

# NORTHERN TERRITORY OF AUSTRALIA

## SENTENCING ACT

As in force at 1 June 2003

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 June 2003

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## SENTENCING ACT

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

### **Part 1                      Preliminary**

#### **1                      Short title**

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

#### **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, unless the contrary intention appears:

***aggravated property offence*** means:

- (a) an offence against section 211, 212, 213 or 215 of the Criminal Code;
- (b) an offence against section 218 of the Criminal Code if subsection (2) of the section applies to the offence;
- (c) an offence against section 226B of the Criminal Code if subsection (3) of the section applies to the offence;
- (d) an offence against section 251 of the Criminal Code if subsection (2) of the section applies to the offence; and
- (e) an attempt to commit an offence against section 213 of the Criminal Code.

***approved project*** means a rehabilitation program or work, or both, approved by a community work advisory committee under the *Prisons (Correctional Services) Act*.

**Chief Health Officer** means the Chief Health Officer appointed under the *Public Health Act*.

**community service order** means a community service order made under Division 3 or 4 of Part 3.

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

**Director** means the Director within the meaning of the *Prisons (Correctional Services) Act*.

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

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

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

**hospital** has the same meaning as in the *Medical Services Act*.

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

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

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

**monitoring device** has the same meaning as in the *Prisons (Correctional Services) Act*.

**motor vehicle** has the same meaning as in the *Motor Vehicles Act*.

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

**non-parole period**, in relation to a sentence of imprisonment, means a period, fixed by or under Subdivision 3 of Division 5 of Part 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.

**prison** has the same meaning as in the *Prison (Correctional Services) Act*.

**probation officer** has the same meaning as in the *Prisons (Correctional Services) Act*.

**proper officer**, in relation to a court, means the officer of the court prescribed by the rules of the court or by regulations for the purpose of 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 clerk or the judicial registrar of the Court of Summary Jurisdiction.

**restricted area** has the same meaning as in the *Liquor Act*.

**supervising officer** has the same meaning as in the *Prisons (Correctional Services) Act*.

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

**supervising officer** has the same meaning as in the *Prisons (Correctional Services) Act*.

**surveillance officer** has the same meaning as in the *Prisons (Correctional Services) Act*.

**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.

**violent offence** means an offence specified in Schedule 2.

- (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 Juvenile Court established under the *Juvenile Justice Act* and the Supreme Court when exercising its jurisdiction under or in pursuance of that Act.

## **Part 2                      General principles**

### **5                      Sentencing guidelines**

- (1) The only purposes for which sentences may be imposed on an offender are:
  - (a) to punish the offender to an extent or in a way that is just in all the circumstances;
  - (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; or
  - (f) a combination of 2 or more of the purposes referred to in this subsection.
- (2) In sentencing an offender, a court shall have regard to:
  - (a) the maximum and any minimum penalty prescribed for the offence;
  - (b) the nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim;
  - (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;
  - (c) the extent to which the offender is to blame for the offence;
  - (d) any damage, injury or loss caused by the offender;
  - (e) the offender's character, age and intellectual capacity;
  - (f) the presence of any aggravating or mitigating factor concerning the offender;

- (g) the prevalence of the offence;
  - (h) how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;
  - (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;
  - (k) time spent in custody by the offender for the offence before being sentenced;
  - (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;
  - (n) sentences already imposed on the offender that have not been served;
  - (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;
  - (q) if the offender is the subject of a community work order, the offender's compliance with the order;
  - (r) anything else prescribed by this Act to which the court is required to have regard; and
  - (s) any other relevant circumstance.
- (3) For the purposes of subsection (2)(ba):
- (a) a certificate by a medical practitioner that a person has (or had at a stated time) a sexually transmissible medical condition is evidence of the existence of that condition; and
  - (b) if:
    - (i) a certificate is tendered that the offender had at the relevant time a sexually transmissible medical condition; and
    - (ii) evidence is given that the victim contracted the medical condition at a time that is consistent with the medical condition being transmitted from the offender,the contraction by the victim of the medical condition is to be taken to be a result of the offence.

(4) In sentencing an offender, a court:

- (a) may have regard to any co-operation by the offender in resolving any action taken against the offender under the *Criminal Property Forfeiture Act* in relation to the offence or offences for which the offender is being sentenced;
- (b) may have regard to a forfeiture order under the *Criminal Property Forfeiture Act* 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* or in any proceedings under that Act in which the offender is, was or may be a respondent.

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

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

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

## **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 service order in respect of the offender;
- (g) record a conviction and order that the offender serve a term of imprisonment that is suspended by it wholly or partly;
- (h) record a conviction and order that the offender serve a term of imprisonment that is suspended on the offender entering into a home detention order;
- (j) record a conviction and order that the offender serve a term of imprisonment;
- (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 shall have regard to the circumstances of the case including:
  - (a) the character, antecedents, age, health or mental condition of the offender;
  - (b) the extent, if any, to which the offence is of a trivial nature; or
  - (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 shall 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;
    - (ii) proceedings for variation or breach of sentence;

- (iii) proceedings against the offender for a subsequent offence; or
- (iv) subsequent proceedings against the offender for the same offence.

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

### **Subdivision 1 General**

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

An order may be made under this Division:

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

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

#### **10 Unconditional dismissal**

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

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

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

- (c) observe any conditions imposed by the court.
- (2) Where a court makes an order under this section, the offender shall not leave the precincts of the court until he or she signs the order.
- (3) A member of the Police Force may, without a warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).
- (4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by:
  - (a) order of the court; or
  - (b) notice issued by the proper officer of the court.
- (5) An application for an order under subsection (4)(a) may be made in the absence of the offender.
- (6) An order or notice under subsection (4) shall be served on the offender not less than 4 days before the time specified in it for the appearance.

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

#### **12 Unconditional discharge**

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

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

- (1) A court which finds a person guilty of an offence may record a conviction and order that the person be released on his or her giving such security as the court thinks fit that the person will:
  - (a) appear before the court if called on to do so during the period of the order, being a period not longer than 5 years as is specified in the order;
  - (b) be of good behaviour for the period of the order; and
  - (c) observe any conditions imposed by the court.
- (2) Where a court makes an order under this section, the offender shall not leave the precincts of the court until he or she signs the order.
- (3) A member of the Police Force may, without a warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).

- (4) An offender in respect of whom an order under subsection (1) is made may be called on to appear before the court by:
  - (a) order of the court; or
  - (b) notice issued by the proper officer of the court.
- (5) An application for an order under subsection (4)(a) may be made in the absence of the offender.
- (6) An order or notice under subsection (4) shall be served on the offender not less than 4 days before the time specified in it for the appearance.

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

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

- (1) A court which has made an order under section 11 or 13 may, on application under this subsection, if satisfied that:
  - (a) circumstances, including those of the offender, have materially altered since the order was made and as a result the offender will not be able to comply with any condition of the order; or
  - (b) the offender is no longer willing to comply with the conditions of the order,vary or cancel the order and, subject to subsection (2), deal with the offender for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.
- (2) In determining how to deal with an offender following the cancellation by it of an order made under section 11 or 13, the court shall take into account the extent to which the offender had complied with the order before its cancellation.
- (3) An application under subsection (1) may be made at any time while the order is in force by:
  - (a) the offender;
  - (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) shall 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 Court of Summary Jurisdiction, the complainant or informant.
- (5) The court may order that a warrant to arrest the offender be issued if he or she does not attend before the court on the hearing of the application.

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

- (1) Where, it appears to a prescribed person or a member of a prescribed class of persons, that an offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13, he or she may apply in the prescribed form to the court which made the order for the making of an order under this section.
- (2) Where an application is made under subsection (1):
- (a) notice of the application shall be given to the offender; or
  - (b) where a Justice is satisfied that the offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13 and that the offender may not appear, the Justice may issue a warrant for the arrest of the offender.
- (3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.
- (3AA) A member of the Police Force who suspects, on reasonable grounds, that an offender has failed to comply with a condition of an order made under section 11 or 13 may, without warrant, arrest the offender.
- (3AB) For the purposes of the application of sections 137 and 138 of the *Police Administration Act*, a failure to comply with a condition of an order made under section 11 or 13 is to be taken to be an offence.

- (3A) Where a court is satisfied that an offender who is before the court has failed without reasonable excuse to comply with a condition of an order made by the court under section 11 or 13, the court may of its own motion make an order under this section.
- (3B) Where the Court of Summary Jurisdiction is satisfied that an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Supreme Court under section 11 or 13, the Court of Summary Jurisdiction may commit the offender to the Supreme Court to be dealt with by that Court under this section.
- (4) Where, on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (3A), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with a condition of the order, it may:
  - (a) vary the order;
  - (b) confirm the order originally made; or
  - (c) cancel the order (if it is still in force) and, whether or not it is still in force, subject to subsection (5), deal with the offender for the offence or offences with respect to which the order was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence or those offences.
- (5) In determining how to deal with an offender under subsection (4)(c), a court shall take into account the extent to which the offender had complied with the order before its cancellation or expiration.

## **Division 3            Fines**

### **16            Power to fine**

- (1) Where a person is found guilty of an offence, the court may, subject to any specific provision relating to the offence, fine the offender.
- (2) The maximum fine that a court may impose is:
  - (a) the maximum fine applicable to the offence under a provision of this or any other Act relating to the offence; or
  - (b) where there is no such maximum, \$2,000 or, in the case of a body corporate, \$10,000.
- (3) Subsection (2) has effect subject to any specific provision of an Act relating to the offence.

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

- (1) Where a court decides to fine an offender, it shall, 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 shall 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 shall 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, &c.**

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 shall be paid into, the Consolidated Revenue Account 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* 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 the purposes of section 88 of the *Fines and Penalties (Recovery) Act* 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 the purposes of section 88 of the *Fines and Penalties (Recovery) Act* 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.

## **Division 4 Community work orders**

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

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

### **34 Community work order**

- (1) A court which finds a person guilty of an offence may order the person to participate, within such time as the court may order, in an approved project for such number of hours, not exceeding 480, as are specified in the order.
- (2) A community work order may require an offender to present himself or herself:
  - (a) at a place and to a person and within a time, specified in the order; or
  - (b) at a place and to a person and within the time and by the means as directed by the Director in writing.
- (3) Where a court makes a community work order, the offender shall not leave the precincts of the court until he or she signs the order.
- (4) Where a court makes a community work order, it shall ensure that a copy of the order is:
  - (a) given to the offender; and
  - (b) sent to the Director.

- (5) Where a community work order contains a requirement in accordance with subsection (2)(b), the Director shall cause written notice of the direction to be given to the offender as soon as practicable after the order is made.

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

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

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

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

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

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

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

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

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

**39 Breach of community work order**

- (1) An offender is in breach of a community work order if he or she:
  - (a) fails to comply with a term or condition of the order;
  - (b) fails to carry out his or her obligations under section 37(1);
  - (c) disturbs or interferes with any other person participating in or doing anything under a community work order;
  - (d) assaults, threatens, insults or uses abusive language to a probation officer or supervising officer;
  - (e) changes his or her address for the purposes of evading the execution of this Act;
  - (f) fails to pay the outstanding balance of a fine within the time specified in a written statement under section 28(2);
  - (g) commits a breach of the Regulations; or
  - (h) commits an offence against a law in force in the Territory during a time when he or she is participating in an approved project under the order.
- (2) Where a Justice is satisfied that an offender is in breach of a community work order, the Justice may:
  - (a) issue a summons directing the offender to appear before the court on a date and at a time specified in the summons; or
  - (b) where the Justice is satisfied the offender may not appear, issue a warrant for the arrest of the offender.
- (3) Where an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may issue a warrant for the arrest of the offender.
- (3A) Where a court is satisfied, by evidence on oath or by affidavit, or by the admission of the offender, that the offender is in breach of a community work order, it may vary, confirm, or, (if the order is still in force) revoke the order and, whether or not it is still in force, taking into account the extent to which the offender had complied with the order, deal with him or her for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found him or her guilty of the offence or offences.



- (4) Where a court is satisfied that an offender is in breach of a community work order, the court may, whether or not the order is in force at the time the offender appears before the court, order that the offender be imprisoned for such term as would equal one day of imprisonment for each 8 hours or part thereof of the approved project that the offender failed to participate in under the order or for 7 days, whichever is the greater.
- (5) For the purpose of determining the number of hours under subsection (4), the court may hear evidence from a probation officer or such other person as it thinks fit.
- (6) Where a court imposes a term of imprisonment under subsection (4), the community work order shall be deemed to be revoked and the court:
  - (a) may then deal with the offender for the offence in respect of which the community work order was made in any manner in which it could deal with the offender if it had just found the offender guilty of the offence; and
  - (b) at the time of further dealing with the offender for the offence, may take into account:
    - (i) the term of imprisonment imposed for the breach of the order; and
    - (ii) the extent to which the offender had complied with the order.
- (7) Where a court is satisfied that an offender is in breach of a community work order and there is more than one community work order in force in respect of the offender, the offender shall, for the purposes of this section, be deemed:
  - (a) to be in breach of all the orders; and
  - (b) in respect of the offender's participation in the approved projects under the orders, to have participated in the projects in the order in which the orders were made.
- (8) Where a community work order is made in respect of more than one offence and a court is satisfied that the offender is in breach of the order, the court shall deal with the offender under this section for all the offences in respect of which the order was made.

## **Division 5 Custodial orders**

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

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

- (1) A court which sentences an offender to a term of imprisonment of not more than 5 years may make an order suspending the sentence where it is satisfied that it is desirable to do so in the circumstances.
- (2) An order suspending a sentence of imprisonment may suspend the whole or a part of the sentence and the order may be subject to such conditions as the court thinks fit.
- (3) A court shall 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 shall be taken to be a sentence of imprisonment for the purposes of 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 shall 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 the purposes of any enactment providing for disqualification for, or loss of, office or the forfeiture or suspension of pensions or other benefits, the offender shall be 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 shall be taken, for all purposes, to be a sentence of imprisonment for the whole term stated by the court.
- (9) For the purposes of this section, a suspended sentence of imprisonment imposed on an offender on appeal shall be taken to have been imposed by the appellate court.
- (10) Notwithstanding 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 notwithstanding that the court is not the court that imposed the sentence.

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

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

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

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

- (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) shall be given to:
  - (a) the offender; and
  - (b) where the sentencing court was:
    - (i) the Supreme Court, the Director of Prosecutions; or
    - (ii) the Court of Summary Jurisdiction, the complainant or informant.
- (5) A court may order that a warrant be issued to arrest an offender where the offender does not attend before the court on the hearing of the application.

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

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

it appears to a prescribed person or a member of a prescribed class of persons that, during the operational period, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment, he or she may apply, in the prescribed form, to the court which sentenced the offender for an order under this section.
- (2) Where it appears to a prescribed person, or a member of a prescribed class of persons, that an offender has breached a condition to which an order suspending a sentence imposed on the offender is subject, he or she may apply, whether or not the order is still in force, in the prescribed form, to the court which sentenced the offender for an order under this section.
- (3) Where an application is made under subsection (1) or (2):
  - (a) notice of the application must be given to the offender; or

(b) where a Justice is satisfied:

- (i) in the case of 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) in the case of 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 Justice 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 member of the Police Force 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 purposes of the application of sections 137 and 138 of the *Police Administration Act*, 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 Court of Summary Jurisdiction 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 Court of Summary Jurisdiction may commit the offender to the Supreme Court to be dealt with by that Court 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;
- (d) restore part of the sentence or part sentence held in suspense and order the offender to serve it;
- (e) in the case of a wholly suspended sentence, extend the operational period to a date after the date of the order suspending the sentence;

- (ea) in the case of 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 shall, 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 shall 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 shall state its reasons.
- (8) Where a court makes no order with respect to a suspended sentence, the proper officer of the court shall record the fact in the records of the court.

## **Subdivision 2 Home detention orders**

### **44 Home detention order**

- (1) A court which sentences an offender to a term of imprisonment may make an order suspending the sentence on the offender entering into a home detention order where it is satisfied that it is desirable to do so in the circumstances.
- (2) A court shall specify in the order the premises or place (which may include a restricted area) at which the offender is to reside or remain and the period, not exceeding 12 months, that the order is to remain in force.
- (3) A home detention order may be subject to such terms and conditions as the court thinks fit including, but not limited to, that the offender:
- (a) not leave the premises or place specified in the order except at the times and for the periods as prescribed or as otherwise permitted by the Director or a surveillance officer;
  - (b) wear or have attached a monitoring device in accordance with the directions of the Director, and allow the placing, or installation in, and retrieval from, the premises or place

specified in the order of such machine, equipment or device necessary for the efficient operation of the monitoring device; and

- (c) obey the reasonable directions of the Director.
- (4) Where a court makes a home detention order the offender shall not leave the precincts of the court until he or she signs the order.
- (5) A member of the Police Force may, without warrant, arrest an offender who the member suspects, on reasonable grounds, has failed to comply with subsection (2).
- (6) Where a court makes a home detention order, it shall ensure that a copy of the order is:
  - (a) given to the offender; and
  - (b) sent to the Director.

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

- (1) A court may make a home detention order only if:
  - (a) it receives a report from the Director stating that:
    - (i) suitable arrangements are available for the offender to reside at the premises or place specified in the report;
    - (ii) the premises or place specified in the report is suitable for the purposes of a home detention order; and
    - (iii) the making of the home detention order is not likely to inconvenience or put at risk other persons living in those premises or at that place or the community generally; and
  - (b) the offender consents to the making of the order.
- (1A) For the purpose of subsection (1)(a), a court must order the Director to prepare and provide to the court a report about the matters referred to in subsection (1)(a)(i), (ii) and (iii).
- (2) In preparing a report for the purposes of subsection (1)(a), the Director may take into account the views of those members of the community who, in the opinion of the Director, may be affected by the making of the home detention order.



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

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

**47 Review of home detention order**

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

- (5) An order under subsection (1)(c) shall not be made if the effect is that the period of the order, as varied, exceeds 12 months.

#### **48 Breach of home detention order**

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

- (4) A member of the Police Force who suspects, on reasonable grounds, that an offender has breached a home detention order may, without warrant, arrest the offender and for that purpose may, by reasonable force if necessary, enter premises or a place.
- (5) For the purposes of the application of sections 137 and 138 of the *Police Administration Act*, a breach of a home detention order shall be taken to be an offence.
- (6) Where a court is satisfied that an offender has breached a home detention order, subject to subsection (9):
  - (a) if the order is still in force, the court must revoke the order; and
  - (b) whether the order is revoked under paragraph (a) or is otherwise no longer in force, the offender must be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and despite any period that the offender may have served under the order.
- (7) Where, after the expiration of the period of a home detention order, an offender in respect of whom the order was made is found guilty of an offence against a law in force in the Territory or elsewhere committed during the period of the order, the offender shall be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and notwithstanding any period the offender may have served under the order.
- (8) Where records purporting to relate to the activities of an offender, being records:
  - (a) generated by or through a monitoring device; or
  - (b) comprising the notebooks or diaries of a surveillance officer,are produced to a court in a proceeding under this section, the matter contained in the records is, as far as it is applicable, evidence of the activities of the offender.
- (9) Where:
  - (a) the offender has breached a home detention order by virtue of subsection (1)(a), (b), (c), (d), (e), (f) or (g) and, having regard to the circumstances of the offender or the breach, the court is of the opinion that it is appropriate to do so; or
  - (b) the offender has breached a home detention order by virtue of subsection (1)(h) and the offence committed is a regulatory offence or is not punishable by imprisonment,

despite subsection (6), the court may:

- (c) if the order is still in force – direct that the order continue in force and, in so doing, may vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force; or
  - (d) if the order is no longer in force – subject to subsection (11A), make another order under section 44(1) suspending the sentence on the offender entering into a home detention order.
- (10) Where a court, in accordance with subsection (9), does not revoke a home detention order, it may, in directing that the order continue in force, vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force.
- (11) A variation of a home detention order shall not be made under subsection (10) if the effect of that variation is that the period of the order exceeds 12 months.
- (11A) A home detention order must not be made for the purpose of subsection (9)(d) if the aggregate of:
  - (a) the period of the order made for the purpose of subsection (9)(d); and
  - (b) so much of the period of the order that was breached as remained after the date of the breach,exceeds 12 months.
- (12) Where an offender has breached a home detention order by virtue of subsection (1)(c), the offender is liable to pay the costs of restoring or replacing a monitoring device, or associated machine, equipment or device, destroyed or damaged in the breach of the order and those costs may be recovered from the offender as a debt due and payable to the Territory.
- (13) Where an offender has breached a home detention order by virtue of subsection (1)(h) or has been found guilty of an offence in circumstances referred to in subsection (7) and the offender is sentenced to a term of imprisonment for the offence, the term shall commence at the expiration of the term of imprisonment suspended on the making of the order.

### **Subdivision 3 Imprisonment**

#### **49 Term of imprisonment where none prescribed**

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

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

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

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

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

#### **51 Cumulative orders of imprisonment**

- (1) If an offender is:

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

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

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

#### **52 Aggregate sentences of imprisonment**

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

- (2) A court shall not impose one term of imprisonment under subsection (1) where one of the offences in respect of which the term of imprisonment would be imposed is an offence against section 192(3) of the Criminal Code.
- (3) Subsection (1) does not apply if one of the offences in the information, complaint or indictment is a violent offence or a sexual offence.

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

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

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

it shall, 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.

- (2) Where a court sentences an offender to be imprisoned in respect of more than one offence, a period fixed under subsection (1) shall be in respect of the aggregate period of imprisonment that the offender is liable to serve under all the sentences then imposed.
- (3) This section does not apply to or in relation to the sentencing of an offender for the crime of murder.

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

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

**55 Fixed non-parole period for certain sexual offences**

- (1) Subject to this section, where a court sentences an offender to be imprisoned for an offence against section 192(3) of the Criminal Code that is not suspended in whole or in part, the court shall 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.

**55A Fixed non-parole period for offences against persons under 16 years of age**

- (1) Subject to this section, if:
  - (a) a court sentences an offender to be imprisoned for an offence against section 127, 128, 129, 130, 131, 131A, 132, 134, 177(a), 181, 184, 186, 186B, 188 or 192(4) of the Criminal Code;
  - (b) the offender was an adult when the offence was committed;
  - (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 in 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 Director 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 Director 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 crime of murder.

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

- (1) Where:
  - (a) a court has sentenced an offender to be imprisoned for an offence and has fixed a non-parole period 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 in respect of which it proposes to fix a non-parole period,it shall 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;
  - (b) shall 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) shall not be less than the non-parole period required to be fixed under section 54, 55 or 55A, as the case may be, in respect of the further sentence.

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

- (1) 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 shall serve:
  - (a) the term or terms in respect of which a non-parole period was not fixed;
  - (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.

- (2) Where, during the service of a sentence of imprisonment, a further sentence of imprisonment is imposed, service of the first-mentioned sentence shall, if necessary, be suspended in order that the sentences may be served in the order referred to in subsection (1).

**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 shall direct when the new term commences, which shall 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* of the Commonwealth) 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 notwithstanding anything to the contrary in any other Act.

**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 shall, 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) Notwithstanding anything to the contrary in this or any other Act or in a rule of law or practice, a sentence of imprisonment shall be calculated exclusive of any time during which service of the sentence is suspended under section 62(2) or (3).
- (2) Where an offender lawfully imprisoned under a sentence escapes or fails to return after an authorised absence, the period between then and the day on which the person surrenders or is apprehended does not count in calculating the term to be served, and service of the sentence is suspended during that period.
- (3) Where an offender serving a sentence of imprisonment is:
  - (a) subject to an order made under section 23 of the *Mental Health Act* as in force before the commencement of the *Mental Health and Related Services Act*; or

- (b) at a hospital outside the prison at which the sentence is being served in accordance with the *Prisons (Correctional Services) Act*,

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, takes effect from the day the court passes sentence on the offender and a sentence of imprisonment on summary conviction takes effect from the commencement of the offender's custody under the sentence.
- (5) Where an offender has been in custody on account of his or her arrest for an offence and the offender is convicted of that offence and sentenced to imprisonment it may be ordered that such imprisonment shall 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.
- (6) A person who escapes from lawful custody while undergoing a sentence involving deprivation of liberty, on recapture, shall undergo the punishment that the person was undergoing at the time of his or her escape for a term equal to that during which the person was absent from prison after his or her escape and before the expiration of the term of his or her original sentence and whether at the time of his or her recapture the term of that sentence has or has not expired.

#### **64 Serving of balance of term of imprisonment when sentenced to further imprisonment**

- (1) In this section, **offence** includes an offence against an Act or a regulation of the Commonwealth.
- (2) Where:
- (a) a person has been sentenced or committed in the Territory to a term of imprisonment for an offence committed while a parole order under the *Parole of Prisoners Act* is or was in force in relation to the person; and
- (b) the parole order is, by reason of that sentence or committal, deemed to have been revoked by virtue of section 5(8) of that Act,

the court by which the person is sentenced or committed shall order the person to be imprisoned for the term that the person had not served at the time when the person was released from prison under the parole order, which term of imprisonment shall commence at

the expiration of the term of imprisonment to which the person is sentenced or committed for the later offence.

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

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

- (1) In this section, ***violent offence*** means:
  - (a) a crime:
    - (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;
  - (b) an offence against section 127 or 128 of the Criminal Code where the penalty for the offence is that specified in subsection (2) of those sections; or
  - (c) an offence against section 129 or 192 of the Criminal Code.
- (2) The Supreme Court may sentence an offender convicted of a violent offence or violent offences to an indefinite term of imprisonment.
- (3) An order under this section may be made on the Supreme Court's initiative or on an application made by the prosecutor.
- (4) The Supreme Court shall not fix a non-parole period in respect of an indefinite sentence.
- (5) The Supreme Court shall 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 shall specify one nominal sentence that shall 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 shall, if it imposes an indefinite sentence on the offender for the other violent offence, specify one nominal sentence that shall apply to all the indefinite sentences.

- (8) The Supreme Court shall not impose an indefinite sentence on an offender unless it is satisfied that the offender is a serious danger to the community because of:
- (a) the offender's antecedents, character, age, health or mental condition;
  - (b) the severity of the violent offence; and/or
  - (c) any special circumstances.
- (9) In determining whether the offender is a serious danger to the community, the Supreme Court shall have regard to:
- (a) whether the nature of the offence is exceptional;
  - (b) the offender's antecedents, age and character;
  - (c) any medical, psychiatric, prison 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; and/or
  - (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 the purpose of subsection (9), the Supreme Court may order the preparation and provision to the Court of such medical, psychiatric, prison 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 shall inform the Supreme Court after the offender has been convicted of the offence.
- (2) An application under section 65(3) shall be made not later than 14 days after the conviction.
- (3) On being informed under subsection (1), the Supreme Court shall remand the offender in custody and shall not admit the offender to bail.

## **67 Adjourment**

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 shall 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 shall give reasons for imposing the sentence.
- (2) Reasons referred to in subsection (1) shall 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) shall 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) shall 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 shall 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 shall 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 shall give directions to enable the application to be heard.
- (4) Subject to any directions given by the court, the application shall 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 shall:
  - (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;
  - (b) takes the place of the indefinite sentence; and
  - (c) shall 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 referred to in subsection (1), the term of imprisonment is taken, for the purposes of 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) shall comply with the request.



- (3) A report referred to in subsection (1) shall 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 shall 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 shall bring the offender before the Supreme Court.

- (3) On the hearing of an application made under section 72 or 73, the Supreme Court may order the person in charge of the place where the offender is imprisoned to bring the offender before the Supreme Court.
- (4) Where the offender acts in a way that makes the hearing of the evidence or application in the offender's presence impracticable, the Supreme Court may order that:
  - (a) the offender be removed; and
  - (b) the hearing of the application continue in the offender's absence.
- (5) Where the Supreme Court is satisfied that the offender is unable to be present during the hearing of the evidence or application because of the offender's illness or another reason, the Supreme Court may allow the offender to be absent during the whole or a part of the hearing if it is satisfied that:
  - (a) the offender's interests will not be prejudiced by the hearing continuing in the offender's absence; and
  - (b) the interests of justice require that the hearing should continue in the offender's absence.

## **Division 6      Aggravated property offences**

### **78A      Purpose**

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

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

- (1) A court that finds a person guilty of an aggravated property offence must take into account the purpose of this Division before sentencing the person in relation to the offence.
- (2) A court that records a conviction against an offender found guilty of an aggravated property offence must:
  - (a) order the offender to serve a term of imprisonment; or
  - (b) order the offender to participate in an approved project under a community work order,

unless there are exceptional circumstances in relation to the offence or the offender.

- (3) A court that orders an offender to serve a term of imprisonment in accordance with subsection (2)(a) may only wholly suspend the sentence on the offender entering into a home detention order.
- (4) Nothing in subsection (2) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order made in accordance with the subsection.

## **Division 6A Imprisonment for violent offences**

### **78BA Imprisonment for violent offences**

- (1) Where a court finds an offender guilty of a violent offence and the offender has one or more times before (whether prior to or after this section commencing) been found guilty of a violent offence, the court must record a conviction and must order that the offender serve:
  - (a) a term of actual imprisonment; or
  - (b) a term of imprisonment that is suspended by it partly but not wholly.
- (2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

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

### **78BB Imprisonment for sexual offences**

- (1) Where a court finds an offender guilty of a sexual offence, the court must record a conviction and must order that the offender serve:
  - (a) a term of actual imprisonment; or
  - (b) a term of imprisonment that is suspended by it partly but not wholly.
- (2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

## Division 8 Perpetrators' program orders

### 78H Interpretation

(1) In this Division:

**domestic violence offence** has the meaning given in subsection (2).

**domestic relationship** has the meaning given in section 3(2) of the *Domestic Violence Act*.

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

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

**restraining order** has the meaning given in section 3(1) of the *Domestic Violence Act*.

(2) For the purposes of this Division, an offender is to be taken to have been found guilty of a domestic violence offence:

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

**78J Declaration of perpetrators' program**

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

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

- (1) Where a court finds a person guilty of:
  - (a) a domestic violence offence; or
  - (b) an offence under section 10(1) of the *Domestic Violence Act*,the court may order the offender to participate in a perpetrators' program on the terms and conditions specified in the order.
- (2) A court may only make an order under subsection (1) if the court receives a report from the Director stating:
  - (a) that the offender is a suitable person to participate in the perpetrators' program; and
  - (b) that there is a place available in the perpetrators' program for the offender.
- (3) A court:
  - (a) may only make an order under subsection (1) after it has made any other sentencing order that it thinks fit or that it is required to make in relation to the offence; and
  - (b) in making any other sentencing order, must not take into account the fact that it can make an order under subsection (1).
- (4) A court must not make an order under subsection (1) if the offender has been found guilty of an offence under section 162 of the Criminal Code.
- (5) A court may make an order under subsection (1) without the offender's consent.

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

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

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

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

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

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

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

**78N Breach of perpetrators' program**

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

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

Penalty:            \$5,000.

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

## **Part 4                      Mental health orders**

### **78P                      Interpretation**

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



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**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*;
  - (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* 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* 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;
  - (b) whether the person must be kept under guard at the approved treatment facility;
  - (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 prison.
- (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* 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*,the person must be:
  - (c) taken to a prison 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 Subdivision 3 of Division 5 of Part 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* 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 prison 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* 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;
  - (b) a prescribed person or a member of a prescribed class of persons;
  - (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 Court of Summary Jurisdiction – 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:

- (a) to pay compensation for injury suffered by a person in the course of or in connection with the commission of an offence;
- (b) to make restitution of property taken in the course of or in connection with the commission of an offence; and/or
- (c) to 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, &c.**

- (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/or cleaning up a thing used in or associated with the commission of the offence.
- (2) For the purposes of 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.
- (3) Where a court makes an order under this Division because of subsection (2), then, notwithstanding section 107, the offender has the same right of appeal as if the court had convicted the offender of the offence in relation to which the order was made.
- (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 shall 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;
- (b) the person to whom restitution is to be made or compensation is, or costs are, to be paid;
- (c) the time within which restitution is to be made or compensation is, or costs are, to be paid; 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) shall 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, may extend the time stated in the order within which the restitution is to be made or the compensation is, or costs are, to be paid.
- (2) A court which grants an extension of time under subsection (1) may vary the extended time.

**95            Payment of compensation by instalment**

Where compensation is ordered to be paid by instalments and an instalment is not paid, the same proceedings may be taken as if the original order had directed that the unpaid instalments be paid in a single amount and the amount had not been paid.

**96            Application by person against whom order made**

An offender ordered by a court to pay compensation under section 88 may apply to the proper officer of the court in the manner prescribed by the rules of the court for an order:

- (a) that time be allowed for the payment of the compensation;
- (b) that the compensation be paid by instalments; or
- (c) for the variation of an order providing for the compensation to be paid by instalments.

**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 shall be taken into account in any award of damages.

**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:

- (a) remain in Australia or the Territory;
- (b) not apply for or obtain an Australian passport; and/or
- (c) surrender every passport, whether Australian or foreign, held by the offender.

- (2) An offender who contravenes or fails to comply with an order made under subsection (1) is guilty of an offence.

Penalty:        Imprisonment for 2 years.

- (3) Where a court makes an order under subsection (1)(c):

- (a) the passport or passports shall be given to the proper officer of the court;
- (b) the proper officer of the court shall cause the passport or passports to be kept 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 shall, 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 shall, as soon as is practicable after the order is made, give a copy of it to the Minister administering the *Passports Act 1938* of the Commonwealth.

- (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 shall be given to the proper officer of the court; and

- (b) the proper officer shall cause the passport to be kept 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 shall cause it to be returned to the offender.

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

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

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

### **Division 1                Conditional 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 shall 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,
- as the case may be.

#### **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 shall, 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;
  - (b) the consequences that may follow if the offender fails without reasonable excuse to comply with the proposed order;
  - (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.

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

### **Subdivision 1          Information, reports, &c.**

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

- (1) A court shall, before imposing a sentence on an offender that requires the offender to be under the supervision of a probation officer, have regard to a report of the Director 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 Division 1 of Part 5, receive such information as it thinks fit to enable it to make the proper order.

#### **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;
- (b) psychological or emotional suffering, including grief;
- (ba) contraction or fear of contraction of a sexually transmissible medical condition;
- (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 referred to 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 the purposes of 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 the purposes of 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 shall 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 shall 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;
- (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 shall 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 shall 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 shall not take into account a written victim impact statement unless it has been signed.
- (8) A court shall not take into account a victim impact statement or a victim report, where the statement or report:
  - (a) is in writing, unless a copy of the statement or report is provided to the offender; or
  - (b) is to be presented to the court orally, unless a written or oral summary of the contents of the statement or report is provided to the offender.

- (9) A legal practitioner representing the offender or, with the leave of the court, the offender:
- (a) where a victim impact statement is in writing, may cross-examine the person who signed the statement; or
  - (b) where a victim impact statement is presented to the court orally, may cross-examine the person, not being the prosecutor, presenting the statement,
- about its contents.

### **Division 3                      Taking other charges into account**

#### **107                      Disposal of other pending charges**

- (1) Where a court finds a person guilty of an offence or offences, not being or including treason or murder, and the court is satisfied that:
- (a) there has been filed in court a document, in the prescribed form, containing a list of other offences, whether indictable or summary, not being or including treason or murder, in respect of which the offender has been charged or committed for trial;
  - (b) a copy of the document has been provided to the offender; and
  - (c) in all the circumstances it is proper to do so,
- the court may, with the consent of the prosecution, before passing sentence ask the offender whether the offender admits having committed all or any of the listed offences and wishes them to be taken into account by the court when passing sentence for the offence or offences of which the offender has been found guilty.
- (2) A document referred to in subsection (1) shall be signed by:
- (a) a member of the Police Force or the prosecutor; and
  - (b) the offender.
- (3) Where an offender admits having committed all or any of the offences listed in a document under subsection (1) and wishes them to be taken into account, the court may, if it thinks fit, do so but shall not impose a sentence in respect of an offence of which the offender has been found guilty in excess of the maximum sentence that might have been imposed if no listed offence had been taken into account.

- (4) Where an offence is taken into account under this section, the court may make any order that it would have been empowered to make under Part 5 if the offender had been convicted before the court of the offence but shall not otherwise impose any separate punishment for the offence.
- (5) An order made under subsection (4) in respect of an offence taken into account may be appealed against as if it had been made on the conviction of the offender for that offence.
- (6) Notwithstanding anything in subsection (3), a court shall not take into account a charge of an offence which it would not have jurisdiction to try even with the consent of the person charged with it.
- (7) The court shall 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 shall 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 the purposes of this section is not admissible in evidence in any proceeding taken or continued in respect of the offence to which it relates.
- (10) A person shall not, for any purpose, be taken to have been convicted of an 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 a crime, reference may likewise be made to, or evidence may likewise be given of, the taking into account under this section of any other offence or offences when sentence was imposed in respect of that conviction.
- (12) The fact that an offence was taken into account under this section may be proved in the same manner as the conviction or convictions in respect of which it was taken into account may be proved.

## **Division 4            Passing of sentence**

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

- (1) The sentence for an offence may be imposed in open court at any time and place in the Territory.



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

#### **109        Sentence by another judge or magistrate**

- (1) Subsection (2) applies where, on the trial of an offence:
  - (a) a verdict of guilty has been found or a plea of guilty has been received but no judgment or sentence has been given or passed on it; and
  - (b) the judge or magistrate who presided at the trial or received the plea (as the case requires) goes out of office or it appears to be probable that because of incapacitating illness or other serious cause he or she will be unable to give judgment or pass sentence within a reasonable time.
- (2) Where this subsection applies, any other judge or magistrate (as the case requires) may in open court take (if necessary) all steps preliminary to the giving of judgment or the passing of sentence and may give judgment or pass sentence.
- (3) In all cases where it is possible so to do, the judge or magistrate referred to in subsection (1)(b) shall be consulted before judgment is given or sentence is passed under subsection (2).
- (4) Non-compliance with subsection (3) does not affect the validity of the judgment or sentence.

(5) The question whether it appears probable that a judge or magistrate will be unable for the reasons referred to in subsection (1)(b) to give judgment or pass sentence within a reasonable time shall be decided by the Chief Justice or the Chief Magistrate (as the case requires) and his or her decision is not liable to be challenged on any ground whatsoever.

(6) Where, on the trial of an offence:

(a) a verdict of guilty has been found or a plea of guilty has been received; and

(b) all steps preliminary to the giving of judgment or the passing of sentence have been taken but no judgment or sentence has been given or passed,

any other judge or magistrate (as the case requires) may give the judgment or pass the sentence determined by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(7) A judgment given or sentence passed under subsection (2) or (6) has for all purposes the same effects and consequences as if it had been given or passed by the judge or magistrate who presided at the trial or received the plea (as the case requires).

(8) This section does not take away from any power of a judge or magistrate under statute or at common law.

#### **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 Court of Summary Jurisdiction, 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) shall 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) shall give the parties an opportunity to be heard;
  - (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;
  - (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 member of the Police Force may, without warrant, arrest the person released under the remission order.
- (5) Where information is laid before a Justice 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 may issue a warrant for the arrest of the person released under the remission order.
- (6) A Justice shall not issue a warrant under subsection (5) unless:
  - (a) the informant and any other person furnishing information required by the Justice concerning the issue of the warrant furnishes the information on oath; and

- (b) the Justice 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 shall, as soon as practicable, be brought before a magistrate and the magistrate shall, if satisfied that the remission order has been revoked, issue a warrant for the commitment of the person to prison 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 shall, as soon as practicable, be brought before a magistrate and, if the magistrate is satisfied that the person brought before him or her has, without lawful excuse, contravened, or failed to comply with a condition of, the remission order, the magistrate may revoke the remission order.
- (9) A person brought before a magistrate in accordance with subsection (7) or (8) shall, unless the magistrate determines otherwise, be kept in custody until the magistrate 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 magistrate may issue a warrant for the commitment of the person to prison 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 a magistrate 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 shall, 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) Division 2 of Part VI of the *Justices Act* applies to and in relation to an appeal made under subsection (11).

## **Part 10                      Prerogative of mercy**

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

- (1) The Administrator may, in any case in which he or she is authorised on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment, do so by directing that the person be released, even before the end of a non-parole period:
  - (a) on giving an undertaking; or
  - (b) on parole under and subject to the *Parole of Prisoners Act*.
- (2) An undertaking under subsection (1)(a):
  - (a) shall have as a condition that the person be of good behaviour;
  - (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 *Prisons (Correctional Services) Act*; 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 shall be not less than the unexpired term of the original sentence.
- (4) A person who gives an undertaking under subsection (1)(a) shall be released from custody.
- (4A) A member of the Police Force 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 purposes of the application of sections 137 and 138 of the *Police Administration Act*, 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 Court of Summary Jurisdiction 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 to prison for the unexpired term of the original sentence.

- (6) Except with the consent of the person who gave the undertaking, the Court of Summary Jurisdiction shall 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 Court of Summary Jurisdiction 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 Court of Summary Jurisdiction may sign any warrant that may be necessary for the purpose of 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 Court of Summary Jurisdiction recommit a person to prison under this section, the *Prisons (Correctional Services) Act* 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 shall be 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 prison 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**

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

- (1) A court shall not make an order under Part 3 unless the offender in respect of whom the order is to be made is before the court.



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

- (a) an order imposing a fine under section 16; or
- (b) an order made on the hearing of an appeal.

**118 Fine in addition to or instead of imprisonment**

An offence against an Act or an instrument of a legislative or administrative character that is punishable by a term of imprisonment (other than life) is, unless the contrary intention appears, punishable, in addition to or instead of imprisonment, by a maximum fine that is equal to the product obtained by multiplying 50 penalty units or, in the case of a body corporate, 250 penalty units by the term of imprisonment expressed in years or a fraction of a year, where the term of imprisonment is less than 12 months.

**119 Location and effect of penalty provisions**

A penalty set out at the foot of a provision of an Act or an instrument of a legislative or administrative character shall, unless the context otherwise requires, be construed as indicating that a contravention (whether by act or omission) of the provision is an offence against the Act or instrument punishable on a finding of guilt by a penalty not exceeding that set out.

**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 Jurisdiction of Court of Summary Jurisdiction**

Where the Court of Summary Jurisdiction has jurisdiction under an Act to hear and determine a crime in a summary manner, the court shall not impose on the person found guilty of the crime a sentence of imprisonment of more than 5 years or a fine greater than 250 penalty units.

**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 the purposes of 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;
  - (b) the procedure applicable to its prosecution;
  - (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.

**125 Procedural rules and regulations**

The power to make rules under the *Supreme Court Act* and to make regulations under the *Justices Act* extends to and applies in relation to the making of rules or regulations (as the case requires) for and with respect to the manner of making applications under this Act, court procedures and proceedings, the functions of a proper officer of the court and all other matters relating to the functions of a court under this Act.

**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.

**127 Service of documents, &c.**

Subject to this Act, a document required to be given to or served on a person under this Act may be given to or served on the person:

- (a) by delivering it to the person; or
- (b) by leaving it at the person's last-known or most usual place of residence or business with some other person who is apparently over the age of 16 years and living or working there.

**128 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may:

- (a) be of general or limited application;
- (b) confer a discretionary authority or impose a duty on a specified person or a specified class of person;
- (c) prescribe the fees payable in respect of any matter under this Act; and/or
- (d) prescribe penalties, not exceeding \$2,000, for offences against the Regulations.

**129 Repeal**

The Acts and Ordinances specified in Schedule 4 are repealed.

**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* 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* 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.

## **Schedule 2**

section 3(1)

### **Violent offences**

1. An offence against section 54, 55, 163, 165, 166, 175, 176, 177, 181, 182, 185 or 186 of the Criminal Code.
2. An offence section 188 of the Criminal Code, other than where the circumstance of aggravation specified in section 188(2)(k) exists.
3. An offence against section 189A, 190, 191 or 193 of the Criminal Code.

## **Schedule 3**

section 3(1)

### **Sexual offences**

1. An offence against section 125B or 125C of the Criminal Code, where the offender is an individual.
2. An offence against section 128 of the Criminal Code, where the circumstance of aggravation specified in section 128(2) exists.
3. An offence against section 129, 130, 131, 131A, 132, 134, 135 or 138 of the Criminal Code.
4. An offence against section 188 of the Criminal Code, where the circumstance of aggravation specified in section 188(2)(k) exists.
5. An offence against section 192 or 192B of the Criminal Code.

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**Schedule 4**

section 129

**Acts and Ordinances repealed**

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



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## ENDNOTES

### 1 KEY

Key to abbreviations

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

### 2 LIST OF LEGISLATION

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

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

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

Assent date	31 October 1996
Commenced	1 March 1997 ( <i>Gaz</i> 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 ( <i>Gaz</i> S7, 7 March 1997)

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

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

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

Assent date	30 March 1998
Commenced	29 April 1998 ( <i>Gaz</i> 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 ( <i>Gaz</i> 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 <i>Penalties Act 1999</i> (Act No. 2, 1999) and <i>Gaz</i> G11, 24 March 1999, p 3)

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**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 <i>Mental Health and Related Services (Consequential Amendments) Act 1999</i> (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 <i>Mental Health and Related Services Act 1998</i> (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 <i>Fines and Penalties (Recovery) Act 2001</i> (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 <i>Criminal Property Forfeiture Act 2002</i> (Act No. 35, 2002) and Gaz G21, 28 May 2003, p 2)

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**SAVINGS AND TRANSITIONAL PROVISIONS**

s 4 *Sentencing Amendment Act (No. 2) 1998* (Act No. 91, 1998)  
s 27 *Sentencing Amendment Act (No. 2) 1999* (Act No. 33, 1999)  
pts 3 and 4 *Sentencing of Juveniles (Miscellaneous Provisions) Act 2000* (Act No. 17, 2000)  
s 11 *Sentencing Amendment Act (No. 3) 2001* (Act No. 55, 2001)

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## 4 LIST OF AMENDMENTS

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
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
s 15	amd No. 65, 1996, s 4; No. 33, 1999, s 6; No. 66, 2001, s 3
s 17	amd No. 60, 2001, s 13
s 19	sub No. 60, 2001, s 13
ss 20 – 23	rep No. 60, 2001, s 13
s 25	rep No. 60, 2001, s 13
s 26	sub No. 60, 2001, s 13
ss 27 – 28	amd No. 55, 2001, s 10 rep No. 60, 2001, s 13
s 29	amd No. 33, 1999, s 7; No. 55, 2001, s 10 rep No. 60, 2001, s 13
ss 30 – 31	amd No. 55, 2001, s 10 rep No. 60, 2001, s 13
ss 32 – 33	rep No. 60, 2001, s 13
s 33A	ins No. 55, 2001, s 5
pt 3	
div 4 hdg	amd No. 55, 2001, s 10
s 34	amd No. 55, 2001, s 10
s 35	amd No. 33, 1999, s 8; No. 55, 2001, s 10
ss 36 – 38	amd No. 55, 2001, s 10
s 39	amd No. 65, 1996, s 5; No. 55, 2001, s 10
s 40	amd No. 33, 1999, s 9
s 42	amd No. 33, 1999, s 10
s 43	sub No. 65, 1996, s 6 amd No. 33, 1999, s 11; No. 66, 2001, s 4
s 45	amd No. 33, 1999, s 12
s 48	sub No. 65, 1996, s 7 amd No. 33, 1999, s 13
s 51	amd No. 14, 1998, s 5; No. 55, 2001, s 10
s 52	amd No. 14, 1998, s 6; No. 33, 1999, s 14; No. 55, 2001, s 10
s 53	amd No. 14, 1998, s 7; No. 38, 2001, s 4; No. 55, 2001, s 10
s 54	amd No. 14, 1998, s 8; No. 55, 2001, s 10
s 55A	ins No. 38, 2001, s 5
s 57	am No. 38, 2001, s 6
s 58	amd No. 14, 1998, s 9 exp No. 39, 1995, s 58(5) and (6)
s 63	amd No. 11, 1999, s 4
s 65	amd No. 33, 1999
pt 3	
div 6 hdg	ins No. 65, 1996, s 8 amd No. 14, 1998, s 12 sub No. 55, 2001, s 6
pt 3	
div 6	
sdiv 1 hdg	ins No. 65, 1996, s. 8 om No. 14, 1998, s 13
s 78A	ins No. 65, 1996, s 8 amd No. 14, 1998, s 10; No. 33, 1999, s 16; No. 17, 2000, s 5 sub No. 55, 2001, s 6
s 78B	ins No. 65, 1996, s 8 amd No. 14, 1998, s 11 sub No. 55, 2001, s 6

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pt 3	
div 6A hdg	ins No. 33, 1999, s 17
s 78BA	ins No. 33, 1999, s 17
pt 3	
div 6B hdg	ins No. 33, 1999, s 17
s 78BB	ins No. 33, 1999, s 17
pt 3	
div 7 hdg	ins No. 65, 1996, s 8 amd No. 14, 1998, s 14
	rep No. 55, 2001, s 7
s 78C	ins No. 65, 1996, s 8 amd No. 14, 1998, s 15
	rep No. 55, 2001, s 7
s 78D	ins No. 65, 1996, s 8 amd No. 14, 1998, s 16
	rep No. 55, 2001, s 7
s 78E	ins No. 65, 1996, s 8 amd No. 14, 1998, s 17
	rep No. 55, 2001, s 7
s 78F	ins No. 65, 1996, s 8 amd No. 14, 1998, s 18
	rep No. 55, 2001, s 7
s 78G	ins No. 65, 1996, s 8 amd No. 14, 1998, s 19
	rep No. 55, 2001, s 7
pt 3	
div 8 hdg	ins No. 91, 1998, s 3
s 78H	ins No. 91, 1998, s 3 amd No. 33, 1999, s 18
ss 78J – 78N	ins No. 91, 1998, s 3
s 78P	amd No. 33, 1999, s 19; No. 11, 1999, s 3; No. 55, 2001, s 10
s 79	amd No. 17, 1997, s 17 sub No. 11, 1999, s 3
s 80	amd No. 17, 1997, s 17; No. 14, 1998, s 20 sub No. 11, 1999, s 3
s 81	amd No. 17, 1997, s 17 sub No. 11, 1999, s 3
s 82	sub No. 11, 1999, s 3
ss 83 – 84	amd No. 17, 1997, s 17 sub No. 11, 1999, s 3
ss 85 – 86	sub No. 11, 1999, s 3
s 99A	ins No. 33, 1999, s 20
pt 6	
div 2	
sdiv 1 hdg	ins No. 47, 1996, s 4
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
s 106B	ins No. 47, 1996, s 5 amd No. 33, 1999, s 21; No. 55, 2001, s 8
s 115	amd No. 66, 2001, s 5
s 118	amd No. 4, 1999, s 3
s 122	amd No. 4, 1999, s 4
s 129	amd No. 65, 1996, s 9; No. 33, 1999, s 22
s 130	amd No. 33, 1999, s 23

## ENDNOTES

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sch 1	ins No. 65, 1996, s 10 amd No. 14, 1998, s 21; No. 33, 1999, s 24 rep No. 55, 2001, s 9
sch 2 – 3	ins No. 33, 1999, s 25
sch 4	amd No. 65, 1996, s 11 renum No. 33, 1999, s 26