



Australian Capital Territory

Crimes (Sentencing) Act 2005

A2005-58

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Australian Capital Territory

Crimes (Sentencing) Act 2005

A2005-58

An Act to consolidate and reform the law about sentencing offenders, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2003 209B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Chapter 1 Preliminary

1 Name of Act

This Act is the *Crimes (Sentencing) Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*domestic violence offence*—see the *Domestic Violence and Protection Orders Act 2001*, section 9 (2).’ means that the term ‘domestic violence offence’ is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, section 133 deals with the meaning of offence penalties that are expressed in penalty units.

Chapter 2 Objects and important concepts

6 Objects of Act

The objects of this Act include the following:

- (a) to promote respect for the law and the maintenance of a just and safe society;
- (b) to provide a range of sentencing options;
- (c) to maximise the opportunity for imposing sentences that are constructively adapted to individual offenders;
- (d) to promote flexibility in sentencing;
- (e) to consolidate legislation relating to the imposition of sentences.

7 Purposes of sentencing

- (1) A court may impose a sentence on an offender for 1 or more of the following purposes:
 - (a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;
 - (b) to prevent crime by deterring the offender and other people from committing the same or similar offences;
 - (c) to protect the community from the offender;
 - (d) to promote the rehabilitation of the offender;
 - (e) to make the offender accountable for his or her actions;
 - (f) to denounce the conduct of the offender;

- (g) to recognise the harm done to the victim of the crime and the community.
- (2) To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.

8 Meaning of *offender*

In this Act:

offender—

- (a) means a person convicted or found guilty of an offence by a court; and
- (b) for part 4.2 (Pre-sentence reports)—see section 40.

Chapter 3 Sentencing and non-conviction options

Part 3.1 General

9 Imposition of penalties

- (1) The penalty a court may impose for an offence is the penalty provided under this Act or any other territory law.
- (2) Chapter 4 (Sentencing procedures generally) applies to the imposition of all penalties imposed by a court, whether under this Act or otherwise.

Note 1 Under this Act, a court has the following sentencing and non-conviction options:

- imprisonment served by full-time detention in a correctional centre (see s 10 and ch 5)
- imprisonment served by periodic detention in a correctional centre (see s 11 and pt 5.4)
- suspension of a sentence of imprisonment (see s 12)
- good behaviour order (see s 13 and ch 6)
- fine order (see s 14 and s 15)
- driver licence disqualification order (see s 16)
- non-conviction order (see s 17 and s 18)
- reparation order (see s 19, s 20 and ch 7)
- non-association order (see pt 3.4)
- place restriction order (see pt 3.4)
- deferred sentence order (see s 27 and ch 8).

Note 2 A court may also impose a **combination sentence** combining 2 or more of the options listed in note 1 or otherwise available under a territory law (see pt 3.6).

Part 3.2 Sentences of imprisonment

10 Imprisonment

- (1) This section applies if a court is sentencing an offender convicted of an offence punishable by imprisonment.
- (2) The court may, by order, sentence the offender to imprisonment, for all or part of the term of the sentence, if the court is satisfied, having considered possible alternatives, that no other penalty is appropriate.

Note An order sentencing an offender to imprisonment may be part of a combination sentence together with other sentencing options (see pt 3.6).

- (3) If the court sentences the offender to imprisonment, the sentence must be served by full-time detention in a correctional centre, unless—
 - (a) the court orders otherwise; or
 - (b) the offender is released from full-time detention under this Act or another territory law.

Example for par (a)

the court makes a suspended sentence order

Examples for par (b)

- 1 the court sets a period of the sentence to be served by periodic detention
- 2 release on parole under the *Crimes (Sentence Administration) Act 2005*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If the court sentences the offender to imprisonment, the court must record the reasons for its decision.
- (5) Failure to comply with subsection (4) does not invalidate the sentence of imprisonment.

- (6) This section also applies subject to any contrary intention in the law that directly or indirectly creates the offence or directly or indirectly affects its scope or operation.
- (7) This section is subject to chapter 5 (Imprisonment).

11 Periodic detention

- (1) This section applies if—
 - (a) an offender is convicted of an offence; and
 - (b) the court sentences the offender to imprisonment for the offence.
- (2) The court may, in the order sentencing the offender to imprisonment, set a period of the sentence of imprisonment (a *periodic detention period*) to be served by periodic detention.

Note A periodic detention period may be part of a combination sentence together with other sentencing options (see pt 3.6).

- (3) The periodic detention period—
 - (a) may be for all or part of the offender's sentence of imprisonment; but
 - (b) must be for a period of at least 3 months and not longer than 2 years.
- (4) When the court sets the periodic detention period, the court must state—
 - (a) when the periodic detention period starts and ends; and
 - (b) the day the first detention period under the *Crimes (Sentence Administration) Act 2005* for the offender is to start.

- (5) The court may also recommend any condition, not inconsistent with this Act or the *Crimes (Sentence Administration) Act 2005*, that the court considers appropriate for the offender's periodic detention.

Examples of conditions

see the examples to section 13 (3) (g) (Good behaviour orders)

Note 1 The sentence administration board may consider any recommendation made by the court but is not bound to follow the recommendation (see *Crimes (Sentence Administration) Act 2005*).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) This section is subject to chapter 5 (Imprisonment).

Note See, in particular, pt 5.4 about eligibility and suitability for, and other matters in relation to, periodic detention.

12 Suspended sentences

- (1) This section applies if—
- (a) an offender is convicted of an offence; and
 - (b) the court sentences the offender to imprisonment for the offence.
- (2) The court may make an order (a *suspended sentence order*) suspending all or part of the sentence of imprisonment.
- (3) If the court makes a suspended sentence order, the court must also make a good behaviour order for the period during which the sentence is suspended or for any longer period that the court considers appropriate.

Note A suspended sentence order may be part of a combination sentence together with other sentencing options (see pt 3.6).

- (4) If the court makes a suspended sentence order fully suspending the sentence of imprisonment, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note For notice of a partly suspended sentence of imprisonment, see s 84.

- (5) Failure to comply with subsection (4) does not invalidate the suspended sentence order.
- (6) This section is subject to the following provisions:
- (a) section 13 (Good behaviour orders);
 - (b) chapter 5 (Imprisonment);
 - (c) chapter 6 (Good behaviour orders).

Part 3.3 Non-custodial sentences

13 Good behaviour orders

- (1) This section applies if an offender is convicted or found guilty of an offence.

Note If a good behaviour order is made without convicting the offender (see s 17), it is also a non-conviction order (see s 17 (2)).

- (2) The court may make an order (a **good behaviour order**) requiring the offender to sign an undertaking to comply with the offender's good behaviour obligations under the *Crimes (Sentence Administration) Act 2005* for a stated period.

- (3) A good behaviour order may include any or all of the following conditions:

(a) that the offender give security for a stated amount, with or without sureties, for compliance with the order;

(b) a community service condition;

Note A community service condition must not be included in the order unless the offender is convicted of the offence (see s 87).

(c) a rehabilitation program condition;

Note A good behaviour order that includes a rehabilitation program condition must also include a probation condition (see s 95).

(d) a probation condition;

(e) that the offender comply with a reparation order;

(f) a condition prescribed by regulation for this paragraph;

- (g) any other condition, not inconsistent with this Act or the *Crimes (Sentence Administration) Act 2005*, that the court considers appropriate.

Examples of conditions for par (g)

- 1 that the offender undertake medical treatment and supervision (eg by taking medication and cooperating with medical assessments)
- 2 that the offender supply samples of blood, breath, hair, saliva or urine for alcohol or drug testing if required by a corrections officer
- 3 that the offender attend educational, vocational, psychological, psychiatric or other programs or counselling
- 4 that the offender not drive a motor vehicle or consume alcohol or non-prescription drugs or medications
- 5 that the offender regularly attend alcohol or drug management programs

Note 1 A court may also issue assessment orders and treatment orders under the *Drugs of Dependence Act 1989*, pt 9 providing for the participation of offenders in drug treatment programs.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If the offence is punishable by imprisonment, a good behaviour order—
- (a) may be made instead of imposing a sentence of imprisonment or as part of a combination sentence that includes imprisonment; and
 - (b) may apply to all or part of the term of the sentence.
- (5) Subsection (4) does not, by implication, limit the sentences that a court may impose under this Act or another territory law.
- (6) If the good behaviour order includes a community service condition, it is a community service order.
- (7) If the good behaviour order includes a rehabilitation program condition, it is a rehabilitation program order.

- (8) This section is subject to section 13 (Good behaviour orders) and chapter 6 (Good behaviour orders).

14 Fines—orders to pay

- (1) This section applies if an offender is convicted of an offence that is punishable by a fine.
- (2) The court may make an order (a *fine order*) directing that the offender pay a fine for the offence.

Note The Legislation Act, s 133, s 135 and s 136 deal with penalty units and the effect of the statement of a penalty for an offence in a territory law.

- (3) The court is not required to inquire into the offender's financial circumstances before making a fine order but must consider any facts established by the offender about the offender's financial circumstances.

Note Section 33 (1) (n) requires the court, in deciding how to sentence an offender, to consider the offender's financial circumstances if relevant and known to the court.

- (4) The court may make a fine order for the offender whether or not the offence is punishable by a fine otherwise than under this part.
- (5) If a court makes a fine order, the court must state in the order—
- (a) the amount of the fine; and
 - (b) how the fine is to be paid (for example, by stated instalments at stated times).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) As soon as practicable after the court makes a fine order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (7) Failure to comply with subsection (6) does not invalidate the fine order.

15 Fines—maximum amounts

The maximum fine that a court may impose for an offence is—

- (a) if the offence is punishable by a fine otherwise than under this part—the maximum amount fixed for the fine; or
- (b) in any other case—
- (i) if the Supreme Court makes the order—\$10 000; or
 - (ii) if the Magistrates Court makes the order—\$2 000.

16 Driver licence disqualification orders—motor vehicle theft

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence against a territory law involving the theft of a motor vehicle; or
- (b) an offender is convicted or found guilty of an offence against the Criminal Code, section 318 (Taking etc motor vehicle without consent).

Example for par (a)

an offence against any of the following provisions of the Criminal Code in relation to property that is a motor vehicle:

- s 308 (Theft)
- s 309 (Robbery)
- s 310 (Aggravated robbery)

- s 311 (Burglary)
- s 312 (Aggravated burglary)

Note 1 **Found guilty** of an offence includes making a non-conviction order for the offence or taking the offence into account under s 57 (see Legislation Act, dict, pt 1).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The court sentencing the offender may make an order (a **driver licence disqualification order**) disqualifying the offender from holding or obtaining a driver licence under the *Road Transport (Driver Licensing) Act 1999* for a period the court considers appropriate.

Note The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

- (3) To remove any doubt, this section is additional to the court's other powers under this Act or any other territory law, including, for example, the road transport legislation.
- (4) As soon as practicable after the court makes a driver licence disqualification order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) the road transport authority.

Note If the order is part of a combination sentence, a single notice may be given to the offender for the sentences (see Legislation Act, s 49).

- (5) Failure to comply with subsection (4) does not invalidate the driver licence disqualification order.

- (6) In this section:

motor vehicle—see the Criminal Code, section 318 (3).

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

17 Non-conviction orders—general

- (1) This section applies if an offender is found guilty of an offence.
- (2) Without convicting the offender of the offence, the court may make either of the following orders (each of which is a *non-conviction order*):

- (a) an order directing that the charge be dismissed, if the court is satisfied that it is not appropriate to impose any punishment (other than nominal punishment) on the offender;
- (b) a good behaviour order under section 13.

Note A good behaviour order for a non-conviction order cannot include a community service condition because the offender is not convicted of the offence (see s 87).

- (3) In deciding whether to make a non-conviction order for the offender, the court must consider the following:
- (a) the offender's character, antecedents, age, health and mental condition;
- (b) the seriousness of the offence;
- (c) any extenuating circumstances in which the offence was committed.

- (4) The court may also consider anything else the court considers relevant.

Note An appeal may lie to the Supreme Court from a decision of the Magistrates Court to make a non-conviction order for an offender in the same circumstances as an appeal from a decision of the Magistrates

Court in relation to an offender's conviction for an offence (see *Magistrates Court Act 1930*, pt 3.10).

- (5) If the court makes a non-conviction order under subsection (2) (a) for the offender, the court must, as soon as practicable after the order is made, ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note For notice of a good behaviour order under s (2) (b), see s 103.

- (6) Failure to comply with subsection (5) does not invalidate the non-conviction order.
- (7) If the court makes a non-conviction order under subsection (2) (b), the good behaviour order must be for a term of no longer than 3 years.
- (8) This section (other than subsection (7)) is subject to section 13 and chapter 6 (Good behaviour orders).

18 Non-conviction orders—ancillary orders

- (1) This section applies if the court makes a non-conviction order for an offender for an offence.
- (2) The court may make any ancillary order that it could have made if it had convicted the offender of the offence.
- (3) The offender has the same rights of appeal in relation to the making of the ancillary order as the offender would have had if the order had been made on the conviction of the offender for the offence.
- (4) This section is subject to section 134 (Operation of ancillary and restitution orders).
- (5) In this section:

ancillary order means an order or direction in relation to any of the following:

- (a) restitution;

- (b) compensation;
- (c) costs;
- (d) forfeiture;
- (e) destruction;
- (f) disqualification or loss or suspension of a licence or privilege.

Examples

- 1 a reparation order
- 2 the forfeiture of an offensive weapon under the Criminal Code, section 375 (2) (which relates to being found guilty of possessing an offensive weapon with intent to use it in relation to theft)
- 3 a driver licence disqualification order

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

19 Reparation orders—losses and expenses generally

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence against a territory law; and
 - (b) a person (the *injured person*) suffers loss or incurs expense (including any out-of-pocket expense) as a direct result of the commission of the offence.

Note 1 **Found guilty** of an offence includes making a non-conviction order for the offence or taking the offence into account under s 57 (see Legislation Act, dict, pt 1).

Note 2 Certain victims of crimes may claim financial assistance under the *Victims of Crime (Financial Assistance) Act 1983*.

- (2) Before the court sentences the offender or makes a non-conviction order for the offender, the director of public prosecutions may apply to the court for an order under this section.

- (3) On application under subsection (2), or its own initiative, the court may make an order (a **reparation order**) requiring the offender to make reparation to the injured person, by way of a payment of money or otherwise, for the loss or expense.

Note If the offence relates to stolen property, a reparation order may also be made under s 20 (see s 111).

- (4) This section is subject to chapter 7 (Reparation orders) and section 134 (Operation of ancillary and restitution orders).

- (5) In this section:

loss—see the Criminal Code, section 300.

20 Reparation orders—stolen property

- (1) This section applies if an offender is convicted or found guilty of an offence against a territory law in relation to stolen property.

- (2) Before the court sentences the offender or makes a non-conviction order for the offender, the director of public prosecutions may apply to the court for 1 or more orders under this section.

- (3) On application under subsection (2), or its own initiative, the court may make the following orders (each of which is a **reparation order**):

- (a) an order that a person having custody or possession of the stolen property restore it to someone entitled to recover it from the person;
- (b) an order that the offender pay the value of the stolen property to a person who, if the stolen property were in the custody or possession of the offender, would be entitled to recover it from the offender.

Note A reparation order may also be made under s 19 for the same offence (see s 111).

- (4) If the court makes an order under subsection (3) (a), the court, on application under subsection (2), or its own initiative, may also make either or both the following orders (each of which is also a **reparation order**):
- (a) if the court considers that the offender has sold the property to a purchaser who was acting honestly—an order that the offender pay the purchaser an amount not exceeding the amount paid by the purchaser;
 - (b) if the court considers that the offender has borrowed money on the security of the property from a lender acting honestly—an order that the offender pay the lender an amount not exceeding the amount owed to the lender under the loan.
- (5) This section is subject to chapter 7 (Reparation orders) and section 134 (Operation of ancillary and restitution orders).
- (6) In this section:
- stolen property**—see the Criminal Code, section 314 (Receiving—meaning of *stolen property*).

Note Under the Criminal Code, stolen property includes tainted property. Tainted property is the proceeds of the sale of stolen property, or property that is exchanged for stolen property.

Part 3.4 Non-association and place restriction orders

21 Definitions—pt 3.4

In this Act:

non-association order means an order prohibiting an offender from—

- (a) being with a named person, or attempting to be with the person; or
- (b) being with a named person or communicating in any way with the person, or attempting to be with the person or to communicate in any way with the person.

place restriction order means an order prohibiting an offender from being in, or within a stated distance of, a named place or area or attempting to be in, or within the stated distance, of the place or area.

22 Application—pt 3.4

This part applies if a court makes either or both of the following orders for an offender in relation to an offence:

- (a) an order setting a periodic detention period;
- (b) a good behaviour order.

23 Non-association and place restriction orders—when may be made

- (1) The court may make a non-association order or place restriction order for the offender if—
 - (a) the offence is a personal violence offence; and

- (b) the court is satisfied that it is necessary and reasonable to make the order for 1 or more of the following purposes:
 - (i) preventing the offender from harassing anyone or endangering the safety or welfare of anyone;
 - (ii) preventing the offender from committing further offences (including a personal violence offence);
 - (iii) assisting the offender to manage things that may make the offender more likely to commit further offences (including a personal violence offence) if not managed.
- (2) The restriction imposed on the offender by a non-association order or place restriction order, and the period of the order, must not be unreasonably disproportionate to the purpose for which the order is made.
- (3) To remove any doubt, this section is additional to the court's other powers under this Act or any other territory law.
- (4) In this section:
 - harm*—see the Criminal Code, dictionary.
 - personal violence offence* means—
 - (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
 - (b) a domestic violence offence.

24 Non-association and place restriction orders—maximum period

- (1) A non-association order or place restriction order—
 - (a) must be for a period of no longer than 12 months; and
 - (b) must state when it starts and the period for which it operates.

- (2) To remove any doubt, the period of a non-association order or place restriction order is not limited by the term of any other sentence imposed for the offence for which the order is made.

Example

Sean is convicted of an offence. The court decides that the appropriate penalty is 6 months periodic detention and a place restriction order. The place restriction order may be for longer than 6 months (but no longer than 12 months).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**25 Non-association and place restriction orders—
explanation and official notice**

- (1) If a court makes a non-association order or place restriction order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
- (a) the nature of the order; and
 - (b) the offender's obligations under the order; and
 - (c) the consequences if the offender breaches the obligations.

Note An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (2) As soon as practicable after the court makes the non-association order or place restriction order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.
- (3) Failure to comply with this section does not invalidate the non-association order or place restriction order.

26 Non-association order—disclosure of identifying information

- (1) A person commits an offence if the person publishes—
- (a) the fact that a person is someone (other than the offender) to whom a non-association order relates; or
 - (b) any information that could reasonably identify someone (other than the offender) to whom a non-association order relates.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the publication is—
- (a) to a relevant person (see subsection (5)); or
 - (b) to a named person by, or in accordance with, a direction of a court; or
 - (c) part of an official report of a court proceeding and the publication is relevant to the proceeding.
- (3) However, a court must not give a direction under subsection (2) (b) unless it is satisfied that the publication is in the interests of justice.
- (4) An offence against this section is a strict liability offence.
- (5) In this section:

relevant person means any of the following:

- (a) the offender;
- (b) a person (other than the offender) to whom the order relates;
- (c) a police officer;
- (d) anyone involved in the administration of the order, or any other penalty to which the offender is subject in relation to the offence for which the order was made;

- (e) anyone involved in a proceeding for failure to comply with the non-association order;
- (f) anyone stated in the non-association order as someone to whom the information may be published;
- (g) anyone else to whom the information is required or allowed to be published under a law of the Territory, the Commonwealth, a State or another Territory.

Part 3.5 Deferred sentence orders

27 Deferred sentence orders—making

- (1) This section applies if—
 - (a) an offender has been convicted or found guilty by a court of an offence punishable by imprisonment; and
 - (b) the court has not sentenced the offender for the offence; and
 - (c) the offender is neither serving, nor liable to serve, a term of imprisonment for another offence; and
 - (d) the court considers the offender should be given an opportunity to address his or her criminal behaviour, and anything that has contributed to the behaviour, before the court sentences the offender for the offence; and
 - (e) the court is satisfied that it may release the offender on bail under the *Bail Act 1992*.
- (2) The court may make an order (a *deferred sentence order*) requiring the offender to appear before the court at the time and place stated in the order to be sentenced for the offence.

Note The maximum period of the order is 12 months (see s 122 (1)).
- (3) If the court makes a deferred sentence order for the offender, the court must release the offender on bail under the *Bail Act 1992*.
- (4) A deferred sentence order applies to all offences for which the court may sentence the offender, whether or not they are punishable by imprisonment.

- (5) A deferred sentence order may include any condition the court considers appropriate for subsection (1) (d).

Examples

see the examples to section 13 (3) (g) (Good behaviour orders)

Note 1 Bail may be granted subject to conditions (see *Bail Act 1992*, s 25).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (6) This section is subject to chapter 8 (Deferred sentence orders).

Part 3.6 Combination sentences

28 Application—pt 3.6

This part applies if an offender is convicted of an offence.

29 Combination sentences—offences punishable by imprisonment

(1) If the offence is punishable by imprisonment, the court sentencing the offender may impose a sentence (a *combination sentence*) consisting of 2 or more of the following orders:

(a) an order sentencing the offender to imprisonment (whether as full-time detention, periodic detention or a combination of these kinds of imprisonment);

Note A sentence of imprisonment must be served by full-time detention in a correctional centre unless the court orders otherwise, or the offender is released from detention under this Act or another territory law (see s 10 (3)).

(b) a suspended sentence order;

(c) a good behaviour order;

(d) a fine order;

(e) a driver licence disqualification order;

(f) a reparation order;

(g) a non-association order;

(h) a place restriction order;

(i) a treatment order under the *Drugs of Dependence Act 1989*, section 123;

- (j) an order (however described) imposing another penalty available under any other territory law.

Examples

The following are examples of sentences that might be imposed on an offender by a court who has been convicted of an offence punishable by imprisonment:

- 1 a sentence of 18 months as follows:
 - a 12-month periodic detention period
 - a fine order directing payment of \$500 by stated instalments
 - a good behaviour order for 6 months (the remainder of the term of the sentence) that includes conditions requiring the offender to undertake 240 hours community service work
- 2 a sentence of 3 years and 6 months as follows:
 - an order for 2 years imprisonment (ie full-time detention in a correctional centre) with no nonparole period
 - a 1-year periodic detention period and a concurrent non-association order
 - a good behaviour order for 6 months (the remainder of the term of the sentence) and a concurrent non-association order
- 3 a sentence of 2 years as follows:
 - a 1-year periodic detention period and a concurrent place restriction order
 - a good behaviour order for 1 year (the remainder of the term of the sentence)
 - a driver licence disqualification order for all of the sentence.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

30 Combination sentences—offences punishable by fine

- (1) If the offence is not punishable by imprisonment (except in default of payment of a fine), the court sentencing the offender may impose

a sentence (also a *combination sentence*) consisting of 2 or more of the following orders:

- (a) a good behaviour order;
 - (b) a fine order;
 - (c) a driver licence disqualification order;
 - (d) a reparation order;
 - (e) a non-association order;
 - (f) a place restriction order;
 - (g) an order (however described) imposing another penalty available under any other territory law.
- (2) However, the court must not make an order that forms part of the combination sentence unless the court would have power to make the order otherwise than as part of a combination sentence.

31 **Combination sentences—start and end**

For a combination sentence, a court may set the start or end of the period of any part of the sentence, or of any order forming part of the sentence, by reference to anything the court considers appropriate, including, for example—

- (a) a stated day; or
- (b) the lapse of a stated period of time; or
- (c) whenever a stated event happens, or whenever the earlier or later of 2 or more stated events happens.

Example for par (c)

a 5-year combination sentence consisting of the following orders:

- an order for imprisonment (ie full-time detention in a correctional centre) with a 3-year nonparole period

- a good behaviour order and a place restriction order, stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence
- a driver licence disqualification order, also stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Chapter 4 Sentencing procedures generally

Part 4.1 General principles

32 Power to reduce penalties

- (1) If, under a territory law, an offender is liable to imprisonment for life, a court may nevertheless impose a sentence of imprisonment for a stated term.
- (2) If, under a territory law, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.
- (3) If, under a territory law, an offender is liable to a fine of a stated amount, a court may nevertheless make a fine order for a lesser amount.
- (4) This section—
 - (a) is not limited by any other provision of this chapter; and
 - (b) does not limit any discretion the court has, apart from this section, about the imposition of penalties.

33 Sentencing—relevant considerations

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must consider whichever of the following matters are relevant and known to the court:
 - (a) the nature and circumstances of the offence;
 - (b) any other offences required or allowed to be taken into account;

- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—the course of conduct;
- (d) if the personal circumstances of any victim of the offence were known to the offender when the offence was committed—the circumstances;
- (e) any injury, loss or damage resulting from the offence;
- (f) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement;

Note 1 For who may make a victim impact statement, see s 49.

Note 2 The court must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence (see s 53 (1) (b)).

- (g) if a victim of the offence was a pregnant woman—
 - (i) whether the offender knew, or ought reasonably to have known, that the woman was pregnant; and
 - (ii) whether the offender intended to cause, or was reckless about causing, loss of or harm to the pregnancy; and
 - (iii) the loss of or harm to the pregnancy; and
 - (iv) whether the offender intended to cause, or was reckless about causing, the death of or harm to a child born alive as a result of the pregnancy; and
 - (v) the death of or harm to a child born alive as a result of the pregnancy.
- (h) any action the offender may have taken to make reparation for any injury, loss or damage resulting from the offence;
- (i) the degree of responsibility of the offender for the commission of the offence;

- (j) a plea of guilty by the offender (see section 35);
- (k) the nature and extent of any pre-trial disclosures by the defence;
- (l) any assistance by the offender to law enforcement authorities (see section 36);
- (m) the cultural background, character, antecedents, age and physical or mental condition of the offender;
- (n) the financial circumstances of the offender;
- (o) the probable effect that any sentence or order under consideration would have on any of the offender's family or dependants;
- (p) whether the offender was affected by alcohol or a controlled drug when the offence was committed and the circumstances in which the offender became affected;
- (q) the degree to which the offence was the result of provocation, duress or entrapment;
- (r) whether the recording of a conviction or the imposition of a particular penalty would be likely to cause particular hardship to the offender;
- (s) any jury recommendation for mercy;
- (t) whether the offender is voluntarily seeking treatment for any physical or mental condition that may have contributed to the commission of the offence;
- (u) whether the offender was in a position of trust or authority when the offence was committed;
- (v) the reason or reasons why the offender committed the offence;
- (w) whether the offender has demonstrated remorse;

- (x) if the offender has accepted responsibility for the offence to take part in restorative justice under the *Crimes (Restorative Justice) Act 2004*—that fact;
- (y) whether the offender has paid the prescribed penalty in accordance with any infringement notice served on the offender for the offence;

Note For when an infringement notice may be withdrawn after it has been paid, see the *Magistrates Court Act 1930*, s 127 and the *Road Transport (General) Act 1999*, s 31.

- (z) current sentencing practice.
- (2) Without limiting subsection (1), in deciding whether a good behaviour order is an appropriate penalty for an offence, the court must consider the nature and severity of the conditions that may apply to the offender under the order.
 - (3) Subsections (1) and (2) do not limit the matters a court may consider in deciding how an offender should be sentenced (if at all) for an offence.
 - (4) The fact that any relevant factor is known to the court does not require the court to increase or reduce the severity of the sentence for the offence.
 - (5) In this section:
defence means—
 - (a) any lawyer representing the offender; or
 - (b) if the offender is not legally represented—the offender.

34 Sentencing—irrelevant considerations

- (1) In deciding how an offender should be sentenced (if at all) for an offence, a court must not increase the severity of the sentence it would otherwise have imposed because of any of the following:
 - (a) a law that has not commenced;
 - (b) any alleged offences that the offender has not admitted in accordance with section 57 (Outstanding additional offences taken into account in sentencing);
 - (c) that the offender chose not to give evidence on oath;
 - (d) that the offender may have committed perjury or been guilty of contempt of court during the proceeding;
 - (e) the offender's behaviour in court;
 - (f) that the offender chose to plead not guilty;
 - (g) that the offender chose not to take part, or chose not to continue to take part, in restorative justice for the offence under the *Crimes (Restorative Justice) Act 2004*.
- (2) In deciding how an offender should be sentenced for an offence, a court must not reduce the severity of a sentence it would otherwise have imposed because of an automatic forfeiture of property, a forfeiture order, or a penalty order, under the *Confiscation of Criminal Assets Act 2003*.

35 Reduction of sentence—guilty plea

- (1) This section applies if—
 - (a) an offender pleads guilty to an offence; and
 - (b) based on the information currently available to the court, the court considers that there is a real likelihood that it will sentence the offender to imprisonment.

- (2) In deciding how the offender should be sentenced (if at all) for the offence, the court must consider the following matters:
- (a) the fact that the offender pleaded guilty;
 - (b) when the offender pleaded guilty, or indicated an intention to plead guilty;
 - (c) whether the guilty plea was related to negotiations between the prosecution and defence about the charge to which the offender pleaded guilty;
 - (d) the seriousness of the offence;
 - (e) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement.

Note For who may make a victim impact statement, see s 49.

- (3) The court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed if the offender had not pleaded guilty to the offence.
- (4) However, in deciding any lesser penalty, the court must not make any significant reduction for the fact that the offender pleaded guilty if, based on established facts, the court considers that the prosecution's case for the offence was overwhelmingly strong.
- (5) For subsection (2) (b), the earlier in the proceeding that the guilty plea is made, or indication is given that it will be made, the lesser the penalty the court may impose.
- (6) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.

(7) In this section:

available documents, in relation to the offence, means any of the following:

- (a) any written statements or admissions made for use as evidence at a trial that would have been admissible as evidence at the trial for the offence;
- (b) depositions taken at any committal proceeding for the offence;
- (c) any written statements or admissions used as evidence in any committal proceeding for the offence;
- (d) any other relevant written documents.

defence—see section 33 (5).

established facts means facts established by—

- (a) evidence given at the trial; or
- (b) available documents; or
- (c) admissions by the offender; or
- (d) submissions made by the prosecution or defence.

36 Reduction of sentence—assistance to law enforcement authorities

(1) This section applies if—

- (a) an offender is convicted or found guilty of an offence; and
- (b) the offender assisted, or undertook to assist, law enforcement authorities in—
 - (i) preventing, detecting or investigating the offence or any other offence; or
 - (ii) a proceeding in relation to the offence or any other offence.

- (2) A court may impose a lesser penalty (including a shorter nonparole period) on the offender than it would otherwise have imposed having regard to the degree of assistance provided, or undertaken to be provided, to law enforcement authorities.

Note The DPP may appeal against the reduced sentence if the offender does not comply with the undertaking (see s 137).

- (3) In deciding whether to impose a lesser penalty for the offence, and the nature and extent of the penalty to be imposed, the court must consider the following matters:

- (a) the effect of the offence on the victims of the offence, the victims' families and anyone else who may make a victim impact statement;

Note For who may make a victim impact statement, see s 49.

- (b) the significance and usefulness of the offender's assistance to law enforcement authorities, taking into account any evaluation by the authorities of the assistance provided or undertaken to be provided;
- (c) the truthfulness, completeness and reliability of any information or evidence provided by the offender;
- (d) the nature and extent of the offender's assistance or promised assistance;
- (e) the timeliness of the assistance or undertaking to assist;
- (f) any benefits that the offender has gained or may gain because of the assistance or undertaking to assist;
- (g) whether the offender will suffer harsher custodial conditions because of the assistance or undertaking to assist;
- (h) any injury suffered by the offender or the offender's family, or any danger or risk of injury to the offender or the offender's family, because of the assistance or undertaking to assist;

- (i) whether the assistance or promised assistance is in relation to the offence for which the offender is being sentenced or an unrelated offence;
 - (j) if the offender is to serve a sentence of imprisonment—the likelihood that the offender will commit further offences after release from imprisonment.
- (4) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.

37 Reduction of sentence—statement by court about penalty

- (1) This section applies if a court imposes a lesser penalty for an offence under section 35 (Reduction of sentence—guilty plea) or section 36 (Reduction of sentence—assistance to law enforcement authorities).
- (2) The court must state—
 - (a) the penalty (including any shorter nonparole period) it would otherwise have imposed; and
 - (b) if the lesser penalty is imposed under section 36—the reason for the imposition of the lesser penalty.

38 Sentences of imprisonment and uncompleted young offender orders

- (1) In this section:

young offender order means an order under the *Children and Young People Act 1999*, section 96 (1) (g), (h), (i), (j), (k) or (l).

Note The relevant orders are a probation order, a community service order, an attendance centre order and certain residential and detention-related orders.

- (2) This section applies in relation to an adult offender if, at the time of sentencing—
- (a) the offender is subject to a young offender order; and
 - (b) the court is imposing a sentence that would be likely to bring the offender into contact with other adult offenders.

Examples of sentences

- 1 a sentence of imprisonment, including imprisonment to be served by periodic detention
- 2 a good behaviour order requiring the offender to perform community service work

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The court—
- (a) must, in deciding the term of the sentence, consider any remaining period during which the young offender order would remain in force if not discharged under paragraph (b); and
 - (b) may, if appropriate, discharge the young offender order.

39 Judgment after sentence deferred

- (1) If an offender is convicted of an offence and sentence is deferred, the court before which the offender was tried, or the Supreme Court, may sentence the offender for the offence at any time afterwards.
- (2) This section does not apply if the court has made a deferred sentence order.

Note Under a deferred sentence order, sentencing is deferred to a stated time (see s 27) unless the order is cancelled (see s 133).

Part 4.2 Pre-sentence reports

40 Application—pt 4.2

This part applies if either of the following applies to a person (the *offender*):

- (a) a court finds the offender guilty of an offence;
- (b) the offender indicates to a court an intention to plead guilty to an offence.

41 Pre-sentence reports—order

- (1) Before sentencing the offender, a court may—
 - (a) by order (a *pre-sentence report order*) direct the chief executive to prepare a report under this part (a *pre-sentence report*) for the offender; and
 - (b) adjourn the proceeding for the report to be prepared.

Note If a form is approved under the *Court Procedures Act 2004* for a pre-sentence report order, the form must be used (see that Act, s 8 (2)).

- (2) The court may, in the pre-sentence report order, direct that the pre-sentence report deal with any of the following:
 - (a) only with the pre-sentence matters under section 42 (3) stated in the order;
 - (b) the offender's suitability under this Act for a deferred sentence order;
 - (c) the offender's suitability under this Act to serve a sentence (or a part of a sentence) in a stated way, including any of the following:
 - (i) by periodic detention;

- (ii) by performing community service work;
 - (iii) by taking part in a stated rehabilitation program;
 - (d) anything else stated in the direction.
- (3) The chief executive must arrange for an assessor to prepare a pre-sentence report for the offender.
- (4) In this part:

assessor means a person to whom the chief executive has, under the *Public Sector Management Act 1994*, delegated the chief executive's function under this part to prepare the pre-sentence report.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

42 Pre-sentence reports—contents

- (1) In preparing the pre-sentence report for the offender, the assessor must include the following in the report:
- (a) as far as practicable, details of—
 - (i) each of the pre-sentence matters that, on investigation, appears to be relevant; or
 - (ii) if the pre-sentence report order includes a direction under section 41 (2) (a)—each of the pre-sentence matters stated in the order;
 - (b) if the pre-sentence report order includes a direction under section 41 (2) (b)—the assessor's recommendation about the offender's suitability for a deferred sentence order;
 - (c) if the pre-sentence report order includes a direction under section 41 (2) (c)—the assessor's recommendation about the offender's suitability to serve a sentence (or a part of a sentence) in the way (or ways) stated in the direction;

- (d) if the pre-sentence report order includes a direction under section 41 (2) (d)—as far as practicable, the matters stated in the direction.

Examples for par (c)

- 1 If the direction relates to periodic detention, the assessor may indicate the kind of conditions that might be recommended under section 11 (5).
- 2 If the direction relates to taking part in a rehabilitation program, the assessor may indicate the kinds of conditions (in addition to the rehabilitation program condition) that might be included under section 13 (3).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The assessor may also include in the pre-sentence report—
 - (a) if the pre-sentence report order includes a direction under section 41 (2) (b)—an indication of the kind of conditions that would be appropriate for the court to include in a deferred sentence order; and
 - (b) if the pre-sentence report order includes a direction under section 41 (2) (c)—an indication of the kind of conditions that would be appropriate for the court to recommend for a sentence (or a part of a sentence) to be served in the way (or ways) stated in the direction; and
 - (c) details of anything else the assessor considers relevant.
- (3) For this section, the *pre-sentence matters* are—
 - (a) the core matters (see subsection (4)); and
 - (b) if the pre-sentence report order includes a direction under section 41 (2) (b)—the matters mentioned in section 116 (1) (Deferred sentence orders—eligibility); and
 - (c) if the pre-sentence report order includes a direction under section 41 (2) (c) about the offender’s suitability to serve a sentence (or a part of a sentence) by—

- (i) periodic detention—the matters mentioned in section 79 (Periodic detention—pre-sentence report matters); and
 - (ii) performing community service work—the matters mentioned in section 90 (Community service—pre-sentence report matters); and
 - (iii) taking part in a stated rehabilitation program—the matters mentioned in section 98 (Rehabilitation programs—pre-sentence report matters).
- (4) For subsection (3) (a), the following are the *core matters*:
- (a) the offender's age;
 - (b) the offender's social history and background (including cultural background);
 - (c) the offender's medical and psychiatric history;
 - (d) the offender's educational background;
 - (e) the offender's employment history;
 - (f) the circumstances of any offences for which the offender is to be sentenced;
 - (g) the extent to which the offender is complying, or has complied, with any sentence;
 - (h) the offender's financial circumstances;
 - (i) any special needs of the offender;
 - (j) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which the offender may benefit;

- (k) any risk assessments made of the likelihood that the offender will commit further offences or of things (including circumstances) that may make the offender more likely to commit further offences;
- (l) the assessor's opinion, and the basis for the opinion, about—
 - (i) the offender's attitude to the offence; and
 - (ii) the need to protect victims of the offence from violence or harassment by the offender; and
 - (iii) anything that may make the offender more likely to commit further offences; and

Examples

- 1 dependence on alcohol or a controlled drug
- 2 a gambling addiction
- 3 association with particular people

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (iv) the likelihood that the offender may commit further offences; and
- (v) whether it would be appropriate to refer the offender for restorative justice under the *Crimes (Restorative Justice) Act 2004*.

43 Pre-sentence reports—powers of assessors

- (1) In preparing the pre-sentence report for the offender, the assessor—
 - (a) may conduct any investigation the assessor considers appropriate; and
 - (b) may ask any of the following to provide information:
 - (i) an administrative unit;

- (ii) a territory authority;
 - (iii) a statutory office-holder;
 - (iv) a victim of the offence;
 - (v) any other entity.
- (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to provide information, the entity must promptly comply with the request.
- (3) If an entity gives information honestly and with reasonable care in response to a request under subsection (1), the giving of the information is not—
- (a) a breach of confidence, professional etiquette, ethics or a rule of professional misconduct; or
 - (b) a ground for a civil proceeding for defamation, malicious prosecution or conspiracy.
- (4) This section does not limit any other power of the assessor to obtain information for the purposes of the pre-sentence report.
- (5) A regulation may make provision in relation to—
- (a) the preparation and provision of pre-sentence reports; and
 - (b) the conduct of assessments of an offender's suitability for a deferred sentence order or to serve a particular kind of sentence (including a kind mentioned in section 41 (2) (c) (Pre-sentence reports—order)).
- (6) In this section:
information includes a document.

44 Pre-sentence reports—provision to court

The pre-sentence report may be given to the court either orally or in writing.

45 Pre-sentence reports—availability of written reports

- (1) This section applies if the court has received a written pre-sentence report for the offender.
- (2) The court must ensure that a copy of the report is made available to the following people at least 2 working days before the offender is to be sentenced:
 - (a) the prosecutor;
 - (b) any lawyer representing the offender;
 - (c) the offender, if—
 - (i) the court has so directed; or
 - (ii) the offender is not legally represented.
- (3) For subsection (2), the court may make a copy of the report available to a person mentioned in the subsection by giving a copy of the report to the person.

46 Pre-sentence reports—cross-examination

- (1) The prosecutor and the defence may cross-examine the assessor on the pre-sentence report given to the court by the assessor.
- (2) In this section:

defence means—

 - (a) any lawyer representing the offender; or
 - (b) if the offender is not legally represented—the offender.

Part 4.3 Victim impact statements

47 Definitions—pt 4.3

In this part:

because of, an offence, means—

- (a) as a result of, or in the course of, the commission of the offence; or
- (b) in the course of assisting a police officer in the exercise of the officer's power to arrest a person for the offence or to take action to prevent the offence.

harm includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

victim, of an offence, means—

- (a) a person (a *primary victim*) who suffers harm because of the offence; or
- (b) if a primary victim dies because of the offence—a person who was financially or psychologically dependent on the primary victim immediately before the primary victim's death.

victim impact statement, for an offence, means a statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence.

48 Application—pt 4.3

This part applies in relation to an offence if the offence is—

- (a) an indictable offence; or
- (b) an offence against the *Crimes Act 1900*, section 26A (Common assault—summary offence); or
- (c) any other offence prescribed by regulation for this paragraph.

Note An offence is an **indictable offence** if it is punishable by imprisonment for longer than 1 year or is declared by a law to be an indictable offence, and includes an indictable offence that is or may be dealt with summarily (see Legislation Act, s 190 (1) and (2)).

49 Victim impact statements—who may make

- (1) The following people may make a victim impact statement for the offence:
 - (a) a victim of the offence;
 - (b) a person who has parental responsibility for a victim of the offence;
 - (c) a close family member of a victim of the offence;
 - (d) a carer for a victim of the offence;
 - (e) a person with an intimate personal relationship with a victim of the offence.

- (2) In this section:

person who has parental responsibility—see the *Children and Young People Act 1999*, section 18 (1).

50 Victim impact statements—oral or written

A victim impact statement for the offence may be made as—

- (a) a written statement signed by or for a victim of the offence; or

- (b) a statement given orally in court by or for a victim of the offence.

51 Victim impact statements—form and contents

- (1) A victim impact statement for the offence must identify the victim to whom it relates.
- (2) The statement must include the full name of the person who makes the statement.
- (3) If the person who makes the statement is not the victim (or the victim's representative)—
 - (a) the statement must indicate that the victim does not object to the statement being made to the court; and
 - (b) if practicable, the victim (or representative) must sign the statement, or make a separate written or oral statement to the court, to verify that the victim does not object.
- (4) If the victim to whom the statement relates is not a primary victim, the statement must identify the primary victim and state the nature and length of the victim's relationship with the primary victim.
- (5) If the statement is made by a person who is not the victim, the statement must indicate the nature and length of the person's relationship with the victim.
- (6) The statement must not contain anything that is offensive, threatening, intimidating or harassing.
- (7) This section does not prevent a victim impact statement being made by or for more than 1 victim.

52 Victim impact statements—use in court

- (1) A victim impact statement may be—
 - (a) tendered to the court; or

- (b) made orally in court; or
 - (c) read out in court by the person who made the statement or someone else (whether or not the statement is tendered to the court).
- (2) The statement may be given when the court considers appropriate—
- (a) after the offender has been convicted; and
 - (b) before the offender is sentenced.

53 Victim impact statements—effect

- (1) In deciding how the offender should be sentenced (if at all) for the offence, the court—
- (a) must consider any victim impact statement given to the court in relation to the offence; and
 - (b) must not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not given to the court in relation to the offence.
- (2) A victim impact statement must not be given in writing to the court unless—
- (a) the statement is made in accordance with section 51 (Victim impact statements—form and contents); and
 - (b) a copy of the statement has been given to the defence.
- (3) The defence may cross-examine a person who makes a victim impact statement on the contents of the statement.
- (4) However, if the offender is not legally represented, the offender may cross-examine the person only if—
- (a) the offender has indicated to the court the nature of the proposed cross-examination; and
 - (b) the court gives the offender leave to cross-examine the person.

(5) In this section:

defence means—

- (a) any lawyer representing the offender; or
- (b) if the offender is not legally represented—the offender.

given includes made orally in court or read out in court under this part.

Part 4.4 Taking additional offences into account

54 Definitions—pt 4.4

In this part:

additional offence—see section 55.

list of additional offences—see section 55.

principal offence—see section 55.

sentence-related order—see section 55.

55 Application—pt 4.4

- (1) This part applies if—
 - (a) an offender has been convicted or found guilty of an offence (the *principal offence*); and
 - (b) none of the following orders (each of which is a *sentence-related order*) have been made for the offence:
 - (i) an order imposing a penalty on the offender;
 - (ii) a deferred sentence order;
 - (iii) a non-conviction order;
 - (iv) a suspended sentence order; and
 - (c) the prosecutor files in the court sentencing the offender a document (the *list of additional offences*) that lists other offences (each of which is an *additional offence*) allegedly committed by the offender.
- (2) However, this part does not apply in relation to an offence punishable by life imprisonment.

56 List of additional offences

- (1) The list of additional offences must—
 - (a) indicate that the offences listed are offences that the offender wants the court to take into account in making a sentence-related order for the principal offence; and
 - (b) be signed by the director of public prosecutions and the offender.
- (2) A copy of the list of additional offences must be given to the offender.

57 Outstanding additional offences taken into account in sentencing

- (1) Before making a sentence-related order for the principal offence, the court must ask the offender whether the offender wants the court to take any of the additional offences into account in relation to the principal offence.
- (2) The court may take an additional offence into account in making a sentence-related order for the principal offence if—
 - (a) the offender admits guilt to the additional offence; and
 - (b) the offender confirms that the offender wants the additional offence to be taken into account by the court in relation to the principal offence; and
 - (c) the prosecutor consents to the additional offence being taken into account.
- (3) If the court takes an additional offence into account in relation to the principal offence, any penalty imposed for the principal offence must not exceed the maximum penalty the court could have imposed for the principal offence if the additional offence had not been taken into account.

- (4) The court may not take an additional offence into account if the court does not have jurisdiction to make a sentence-related order for the offence.
- (5) For subsection (4), the court is taken to have jurisdiction to make a sentence-related order for an additional offence even if the jurisdiction may only be exercised with the offender's consent.
- (6) To remove any doubt, subsection (4) does not prevent the Supreme Court from taking a summary offence into account.

58 Ancillary orders relating to offences taken into account in sentencing

- (1) This section applies if the court takes an additional offence into account in making a sentence-related order for the offender for the principal offence.
- (2) The court may make any ancillary order that it could have made if it had convicted the offender of the additional offence when it took the offence into account.
- (3) To remove any doubt, the court may not make a separate sentence-related order for the additional offence.
- (4) The offender has the same rights of appeal in relation to the making of the ancillary order as the offender would have had if the order had been made on the conviction of the offender for the additional offence.
- (5) This section is subject to section 134 (Operation of ancillary and restitution orders).
- (6) In this section:
ancillary order—see section 18 (5).

59 Consequences of taking offences into account in sentencing

- (1) This section applies if the court takes an additional offence into account for the principal offence.
- (2) The court must certify, on the list of additional offences, that the additional offence has been taken into account.
- (3) A proceeding must not be started or continued in relation to the additional offence unless the conviction or finding of guilt for the principal offence is reversed or set aside.
- (4) Subsection (3) does not prevent the court from taking the additional offence into account if the court, on a later occasion, makes another sentence-related order for the offender, or re-sentences the offender, for the principal offence.
- (5) The offender's admission of guilt in relation to the additional offence is not admissible in evidence in a proceeding in relation to—
 - (a) the additional offence; or
 - (b) any other offence mentioned in the list of additional offences.
- (6) The offender is not, for any purpose, taken to have been convicted or found guilty of the additional offence only because the additional offence is taken into account.

60 Evidence of offences taken into account in sentencing

- (1) This section applies if the court takes an additional offence into account in making a sentence-related order for the offender for the principal offence.
- (2) The fact that the additional offence has been taken into account is admissible in a criminal proceeding if—

- (a) the fact that the offender has been convicted or found guilty of the principal offence is admissible in the proceeding; and
 - (b) had the offender been convicted or found guilty of the additional offence, that fact would have been admissible in the proceeding.
- (3) For subsection (2), a fact is *admissible* in a criminal proceeding if—
- (a) reference may be made to the fact in the proceeding; or
 - (b) evidence may be given of the fact in the proceeding.
- (4) The fact that the additional offence has been taken into account may be proved in the same way as the finding of guilt or conviction for the principal offence.

Part 4.5 **Correction and adjustment of penalties**

61 **Reopening proceedings to correct penalty errors**

- (1) This section applies to a criminal proceeding (including a proceeding on appeal) in which a court has—
 - (a) made a sentence-related order that is contrary to law; or
 - (b) failed to make a sentence-related order that is required to be made by law.
- (2) This section applies whether or not anyone has been convicted or found guilty of an offence in the proceeding.
- (3) The court may reopen the proceeding (on the application of a party to the proceeding, or on its own initiative) and may, after giving the parties an opportunity to be heard, do either or both of the following:
 - (a) make a sentence-related order that is in accordance with law;
 - (b) amend any relevant finding of guilt, conviction, sentence or order.
- (4) For this section, the court may issue a warrant for the arrest of a person charged in the proceeding if—
 - (a) the court considers that the person will not appear unless the warrant is issued; or
 - (b) the person fails to appear when the court calls on the person to appear.
- (5) For an appeal under any Act against a sentence-related order made under this section, the time within which the appeal must be made starts on the day the order is made.

(6) However, this section does not otherwise affect any right of appeal.

(7) In this section:

sentence-related order—

(a) see section 55 (Application—pt 4.4); and

(b) includes an ancillary order within the meaning of section 58 (Ancillary orders relating to offences taken into account in sentencing).

Chapter 5 Imprisonment

Part 5.1 Imprisonment—start and end of sentences

62 Start and end of sentences—general rule

- (1) A sentence of imprisonment starts—
 - (a) on the day the sentence is imposed; or
 - (b) if an offender is not in custody—on the day the offender becomes subject to lawful custody.
- (2) However, subsection (1) is subject to—
 - (a) the following provisions of this Act:
 - (i) section 11 (Periodic detention);
 - (ii) section 31 (Combination sentences—start and end);
 - (iii) section 63 (Start of sentences—backdated sentences);
 - (iv) part 5.3 (Imprisonment—concurrent and consecutive sentences); and
 - (b) the *Crimes (Sentence Administration) Act 2005*.
- (3) A sentence of imprisonment that starts on a day starts at the beginning of that day.
- (4) A sentence of imprisonment that ends on a day ends at the end of that day.
- (5) In this section:

sentence of imprisonment does not include a sentence of imprisonment that is fully suspended.

63 Start of sentences—backdated sentences

- (1) The court may direct that a sentence of imprisonment is taken to have started on a day before the day the sentence is imposed.
- (2) For subsection (1), the court must take into account any period during which the offender has already been held in custody in relation to the offence.
- (3) However, subsection (2) does not apply to—
 - (a) a period of custody of less than 1 day; or
 - (b) a sentence of imprisonment of less than 1 day; or
 - (c) a sentence of imprisonment that is fully suspended; or
 - (d) the suspended part of a partly suspended sentence of imprisonment.
- (4) If the offender is charged with a series of offences committed on different occasions and has been in custody continuously since arrest, the period of custody for subsection (2) must be worked out from the time of the offender's arrest.
- (5) Subsection (4) applies even if the offender is not convicted or found guilty of—
 - (a) the offence for which the offender was first arrested; or
 - (b) any particular offence or offences in the series.

Part 5.2 Imprisonment—nonparole periods

64 Application—pt 5.2

- (1) This part applies to a sentence of imprisonment imposed by a court on an offender for an offence, other than an excluded sentence of imprisonment.
- (2) However, if the sentence of imprisonment includes a periodic detention period, this part applies only to that part of the sentence to be served otherwise than by periodic detention.
- (3) In this section:

excluded sentence of imprisonment means—

- (a) a sentence of imprisonment that is fully suspended; or
- (b) a sentence of imprisonment to be served fully by periodic detention; or
- (c) a sentence of imprisonment imposed in default of payment of a fine; or
- (d) a sentence of imprisonment imposed for an offence committed while in lawful custody; or
- (e) a sentence of life imprisonment.

fine—see the *Magistrates Court Act 1930*, section 146.

65 Nonparole periods—court to set

- (1) This section applies if the court sentences the offender to a term of imprisonment of 1 year or longer, or 2 or more terms of imprisonment that total 1 year or longer.

- (2) The court must set a period (a ***nonparole period***) during which the offender is not eligible to be released on parole.

Note If the offender is released on parole, the sentence is not discharged unless the parole is completed without the parole order being cancelled (see *Crimes (Sentence Administration) Act 2005*).

- (3) When the court sets the nonparole period, the court must state when the nonparole period starts and ends.

Note A sentence may be backdated to account for time already held in custody (see s 63).

- (4) However, the court may decline to set a nonparole period in sentencing the offender if the court considers that it would be inappropriate to set a nonparole period having regard to the nature of the offence or offences and the offender's antecedents.

- (5) If the offender is subject to a sentence of life imprisonment, the court must not set a nonparole period for any sentence of imprisonment that is imposed on the offender.

- (6) If the sentence of imprisonment is partly suspended, the period for which it is suspended must be disregarded for this section.

66 Nonparole periods—setting if sentence currently being served

- (1) This section applies if—
- (a) the offender is serving a sentence of imprisonment (the ***existing sentence***); and
 - (b) the offender is sentenced to a further term of imprisonment (the ***primary sentence***).

Note Pt 5.3 deals with whether the primary sentence is to be served concurrently or consecutively (or partly concurrently and partly consecutively) with the existing sentence.

- (2) Section 65 (Nonparole periods—court to set) applies as if the court that imposes the primary sentence had sentenced the person to imprisonment for a term equal to the total of the terms of the existing sentence and the primary sentence.
- (3) The imposition of the primary sentence automatically cancels any nonparole period set for the existing sentence.
- (4) Any nonparole period set for the primary sentence must not make the offender eligible to be released on parole earlier than if the primary sentence had not been imposed.

67 Nonparole periods—recommended conditions

In sentencing the offender to imprisonment, the court may recommend conditions for the offender's parole.

Note The sentence administration board must consider any recommendation made by the court but is not bound to follow the recommendation (see *Crimes (Sentence Administration) Act 2005*).

68 Nonparole periods—review of decision on nonparole period

- (1) This section applies if the court fails to set, or fails to set properly, a nonparole period for a sentence of imprisonment.
- (2) The court may set a nonparole period on the application of any of the following people:
 - (a) the Attorney-General;
 - (b) the director of public prosecutions;
 - (c) the secretary of the sentence administration board;
 - (d) the offender.

Part 5.3 Imprisonment—concurrent and consecutive sentences

69 Definitions—pt 5.3

In this part:

existing sentence—see section 70 (1).

fine—see the *Magistrates Court Act 1930*, section 146.

primary sentence—see section 70 (1).

70 Application—pt 5.3

- (1) This part applies to a sentence of imprisonment (a *primary sentence*) imposed by a court on an offender if—
 - (a) any of the following apply in relation to the offender:
 - (i) when the primary sentence is imposed, the offender is serving another sentence of imprisonment (an *existing sentence*);
 - (ii) the offender has been sentenced to another sentence of imprisonment (also an *existing sentence*) but, when the primary sentence is imposed, the other sentence has not yet started;
 - (iii) the offender is sentenced to another sentence of imprisonment (also an *existing sentence*) in the same proceeding; and
 - (b) the existing sentence is for an offence against a territory law; and
 - (c) the primary sentence is not fully suspended.

- (2) In this section:

sentence of imprisonment—

- (a) does not include any nonparole period that has been set for the primary sentence; but
- (b) includes an order committing a young person to an institution under the *Children and Young People Act 1999*, section 96 (1) (k) or (l).

71 Concurrent and consecutive sentences—general rule

- (1) In the absence of a direction under subsection (2), the primary sentence must be served concurrently with the existing sentence.
- (2) The court may direct that the primary sentence be served consecutively (or partly concurrently and partly consecutively) with the existing sentence.
- (3) This section is subject to the following provisions:
 - (a) section 38 (Sentences of imprisonment and uncompleted young offender orders); and
 - (b) section 72 (Concurrent and consecutive sentences—offences in custody or unlawfully at large);
 - (c) section 73 (Concurrent and consecutive sentences—fine default offences);
 - (d) section 80 (Periodic detention—concurrent and consecutive periods).

72 Concurrent and consecutive sentences—offences in custody or unlawfully at large

- (1) This section applies if the primary sentence is imposed on the offender for any of the following offences:
 - (a) an offence committed while the offender was in lawful custody or unlawfully at large;
 - (b) an offence involving an escape from lawful custody.
- (2) In the absence of a direction under subsection (3), the primary sentence must be served consecutively with the existing sentence of imprisonment.
- (3) The court may direct that the primary sentence be served concurrently (or partly concurrently and partly consecutively) with the existing sentence.
- (4) Unless the court considers that special circumstances apply, the court must not give a direction under subsection (3) if the primary sentence is an offence that involves causing harm, or threatening to cause harm, to a corrections officer.

73 Concurrent and consecutive sentences—fine default offences

- (1) This section applies if the primary sentence is imposed in default of payment of a fine.
- (2) In the absence of a direction under subsection (3), the primary sentence must be served—
 - (a) consecutively with an existing sentence in default of payment of a fine; and
 - (b) concurrently with any other existing sentence.

- (3) The court may direct that the primary sentence be served concurrently or consecutively (or partly concurrently and partly consecutively) with the existing sentence.

74 Amendment of start of sentences on setting aside or amending other sentences

- (1) If a court sets aside or amends a sentence of imprisonment imposed on the offender (whether on appeal or otherwise), the court may amend the starting day of any other sentence that has been imposed on the offender by the court or another court.
- (2) If the offender is subject to 2 or more sentences, this section applies to each of them.
- (3) The court may amend the starting day of a sentence under this section on its own initiative, or the application of a party to the proceeding on the setting aside or amendment of the other sentence.
- (4) An appeal does not lie only because the starting day of a sentence is amended under this section.
- (5) The term of a sentence, or the nonparole period of a sentence, must not be amended under this section.

75 Previous sentences to be noted in new sentence

- (1) If the court imposes the primary sentence consecutively (or partly concurrently and partly consecutively) with an existing sentence, the court must include in the record of the primary sentence details of each existing sentence, including—
 - (a) the starting day of the existing sentence (or the likely starting day of a sentence that has not yet started); and
 - (b) the term of the existing sentence.
- (2) Failure to comply with this section does not invalidate the primary sentence or the existing sentence.

Part 5.4 Periodic detention

76 Application—pt 5.4

This part applies if a court is considering whether to set a periodic detention period for an offender for an offence.

77 Periodic detention—eligibility

- (1) The court must not set a periodic detention period for the offender unless satisfied that—
 - (a) periodic detention is suitable for the offender (see section 78); and
 - (b) it is appropriate for the offender to serve all or part of the sentence by periodic detention; and
 - (c) there are appropriate facilities available at a correctional centre for the offender to serve any period of periodic detention set by the court; and
 - (d) the offender has signed an undertaking to comply with the offender's periodic detention obligations under the *Crimes (Sentence Administration) Act 2005*.
- (2) The court may decline to set a periodic detention period for the offender if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender does not undergo the examination in accordance with the direction.

78 Periodic detention—suitability

- (1) The court must not set a periodic detention period for the offender unless a pre-sentence report is given to the court about the offender's suitability to serve a sentence (or a part of a sentence) by periodic detention.
- (2) In deciding whether to set a periodic detention period for the offender, the court must consider the following:
 - (a) the pre-sentence report;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the pre-sentence report;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) In considering the pre-sentence report, the court must consider any indicators of unsuitability mentioned in table 86, column 3 that are stated in the report to apply to the offender.
- (5) The court may set, or decline to set, a periodic detention period for the offender despite—
 - (a) any recommendation in the pre-sentence report about the offender's suitability to serve a sentence (or a part of a sentence) by periodic detention; or
 - (b) any evidence given by the person who prepared the pre-sentence report or a corrections officer.
- (6) The court must record reasons for its decision to set, or decline to set, a periodic detention period for the offender if—

Section 79

- (a) the pre-sentence report recommends that the offender is suitable but the court decides not to set a periodic detention period for the offender; or
 - (b) the pre-sentence report recommends that the offender is not suitable but the court decides to set a periodic detention period for the offender.
- (7) Failure to comply with subsection (6) does not invalidate the periodic detention order.

79 Periodic detention—pre-sentence report matters

For section 42 (3) (c) (ii) (Pre-sentence reports—contents), the matters for assessing the offender’s suitability to serve a sentence (or a part of a sentence) by periodic detention are the matters mentioned in table 79, column 2.

Table 79 Assessment of suitability—periodic detention

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to report for periodic detention
4	criminal record	serious criminal record
5	employment and personal circumstances	potential impracticability of regular reporting for periodic detention

80 Periodic detention—concurrent and consecutive periods

- (1) This section applies if—
- (a) the court is considering whether to set a periodic detention period (a *new period*) for the offender; and
 - (b) the offender is currently serving a sentence of imprisonment for another offence by periodic detention.

Note Pt 5.3 deals with the imposition of 2 sentences of imprisonment on the offender.

- (2) If the court sets a new period, the new period must be stated to end no later than 2 years after the day it is made (no matter when the new period is to take effect).

Part 5.5 Imprisonment—explanation and information

81 Application—pt 5.5

This part applies if—

- (a) an offender is convicted of an offence; and
- (b) a court sentences the offender to imprisonment for the offence; and
- (c) the sentence of imprisonment is not fully suspended.

82 Imprisonment—explanation to offender

- (1) The court must ensure that reasonable steps are taken to explain to the offender (and in language the offender can readily understand)—
 - (a) the reason why the sentence of imprisonment is imposed, and why no penalty other than imprisonment is appropriate; and
 - (b) the purpose of the sentence; and
 - (c) if the offender is to serve all or part of the sentence by full-time detention in a correctional centre—in general terms, the offender’s obligations as a full-time detainee under the *Crimes (Sentence Administration) Act 2005* and the consequences if the offender breaches the obligations; and

Note An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def *breach*).

- (d) if the order sentencing the offender to imprisonment sets a periodic detention period—in general terms, the offender’s periodic detention obligations under the *Crimes (Sentence Administration) Act 2005* and the consequences if the offender breaches the obligations; and

- (e) the day when the sentence starts or is taken to have started; and

Note For examples of the operation of this paragraph, see the end of this subsection.

- (f) if a suspended sentence order is made for the offender suspending the sentence in part—in general terms, the effect of the suspension of the sentence; and

Note Explanations for the offender and any surety of the effect of entering into a good behaviour order are required under pt 6.3.

- (g) the earliest day (on the basis of the information currently available to the court) that the offender will become entitled to be released from detention or be eligible to be released on parole, having regard to—

(i) each sentence of imprisonment to which the offender is subject; and

(ii) any applicable nonparole period; and

- (h) if a nonparole period is set for the sentence—that, if the offender is released on parole, the offender's release will be subject to a parole order and any conditions included in the order.

Examples for par (e)

- 1 A court sentences Rick to 7 days imprisonment. The sentence is imposed on a Monday. Rick is not subject to any other sentence of imprisonment.

To comply with paragraph (e), the court should explain to Rick that the sentence starts on the Monday when it is imposed and that the earliest day when Rick will become entitled to be released from detention is the following Monday.

- 2 A court sentences Ken to 12 months imprisonment. The sentence is imposed on 5 May 2005. The court has set a nonparole period of 9 months. Ken is not subject to any other sentence of imprisonment. Because Ken has been remanded in custody for sentencing since 27 April 2005, the court has backdated the start of the sentence to that date.

To comply with paragraph (e), the court should explain to Ken that the sentence is taken to have started on 27 April 2005 and that the earliest date when Ken will become eligible to be released on parole is 27 January 2006.

- 3 On 1 July 2004, Colleen began serving a 2-year sentence of imprisonment for an offence. The nonparole period for the sentence was 18 months (Colleen would be eligible to be released on parole on 1 January 2006). Colleen is later convicted of another offence, with a further sentence of 2 years to start from 1 January 2005, to be served partly concurrently and partly consecutively with the first sentence (under s 71 (Concurrent and consecutive sentences—general rule)). The court cancels the first nonparole period and sets a new nonparole period of 18 months from 1 January 2005 (under s 66 (Nonparole periods—setting if sentence currently being served)).

To comply with paragraph (e), the court should explain to Colleen that the sentence for the 2nd offence starts on 1 January 2005 and ends on 1 January 2007, that it will be served partly concurrently and partly consecutively with her current sentence, and that the earliest date when Colleen will become eligible to be released on parole is now 1 July 2006.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Failure to comply with this section does not invalidate the sentence of imprisonment.

83 Imprisonment—written record of explanation

- (1) The court must ensure that a written record of the explanation under section 82 is given to the offender or the offender's lawyer as soon as practicable after (but no later than 10 working days after the day) the explanation is given under that section.

Example of written record

a copy of the transcript of the explanation

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Failure to comply with this section does not invalidate the sentence of imprisonment.

84 Imprisonment—official notice of sentence

- (1) As soon as practicable after (but no later than 10 working days after the day) the court makes the order sentencing the offender to imprisonment, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) the chief executive; and
 - (c) if the court sets a periodic detention period or nonparole period for the sentence—the secretary of the sentence administration board.

Note 1 If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used (see that Act, s 8 (2)).

Note 2 If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) The notice must include the following information:
- (a) when the sentence starts or is taken to have started;
 - (b) when the sentence ends;
 - (c) whether the sentence is to be served as full-time detention, periodic detention or a combination of these kinds of imprisonment;
 - (d) if the sentence includes more than 1 kind of imprisonment—when each kind of imprisonment starts and ends;
 - (e) if a suspended sentence order is made for a part of the sentence—when the suspended part of the sentence starts and ends;
 - (f) if the order sets a periodic detention period the offender (the *periodic detainee*)—

- (i) when and where the periodic detainee is first to report for periodic detention; and
 - (ii) any conditions recommended by the court for the offender's periodic detention;
 - (g) if a nonparole period is set for the sentence—the nonparole period and when it starts and ends;
 - (h) the earliest day (on the basis of the information currently available to the court) that the offender will become entitled to be released from detention or be eligible to be released on parole.
- (3) The court may remand the periodic detainee in custody until the detainee is given the notice.
- (4) Failure to comply with this section does not invalidate the sentence of imprisonment.

Chapter 6 Good behaviour orders

Part 6.1 Good behaviour orders— community service conditions

85 Meaning of *community service condition*—pt 6.1

In this Act:

community service condition, of a good behaviour order for an offender, means a condition included in the order that the offender perform community service work.

Note 1 The number of hours that may be required to be performed for a community service condition is at least 20 and not more than 500 hours (see s 91).

Note 2 *Community service work* is work prescribed by regulation under the *Crimes (Sentence Administration) Act 2005*.

86 Application—pt 6.1

This part applies if a court is considering whether to include a community service condition in a good behaviour order for an offender.

87 Community service—convicted offenders only

The court must not include a community service condition in the good behaviour order unless the offender is convicted of the offence for which the order is made.

Note A good behaviour order under s 17 (2) (b) (Non-conviction orders—general) cannot include a community service condition because the offender is found guilty, but not convicted, of the offence.

88 Community service—eligibility

- (1) The court must not include a community service condition in the good behaviour order unless satisfied that—
 - (a) community service work is suitable for the offender (see section 89); and
 - (b) it is appropriate that the offender be required to perform community service work.
- (2) The court may decline to include a community service condition in the good behaviour order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender does not undergo the examination in accordance with the direction.

89 Community service—suitability

- (1) The court must not include a community service condition in the good behaviour order unless a pre-sentence report is given to the court about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work.
- (2) In deciding whether to include a community service condition in the good behaviour order, the court must consider the following:
 - (a) the pre-sentence report;
 - (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared the pre-sentence report;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.

- (4) In considering the pre-sentence report, the court must consider any indicators of unsuitability mentioned in table 90, column 3 that are stated in the report to apply to the offender.
- (5) The court may include, or decline to include, a community service condition in a good behaviour order for the offender despite—
 - (a) any recommendation in the pre-sentence report about the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work; or
 - (b) any evidence given by the person who prepared the pre-sentence report or a corrections officer.
- (6) The court must record reasons for its decision to include, or decline to include, a community service condition in the good behaviour order if—
 - (a) the pre-sentence report recommends that the offender is suitable but the court decides not to include a community service condition; or
 - (b) the pre-sentence report recommends that the offender is not suitable but the court decides to include a community service condition.
- (7) Failure to comply with subsection (6) does not invalidate the good behaviour order.

90 Community service—pre-sentence report matters

For section 42 (3) (c) (iii) (Pre-sentence reports—contents), the matters for assessing the offender's suitability to serve a sentence (or a part of a sentence) by performing community service work are the matters mentioned in table 90, column 2.

Table 90 **Assessment of suitability—community service work**

column 1 item	column 2 matter	column 3 indication of unsuitability
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to perform community service work
4	criminal record	serious criminal record
5	employment and personal circumstances	potential impracticability of regular reporting for community service work

91 **Community service—hours to be performed**

- (1) The number of hours of community service work required to be performed for a community service condition in the good behaviour order must be at least 20 hours and not more than 500 hours.
- (2) The period during which the community service work is required to be completed under the community service condition must be at least—
 - (a) if fewer than 250 hours work is required—12 months; or
 - (b) if 250 or more hours work is required—24 months.

92 Community service—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a community service condition under a good behaviour order (an *existing order*).
- (2) If the court makes a further good behaviour order that includes a community service condition (a *new order*), the court may direct that the hours of community service work to be performed by the offender under the new order run concurrently or consecutively, or partly concurrently and partly consecutively, with the hours of community service work remaining to be performed under the existing order.
- (3) However, the total of the hours to be performed under the new order and those remaining to be performed under the existing order must not be more than 500.

Part 6.2 Good behaviour orders— rehabilitation program conditions

93 Definitions—pt 6.2

In this Act:

rehabilitation program, for a good behaviour order, means a program prescribed by regulation for the rehabilitation of offenders.

rehabilitation program condition, of a good behaviour order for an offender, means a condition included in the order that an offender undertake a rehabilitation program.

94 Application—pt 6.2

This part applies if a court is considering whether to include a rehabilitation program condition in a good behaviour order for an offender.

95 Rehabilitation programs—probation condition required

If the court includes a rehabilitation program condition in the good behaviour order, the court must also include a probation condition in the order.

96 Rehabilitation programs—eligibility

- (1) The court must not include a rehabilitation program condition in the good behaviour order unless satisfied that—
 - (a) a rehabilitation program of a particular kind is suitable for the offender; and
 - (b) it is appropriate that the offender undertake a rehabilitation program of that kind; and

- (c) a place for the offender in a program of that kind is available or will become available within a reasonable time.
- (2) The court may decline to include a rehabilitation program condition in the good behaviour order if—
 - (a) the court asks the offender to undergo a medical examination by a doctor, as directed by the court; and
 - (b) the offender does not undergo the examination in accordance with the direction.

97 Rehabilitation programs—suitability

- (1) The court must not include a rehabilitation program condition in the good behaviour order unless—
 - (a) a pre-sentence report is given to the court about the offender’s suitability to take part in a rehabilitation program; or
 - (b) there is some other information (*relevant sentencing information*) before the court about the nature of the program and its suitability for the offender that justifies including the condition in the good behaviour order.

Example of relevant sentencing information that may justify making an order

a letter offering the offender a place in a rehabilitation program that explains the nature of the program and why it would be suitable for the offender

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In deciding whether to include a rehabilitation program condition in the good behaviour order, the court must consider the following:
 - (a) any pre-sentence report or relevant sentencing information for the offender given to the court;

- (b) any medical report about the offender given to the court;
 - (c) any evidence given by the person who prepared a pre-sentence report for the offender or who gave relevant sentencing information to the court;
 - (d) any evidence given by a corrections officer about the offender.
- (3) Subsection (2) does not limit the matters that the court may consider.
- (4) The court may include, or decline to include, a rehabilitation program condition in the good behaviour order despite—
- (a) any recommendation in any pre-sentence report, or indication in relevant sentencing information, about the offender's suitability to serve a sentence (or a part of a sentence) by taking part in a rehabilitation program; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the offender or who gave relevant sentencing information to the court; or
 - (c) any evidence given by a corrections officer.
- (5) The court must record reasons for its decision to include, or decline to include, a rehabilitation program condition in the good behaviour order if—
- (a) any pre-sentence report recommends, or relevant sentencing information indicates, that the offender is suitable but the court decides not to include a rehabilitation program condition; or
 - (b) any pre-sentence report recommends, or relevant sentencing information indicates, that the offender is not suitable but the court decides to include a rehabilitation program condition.
- (6) Failure to comply with subsection (5) does not invalidate the good behaviour order.

98 Rehabilitation programs—pre-sentence report matters

For section 42 (3) (c) (iv) (Pre-sentence reports—contents), the matters for assessing the offender's suitability to serve a sentence (or a part of a sentence) by taking part in a rehabilitation program are whether the offender was—

- (a) under the influence of alcohol or a controlled drug when the offence was committed; or
- (b) motivated to commit the offence by a desire—
 - (i) to administer a controlled drug to himself or herself; or
 - (ii) to obtain a controlled drug for self-administration; or
 - (iii) to obtain resources to enable the offender to obtain a controlled drug for self-administration.

99 Rehabilitation programs—maximum period

A rehabilitation program condition included in the good behaviour order must not require the offender to take part in a rehabilitation program for longer than 3 years.

100 Rehabilitation programs—concurrent and consecutive orders

- (1) This section applies if the offender is currently subject to a rehabilitation program condition under a good behaviour order (an *existing order*).
- (2) If the court makes a further good behaviour order that includes a rehabilitation program condition (a *new order*), the court may direct that the new order operate concurrently or consecutively, or partly concurrently and partly consecutively, with the existing order.
- (3) However, the new order must not be stated to end later than 3 years after the day the new order is made, irrespective of when the order is to take effect.

Part 6.3 **Good behaviour orders— explanations and official notice**

101 **Application—pt 6.3**

This part applies if a court makes a good behaviour order for an offender.

102 **Good behaviour orders—explanation to offenders**

- (1) The court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—
 - (a) the nature and conditions of the good behaviour order; and
 - (b) the offender’s good behaviour obligations under the *Crimes (Sentence Administration) Act 2005*; and
 - (c) the consequences if the offender breaches the obligations.

Note An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def **breach**).

- (2) Failure to comply with this section does not invalidate the good behaviour order.

103 **Good behaviour orders—official notice of order**

- (1) As soon as practicable after the court makes the good behaviour order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
 - (a) the offender; and

- (b) if the order includes a community service condition, probation condition or rehabilitation program condition—the chief executive.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) The notice must include the following information:
- (a) the term of the good behaviour order;
 - (b) if the good behaviour order includes a community service condition—
 - (i) the number of hours of community service work the offender is to perform; and
 - (ii) the period during which the work is to be completed; and
 - (iii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iv) when, or the period within which, the offender must present;
 - (c) if the good behaviour order includes a probation condition—
 - (i) the probation supervisor for the offender; and
 - (ii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iii) when, or the period within which, the offender must present;
 - (d) if the good behaviour order includes a rehabilitation program condition—
 - (i) the rehabilitation program the offender is to take part in; and

- (ii) the period for which the offender is to take part in the program; and
 - (iii) where the offender must present himself or herself for the administration of the condition to start; and
 - (iv) when or the period within which the offender must present;
 - (e) any other conditions included in the good behaviour order.
- (3) Failure to comply with this section does not invalidate the good behaviour order.

104 Good behaviour orders—explanation and notice to sureties

- (1) This section applies if the good behaviour order includes a condition that a surety give security for the offender.
- (2) The court must ensure that reasonable steps are taken to explain to the surety in general terms (and in language the surety can readily understand)—
- (a) the nature and the conditions of the order (including the amount of the security); and
 - (b) the offender’s good behaviour obligations under the *Crimes (Sentence Administration) Act 2005*; and
 - (c) the consequences for the offender and the surety if the offender breaches the obligations.
- Note* An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def **breach**).
- (3) The court must also ensure that reasonable steps are taken to give a copy of the good behaviour order to the surety.
- (4) Failure to comply with this section does not invalidate the good behaviour order or the security.

Part 6.4 Good behaviour orders—other provisions

105 Good behaviour—consequences of failure to sign undertaking

- (1) This section applies if an offender fails to sign the undertaking mentioned in section 13 (2) for a good behaviour order made in relation to the offender.
- (2) The court that made the good behaviour order may re-sentence the offender, or convict and sentence the offender, as if the order had not been made.
- (3) To remove any doubt, if the offender is re-sentenced by the court under this section, the offender has the same rights of appeal as the offender would have had if the good behaviour order had not been made.

106 Good behaviour—maximum amount of security

- (1) The maximum amount of security that may be required to be given by an offender or a surety under a good behaviour order is—
 - (a) if the offence is punishable by a fine—the maximum fine that may be imposed for the offence; or
 - (b) if the offence is not punishable by a fine—
 - (i) for the Supreme Court—\$10 000; or
 - (ii) for the Magistrates Court—\$2 000.
- (2) However, a good behaviour order made by the Magistrates Court must not include a condition that the offender or a surety give security unless—

- (a) the offence is punishable by imprisonment for longer than 6 months; or
- (b) a suspended sentence order has been made for the offence.

Chapter 7 Reparation orders

107 Application—ch 7

This part applies if a court is considering whether to make, or makes, a reparation order for an offender for an offence.

108 Reparation orders—no agreement about amount of loss etc

- (1) If the offender and the director of public prosecutions (or any other applicant for the reparation order) do not agree about the amount the offender is to be ordered to pay under the reparation order, the court must decide the amount.
- (2) To remove any doubt, section 110 (Reparation orders—evidential basis for orders) applies in relation to facts about the amount the offender is to be ordered to pay under the reparation order.

109 Reparation orders—payment by instalments

If the court makes a reparation order for the payment of money, the court may, in addition, order that—

- (a) the amount be paid by stated instalments; and
- (b) the offender give security, with or without sureties, to the satisfaction of a stated officer of the court for the payment of the amount or of each instalment of the amount.

110 Reparation orders—evidential basis for orders

- (1) A reparation order must not be made for the offence unless the court considers that the order should be made on the basis of facts established by—
 - (a) evidence given at the trial; or

- (b) available documents; or
 - (c) admissions by the offender; or
 - (d) submissions made by or for anyone (including the director of public prosecutions).
- (2) In this section:

available documents, in relation to the offence, means any of the following:

- (a) any written statements or admissions made for use as evidence at a trial that would have been admissible as evidence at the trial for the offence;
- (b) depositions taken at any committal proceeding for the offence;
- (c) any written statements or admissions used as evidence in any committal proceeding for the offence;
- (d) any other relevant written documents.

Example for par (d)

If the value of an object, or the cost of its repair, is relevant to the proceeding for the reparation order, an affidavit by a valuer or repairer about the value of the object or the cost of its repair would be a relevant written document.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

111 Reparation orders—power to make other orders etc

To remove any doubt, the power to make a reparation order under a provision of this Act is additional to the court's other powers under this Act or any other territory law, including its power to make a reparation order under another provision of this Act or any other territory law.

Example

Stan broke into Alice's house and stole property belonging to Alice. None of the property was recovered. Stan is convicted of the theft of the property. The court may make reparation orders ordering Stan to pay Alice—

- the value of the stolen property (see s 20); and
- the costs of repairing the damage caused during the break-in (see s 19).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

112 Reparation orders—Confiscation of Criminal Assets Act

- (1) The court must not order the offender to make reparation to a person only because the person's property is subject to a restraining order or forfeiture order under the *Confiscation of Criminal Assets Act 2003* (the *Confiscation Act*).
- (2) The court cannot make a reparation order in relation to property that has been restrained or forfeited under the Confiscation Act.

Note For applications by a person with an interest in restrained property, or who had an interest in forfeited property, for the property's return or for compensation, see the Confiscation Act, pt 6 and div 9.5.

- (3) In this section:

restrained—property that has been ***restrained*** under the Confiscation Act includes—

- (a) property in relation to which an application for a restraining order has been made under that Act; and
- (b) property in relation to which an application for a conviction forfeiture order has been made under that Act; and
- (c) property subject to forfeiture under that Act.

113 Reparation orders—official notice of order

- (1) This section applies if the court makes a reparation order for the offender.

Note If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

- (2) As soon as practicable after the court makes the reparation order, the court must ensure that written notice of the order, together with a copy of the order, is given to—
- (a) the offender; and
 - (b) the person in whose favour the order is made.
- (3) Failure to comply with this section does not invalidate the reparation order.

Chapter 8 Deferred sentence orders

Part 8.1 Deferred sentence orders— making

114 Application—pt 8.1

This chapter applies if a court is considering whether to make, or makes, a deferred sentence order for an offender.

115 Meaning of *deferred sentence obligations*—pt 8.1

In this Act:

deferred sentence obligations, for an offender—see section 120 (Deferred sentence orders—obligations).

116 Deferred sentence orders—eligibility

- (1) The court must not make a deferred sentence order for the offender unless it considers that—
 - (a) releasing the offender on bail would allow the offender to address his or her criminal behaviour and anything that has contributed to the behaviour; and
 - (b) if the offender were to comply with the order, and any bail conditions, the court might not impose as severe a sentence for the offence.
- (2) The court may make a deferred sentence order whether or not it considers that the seriousness of the offence justifies a sentence of imprisonment.

117 Deferred sentence orders—suitability

- (1) In deciding whether to make a deferred sentence order for the offender, the court must consider the following:
 - (a) any pre-sentence report about the offender;
Note The court may order a pre-sentence report under s 41.
 - (b) any evidence given by the person who prepared a pre-sentence report for the offender;
 - (c) any evidence given by a corrections officer about the offender.
- (2) Subsection (1) does not limit the matters that the court may consider.
- (3) The court may make, or decline to make, a deferred sentence order despite—
 - (a) any recommendation in any pre-sentence report about the offender’s suitability for a deferred sentence order; or
 - (b) any evidence given by the person who prepared any pre-sentence report for the offender or a corrections officer.
- (4) The court must record reasons for its decision to make a deferred sentence order if—
 - (a) any pre-sentence report recommends that the offender is suitable but the court decides not to make a deferred sentence order; or
 - (b) any pre-sentence report recommends that the offender is not suitable but the court decides to make a deferred sentence order.
- (5) Failure to comply with subsection (4) does not invalidate a deferred sentence order.

118 Deferred sentence orders—indication of penalties

If the court makes a deferred sentence order for the offender, the court must state, in general terms—

- (a) the penalty that the offender might receive if the offender complies with the order and any bail conditions; and
- (b) the penalty that the offender might receive if the offender does not comply with the order or a bail condition.

119 Deferred sentence orders—review requirements in orders

If the court makes a deferred sentence order for the offender, the court may require the offender to appear before the court at the times (before the time stated in the order under section 27 (2)), and at the places, stated in the order for the purpose of reviewing the offender's compliance with the order.

Note The court may also review the offender's bail at any time, see the *Bail Act 1992*, s 41A.

120 Deferred sentence orders—obligations

The offender's obligations (the *deferred sentence obligations*) while subject to a deferred sentence order are—

- (a) to comply with the order (including any conditions of the order); and
- (b) to comply with the offender's bail conditions.

121 Deferred sentence orders—explanation and official notice

- (1) If the court makes a deferred sentence order for the offender, the court must ensure that reasonable steps are taken to explain to the offender in general terms (and in language the offender can readily understand)—

- (a) the nature and conditions of the order and the offender's bail under the *Bail Act 1992*; and
- (b) the offender's obligations under the order and the *Bail Act 1992*; and
- (c) the consequences if the offender breaches the obligations.

Note An offender may breach the obligations by failing to comply with them (see Legislation Act, dict, pt 1, def ***breach***).

- (2) As soon as practicable after the court makes the deferred sentence order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender.

Note The offender must also be given written notice of any bail conditions (see *Bail Act 1992*, s 34).

- (3) Failure to comply with this section does not invalidate the deferred sentence order.

122 Deferred sentence orders—period of effect

- (1) A deferred sentence order must not state a time (the ***sentencing time***) under section 27 (2) (Deferred sentence orders—making) that is more than 12 months after the day the order is made.
- (2) A deferred sentence order—
 - (a) starts on the day it is made; and
 - (b) ends—
 - (i) at the sentencing time; or
 - (ii) if the order is earlier cancelled under section 128 (Deferred sentence orders—court's powers on review) or section 132 (Deferred sentence orders—automatic cancellation on bail revocation)—on the day the court cancels it.

Part 8.2 Deferred sentence orders— supervision

123 Application—pt 8.2

This part applies if a court (the *sentencing court*) makes a deferred sentence order for an offender.

124 Deferred sentence orders—arrest without warrant

- (1) This section applies if a police officer believes, on reasonable grounds, that the offender has breached the offender's deferred sentence obligations.
- (2) The police officer may arrest the offender without a warrant.
- (3) If the police officer arrests the offender, the police officer must bring the offender before—
 - (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

125 Deferred sentence orders—arrest warrant

- (1) If a judge or magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that the offender has breached, or will breach, the offender's deferred sentence obligations, the judge or magistrate may issue a warrant for the offender's arrest.

Note For the arrest of an offender who breaches bail, see the *Bail Act 1992*, s 56A and s 56B.

- (2) The warrant must—
 - (a) be in writing signed by the judge or magistrate; and
 - (b) be directed to all police officers or a named police officer; and

- (c) state briefly the matter on which the information is based; and
 - (d) order the offender's arrest and bringing the offender before the sentencing court.
- (3) If a police officer arrests the offender under this section, the police officer must, as soon as practicable, bring the offender before—
- (a) the sentencing court; or
 - (b) if the sentencing court is not sitting—a magistrate.

126 Deferred sentence orders—review

- (1) The sentencing court may review the offender's deferred sentence order at any time.

Note The court may also review the offender's bail at any time, see the *Bail Act 1992*, s 41A.

- (2) Without limiting subsection (1), the sentencing court may review the deferred sentence order to consider whether the offender has breached, or may breach, the offender's deferred sentence obligations.
- (3) The sentencing court may review the deferred sentence order—
- (a) on its own initiative; or
 - (b) on application by—
 - (i) the offender; or
 - (ii) the chief executive; or
 - (iii) the director of public prosecutions.
- (4) A person mentioned in subsection (3) (b) may appear at a review.

127 Deferred sentence orders—notice of review

- (1) The sentencing court must give a written notice of a proposed review of the offender's deferred sentence order to the offender, the chief executive and the director of public prosecutions.
- (2) The notice must set out—
 - (a) the reasons for the review; and
 - (b) the time and place fixed for the review.

Part 8.3 Deferred sentence orders— amendment or cancellation

128 Deferred sentence orders—court’s powers on review

After reviewing the offender’s deferred sentence order, the sentencing court may do any of the following:

- (a) take no further action;
- (b) give the offender a warning about the need to comply with the offender’s deferred sentence obligations (including any bail conditions);
- (c) by order, amend any of the deferred sentence order’s conditions;
- (d) by order, cancel the deferred sentence order if—
 - (i) the offender has applied for its cancellation; or
 - (ii) the court is satisfied that the offender has breached the offender’s deferred sentence obligations.

129 Deferred sentence orders—when amendments take effect

- (1) This section applies if the sentencing court makes an order (an *amendment order*) under section 128 (1) (c) amending the offender’s deferred sentence order’s conditions.
- (2) The court must record its reasons for the decision.
- (3) The amendment order must state when it takes effect.
- (4) The date of effect must be—
 - (a) the date when the sentencing court gives the offender written notice of the amendment order; or

- (b) if a later date of effect is stated in the amendment order—the date stated.
- (5) As soon as practicable after the sentencing court makes the amendment order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender, the chief executive and the director of public prosecutions.
- (6) Failure to comply with subsection (5) does not invalidate the amendment order.

130 Deferred sentence orders—when cancellation takes effect

- (1) This section applies if the sentencing court makes an order (a *cancellation order*) under section 128 (Deferred sentence orders—court’s powers on review) cancelling the offender’s deferred sentence order.
- (2) The court must record its reasons for the decision.
- (3) The cancellation order takes effect on the day it is made.
- (4) As soon as practicable after the sentencing court makes the cancellation order, the court must ensure that written notice of the order, together with a copy of the order, is given to the offender, the chief executive and the director of public prosecutions.
- (5) Failure to comply with subsection (4) does not invalidate the cancellation order.

131 Deferred sentence orders—effect of cancellation

- (1) This section applies if the sentencing court makes an order (a *cancellation order*) under section 128 (Deferred sentence orders—court’s powers on review) cancelling the offender’s deferred sentence order.

- (2) The offender's bail in relation to which the deferred sentence order was made is automatically revoked on the making of the cancellation order.
- (3) The sentencing court must sentence the offender for all offences for which the court may sentence the offender, whether or not they are punishable by imprisonment.

Part 8.4 Deferred sentence orders—other provisions

132 Deferred sentence orders—automatic cancellation on bail revocation

The offender's deferred sentence order is automatically cancelled if the offender's bail in relation to which the order was made is revoked.

133 Deferred sentence orders—relationship with Bail Act

- (1) A requirement in a deferred sentence order under section 27 (2) (Deferred sentence orders—making) or section 119 (Deferred sentence orders—review requirements in orders) for an offender to appear before the sentencing court—
 - (a) does not affect a court's power under the *Bail Act 1992* to require the offender to appear before the court under that Act; and
 - (b) applies to the offender despite the *Bail Act 1992*, section 6 (2) (b) (Rights following grant of bail).

Note The *Bail Act 1992*, s 6 (2) (b) provides a bailed person is entitled to remain at liberty in relation to the offence until required to appear before a court in accordance with the person's undertaking to appear under that Act.

- (2) To remove any doubt, section 27 (5) does not limit, and is not limited by, the *Bail Act 1992*, section 25 (Conditions on which bail may be granted to adults).
- (3) To remove any doubt, section 128 (1) (c) (Deferred sentence orders—court's powers on review) does not limit, and is not limited by, any provision of the *Bail Act 1992* about varying an offender's bail conditions.

- (4) To remove any doubt, section 126 (Deferred sentence order—court review) does not limit, and is not limited by, any provision of the *Bail Act 1992*, part 6 (Review of bail decisions) about review of an offender's bail.

Chapter 9 Miscellaneous

134 Operation of ancillary and restitution orders

(1) In this section:

finalised—proceedings in relation to an appeal are *finalised* if—

- (a) the appeal is dismissed, withdrawn or struck out or ends without a retrial being ordered and the period for making any further appeal against that decision ends; or
- (b) if a retrial is ordered—the proceedings on the retrial are finalised within the meaning of paragraph (a).

relevant order means—

- (a) an ancillary order under—
 - (i) section 18 (Non-conviction orders—ancillary orders); or
 - (ii) section 58 (Ancillary orders relating to offences taken into account in sentencing); or
- (c) a reparation order.

(2) A relevant order takes effect on the day after—

- (a) the end of the period for appealing against the conviction or finding of guilt to which the relevant order relates; or
- (b) if an appeal in relation to the conviction or finding of guilt is made within the period for making the appeal—the day proceedings in relation to the appeal are finalised.

(3) However, an appeal court may, on application or its own initiative, if satisfied it is in the interests of justice, order that a relevant order take effect on a stated day earlier than the day fixed under subsection (2).

- (4) A court may, on application or its own initiative, by order, give such directions as it considers appropriate for—
 - (a) the custody of property to which a relevant order relates; or
 - (b) the giving of security, with or without sureties, for payment of an amount under a relevant order.
- (5) A relevant order automatically lapses if the conviction or finding of guilt to which the order relates is reversed or set aside.
- (6) An application under this section may be made by the director of public prosecutions or a person whose interests are affected by a relevant order.
- (7) This section is subject to section 61 (Reopening proceedings to correct penalty errors).

135 Reparation—other actions for recovery

- (1) This Act does not abolish or otherwise affect any cause of action that anyone may have—
 - (a) to recover goods or property; or
 - (b) to recover damages for, or be indemnified against, any loss or expense.
- (2) However, in a proceeding in relation to any loss or expense that resulted from the commission of an offence, a court must consider any amount paid under a reparation order in relation to the commission of the offence.

136 Information exchanges between criminal justice entities

- (1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a criminal justice entity, including—
 - (a) information about a person charged with the offence; and

- (b) a victim of the offence; and
 - (c) a person convicted or found guilty of the offence.
- (2) The criminal justice entity may give the information to another criminal justice entity for the purposes of the other entity.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a criminal justice entity.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (4) In this section:

criminal justice entity means any of the following:

- (a) the Supreme Court;
- (b) the Magistrates Court;
- (c) the chief executive;
- (d) the sentence administration board;
- (e) the director of public prosecutions;
- (f) the chief police officer;
- (g) any other entity prescribed by regulation.

victim, of an offence—see section 47.

137 Reduction of sentence—appeal if assistance undertaking breached

- (1) This section applies if a court imposed a lesser penalty (including a shorter nonparole period) on an offender under section 36 (Reduction of sentence—assistance to law enforcement authorities) having regard to assistance undertaken to be provided by the offender to law enforcement authorities.

- (2) If, after the sentence is imposed, the offender does not assist law enforcement authorities in accordance with the undertaking, the director of public prosecutions may, at any time during the term of the sentence, appeal against the inadequacy of the sentence.
- (3) The director of public prosecutions must not appeal unless the director is of the opinion that the appeal is in the interests of the administration of justice.
- (4) If the court hearing the appeal is satisfied that the offender has completely failed to assist law enforcement authorities in accordance with the undertaking, the court must substitute for the reduced sentence the sentence that it would otherwise have imposed.
- (5) If the court hearing the appeal is satisfied that the offender has partly failed to assist law enforcement authorities in accordance with the undertaking, the court may substitute for the reduced sentence the sentence it considers appropriate.
- (6) The sentence that may be substituted under subsection (5) must not exceed the sentence that may be substituted under subsection (4) if the offender had completely failed to assist law enforcement authorities in accordance with the undertaking.

138 Effect of failure to comply with Act

A failure to comply with this Act may be considered by an appeal court in any appeal against sentence even if this Act declares that the failure to comply does not invalidate the sentence.

139 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Chapter 10 Transitional

140 Application of Act—charges after commencement

- (1) This Act applies to an offender in relation to an offence if the offender is charged with the offence on or after the commencement of this section, whether the offence was committed before or after the commencement of this section.
- (2) The old sentencing law continues to apply to an offender in relation to an offence if the offender was charged with the offence before the commencement of this section.
- (3) However, a court must not make a home detention order under the *Rehabilitation of Offenders (Interim) Act 2001* for the offender.
- (4) This section applies subject to the transitional provisions of the *Crimes (Sentencing Administration) Act 2005*.
- (5) In this section:

old sentencing law means the law of the Territory as in force immediately before the commencement of this section in relation to proceedings for offences, including the following:

- (a) the making of orders for the conditional release of offenders (whether with or without conviction);
- (b) the imposition of sentences for offenders convicted of offences;
- (c) the making and enforcement of reparation orders for offenders;
- (d) the making of other orders for offenders on conviction (for example, community service orders).

Examples

- 1 the *Crimes Act 1900*, part 15 (Sentences), part 18 (Conditional release of offenders) and part 19 (Community service orders)
- 2 the *Periodic Detention Act 1995*, section 4

Note 1 The legislation in the examples, and other aspects of the old sentencing law, are repealed or amended by the *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) This section expires 5 years after the day it commences.

141 Nonparole periods—Rehabilitation of Offenders (Interim) Act, s 31

- (1) This section applies if—
 - (a) a nonparole period (an *old nonparole period*) is set, whether before or after the commencement of this section, for an offender under the *Rehabilitation of Offenders (Interim) Act 2001*, section 31 (Court to set nonparole period); and
 - (b) for an old nonparole period set before the commencement—the old nonparole period has not ended.
- (2) The old nonparole period is taken to be a nonparole period set under this Act, section 65 (Nonparole periods—court to set)—
 - (a) if the old nonparole period was set before the commencement of this section—for the remainder of the period for which it was originally set; or
 - (b) if the old nonparole period is set after the commencement of this section—for the period set by the court.
- (3) This section expires 5 years after the day it commences.

142 Reparation orders—Crimes Act, s 350

- (1) This section applies if—
 - (a) whether before or after the commencement of this section, a court makes an order (the *old reparation order*) under the *Crimes Act 1900*, section 350 for an offender in relation to an offence; and
 - (b) if the old reparation order was made before the commencement of this section—the order is still in force.
- (2) If the old reparation order was made before the commencement of this section—
 - (a) the old reparation order (as in force immediately before the commencement of this section) is taken to be a reparation order under part 3.3 (the *new reparation order*); and
 - (b) any conditions included in the old reparation order (as in force immediately before the commencement of this section) are taken to be conditions included in the new reparation order; and
 - (c) the new reparation order may be enforced as if it had been made under this Act.
- (3) If the old reparation order is made after the commencement of this section—
 - (a) the old reparation order is taken to be a reparation order under part 3.3 (the *new reparation order*) immediately after it is made; and
 - (b) any conditions included in the old reparation order are taken to be conditions included in the new reparation order; and
 - (c) the new reparation order may be enforced as if it had been made under this Act.

- (4) This section expires 5 years after the day it commences.

143 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the *Crimes (Sentencing Legislation) Consequential Amendments Act 2005*.
- (2) A regulation may modify this part (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.
- (4) This section expires 2 years after the day it commences.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- administrative unit
- adult
- chief executive (see s 163)
- director of public prosecutions
- doctor
- entity
- law (of the Territory)
- lawyer
- may (see s 146)
- must (see s 146)
- oath
- police officer
- road transport authority
- sentence administration board
- statutory office-holder
- territory authority
- working day.

additional offence, for part 4.4 (Taking additional offences into account)—see section 55.

assessor, for part 4.2 (Pre-sentence reports)—see section 41 (5).

bail condition—see the *Bail Act 1992*, dictionary.

because of, an offence, for part 4.3 (Victim impact statements)—see section 47.

combination sentence—see section 29 (1) (Combination sentences—offences punishable by imprisonment) and section 30 (1) (Combination sentences—offences punishable by fine).

community service condition, of a good behaviour order for an offender—see section 85.

community service work—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

controlled drug means a controlled drug under the Criminal Code, chapter 6 (Serious drug offences).

correctional centre means—

- (a) a correctional centre under the *Crimes (Sentence Administration) Act 2005*; or
- (b) a NSW correctional centre.

corrections officer—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

court—if a **court** has sentenced an offender, made an order or given a direction, means the same court, however constituted.

deferred sentence obligations, for an offender, see section 120.

deferred sentence order—see section 27 (2).

domestic violence offence—see the *Domestic Violence and Protection Orders Act 2001*, section 9 (2).

driver licence disqualification order—see section 17 (2).

existing sentence, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 70 (1).

fine, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 69.

fine order—see section 14 (2).

good behaviour order—see section 13 (2).

harm, for part 4.3 (Victim impact statements)—see section 47.

list of additional offences, for part 4.4 (Taking additional offences into account)—see section 55.

non-association order—see section 21.

non-conviction order—see section 17 (2).

nonparole period, for a sentence of imprisonment—

- (a) see section 65 (2) (Nonparole periods—court to set); and
- (b) if the nonparole period of the sentence is amended—means the nonparole period as amended.

offender—see section 8.

parole order—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

periodic detention—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

periodic detention period—see section 11 (2), and includes the period as amended under the *Crimes (Sentence Administration) Act 2005*.

place restriction order—see section 21.

pre-sentence report—see section 41 (1).

pre-sentence report order—see section 41 (1).

primary sentence, for part 5.3 (Imprisonment—concurrent and consecutive sentences)—see section 70 (1).

primary victim, for part 4.3 (Victim impact statements)—see section 47, definition of **victim**, paragraph (a).

principal offence, for part 4.4 (Taking additional offences into account)—see section 55.

probation condition, of a good behaviour order for an offender, means a condition included in the order that, during the period of the order, or for a part of that period stated in the order, the offender is—

- (a) to be on probation subject to the supervision of a person appointed under the order; and
- (b) to obey all reasonable directions of the appointed person.

Example of directions for par (b)

that the offender comply with a condition mentioned in section 13 (3) (g), examples, even if the condition is not a condition of the order

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

rehabilitation program, for a good behaviour order—see section 93.

rehabilitation program condition, of a good behaviour order for an offender—see section 93.

reparation order means an order under—

- (a) section 19 (3) (Reparation orders—losses and expenses generally); or
- (b) section 20 (3) or (4) (Reparation orders—stolen property).

sentence means—

- (a) when used as a noun—the penalty imposed for an offence; or
- (b) when used as a verb—to impose a penalty for an offence.

sentence of imprisonment includes—

- (a) a sentence of imprisonment that has been imposed but is yet to start; and
- (b) a combination sentence that imposes a penalty of imprisonment together with another penalty.

sentence-related order, for part 4.4 (Taking additional offences into account)—see section 55.

sentencing court, for part 8.2 (Deferred sentence orders—supervision) and part 8.3 (Deferred sentence orders—amendment or cancellation)—see section 123.

surety, for a good behaviour order for an offender, means a person other than the offender who gives security for complying with the order.

suspended sentence order—see section 12 (2).

term—if the term of a sentence is amended under the *Crimes (Sentence Administration) Act 2005*, the ***term*** of the sentence as amended.

victim, of an offence, for part 4.3 (Victim impact statements)—see section 47.

victim impact statement, for an offence, for part 4.3 (Victim impact statements)—see section 47.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 April 2005.

2 Notification

Notified under the Legislation Act on 2 December 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Sentencing) Bill 2005,
which was passed by the Legislative Assembly on 22 November 2005.

Clerk of the Legislative Assembly

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