to undertake treatment program

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

### 101 Consent of offender to conditional order

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

(a) the order being made and to the conditions being attached; or

(b) the conditions being included in the undertaking.

### 102 Explanation of orders

(1) Where a court proposes to make an order which has attached to it conditions to which an offender is required to consent or which requires an offender to give an undertaking, it must, before making the order, explain or cause to be explained to the offender, in language likely to be readily understood by the offender:

(a) the purpose and effect of the proposed order; and

(b) the consequences that may follow if the offender fails without reasonable excuse to comply with the proposed order; and

(c) where the proposed order requires the offender to undertake a program referred to in section 100, the benefits and detriments of the program, including the medical risks and benefits of any drugs used in the program; and

(d) the manner in which the proposed order may be varied.

(2) Non-compliance with subsection (1) does not affect the validity of the order.

### 102A Signing of orders

(1) This section applies to the following orders:

(a) an order made under section 40;

(b) a community correction order;

(c) an intensive community correction order;

(f) an order varying or confirming an order mentioned in paragraph (a), (b) or (c).

(2) On the making of the order, the offender must not leave the precincts of the court without signing the order.

(3) A police officer may, without a warrant, arrest an offender who the police officer suspects, on reasonable grounds, has failed to comply with subsection (2).

## Division 2 Information and reports before passing sentence

## Subdivision 1 Information, reports etc.

### 103 Assessment of offender before certain orders made

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

(2) A report under subsection (1) may be in writing or given orally to the court.

### 104 Information before passing sentence or making order

(1) A court may, before passing sentence on an offender, receive such information as it thinks fit to enable it to impose the proper sentence.

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

### 104A Special provisions regarding cultural information

(1) This section applies if, as part of the sentencing process, a party to proceedings seeks to present information to a court about:

(a) an aspect of any form of customary law (including any punishment or restitution under that law); or

(b) a cultural practice.

(2) Despite section 104, before agreeing to receive the information the court must have regard to:

(a) whether the party intends to present the information in the form of evidence on oath, an affidavit or a statutory declaration; and

(b) whether each other party to the proceedings:

(i) has been given notice that the information will be presented to the court; and

(ii) has had a reasonable opportunity to respond to the information.

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

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

**106 Contents of pre-sentence report**

(1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her:

(a) the age of the offender;

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

(c) the medical and psychiatric history of the offender;

(d) the offender's educational background;

(e) the offender's employment history;

(f) the circumstances of other offences of which the offender has been found guilty and which are known to the court;

(g) the extent to which the offender is complying with a sentence currently imposed on the offender;

(h) the offender's financial circumstances;

(j) any special needs of the offender;

(k) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which the offender may benefit.

(2) The author of a pre-sentence report shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

## Subdivision 2 Victim impact statements and victim reports

### 106A Definitions

In this Subdivision:

***harm*** includes:

(a) physical injury; and

(b) psychological or emotional suffering, including grief; and

(ba) contraction or fear of contraction of a sexually transmissible medical condition; and

(c) pregnancy; and

(d) economic loss.

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

***victim*** means:

(a) a person who suffers harm arising from an offence; or

(b) where the person mentioned in paragraph (a) dies as a result of the commission of the offence, a person who was a relative of, or who was financially or psychologically dependent on, the person.

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

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

### 106B Victim impact statements and victim reports

(1) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim impact statement where:

(a) the victim consents to its presentation; or

(b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – the report has been prepared by a person who, in the opinion of the court, has a sufficiently close relationship with the victim.

(2) The prosecutor must present to the court, before it sentences an offender in relation to an offence, a victim report in relation to each victim of the offence where:

(a) the victim has not consented to the presentation to the court of a victim impact statement in relation to him or her but has been informed of the contents of the victim report and does not object to its presentation; or

(aa) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the victim has been informed of the contents of the victim report and does not object to its presentation; or

(b) the victim cannot, after reasonable attempts have been made by the prosecutor, be located;

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

(3) With the permission of the court, a person other than the prosecutor may present a victim impact statement.

(4) Subject to subsections (7) and (8), the court must consider each victim impact statement and each victim report, if any, in relation to an offence before determining the sentence to be imposed in relation to the offence.

(5) A victim impact statement or a victim report may contain details of the harm caused to the victim of the offence to which the statement or report relates arising from another offence:

(a) for which the offender has already been sentenced, or will be sentenced in the proceedings then before the court; or

(b) which, under section 107, has already been taken into account in a sentence or which may be taken into account under that section in the proceedings then before the court.

(5A) A victim impact statement or victim report may contain a statement as to the victim's wishes in respect of the order that the court may make in relation to the offence referred to in the statement or the report.

(6) A court must not draw an inference in favour of an offender or against a victim because a victim impact statement or victim report is not presented to the court.

(7) A court must not take into account a written victim impact statement unless it has been signed.

(8) A court must not take into account a victim impact statement or a victim report, where the statement or report:

(a) is in writing, unless a copy of the statement or report is provided to the offender; or

(b) is to be presented to the court orally, unless a written or oral summary of the contents of the statement or report is provided to the offender.

(9) A victim must not be cross-examined on the content of the victim's victim impact statement.

## Division 3 Taking alleged offences into account

### 107 Court may take alleged offences into account

(1) This section applies if:

(a) a court finds a person (the ***offender***) guilty of an offence, not being or including murder; and

(b) there has been filed in court a document, in the prescribed form, that:

(i) lists other offences (the ***listed offences***), whether indictable or summary, not being or including murder, that it is alleged the offender has committed (whether or not the offender has been charged) but in respect of which the offender has not been found guilty; and

(ii) is signed by the offender and either a police officer or the prosecutor; and

(c) a copy of the document has been given to the offender.

(2) If the court considers it appropriate to do so and the prosecution consents, the court may ask the offender whether the offender:

(a) admits committing any of the listed offences; and

(b) wishes those listed offences to be taken into account by the court when passing sentence for the offence mentioned in subsection (1)(a).

(3) If the offender admits committing any of the listed offences and wishes those listed offences to be taken into account, the court may do so if it considers it appropriate, but must not impose a sentence in respect of the offence mentioned in subsection (1)(a) in excess of the maximum penalty for that offence.

(3A) Despite subsection (3), the Local Court may not take into account a listed offence unless it is:

(a) a summary offence; or

(b) an indictable offence of a type that is capable of being heard and determined in a summary manner.

(4) If a listed offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 5 if the offender had been convicted before the court of the listed offence but must not otherwise impose any separate punishment for the listed offence.

(5) An order made under subsection (4) in respect of a listed offence may be appealed against as if it has been made on the conviction of the offender for the listed offence.

(7) The court must certify on the document filed in court any listed offences that have been so taken into account and the convictions in respect of which this has been done.

(8) Proceedings must not be taken or continued in respect of any listed offence certified under subsection (7) unless each conviction in respect of which it has been taken into account has been quashed or set aside.

(9) An admission made under and for this section is not admissible in evidence in any proceeding taken or continued in respect of the listed offence to which the admission relates.

(10) A person must not, for any purpose, be taken to have been convicted of a listed offence taken into account under and in accordance with this section only because it was so taken into account.

(11) Whenever, in or in relation to any criminal proceeding, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a person was convicted of an offence, reference may likewise be made to, or evidence may likewise be given of, the taking into account under this section of any listed offence when sentence was imposed in respect of that conviction.

(12) The fact that a listed offence was taken into account under this section may be proved in the same manner as the conviction or convictions in respect of which it was taken into account may be proved.

## Division 3A Community court sentencing procedure

### 107A Definitions

In this Division:

***Aboriginal experience report***, see section 107B.

***approved member***, of a Law and Justice Group, means a member of the Law and Justice Group who is approved under section 107C(3).

***community court sentencing procedure*** means the sentencing of an offender in accordance with this Division.

***Law and Justice Group***, for a place, see section 107C(2).

### 107B Aboriginal experience report

(1) An ***Aboriginal experience report*** is a report that is prepared by approved members of a Law and Justice Group in respect of an offender and the offence.

(2) An Aboriginal experience report may contain the following information in respect of an offender and the offence:

(a) the personal circumstances and background of the offender and the offender's family;

(b) the family relationships of the offender;

(c) the employment status of the offender;

(d) the offender's health;

(e) the victim of the offence;

(f) the impact of the offending on the offender's community;

(g) the relationship between the offender and the offender's community, including cultural connection;

(h) the steps the offender has taken towards rehabilitation or restoration;

(i) general information or research about criminogenic factors.

(3) An Aboriginal experience report must be in a manner or form approved by the Chief Judge.

**107C Law and Justice Group**

(1) The Minister may, by *Gazette* notice, approve a place for which a Law and Justice Group may be established and recognised for the purposes of:

(a) this Division; and

(b) Part 5, Division 4 of the *Youth Justice Act 2005*.

(2) A ***Law and Justice Group*** for a place approved under subsection (1) is a community group established by the community for the place.

(3) The CEO may, by *Gazette* notice, approve a member of the Law and Justice Group that is established for the place to perform the functions of an approved member of the Group under:

(a) this Division; and

(b) Part 5, Division 4 of the *Youth Justice Act 2005*.

(4) In deciding whether to approve a member of the Law and Justice Group under subsection (3), the CEO must be satisfied that the member is an appropriate person to perform the functions of an approved member, having regard to the member's character, skills and experience.

(5) The CEO may approve guidelines in relation to the approval of members of a Law and Justice Group under subsections (3) and (4).

(6) Without limiting subsection (5), the guidelines may include criteria that are to be considered in making a decision under subsections (3) and (4).

(7) Any guidelines approved under subsection (5) must be published on the Agency's website.

(8) In this section:

***CEO*** means the Chief Executive Officer of the Agency.

**107D Application for community court sentencing procedure**

(1) An offender may apply to the Local Court for the Court to sentence the offender for an offence in accordance with the community court sentencing procedure if the offender:

(a) has pleaded guilty to an offence in the Local Court; and

(b) has agreed with the prosecutor to facts in relation to the offence and those facts have been given to the Court; and

(c) is Aboriginal.

(2) The application must specify a place:

(a) in the Territory for the sitting of the Court; and

(b) for which a Law and Justice Group is established.

(3) The Court may grant the application or refuse to grant the application.

(4) In deciding whether to grant the application or refuse to grant the application, the Court must have regard to:

(a) the offender's connection to the place specified in the application; and

(b) any other matter the Court considers relevant.

**107E Community court sentencing procedure**

(1) If the Local Court grants an application under section 107D(3), the Court must:

(a) sit and hear the proceedings at the place specified in the offender's application; and

(b) impose the sentence on the offender at the place.

(2) Before imposing a sentence on the offender, the Court:

(a) must have regard to an Aboriginal experience report in relation to the offender and the offence; and

(b) may have regard to the responses given to any questions asked of the approved members of the Law and Justice Group who prepared the report as mentioned in subsection (4).

(3) The Court may adjourn the proceedings to enable the Aboriginal experience report to be prepared and may admit the offender to bail or remand the offender in custody.

(4) After receiving the Aboriginal experience report the Court may, in relation to the information contained in the report:

(a) ask questions of the approved members of the Law and Justice Group who prepared the Aboriginal experience report; and

(b) allow another person to ask questions of the approved members of the Law and Justice Group who prepared the Aboriginal experience report.

(5) The response given to a question asked under subsection (4) may be given in writing or orally.

(6) To avoid doubt, this section does not limit the matters the Court would ordinarily have regard to in imposing a sentence on the offender.

### 107F Information in Aboriginal experience report and responses of Law and Justice Group

(1) The fact that information is contained in an Aboriginal experience report or a response given to a question asked under section 107E(4) does not constitute proof of the information.

(2) If section 104A applies to information contained in an Aboriginal experience report or a response given to a question asked under section 107E(4), the failure of a court to comply with section 104A in relation to the information does not invalidate the information.

## Division 4 Passing of sentence

### 108 Time and place of sentence

(1) Subject to Division 3A, the sentence for an offence may be imposed in open court at any time and place in the Territory.

(2) A court at a trial of an offence or receiving a plea of guilty to an offence may, when it thinks it desirable in the interests of justice so to do and from time to time if necessary:

(a) fix, or indicate by reference to a fact or event, the time; and

(b) fix the place;

at which the sentence is to be imposed.

(3) A court which is to impose sentence for an offence may:

(a) admit the person to bail; or

(b) make an order or orders for the removal in custody of the person from one place in the Territory to another.

(4) A person to be sentenced for an offence is taken, while in custody pending sentencing, to be in the lawful custody of the Commissioner, the CEO (Youth Justice) or the Commissioner of Police (according to whether the person is in a custodial correctional facility, in a detention centre as defined in section 5(1) of the *Youth Justice Act 2005* or in police custody).

(5) This section does not take away from any power of a court under statute or at common law.

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

(1) This section applies if:

(a) an offender has pleaded guilty to and been found guilty of an offence in the Local Court; and

(b) in sentencing the offender the Court has:

(i) had regard to the plea of guilty and the stage in the proceedings at which the offender pleaded guilty; and

(ii) imposed a sentence that is less severe than the sentence that the Court would have imposed but for the plea of guilty.

(2) In imposing the sentence, the person constituting the Court must also state and record the sentence that would have been imposed but for the plea of guilty.

(3) However, it is not an error of law if the person does not state and record the sentence mentioned in subsection (2).

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

(1) The failure of a court to give reasons or to comply with any other procedural requirement contained in this Act in sentencing an offender does not invalidate any sentence imposed by it.

(2) Nothing in subsection (1) prevents a court on an appeal against sentence from reviewing a sentence imposed by a court in circumstances where there has been a failure that is referred to in that subsection.

## Part 7 Correction of sentences

### 111 Correction of sentences by Supreme Court

(1) Where:

(a) a person has been sentenced (whether at first instance or on appeal) by a court (including the Supreme Court) for an offence; or

(b) the sentencing court was the Local Court, application is made to the Supreme Court for relief or remedy in the nature of certiorari to remove the proceeding into the Supreme Court;

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

(2) Unless the Supreme Court otherwise directs, a sentence of imprisonment imposed by it under subsection (1) commences on the day on which the sentence imposed in the earlier proceeding purported to take effect but in calculating the term to be served under the sentence any time during which the offender was at large (whether on bail or otherwise) must be disregarded.

(3) Subsections (1) and (2) extend and apply, with necessary changes, to any order made on, but not forming part of, the sentence of an offender as if reference in those subsections to a sentence included a reference to such an order.

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

(1) Where a court has in, or in connection with, criminal proceedings (including a proceeding on appeal):

(a) imposed a sentence that is not in accordance with the law; or

(b) failed to impose a sentence that the court legally should have imposed;

the court (whether or not differently constituted) may reopen the proceedings unless it considers the matter should more appropriately be dealt with by a proceeding on appeal.

(2) Where a court reopens proceedings, it:

(a) must give the parties an opportunity to be heard; and

(b) may impose a sentence that is in accordance with the law; and

(c) may amend any relevant conviction or order to the extent necessary to take into account the sentence imposed under paragraph (b).

(3) A court may reopen proceedings:

(a) on its own initiative at any time; or

(b) on the application of a party to the proceedings made not later than:

(i) 28 days after the day the sentence was imposed; or

(ii) such further time as the court allows.

(4) An application for leave to make an application under subsection (3)(b)(ii) may be made at any time.

(5) Subject to subsection (6), this section does not affect any right of appeal.

(6) For the purposes of an appeal under any Act against a sentence imposed under subsection (3)(b), the time within which the appeal must be made starts from the day the sentence is imposed under subsection (2)(b).

(7) This section applies to a sentence imposed, or required to be imposed, whether before or after the commencement of this section.

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

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

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

(a) the court had immediately before imposing it found the person guilty, or convicted the person, of the offence in respect of which the sentencing order was originally made; and

(b) the sentence was a sentence imposed on that finding of guilt or conviction.

## Part 9 Remission of sentence

### 114 Remission of sentence by Administrator

(1) In this section, ***remission order*** means an order made under subsection (2).

(2) The Administrator may, by writing under his or her hand, order the remission, with or without conditions, of a sentence of imprisonment under, or in respect of an offence against, a law of the Territory.

(3) The Administrator may, by writing under his or her hand:

(a) vary or revoke the conditions to which a remission order is subject; or

(b) impose additional conditions on a remission order; or

(c) revoke a remission order.

(4) Where a remission order has been:

(a) revoked; or

(b) contravened or a condition to which the remission order is subject has not been complied with;

a police officer may, without warrant, arrest the person released under the remission order.

(5) Where information is laid before a justice of the peace alleging that a remission order has been:

(a) revoked; or

(b) contravened or a condition to which the remission order is subject has not been complied with;

the justice of the peace may issue a warrant for the arrest of the person released under the remission order.

(6) A justice of the peace must not issue a warrant under subsection (5) unless:

(a) the informant and any other person furnishing information required by the justice of the peace concerning the issue of the warrant furnishes the information on oath; and

(b) the justice of the peace is satisfied that there are reasonable grounds for issuing the warrant.

(7) Where a person has been arrested under subsection (4)(a) or (5)(a), the person must, as soon as practicable, be brought before the Local Court and the Local Court must, if satisfied that the remission order has been revoked, issue a warrant for the commitment of the person into the custody of the Commissioner to serve the part of the term of imprisonment that the person had not served at the time the remission order was made.

(8) Where a person has been arrested in accordance with subsection (4)(b) or (5)(b), the person must, as soon as practicable, be brought before the Local Court and, if the Local Court is satisfied that the person has, without lawful excuse, contravened a condition of the remission order, the Local Court may revoke the remission order.

(9) A person brought before the Local Court in accordance with subsection (7) or (8) must, unless the Local Court determines otherwise, be kept in custody until the Local Court has determined the matter.

(10) Where, under subsection (8), a remission order is revoked in respect of a person who was serving a term of imprisonment at the time that the remission order was made, the Local Court may issue a warrant for the commitment of the person into the custody of the Commissioner to serve the part of the term of imprisonment that the person had not served at the time that the remission order was made.

(11) Where the Local Court acting in accordance with subsection (8) revokes a remission order, the person in respect of whom the remission order was made may appeal to the Supreme Court against the revocation, and the Supreme Court must, if it is:

(a) satisfied that the grounds under which the remission order was revoked have been established – confirm the revocation; or

(b) not so satisfied – order that the revocation cease to have effect.

(12) Part VI, Division 2 of the *Local Court (Criminal Procedure) Act 1928* applies to and in relation to an appeal made under subsection (11).

# Part 10 Prerogative of mercy

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

(1) The Administrator may, in any case in which he or she is authorised on behalf of the Sovereign to extend mercy to any person under sentence of imprisonment, do so by directing that the person be released, even before the end of a non-parole period:

(a) on giving an undertaking; or

(b) on parole under and subject to the *Parole Act 1971.*

(2) An undertaking under subsection (1)(a):

(a) must have as a condition that the person be of good behaviour; and

(b) may have as a condition that the person be under the supervision of an employee employed in the Agency responsible under the Minister for the administration of the *Correctional Services Act 2014*; and

(c) may have any other condition that the Administrator considers to be in the interests of the person or the community.

(3) The period of an undertaking under subsection (1)(a) is the period fixed by the Administrator, which must be not less than the unexpired term of the original sentence.

(4) A person who gives an undertaking under subsection (1)(a) must be released from custody.

(4A) A police officer who suspects, on reasonable grounds, that a person who gave an undertaking under subsection (1)(a) has breached a condition of the undertaking may, without warrant, arrest the person.

(4B) For the application of sections 137 and 138 of the *Police Administration Act 1978*, a breach of a condition of an undertaking given under subsection (1)(a) is to be taken to be an offence.

(5) Where, at any time during the period of an undertaking under subsection (1)(a), the Local Court is satisfied by evidence on oath or by affidavit or by the admission of the person who gave the undertaking that that person has failed without reasonable excuse to comply with any condition of the undertaking it may impose a fine not exceeding $1,000 and direct that the person be committed into the custody of the Commissioner for the unexpired term of the original sentence.

(6) Except with the consent of the person who gave the undertaking, the Local Court must not deal with the person under subsection (5) unless the person has been served with a notice to attend on the hearing of the proceeding.

(7) The Local Court may order that a warrant to arrest be issued against a person who gave an undertaking if he or she does not attend before the Court on the hearing of the proceeding under subsection (5).

(8) A registrar of the Local Court may sign any warrant that may be necessary for subsection (5) and the period of imprisonment after committal begins on the day of the committal, if the person is then before the Court, and if not, on the day of his or her subsequent arrest.

(9) A person who gives an undertaking under subsection (1)(a) is discharged from the original sentence at the end of the period of the undertaking if an order has not been made under subsection (5).

(10) If the Local Court recommits a person into the custody of the Commissioner under this section, the *Correctional Services Act 2014* applies as if the person had just been convicted by the Court and sentenced to be imprisoned for a term equal to the unexpired term of the original sentence.

(11) A fine imposed under this section is taken for all purposes to be a fine payable on a conviction of an offence.

### 116 Penalties for offences may be remitted

The Administrator may:

(a) remit in whole or in part any sum of money which is imposed under any Act as a penalty or forfeiture; and

(b) order the discharge from the custody of the Commissioner of any person who is imprisoned for non-payment of any sum of money so imposed;

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

## Part 11 Miscellaneous matters

### 117 Offender to be before court when sentence imposed

(1) A court must not make an order under Part 3 unless the offender in respect of whom the order is to be made is before the court.

*Note for subsection (1)*

*Section 49E(8) of the Evidence Act 1939 provides that a requirement that a person be before a court is taken to be satisfied if the person is before the court by way of a communication link in accordance with Part 5, Division 2 of that Act.*

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

(a) an order imposing a fine under section 16; or

(b) an order made on the hearing of an appeal.

### 120 Lesser sentence may be imposed

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

### 121 Effect of alterations in penalties

(1) Where an Act, including this Act, or an instrument of a legislative or administrative character increases the penalty or the maximum or minimum penalty for an offence, the increase applies only to an offence committed after the commencement of the provision effecting the increase.

(2) Where an Act, including this Act, or an instrument of a legislative or administrative character reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to an offence committed before the commencement of the provision

effecting the reduction for which no penalty had been imposed at that commencement.

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

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

(2) Subsection (1) does not have the effect of increasing the maximum penalty for the indictable offence.

### 123 Old offences relevant in determining previous convictions

(1) A finding of guilt or conviction of an old offence counts as a finding of guilt or conviction of a new offence for the purpose of determining whether or not a person has previously been found guilty or convicted of the new offence.

(2) For this section:

(a) an old offence is an offence under a repealed statutory provision which is constituted by the same acts, omissions, matters, circumstances or things as an offence (the new offence) under an Act or an instrument of a legislative or administrative character which substantially re-enacts (whether in the same language or not) the repealed statutory provision; and

(b) a repealed statutory provision is an Act or a provision of an Act that has been repealed or an instrument of a legislative or administrative character or a provision of such an instrument that has been repealed or revoked.

(3) This section applies even where the new offence differs from the old offence in:

(a) its penalty; or

(b) the procedure applicable to its prosecution; or

(c) its classification; or

(d) its name;

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

### 124 Abolition of common law bonds

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

### 126 Facilitation of proof

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

(a) an averment of the prosecutor that the offender is the person in respect of whom the order was made is evidence of the matter so averred; and

(b) on the averring of the fact referred to in paragraph (a), the offender may be asked by the court whether the person was convicted of the offence or offences in respect of which the order was made and, if the person admits the conviction or convictions, no further proof of the conviction or convictions is necessary.

### 128 Regulations

(1) The Administrator may make regulations under this Act.

(2) The Regulations may:

(a) be of general or limited application; or

(b) confer a discretionary authority or impose a duty on a specified person or a specified class of person; or

(c) prescribe the fees payable in respect of any matter under this Act; or

(d) prescribe penalties, not exceeding 100 penalty units, for offences against the Regulations.

## Part 12 Repeal and transitional matters

## Division 1 Repeal of Acts

### 129 Repeal

The Acts and Ordinances specified in Schedule 4 are repealed.

## Division 2 Transitional matters for Sentencing Act 1995

### 130 Savings and transitional

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

(2) Where, immediately before the commencement of this section, an order under the *Criminal Law (Conditional Release of Offenders) Act 1971* or a sentence was in force in respect of a person, the person continues to be subject to the requirements of the order or sentence in all respects as if this Act has not commenced but the order or sentence may be cancelled or varied and any failure to comply with it may be dealt with under this Act (whether or not, in the case of an order, the order is still in force) as if it were made or imposed after the commencement of this section.

(3) Where, immediately before the commencement of this section, a declaration under section 397 or a direction under section 401 of the Criminal Code detaining a person at the Administrator's pleasure was in force, the person continues to be subject to the requirements of the declaration or direction in all respects, and the declaration or direction shall be subject to, and the person may be dealt with under, the Criminal Code or section 8A of the *Criminal Law (Conditional Release of Offenders) Act 1971* as in force before that commencement, as if this Act had not commenced.

(4) The Regulations may contain provisions of a savings or transitional nature consequent on the commencement of the various provisions of this Act.

(5) For the purposes of this section, an order made or imposed by an appellate court after the commencement of this section on setting aside an order made or a sentence imposed before that commencement shall be taken to have been made or imposed at the time the original order was made or the sentence imposed.

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

### 131 Application of section 104A

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

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

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

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

(a) mentioned in section 3, definition ***aggravated property offence***, paragraph (d), as in force immediately before the commencement of the amendment; and

(b) was committed or is alleged to have been committed before the commencement of the amendment.

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

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

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

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

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

(1) Section 64, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before the commencement of this section (***commencement***) if:

(a) the sentence is imposed in proceedings in which a court starts hearing sentencing submissions after commencement; or

(b) the commitment is imposed in a hearing under section 15(4) that starts after commencement.

(2) Section 64, as in force before commencement, continues to apply in relation to a sentence of imprisonment, or commitment to prison, for an offence committed before commencement if:

(a) the sentence is imposed in proceedings in which a court started hearing sentencing submissions before commencement; or

(b) the commitment is imposed in a hearing under section 15(4) that started before commencement.

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

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

(2) Section 104A, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

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

(1) Section 107, as amended by the *Justice and Other Legislation Amendment Act 2014*, applies only in relation to proceedings for an offence committed before the commencement of this section (***commencement***) if a court starts hearing sentencing submissions after commencement.

(2) To avoid doubt, an offence may be listed in a document filed under section 107(1)(b), as amended by the *Justice and Other Legislation Amendment Act 2014*, even if:

(a) the charge for the offence was laid before commencement; or

(b) the offence is alleged to have been committed before commencement.

(3) Section 107, as in force before commencement, continues to apply in relation to proceedings for an offence committed before commencement if a court started hearing sentencing submissions before commencement.

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

### 137 Application of amendments

(1) Section 57, as amended by the amending Act, applies if an offender is sentenced by a court to a further term of imprisonment after the commencement, even if the offence to which the sentence relates was committed before the commencement.

(2) Section 59, as in force immediately before the commencement, continues to apply in relation to a sentence, the service of which was suspended under section 59 before the commencement, as if the amending Act had not commenced.

(3) In this section:

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

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

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

### 138 Definitions

In this Division:

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

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

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

(1) Sections 5(2)(ha) and 123A, as inserted by the amending Act, apply only in relation to offences committed after the commencement.

(2) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.

### 140 Application of section 108A

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

## Division 9 Transitional matter for Criminal Code Amendment (Property Offences) Act 2022

### 141 Definition *aggravated property offence*

(1) This Act, as in force immediately before the commencement, continues to apply in relation to an offence defined as an ***aggravated property offence*** immediately before the commencement that was committed before the commencement.

(2) In this section:

***commencement*** means the commencement of section 31 of the *Criminal Code Amendment (Property Offences) Act 2022*.

## Division 10 Transitional matters for Sentencing and Other Legislation Amendment Act 2022

### 142 Definition

In this Division:

***commencement*** means the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

### 143 Community correction orders and intensive community correction orders

(1) A court may make a community correction order or an intensive community correction order in relation to an offender:

(a) for an offence committed before the commencement if the court had not imposed a sentence on the offender in relation to the offence before the commencement; and

(b) for an offence committed after the commencement.

(2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

### 144 Mandatory sentencing before and after commencement

(1) This section applies:

(a) to an offender:

(i) who committed an offence before the commencement; and

(ii) to whom Part 3, Division 6A, as in force before the commencement, applies; and

(b) if a court had not imposed a sentence on the offender in relation to the offence before the commencement.

(2) Subject to section 148, the Act as in force after the commencement applies in relation to the sentence the court must impose on the offender in relation to the offence.

(3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

### 145 Application of Act to old orders

(1) To avoid doubt, an old order that is in force immediately before the commencement continues in force after the commencement in accordance with the terms of the order.

(2) The repealed provisions continue to apply in relation to an old order mentioned in subsection (1).

(3) In this section:

***old order*** means any of the following orders made under this Act as in force before the commencement:

(a) an order made under section 11;

(b) an order made under section 13;

(c) a community work order;

(d) a community based order;

(e) a home detention order;

(f) a community custody order;

(g) a perpetrators' program order.

***repealed provisions*** means the following provisions as in force immediately before the commencement:

(a) section 11;

(b) section 13;

(c) Part 3, Division 2, Subdivision 4;

(d) Part 3, Divisions 4 and 4A;

(e) Part 3, Division 5, Subdivisions 2 and 2A;

(f) Part 3, Division 8.

**146 Application of section 5**

(1) Section 5, as amended by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to:

(a) the sentencing of an offender in relation to an offence committed before the commencement if the court had not imposed a sentence on the offender before the commencement; and

(b) the sentencing of an offender in relation to an offence committed after the commencement.

(2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

**147 Application of section 42**

(1) Section 42, as amended by the *Sentencing and Other Legislation Amendment Act 2022*, applies in relation to an order wholly or partially suspending a sentence of imprisonment made after the commencement.

(2) Section 42, as in force before the commencement, applies in relation to an order wholly or partially suspending a sentence of imprisonment made before the commencement.

**148 Non-parole period for offences committed before the commencement**

(1) This section applies:

(a) to the sentencing of an offender:

(i) who committed an offence against the *Misuse of Drugs Act 1990* or an offence against section 120(1) of the *Domestic and Family Violence Act 2007* before the commencement; or

(ii) to whom Part 3, Division 6A, as in force before the commencement, applied; and

(b) if a court had not imposed the sentence on the offender in relation to the offence before the commencement.

(2) If a court sentences the offender to be imprisoned for 12 months or longer that is not suspended in whole or in part for the offence, the court must fix a period under section 53(1) of not less than 50% of the period of imprisonment that the offender is to serve under the sentence.

(3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

## Division 11 Transitional matters for Sentencing Legislation Amendment Act 2023

### 149 Application of Part 6, Division 3A

(1) Part 6, Division 3A, as inserted by the *Sentencing Legislation Amendment Act 2023*, applies in relation to the sentencing of an offender for an offence committed after the commencement.

(2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(3) In this section:

***commencement*** means the commencement of Part 2 of the *Sentencing Legislation Amendment Act 2023*.

## Division 12 Transitional matter for Criminal Justice Legislation Amendment (Sexual Offences) Act 2023

### 150 Application of section 5

(1) Section 5, as amended by section 29 of the amending Act, applies only in relation to offences that are committed after the commencement of this section.

(2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement of this section, the offence is taken to have been committed before the commencement of this section.

(3) In this section:

***amending Act*** means the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*.

## Division 13 Transitional matters for Justice Legislation Amendment (Domestic and Family Violence) Act 2023

### 151 Definitions

In this Division:

***amending Act*** means the *Justice Legislation Amendment (Domestic and Family Violence) Act 2023.*

***commencement*** means the commencement of Part 7 of the amending Act.

### 152 Application of amendment to section 6A

(1) Section 6A, as amended by the amending Act, applies only relation to offences committed after the commencement.

(2) Section 6A, as in force before the commencement, continues to apply in relation to offences committed before the commencement.

(3) For this section:

(a) an offence is taken to be committed after the commencement only if all of the conduct constituting the offence occurred after the commencement; and

(b) any other offence is taken to be committed before the commencement.

### 153 Application of section 52

Section 52, as inserted by section 60 of the amending Act, applies in relation to the sentencing of an offender after the commencement, regardless of when the offences for which the offender is being sentenced were committed.

## Division 14 Transitional matters for Justice and Other Legislation Further Amendment Act 2024

### 154 Definitions

In this Division:

***amending Act*** means the *Justice and Other Legislation Further Amendment Act 2024*.

***commencement*** means the commencement of Part 9 of the amending Act.

### 155 Continuation of approved places for Law and Justice Groups

An approval of a place under section 107C(1) of the Act that is in effect immediately before the commencement continues in effect after the commencement as if the place had been approved under section 107C(1), as inserted by the amending Act.

### 156 Continuation of appointed members as approved members of Law and Justice Groups

(1) Subsection (2) applies to a person who was appointed as a member of a Law and Justice Group for a place referred to in section 155, under regulation 19 of the *Sentencing Regulations 1996* as in force immediately before the commencement.

(2) The person is taken to have been approved under section 107C(3), as inserted by the amending Act, to be an approved member of the Law and Justice Group for the place after the commencement.

## Division 15 Transitional matters for Sentencing Amendment Act 2024

### 157 Mandatory sentencing before and after commencement

(1) Sections 78DAA, 78DAB and 78DBA, as inserted by the amending Act, apply in relation to the sentencing of an offender for an offence committed after the commencement.

(2) Section 78DA, as in force before the commencement, continues to apply in relation to the sentencing of an offender for an offence committed before commencement.

(3) Section 78DA, as amended by the amending Act, applies in relation to the sentencing of an offender for an offence committed after the commencement.

(4) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

(5) In this section:

***amending Act*** means the *Sentencing Amendment Act 2024*.

***commencement*** means the commencement of section 3 of the amending Act.

## Division 16 Transitional matters for Sentencing Amendment (Murder) Act 2026

### 158 Application of amendments to section 53A

(1) The amendments to section 53A by the *Sentencing Amendment (Murder) Act 2026* do not apply to an offence committed before the commencement of section 4 of that Act.

(2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

# Schedule 2 Violent offences

section 78C, definition ***violent offence***

| | |
|---|---|
| **Criminal Code** | |
| section 54 | Terrorism |
| section 55 | Contribution towards acts of terrorism |
| section 155A | Assault, obstruction etc. of persons providing rescue, medical treatment or other aid if the offender assaulted the other person |
| section 156 | Murder |
| section 160 | Manslaughter |
| section 161A | Violent act causing death |
| section 165 | Attempt to murder |
| section 166 | Threats to kill |
| section 175 | Disabling in order to commit indictable offence |
| section 176 | Stupefying in order to commit indictable offence |
| section 177 | Acts intended to cause serious harm or prevent apprehension |
| section 181 | Serious harm |
| section 182 | Attempting to injure by explosive substances |
| section 185 | Setting man-traps |
| section 186 | Harm |
| section 188 | Common assault |
| section 188A | Assaults on workers |
| section 189 | Unlawful stalking |
| section 189A | Assaults on police |
| section 190 | Assaults on the Administrator or judges |
| section 191 | Assaults on member of crew of aircraft |
| section 193 | Assaults with intent to commit an offence |
| section 193B | Assault with intent to steal |
| section 194 | Kidnapping for ransom |
| section 218 | Robbery |

# Schedule 3 Sexual offences

section 3(1)

1 An offence against section 125B or 125C of the Criminal Code if the offender is an individual.

2 An offence against a provision of Part VIA of the Criminal Code, other than section 208NA.

3 An offence against any of the following provisions of the Criminal Code, as in force before the commencement of Part 2 of the *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*:

(a) section 127, 128, 130, 131, 131A, 132, 134 or 138;

(b) section 188 if the circumstance mentioned in section 188(2)(k) applied;

(c) section 192 or 192B.

# Schedule 4 Acts and Ordinances repealed

section 129

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

# ENDNOTES

## 1 KEY

Key to abbreviations in list of legislation and amendments

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

## 2 LIST OF LEGISLATION

***Sentencing Act 1995* (Act No. 39, 1995)**
Assent date 29 September 1995
Commenced 1 July 1996 (*Gaz* S15, 13 June 1996)

***Sentencing Amendment Act 1996* (Act No. 47, 1996)**
Assent date 31 October 1996
Commenced 1 March 1997 (*Gaz* G4, 29 January 1997, p 2)

***Sentencing Amendment Act (No. 2) 1996* (Act No. 65, 1996)**
Assent date 31 December 1996
Commenced 8 March 1997 (*Gaz* S7, 7 March 1997)

***Statute Law Revision Act 1997* (Act No. 17, 1997)**
Assent date 11 April 1997
Commenced 1 May 1997 (*Gaz* G17, 30 April 1997, p 2)

***Sentencing Amendment Act 1998* (Act No. 14, 1998)**
Assent date 30 March 1998
Commenced 29 April 1998 (*Gaz* G16, 29 April 1998, p 3)

***Sentencing Amendment Act (No. 2) 1998* (Act No. 91, 1998)**
Assent date 11 December 1998
Commenced 13 January 1999 (*Gaz* G1, 13 January 1999, p 6)

***Sentencing Amendment Act 1999* (Act No. 4, 1999)**
Assent date 26 February 1999
Commenced 1 April 1999 (s 2, s 2 *Penalties Act 1999* (Act No. 2, 1999) and *Gaz* G11, 24 March 1999, p 3)

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

| | |
|---|---|
| Assent date | 18 June 1999 |
| Commenced | s 19: 1 February 2000 (s 2(1), s 2 *Mental Health and Related Services (Consequential Amendments) Act 1999* (Act No. 11, 1999) and *Gaz* G3, 26 January 2000, p 2); rem: 4 July 1999 (s 2(2) and *Gaz* S31, 1 July 1999) |

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

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|---|---|
| Assent date | 21 December 2001 |
| Commenced | 21 December 2001 |

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

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

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

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

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

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

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

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

***Justice Portfolio (Miscellaneous Amendments) Act 2005*** **(Act No. 20, 2005)**
Assent date 6 May 2005
Commenced 13 July 2005 (*Gaz* G28, 13 July 2005, p 3)

***Youth Justice (Consequential Amendments) Act 2005*** **(Act No. 33, 2005)**
Assent date 22 September 2005
Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz* G30, 26 July 2006, p 3)

***Antisocial Behaviour (Miscellaneous Amendments) Act 2006*** **(Act No. 2, 2006)**
Assent date 8 March 2006
Commenced 14 June 2006 (*Gaz* G24, 14 June 2006, p 3)

***Justice Legislation Amendment Act 2006*** **(Act No. 13, 2006)**
Assent date 18 May 2006
Commenced 1 July 2006 (s 3(2))

***Justice Legislation Amendment (Group Criminal Activities) Act 2006*** **(Act No. 36, 2006)**
Assent date 3 November 2006
Commenced 20 December 2006 (*Gaz* G51, 20 December 2006, p 2)

***Statute Law Revision Act 2007*** **(Act No. 4, 2007)**
Assent date 8 March 2007
Commenced 8 March 2007

***Domestic and Family Violence Act 2007*** **(Act No. 34, 2007)**
Assent date 12 December 2007
Commenced 1 July 2008 (*Gaz* G25, 25 June 2008, p 4)

***Statute Law Revision Act 2008*** **(Act No. 6, 2008)**
Assent date 11 March 2008
Commenced 11 March 2008

***Sentencing Amendment (Violent Offences) Act 2008*** **(Act No. 30, 2008)**
Assent date 21 November 2008
Commenced 10 December 2008 (*Gaz* S63, 10 December 2008)

***Justice Legislation Amendment (Penalties) Act 2010*** **(Act No. 12, 2010)**
Assent date 20 May 2010
Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

***Justice Legislation Amendment Act 2010*** **(Act No. 24, 2010)**
Assent date 30 June 2010
Commenced 21 July 2010 (*Gaz* G29, 21 July 2010, p 5)

***Statute Law Revision Act 2010*** **(Act No. 29, 2010)**
Assent date 9 September 2010
Commenced 13 October 2010 (*Gaz* G41, 13 October 2010, p 2)

***Criminal Code Amendment (Criminal Damage) Act 2011*** **(Act No. 5, 2011)**
Assent date 16 March 2011
Commenced 1 June 2011 (*Gaz* S19, 4 May 2011)

***Public and Environmental Health Act 2011*** **(Act No. 7, 2011)**
Assent date 16 March 2011
Commenced 1 July 2011 (*Gaz* S28, 3 June 2011)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|---|---|
| Assent date | 12 July 2013 |
| Commenced | 12 July 2013 |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|---|---|
| Assent date | 8 November 2018 |
| Commenced | pt 2 and ss 19, 20 and 25 to 27: 11 February 2019 (*Gaz* S11, 18 February 2019); rem: 11 December 2018 (*Gaz* S101, 11 December 2018) |

***Liquor Act 2019*** **(Act No. 29, 2019)**

| | |
|---|---|
| Assent date | 3 September 2019 |
| Commenced | 1 October 2019 (*Gaz* G39, 25 September 2019, p 2) |

***Evidence and Other Legislation Amendment Act 2020*** **(Act No. 3, 2020)**

| | |
|---|---|
| Assent date | 9 March 2020 |
| Commenced | 29 July 2020 (*Gaz* G28, 15 July 2020, p 1) |

***Justice Legislation Amendment (Domestic and Family Violence) Act 2020*** **(Act No. 18, 2020)**

| | |
|---|---|
| Assent date | 1 July 2020 |
| Commenced | 29 July 2020 (*Gaz* G29, 22 July 2020, p 1) |

***Statute Law Revision Act 2020*** **(Act No. 26, 2020)**

| | |
|---|---|
| Assent date | 19 November 2020 |
| Commenced | 20 November 2020 (s 2) |

***Criminal Justice Legislation Amendment Act 2022*** **(Act No. 20, 2022)**

| | |
|---|---|
| Assent date | 12 September 2022 |
| Commenced | 1 November 2022 (*Gaz* G42, 26 October 2022, p 1) |

***Criminal Code Amendment (Property Offences) Act 2022*** **(Act No. 24, 2022)**

Assent date 31 October 2022
Commenced 30 April 2023 (*Gaz* G8, 13 April 2023, p 1)

***Sentencing and Other Legislation Amendment Act 2022*** **(Act No. 28, 2022)**

Assent date 9 December 2022
Commenced 25 March 2024 (*Gaz* S19, 22 March 2024)

**Amending Legislation**

***Justice Legislation Amendment (Domestic and Family Violence) Act 2023*** **(Act No. 33, 2023)**

Assent date 6 December 2023
Commenced 25 March 2024 (*Gaz* S18, 22 March 2024)

***Justice and Other Legislation Amendment Act 2024*** **(Act No. 4, 2024)**

Assent date 14 March 2024
Commenced pt 5, div 1: 30 October 2023 (s 2(2));
pt 3, div 2: 25 March 2024 (s 2(3), s 2 *Sentencing and Other Legislation Amendment Act 2022* (Act No. 28, 2022) and *Gaz* S19, 22 March 2024);
pt 4: 25 March 2024 (s 2(4), s 2 *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (Act No. 20, 2023) and *Gaz* S20, 22 March 2024);
rem: 15 March 2024 (s 2(1))

***Statute Law Amendment (Succession of the Crown) Act 2023*** **(Act No. 10, 2023)**

Assent date 20 April 2023
Commenced 21 April 2023 (s 2)

***Sentencing Legislation Amendment Act 2023*** **(Act No. 11, 2023)**

Assent date 26 May 2023
Commenced 1 December 2023 (*Gaz* S81, 30 November 2023)

***Criminal Justice Legislation Amendment (Sexual Offences) Act 2023*** **(Act No. 20, 2023)**

Assent date 17 August 2023
Commenced 25 March 2024 (*Gaz* S20, 22 March 2024)

***Justice Legislation Amendment (Domestic and Family Violence) Act 2023*** **(Act No. 33, 2023)**

Assent date 6 December 2023
Commenced 25 March 2024 (*Gaz* S18, 22 March 2024)

**Amending Legislation**

***Justice and Other Legislation Amendment Act 2024*** **(Act No. 4 2024)**

Assent date 14 March 2024
Commenced pt 5, div 1: 30 October 2023 (s 2(2));
pt 3, div 2: 25 March 2024 (s 2(3), s 2 *Sentencing and Other Legislation Amendment Act 2022* (Act No. 28, 2022) and *Gaz* S19, 22 March 2024);
pt 4: 25 March 2024 (s 2(4), s 2 *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (Act No. 20, 2023) and *Gaz* S20, 22 March 2024);
rem: 15 March 2024 (s 2(1))

***Justice and Other Legislation Amendment Act 2024*** **(Act No. 4, 2024)**

| | |
|---|---|
| Assent date | 14 March 2024 |
| Commenced | pt 5, div 1: 30 October 2023 (s 2(2)); pt 3, div 2: 25 March 2024 (s 2(3), s 2 *Sentencing and Other Legislation Amendment Act 2022* (Act No. 28, 2022) and *Gaz* S19, 22 March 2024); pt 4: 25 March 2024 (s 2(4), s 2 *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (Act No. 20, 2023) and *Gaz* S20, 22 March 2024); rem: 15 March 2024 (s 2(1)) |

***Justice and Other Legislation Further Amendment Act 2024*** **(Act No. 9, 2024)**

| | |
|---|---|
| Assent date | 24 May 2024 |
| Commenced | pt 4: 1 July 2024 (s 2(2)), s 2 *Health Care Decision Making Act 2023* (Act No. 19, 2023) and *Gaz* G13, 20 June 2024, p 2); pts 9 and 10: 1 July 2024 (s 2(3)); pt 8: 19 March 2026 (s 2(5)); rem: 25 May 2024 (s 2(1)) |

***Criminal Code Amendment Act 2024*** **(Act No. 18, 2024)**

| | |
|---|---|
| Assent date | 29 October 2024 |
| Commenced | 30 October 2024 (s 2) |

***Sentencing Amendment Act 2024*** **(Act No. 20, 2024)**

| | |
|---|---|
| Assent date | 1 November 2024 |
| Commenced | 2 November 2024 (s 2) |

***Attorney-General Legislation Amendment Act 2025*** **(Act No. 14, 2025)**

| | |
|---|---|
| Assent date | 6 June 2025 |
| Commenced | 1 August 2025 (*Gaz* G14, 10 July 2025, p 1) |

***Sentencing Amendment (Murder) Act 2026*** **(Act No. 5, 2026)**

| | |
|---|---|
| Assent date | 31 March 2026 |
| Commenced | 1 April 2026 (s 2) |

***Criminal Procedure Legislation Amendment Act 2026*** **(Act No. 11, 2026)**

| | |
|---|---|
| Assent date | 28 May 2026 |
| Commenced | 1 July 2026 (*Gaz* S47, 22 June 2026) |

## 3 SAVINGS AND TRANSITIONAL PROVISIONS

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

## 4 GENERAL AMENDMENTS

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

## 5 LIST OF AMENDMENTS

| | |
|---|---|
| pt 1 hdg | amd No. 30, 2011, s 3 |
| s 3 | amd No. 65, 1996, s 3; No. 17, 1997, s 17; No. 14, 1998, s 4; No. 33, 1999, s 4; No. 55, 2001, s 4; No. 2, 2006, s 22; No. 36, 2006, s 4; No. 4, 2007, s 2; No. 6, 2008, s 3; No. 30, 2008, s 4; No. 29, 2010, s 7; No. 5, 2011, s 8; No. 7, 2011, s 140; No. 19, 2011, s 46; No. 24, 2011, s 33; No. 30, 2011, s 3; No. 24, 2011, s 25; No. 1, 2013, s 4; No. 17, 2013, s 175; No. 9, 2014, s 10; No. 27, 2014, s 39; No. 9, 2016, s 140; No. 19, 2017, s 39; No. 29, 2019, s 405; No. 26, 2020, s 3; No. 24, 2022, s 31; No. 11, 2023, s 4; No. 33, 2023, s 58; No. 28, 2022, s 4; No. 9, 2024, s 30; No. 14, 2025, s 26 |
| s 4 | amd No. 2, 2006, s 23; No. 33, 2005, s 5; No. 19, 2011, s 46; No. 17, 2013, s 176 |
| s 5 | amd No. 47, 1996, s 3; No. 33, 1999, s 5; No. 39, 2001, s 3; No. 55, 2001, s 10; No. 35, 2002, s 5; No. 36, 2006, s 5; No. 30, 2011, s 3; No. 24, 2011, s 26; No. 20, 2015, s 10; No. 9, 2016, s 140; No. 5, 2017, s 12; No. 29, 2019, s 406; No. 26, 2020, s 3; No. 28, 2022, s 5 |
| s 6 | amd No. 30, 2011, s 3 |
| s 6A | ins No. 36, 2006, s 6 |
| | amd No. 20, 2022, s 7; No. 33, 2023, s 59 |
| s 7 | amd No. 24, 2011, s 27; No. 28, 2022, s 6 |
| s 8 | amd No. 30, 2011, s 3 |
| pt 3 | |
| div 2 hdg | amd No. 28, 2022, s 7 |
| pt 3 | |
| div 2 | |
| sdiv 1 hdg | om No. 28, 2022, s 8 |
| s 9 | amd No. 30, 2011, s 3 |
| pt 3 | |
| div 2 | |
| sdiv 2 hdg | om No. 28, 2022, s 8 |
| s 11 | amd No. 20, 2005, s 49; No. 30, 2011, s 3 |
| | rep No. 28, 2022, s 9 |
| pt 3 | |
| div 2 | |
| sdiv 3 hdg | om No. 28, 2022, s 10 |
| s 13 | amd No. 20, 2005, s 50; No. 30, 2011, s 3 |
| | rep No. 28, 2022, s 11 |
| pt 3 | |
| div 2 | |
| sdiv 4 hdg | rep No. 28, 2022, s 11 |
| s 14 | amd No. 30, 2011, s 3; No. 9, 2016, s 140 |
| | rep No. 28, 2022, s 11 |
| s 15 | amd No. 65, 1996, s 4; No. 33, 1999, s 6; No. 66, 2001, s 3; No. 20, 2005, s 51; No. 30, 2011, s 3; No. 9, 2016, s 140 |
| | rep No. 28, 2022, s 11 |
| s 16 | amd No. 13, 2006, s 67 |
| | sub No. 22, 2018, s 29 |
| s 17 | amd No. 60, 2001, s 13; No. 30, 2011, s 3 |
| s 19 | sub No. 60, 2001, s 13 |
| ss 20 – 23 | rep No. 60, 2001, s 13 |
| s 24 | amd No. 4, 2007, s 7; No. 30, 2011, s 3 |
| s 25 | rep No. 60, 2001, s 13 |
| s 26 | sub No. 60, 2001, s 13 |
| | amd No. 30, 2011, s 3 |

| | |
|---|---|
| ss 27 – 28 | amd No. 55, 2001, s 10<br>rep No. 60, 2001, s 13<br>ins No. 22, 2018, s 30 |
| s 29 | amd No. 33, 1999, s 7; No. 55, 2001, s 10<br>rep No. 60, 2001, s 13<br>ins No. 22, 2018, s 30 |
| pt 3 | |
| div 4 hdg | amd No. 55, 2001, s 10<br>sub No. 28, 2022, s 12 |
| ss 30 – 31 | amd No. 55, 2001, s 10<br>rep No. 60, 2001, s 13<br>ins No. 28, 2022, s 12 |
| ss 32 – 33 | rep No. 60, 2001, s 13<br>ins No. 28, 2022, s 12 |
| s 33A | ins No. 55, 2001, s 5<br>rep No. 28, 2022, s 12 |
| s 34 | amd No. 55, 2001, s 10; No. 20, 2005, s 52; No. 30, 2011, s 3; No. 27, 2014, s 39<br>sub No. 28, 2022, s 12 |
| s 35 | amd No. 33, 1999, s 8; No. 55, 2001, s 10; No. 30, 2011, s 3; No. 27, 2014, s 39<br>sub No. 28, 2022, s 12 |
| s 36 | amd No. 55, 2001, s 10; No. 30, 2011, s 3<br>sub No. 28, 2022, s 12 |
| ss 37 – 38 | amd No. 55, 2001, s 10; No. 30, 2011, s 3; No. 27, 2014, s 39<br>sub No. 28, 2022, s 12 |
| s 39 | amd No. 65, 1996, s 5; No. 55, 2001, s 10; No. 24, 2011, s 33; No. 30, 2011, s 3; No. 27, 2014, s 39; No. 9, 2016, s 140<br>sub No. 28, 2022, s 12 |
| pt 3 | |
| div 4A hdg | ins No. 24, 2011, s 28<br>rep No. 28, 2022, s 12 |
| ss 39A – 39B | ins No. 24, 2011, s 28<br>sub No. 28, 2022, s 12 |
| s 39C | ins No. 24, 2011, s 28<br>amd No. 27, 2014, s 39<br>sub No. 28, 2022, s 12 |
| s 39D | ins No. 24, 2011, s 28<br>sub No. 28, 2022, s 12 |
| ss 39E – 39G | ins No. 24, 2011, s 28<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 12 |
| s 39H | ins No. 24, 2011, s 28<br>rep No. 28, 2022, s 12 |
| ss 39J – 39L | ins No. 24, 2011, s 28<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 12 |
| s 39M | ins No. 24, 2011, s 28<br>amd No. 9, 2016, s 140<br>rep No. 28, 2022, s 12 |
| ss 39N – 39P | ins No. 24, 2011, s 28<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 12 |
| s 39Q | ins No. 24, 2011, s 28<br>rep No. 28, 2022, s 12 |
| s 39R | ins No. 24, 2011, s 28<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 12 |

| | |
|---|---|
| s 40 | amd No. 33, 1999, s 9; No. 30, 2011, s 3; No. 28, 2022, s 13 |
| s 42 | amd No. 33, 1999, s 10; No. 30, 2011, s 3; No. 9, 2016, s 140; No. 28, 2022, s 14 |
| s 43 | sub No. 65, 1996, s 6<br>amd No. 33, 1999, s 11; No. 66, 2001, s 4; No. 20, 2005, s 53; No. 30, 2011, s 3; No. 9, 2016, s 140 |
| pt 3<br>div 5 | |
| sdiv 2 hdg | sub No. 28, 2022, s 15 |
| s 44 | amd No. 20, 2005, s 54; No. 30, 2011, s 3; No. 24, 2011, s 33; No. 27, 2014, s 39; No. 29, 2019, s 407<br>sub No. 28, 2022, s 15 |
| s 45 | amd No. 33, 1999, s 12; No. 30, 2011, s 3; No. 27, 2014, s 39<br>sub No. 28, 2022, s 15 |
| s 46 | amd No. 30, 2011, s 3<br>sub No. 28, 2022, s 15 as amd by No. 4, 2024, s 10 |
| s 47 | amd No. 30, 2011, s 3; No. 27, 2014, s 39<br>sub No. 28, 2022, s 15 |
| s 48 | sub No. 65, 1996, s 7<br>amd No. 33, 1999, s 13; No. 30, 2011, s 3; No. 24, 2011, s 33; No. 27, 2014, s 39; No. 9, 2016, s 140; No. 14, 2025, s 27<br>sub No. 28, 2022, s 15 |
| pt 3<br>div 5 | |
| sdiv 2A hdg | ins No. 24, 2011, s 29<br>rep No. 28, 2022, s 15 |
| ss 48A – 48B | ins No. 24, 2011, s 29<br>sub No. 28, 2022, s 15 |
| s 48C | ins No. 24, 2011, s 29<br>amd No. 27, 2014, s 39<br>sub No. 28, 2022, s 15 |
| s 48D | ins No. 24, 2011, s 29<br>sub No. 28, 2022, s 15 |
| s 48E | ins No. 24, 2011, s 29<br>amd No. 27, 2014, s 39<br>sub No. 28, 2022, s 15 |
| s 48F | ins No. 24, 2011, s 29<br>sub No. 28, 2022, s 15 |
| ss 48G – 48J | ins No. 24, 2011, s 29<br>amd No. 27, 2014, s 39<br>sub No. 28, 2022, s 15 |
| s 48K | ins No. 24, 2011, s 29<br>amd No. 9, 2016, s 140<br>rep No. 28, 2022, s 15 |
| ss 48L – 48M | ins No. 24, 2011, s 29<br>rep No. 28, 2022, s 15 |
| s 48N | ins No. 24, 2011, s 29<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 15 |
| s 48P | ins No. 24, 2011, s 29<br>rep No. 28, 2022, s 15 |
| s 48Q | ins No. 24, 2011, s 29<br>amd No. 27, 2014, s 39<br>rep No. 28, 2022, s 15 |
| s 50 | amd No. 30, 2011, s 3 |
| s 51 | amd No. 14, 1998, s 5; No. 55, 2001, s 10; No. 30, 2011, s 3 |

| | |
|---|---|
| s 52 | amd No. 14, 1998, s 6; No. 33, 1999, s 14; No. 55, 2001, s 10; No. 30, 2011, s 3<br>sub No. 33, 2023, s 60 |
| s 53 | amd No. 14, 1998, s 7; No. 38, 2001, s 4; No. 55, 2001, s 10; No. 3, 2004, s 6; No. 30, 2011, s 3; No. 22, 2015, s 4; No. 28, 2022, s 16; No. 14, 2025, s 28 |
| s 53AA | ins No. 14, 2025, s 29 |
| s 53A | ins No. 3, 2004, s 7<br>amd No. 27, 2014, s 39; No. 9, 2016, s 140; No. 5, 2026, s 4 |
| s 54 | amd No. 14, 1998, s 8; No. 55, 2001, s 10; No. 30, 2011, s 3; No. 1, 2013, s 5<br>sub No. 28, 2022, s 17<br>rep No. 14, 2025, s 30 |
| s 55 | amd No. 30, 2011, s 3<br>sub No. 17, 2016, s 45<br>amd No. 28, 2022, s 18 |
| s 55A | ins No. 38, 2001, s 5<br>amd No. 1, 2004, s 16; No. 30, 2011, s 3; No. 28, 2022, s 19; No. 14 2025, s 31 |
| s 56 | amd No. 3, 2004, s 8; No. 27, 2014, s 39; No. 9, 2016, s 140; No. 19, 2017, s 39 |
| s 57 | amd No. 38, 2001, s 6; No. 3, 2004, s 9; No. 30, 2011, s 3; No. 22, 2015, s 5; No. 28, 2022, s 20; No. 14, 2025, s 32 |
| s 58 | amd No. 14, 1998, s 9<br>exp No. 39, 1995, s 58(5) and (6) |
| s 59 | amd No. 30, 2011, s 3; No. 22, 2015, s 6 |
| s 60 | amd No. 30, 2011, s 3 |
| s 60A | ins No. 27, 2014, s 36 |
| s 61 | amd No. 30, 2011, s 3 |
| pt 3 | |
| div 6 hdg | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 12<br>sub No. 55, 2001, s 6 |
| s 63 | amd No. 11, 1999, s 4; No. 30, 2011, s 3; No. 27, 2014, s 37; No. 10, 2018, s 6; No. 28, 2022, s 21 |
| s 63A | ins No. 27, 2014, s 38 |
| s 64 | amd No. 30, 2011, s 3<br>sub No. 11, 2014, s 8<br>amd No. 27, 2014, s 39; No. 17, 2017, s 15; No. 28, 2022, s 22 |
| s 65 | amd No. 33, 1999, s 15; No. 1, 2004, s 17; No. 30, 2011, s 3; No. 27, 2014, s 39; No. 9, 2016, s 140; No. 4, 2024, s 75 |
| s 66 | amd No. 30, 2011, s 3 |
| ss 68 – 69 | amd No. 30, 2011, s 3 |
| ss 71 – 76 | amd No. 30, 2011, s 3 |
| s 78 | amd No. 30, 2011, s 3 |
| pt 3<br>div 6 | |
| sdiv 1 hdg | ins No. 65, 1996, s. 8<br>om No. 14, 1998, s 13 |
| s 78AA | ins No. 24, 2022, s 32<br>amd No. 18, 2024, s 18 |
| s 78A | ins No. 65, 1996, s8<br>amd No. 14, 1998, s 10; No. 33, 1999, s 16; No. 17, 2000, s 5<br>sub No. 55, 2001, s 6 |
| s 78B | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 11<br>sub No. 55, 2001, s 6<br>amd No. 30, 2011, s 3; No. 28, 2022, s 23 |

| | |
|---|---|
| pt 3 | |
| div 6A hdg | ins No. 33, 1999, s 17<br>sub No. 1, 2013, s 6; No. 28, 2022, s 24<br>amd No. 20, 2024, s 4 |
| pt 3 | |
| div 6A | |
| sdiv 1 hdg | ins No. 1, 2013, s 6<br>sub No. 28, 2022, s 24 |
| s 78BA | ins No. 33, 1999, s 17<br>sub No. 30, 2008, s 5<br>rep No. 1, 2013, s 6 |
| s 78C | ins No. 1, 2013, s 6<br>sub No. 28, 2022, s 24 |
| s 78CA | ins No. 1, 2013, s 6<br>amd No. 18, 2020, s 16<br>sub No. 28, 2022, s 24 |
| s 78CB | ins No. 28, 2022, s 24 |
| pt 3 | |
| div 6A | |
| sdiv 2 hdg | ins No. 1, 2013, s 6<br>sub No. 28, 2022, s 24<br>amd No. 20, 2024, s 5 |
| s 78D | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 3<br>sub No. 28, 2022, s 24 |
| ss 78DAA – 78DAB | ins No. 20, 2024, s 6 |
| s 78DA | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 4<br>sub No. 28, 2022, s 24<br>amd No. 20, 2024, s 7 |
| s 78DBA | ins No. 20, 2024, s 8 |
| s 78DB | ins No. 1, 2013, s 6<br>sub No. 28, 2022, s 24 |
| s 78DC | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 5<br>rep No. 28, 2022, s 24 |
| s 78DD | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 6<br>rep No. 28, 2022, s 24 |
| s 78DE | ins No. 1, 2013, s 6<br>rep No. 28, 2022, s 24 |
| s 78DF | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 7<br>rep No. 28, 2022, s 24 |
| ss 78DG – 78DH | ins No. 1, 2013, s 6<br>rep No. 28, 2022, s 24 |
| s 78DI | ins No. 1, 2013, s 6<br>amd No. 18, 2020, s 17<br>rep No. 28, 2022, s 24 |
| pt 3 | |
| div 6A | |
| sdiv 3 hdg | ins No. 1, 2013, s 6<br>rep No. 28, 2022, s 24 |
| s 78E | ins No. 1, 2013, s 6<br>rep No. 28, 2022, s 24 |

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| s 78EA | ins No. 1, 2013, s 6<br>amd No. 21, 2013, s 8<br>rep No. 28, 2022, s 24 |
| pt 3 | |
| div 6B hdg | ins No. 33, 1999, s 17 |
| s 78BB | ins No. 33, 1999, s 17 |
| s 78F | renum No. 1, 2013, s 7 |
| pt 3 | |
| div 7 hdg | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 14<br>rep No. 55, 2001, s 7 |
| s 78C | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 15<br>rep No. 55, 2001, s 7 |
| s 78D | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 16<br>rep No. 55, 2001, s 7 |
| s 78E | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 17<br>rep No. 55, 2001, s 7 |
| s 78F | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 18<br>rep No. 55, 2001, s 7 |
| s 78G | ins No. 65, 1996, s 8<br>amd No. 14, 1998, s 19<br>rep No. 55, 2001, s 7 |
| pt 3 | |
| div 8 hdg | ins No. 91, 1998, s 3<br>rep No. 28, 2022, s 25 |
| s 78H | ins No. 91, 1998, s 3<br>amd No. 33, 1999, s 18; No. 34, 2007, s 146; No. 30, 2011, s 3<br>rep No. 28, 2022, s 25 |
| s 78J | ins No. 91, 1998, s 3<br>amd No. 30, 2011, s 3<br>rep No. 28, 2022, s 25 |
| s 78K | ins No. 91, 1998, s 3<br>amd No. 4, 2007, s 2; No. 34, 2007, s 146; No. 27, 2014, s 39; No. 9, 2016, s 140<br>rep No. 28, 2022, s 25 |
| ss 78L – 78M | ins No. 91, 1998, s 3<br>amd No. 30, 2011, s 3; No. 27, 2014, s 39<br>rep No. 28, 2022, s 25 |
| s 78N | ins No. 91, 1998, s 3<br>amd No. 34, 2007, s 146; No. 12, 2010, s 3; No. 30, 2011, s 3; No. 9, 2016, s 140<br>rep No. 28, 2022, s 25 |
| pt 4 hdg | sub No. 11, 1999, s 3 |
| s 78P | amd No. 33, 1999, s 19; No. 55, 2001, s 10 |
| s 79 | amd No. 17, 1997, s 17<br>sub No. 11, 1999, s 3<br>amd No. 29, 2010, s 7; No. 30, 2011, s 3 |
| s 80 | amd No. 17, 1997, s 17; No. 14, 1998, s 20<br>sub No. 11, 1999, s 3<br>amd No. 30, 2011, s 3; No. 27, 2014, s 39 |
| s 81 | amd No. 17, 1997, s 17<br>sub No. 11, 1999, s 3 |
| s 82 | sub No. 11, 1999, s 3 |

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|---|---|
| s 83 – 84 | amd No. 17, 1997, s 17 |
| | sub No. 11, 1999, s 3 |
| s 85 | sub No. 11, 1999, s 3 |
| | amd No. 30, 2011, s 3; No. 9, 2016, s 140 |
| s 86 | sub No. 11, 1999, s 3 |
| ss 88 – 89 | amd No. 30, 2011, s 3 |
| s 90 | amd No. 30, 2011, s 3; No. 11, 2014, s 9 |
| s 92 | amd No. 30, 2011, s 3; No. 43, 2011, s 35 |
| s 93 | amd No. 30, 2011, s 3 |
| s 94 | amd No. 43, 2011, s 36 |
| s 95 | rep No. 43, 2011, s 37 |
| s 96 | amd No. 30, 2011, s 3 |
| | rep No. 43, 2011, s 37 |
| s 97 | amd No. 30, 2011, s 3 |
| pt 5 | |
| div 1AA hdg | ins No. 9, 2014, s 11 |
| s 97AA | ins No. 9, 2014, s 11 |
| s 97AB | ins No. 9, 2014, s 11 |
| | amd No. 9, 2016, s 140 |
| s 97AC | ins No. 9, 2014, s 11 |
| pt 5 | |
| div 1A hdg | ins No. 36, 2006, s 7 |
| s 97A | ins No. 36, 2006, s 7 |
| | amd No. 28, 2022, s 26 |
| ss 97B – 97H | ins No. 36, 2006, s 7 |
| s 99 | amd No. 4, 2007, s 7; No. 12, 2010, s 3; No. 30, 2011, s 3 |
| s 99A | ins No. 33, 1999, s 20 |
| | amd No. 29, 2019, s 408 |
| pt 6 | |
| div 1 hdg | sub No. 20, 2005, s 55 |
| ss 101 – 102 | amd No. 30, 2011, s 3 |
| s 102A | ins No. 20, 2005, s 56 |
| | amd No. 24, 2011, ss 30 and 33; No. 28, 2022, s 27 |
| pt 6 | |
| div 2 | |
| sdiv 1 hdg | ins No. 47, 1996, s 4 |
| | amd No. 30, 2011, s 3 |
| s 103 | amd No. 30, 2011, s 3; No. 27, 2014, s 39; No. 19, 2017, s 39 |
| s 104 | amd No. 30, 2011, s 3 |
| s 104A | ins No. 1, 2005, s 4 |
| | sub No. 11, 2014, s 10 |
| pt 6 | |
| div 2 | |
| sdiv 2 hdg | ins No. 47, 1996, s 5 |
| s 106A | ins No. 47, 1996, s 5 |
| | amd No. 39, 2001, s 4; No. 30, 2011, s 3 |
| s 106B | ins No. 47, 1996, s 5 |
| | amd No. 33, 1999, s 21; No. 55, 2001, s 8; No. 30, 2011, s 3; No. 33, 2023, s 61 |
| pt 6 | |
| div 3 hdg | sub No. 11, 2014, s 11 |
| s 107 | amd No. 30, 2011, s 3; No. 11, 2014, s 12; No. 9, 2016, s 140 |
| pt 6 | |
| div 3A hdg | ins No. 11, 2023, s 5 |
| s 107A | ins No. 11, 2023, s 5 |
| | amd No. 9, 2024, s 31 |
| s 107B | ins No. 11, 2023, s 5 |
| | amd No. 9, 2024, s 32 |

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| s 107C | ins No. 11, 2023, s 5<br>sub No. 9, 2024, s 33 |
| s 107D | ins No. 11, 2023, s 5 |
| s 107E | ins No. 11, 2023, s 5<br>amd No. 9, 2024, s 34 |
| s 107F | ins No. 11, 2023, s 5 |
| s 108 | amd No. 30, 2011, s 3; No. 27, 2014, s 39; No. 22, 2015, s 7; No. 19, 2017, s 39; No. 11, 2023, s 6 |
| s 108A | ins No. 20, 2015, s 11<br>amd No. 9, 2016, s 140 |
| s 109 | amd No. 30, 2011, s 3<br>rep No. 9, 2016, s 137 |
| s 111 | amd No. 30, 2011, s 3; No. 9, 2016, s 140 |
| s 112 | amd No. 30, 2011, s 3 |
| s 114 | amd No. 30, 2011, s 3; No. 27, 2014, s 39; No. 9, 2016, s 140 |
| s 115 | amd No. 66, 2001, s 5; No. 30, 2011, s 3; No. 27, 2014, s 39; No. 9, 2016, s 140; No. 10, 2023, s 5 |
| s 116 | amd No. 30, 2011, s 3; No. 27, 2014, s 39 |
| pt 11 hdg | amd No. 30, 2011, s 3 |
| s 117 | amd No. 30, 2011, s 3; No. 3, 2020, s 26 |
| s 118 | amd No. 4, 1999, s 3<br>rep No. 13, 2006, s 68 |
| s 119 | rep No. 13, 2006, s 68 |
| s 122 | amd No. 4, 1999, s 4; No. 30, 2011, s 3<br>sub No. 9, 2016, s 138 |
| s 123 | amd No. 30, 2011, s 3 |
| s 123A | ins No. 20, 2015, s 12<br>amd No. 9, 2016, s 140<br>rep No. 11, 2026, s 48 |
| s 125 | rep No. 9, 2016, s 139 |
| s 127 | amd No. 30, 2011, s 3<br>rep No. 24, 2011, s 31 |
| s 128 | amd No. 30, 2011, s 3; No. 9, 2016, s 140 |
| pt 12 hdg | ins No. 1, 2005, s 5<br>sub No. 30, 2011, s 3 |
| pt 12<br>div 1 hdg | ins No. 30, 2011, s 3 |
| s 129 | amd No. 65, 1996, s 9; No. 33, 1999, s 22 |
| pt 12<br>div 2 hdg | ins No. 30, 2011, s 3 |
| s 130 | amd No. 33, 1999, s 23 |
| pt 13 hdg | ins No. 1, 2005, s 6<br>amd No. 30, 2011, s 3 |
| s 131 | ins No. 1, 2005, s 6 |
| pt 12<br>div 4 hdg | ins No. 5, 2011, s 8 |
| s 132 | ins No. 5, 2011, s 8 |
| pt 12<br>div 5 hdg | ins No. 24, 2011, s 32 |
| s 133 | ins No. 24, 2011, s 32 |
| pt 12<br>div 6 hdg | ins No. 11, 2014, s 13 |
| ss 134 – 136 | ins No. 11, 2014, s 13 |
| pt 12<br>div 7 hdg | ins No. 22, 2015, s 8 |
| s 137 | ins No. 22, 2015, s 8 |
| pt 12<br>div 8 hdg | ins No. 20, 2015, s 13 |

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| ss 138 – 140 | ins No. 20, 2015, s 13 |
| pt 12 | |
| div 9 hdg | ins No. 24, 2022, s 34 |
| s 141 | ins No. 24, 2022, s 34 |
| pt 12 | |
| div 10 hdg | ins No. 28, 2022, s 28 |
| ss 142 – 148 | ins No. 28, 2022, s 28 as amd by No. 4, 2024, s 11 |
| pt 12 | |
| div 11 hdg | ins No. 11, 2023, s 7 |
| s 149 | ins No. 11, 2023, s 7 |
| pt 12 | |
| div 13 hdg | ins No. 33, 2023, s 62 |
| ss 151 – 153 | ins No. 33, 2023, s 62 as amd by No. 4, 2024, s 8 |
| pt 12 | |
| div 14 hdg | ins No. 9, 2024, s 35 |
| ss 154 – 156 | ins No. 9, 2024, s 35 |
| pt 12 | |
| div 15 hdg | ins No. 20, 2024, s 9 |
| s 157 | ins No. 20, 2024, s 9 |
| pt 12 | |
| div 16 hdg | ins No 5, 2026, s 5 |
| s 158 | ins No 5, 2026, s 5 |
| sch 1 | ins No. 65, 1996, s 10<br>amd No. 14, 1998, s 21; No. 33, 1999, s 24<br>rep No. 55, 2001, s 9 |
| sch 2 | ins No. 33, 1999, s 25<br>amd No. 4, 2007, s 2; No. 24, 2010, s 18; No. 25, 2012, s 6<br>sub No. 1, 2013, s 8<br>amd No. 9, 2016, s 140; No. 24, 2022, s 33; No. 4, 2024, s 76 |
| sch 3 | ins No. 33, 1999, s 25<br>amd No. 1, 2004, s 18 |
| sch 4 | amd No. 65, 1996, s 11<br>renum No. 33, 1999, s 26 |