Examinable excerpts of

Sentencing Act 1991

as at 10 April 2017

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

(a) to promote consistency of approach in the sentencing of offenders;

(b) to have within the one Act all general provisions dealing with the powers of courts to sentence offenders;

(c) to provide fair procedures—

(i) for imposing sentences; and

(ii) for dealing with offenders who breach or contravene the terms or conditions of their sentences;

(d) to prevent crime and promote respect for the law by—

(i) providing for sentences that are intended to deter the offender or other persons from committing offences of the same or a similar character; and

(ii) providing for sentences that facilitate the rehabilitation of offenders; and

(iii) providing for sentences that allow the court to denounce the type of conduct in which the offender engaged; and

(iv) ensuring that offenders are only punished to the extent justified by—

(A) the nature and gravity of their offences; and

(B) their culpability and degree of responsibility for their offences; and

(C) the presence of any aggravating or mitigating factor concerning the offender and of any other relevant circumstances; and

(v) promoting public understanding of sentencing practices and procedures;

(e) to provide sentencing principles to be applied by courts in sentencing offenders;

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(g) to provide for the sentencing of special categories of offender;

(h) to set out the objectives of various sentencing and other orders;

(i) to ensure that victims of crime receive adequate compensation and restitution;

(j) to provide a framework for the setting of maximum penalties;

(k) to vary the penalties that may be imposed in respect of offences under the **Crimes Act 1958**;

(l) generally to reform the sentencing laws of Victoria.

…

PART 2—GOVERNING PRINCIPLES

5 Sentencing guidelines

(1) The only purposes for which sentences may be imposed are—

(a) to punish the offender to an extent and in a manner which is just in all of the circumstances; or

(b) to deter the offender or other persons from committing offences of the same or a similar character; or

(c) to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated; or

(d) to manifest the denunciation by the court of the type of conduct in which the offender engaged; or

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

(f) a combination of two or more of those purposes.

(2AA) Despite anything to the contrary in this Act, in sentencing an offender a court must not have regard to[i]—

(a) any possibility or likelihood that the length of time actually spent in custody by the offender will be affected by executive action of any kind; or

(b) any sentencing practices arising at any time out of section 10 of this Act as in force at any time before its expiry on 22 April 1997.

(2AB) If, in sentencing an offender, a court imposes a less severe sentence than it would otherwise have imposed because of an undertaking given by the offender to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, the court must announce that it is doing so and cause to be noted in the records of the court the fact that the undertaking was given and its details.

(2AC) Nothing in subsection (2AB) requires a court to state the sentence that it would have imposed but for the undertaking that was given.

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

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

(ab) the baseline sentence for the offence; and

(b) current sentencing practices; and

(c) the nature and gravity of the offence; and

(d) the offender's culpability and degree of responsibility for the offence; and

(daaa) whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated; and

(daa) the impact of the offence on any victim of the offence; and

(da) the personal circumstances of any victim of the offence; and

(db) any injury, loss or damage resulting directly from the offence; and

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

(f) the offender's previous character; and

(g) the presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances.

…

(3) Subject to subsections (2G) and (2H), a court must not impose a sentence that is more severe than that which is necessary to achieve the purpose or purposes for which the sentence is imposed.

(4) Subject to subsections (2G) and (2H), a court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a sentence that does not involve the confinement of the offender.

* * * *

(4B) Subject to subsections (2G) and (2H), a court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a drug treatment order.

(4C) Subject to subsections (2G) and (2H), a court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a community correction order to which one or more of the conditions referred to in sections 48F, 48G, 48H, 48I and 48J are attached.

(5) A court must not impose a drug treatment order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a community correction order.

(6) A court must not impose a community correction order unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by imposing a fine.

(7) A court must not impose a fine unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a dismissal, discharge or adjournment.

…

6 Factors to be considered in determining offender's character

In determining the character of an offender a court may consider (among other things)—

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

(b) the general reputation of the offender; and

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

6AAA Sentence discount for guilty plea

(1) If—

(a) in sentencing an offender, a court imposes a less severe sentence than it would otherwise have imposed because the offender pleaded guilty to the offence; and

(b) the sentence imposed on the offender is or includes—

(i) an order under Division 2 of Part 3; or

(ia) an order that the offender serve a term of imprisonment; or

(ib) a community correction order for a period of 2 years or more; or

(ii) a fine exceeding 10 penalty units; or

(iii) an aggregate fine exceeding 20 penalty units—

the court must state the sentence and the non-parole period, if any, that it would have imposed but for the plea of guilty.

(2) If an offender is sentenced for more than one offence in the same proceeding and subsection (1)(a) and (b) apply, the court must state, in respect of any total effective period of imprisonment—

(a) the sentence; and

(b) the non-parole period, if any—

that it would have imposed but for the plea of guilty and need not state those matters in respect of each offence.

(3) In the case of a sentence other than a sentence referred to in subsection (1)(b), the court may state the sentence that it would have imposed but for the plea of guilty.

(4) If the court makes a statement under this section, it must record or cause to be recorded (whether in writing or another form) the matters stated under subsection (1), (2) or (3), as the case may be.

(5) For the purposes of this section, an aggregate sentence imposed in respect of two or more offences is to be treated as a sentence imposed in respect of one offence.

Part 3—Sentences

Division 1—General

7 Sentences

(1) If a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and subject to this Act—

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

* * * * *

(aab) subject to Part 5, record a conviction and order that the offender be detained and treated in a designated mental health service as a security patient (Court Secure Treatment Order); or

(ac) record a conviction and make a drug treatment order in respect of the offender; or

* * * * *

(d) in the case of a young offender, record a conviction and order that the young offender be detained in a youth justice centre; or

(da) in the case of a young offender, record a conviction and order that the young offender be detained in a youth residential centre; or

(e) with or without recording a conviction, make a community correction order in respect of the offender; or

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

(g) record a conviction and order the release of the offender on the adjournment of the hearing on conditions; or

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

(i) without recording a conviction, order the release of the offender on the adjournment of the hearing on conditions; or

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

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

(2) If the Magistrates' Court or County Court finds a person guilty of an offence, it may defer sentencing the person in accordance with section 83A.

8 Conviction or non-conviction

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

(a) the nature of the offence; and

(b) the character and past history of the offender; and

(c) the impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects.

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

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

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

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

(i) appeals against sentence; or

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

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

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

Division 1A—Pre-sentence reports

8A Court may order pre-sentence report

(1) If a court finds a person guilty of an offence, before passing sentence the court may order a pre-sentence report in respect of the offender and adjourn the proceeding to enable the report to be prepared.

(2) A court must order a pre-sentence report if it is considering making a community correction order, a youth justice centre order or a youth residential centre order so that it may—

(a) establish the person's suitability for the order being considered; and

(b) establish that any necessary facilities exist; and

(c) if the order being considered is a community correction order, gain advice concerning the most appropriate condition or conditions to be attached to the order.

(3) A court is not required to order a pre-sentence report under subsection (2) if it is considering making a community correction order with an unpaid community work condition of up to a maximum of 300 hours as the sole condition attached to the order.

(4) If a court orders a pre-sentence report, it must be prepared by—

(a) the Secretary to the Department of Human Services if the court is considering making a youth justice centre order or a youth residential centre order; or

(b) the Secretary in any other case.

(5) The author of a pre-sentence report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

8B Contents of pre-sentence report

(1) A pre-sentence report may set out all or any of the following matters which, on investigation, appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertainable by him or her—

(a) the age of the offender;

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

(c) the medical and psychiatric history of the offender;

(d) any alcohol, drug and any other substance history disclosed by the offender;

(e) the educational background of the offender;

(f) the employment history of the offender;

(g) the circumstances of any other offences of which the offender has been found guilty and which are known to the court;

(h) the extent to which the offender is complying with any sentence currently in force in respect of him or her;

(i) the financial circumstances of the offender;

(j) the ability of the offender to pay a bond;

(k) any special needs of the offender;

(l) any other services that address the risk of recidivism from which the offender may benefit;

(m) any courses, programs, treatment, therapy or other assistance that could be available to the offender and from which he or she may benefit;

(n) the relevance and appropriateness of any proposed condition;

(o) the capacity of the offender to perform unpaid community work for any proposed unpaid community work condition;

(p) the recommended duration of any intensive compliance period fixed under a community correction order;

(pa) if a monitored condition is proposed in relation to a community correction order—

(i) the suitability of the offender to be electronically monitored;

(ii) the availability of appropriate resources or facilities, including but not limited to devices or equipment, for the offender to be electronically monitored;

(iii) the appropriateness of the offender being electronically monitored in all the circumstances;

(q) the appropriateness of confirming an existing order that applies to the offender;

(r) any other information that the author believes is relevant and appropriate.

(2) The author of a pre-sentence report must include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

…

Division 1B—Drug and alcohol reports

8E Drug and alcohol assessment report

(1) If a court is considering making a community correction order the court may order a drug and alcohol assessment report if the court is satisfied that the offender had a drug or alcohol dependency that contributed to the offender's criminal behaviour.

(2) If a court orders a drug and alcohol assessment report under subsection (1), it must be prepared by an approved drug and alcohol assessment agency.

(3) The purpose of a drug and alcohol assessment report is—

(a) to assess whether the offender has a drug or alcohol dependency; and

(b) to make recommendations as to his or her suitability to undergo treatment and rehabilitation under a community correction order.

(4) A drug and alcohol assessment report may set out any matters which, on investigation, appear to the author of the report to be relevant to the assessment of the offender and are readily ascertainable by him or her.

(5) The author of a drug and alcohol assessment report must conduct any investigation that he or she thinks appropriate or that is directed by the court.

Division 1C—Victim Impact Statements

…

8K Victim may make victim impact statement

(1) If a court finds a person guilty of an offence, a victim of the offence may make a statement to the court for the purpose of assisting the court in determining sentence.

(2) A victim impact statement may be made—

(a) in writing by statutory declaration; or

(b) in writing by statutory declaration and orally by sworn evidence.

(3) A victim impact statement may be made by another person on behalf of a victim—

(a) who is under the age of 18 years; or

(b) who the court is satisfied is incapable of making the statement because of mental illness or for any other reason; or

(c) that is not an individual.

8L Contents of victim impact statement

(1) A victim impact statement contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence.

(2) A victim impact statement may include photographs, drawings or poems and other material that relates to the impact of the offence on the victim or to any injury, loss or damage suffered by the victim as a direct result of the offence.

(3) The court may rule as inadmissible the whole or any part of a victim impact statement, including the whole or any part of a medical report attached to it.

…

8Q Reading aloud of victim impact statement

(1) A person who has made a victim impact statement may request that any part of that victim impact statement—

(a) is read aloud or displayed in the course of the sentencing hearing by—

(i) the person making the request; or

(ii) a person chosen by the person making the request who consents and who is approved by the court for that purpose; or

(b) is read aloud in the course of the sentencing hearing by the prosecutor.

(2) If a request is made under subsection (1) and the person specified in the request is available to do so during the course of the sentencing hearing, the court must ensure that any admissible parts of the victim impact statement that are—

(a) identified in the request; and

(b) appropriate and relevant to sentencing—

are read aloud or displayed by the person or persons specified in the request in open court in the course of the sentencing hearing.

(3) For the purposes of subsection (2), the court may direct the person who made the request or the person chosen by that person as to which

admissible parts of the victim impact statement are appropriate and relevant to sentencing.

(4) Nothing in this section prevents the presiding judge or magistrate from reading aloud any admissible part of a victim impact statement in the course of sentencing the offender or at any other time in the course of the sentencing hearing.

…

Division 2—Custodial orders

Subdivision (1)—Imprisonment

9 Aggregate sentence of imprisonment

(1) If an offender is convicted by a court of two or more offences which are founded on the same facts, or form, or are part of, a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences in place of a separate sentence of imprisonment in respect of all or any two or more of them.

(1A) Despite subsection (1), a court must not impose an aggregate sentence of imprisonment if—

(a) the offender is a serious offender within the meaning of Part 2A and any of the offences of which the offender is convicted is a relevant offence within the meaning of that Part; or

(ab) the offences comprise at least one offence that is a baseline offence; or

(b) the offences comprise at least one offence committed by the offender while released under a parole order and one offence committed at another time.

(2) The term of an aggregate sentence of imprisonment imposed in accordance with subsection (1) must not exceed the total effective period of imprisonment that could have been imposed in respect of the offences in accordance with this Act if the court had imposed a separate sentence of imprisonment in respect of each of them.

(3) If a court proposes to impose an aggregate sentence of imprisonment, it must before doing so announce in open court, in language likely to be readily understood by the offender—

(a) the decision to impose an aggregate sentence and the reasons for doing so; and

(b) the effect of the proposed aggregate sentence.

(4) If a court imposes an aggregate sentence of imprisonment in respect of 2 or more offences, the court—

(a) is not required to identify separate events giving rise to specific charges; and

(b) is not required to announce—

(i) the sentences that would have been imposed for each offence had separate sentences been imposed; or

(ii) whether those sentences would have been imposed concurrently or cumulatively.

(4A) For the avoidance of doubt, an aggregate sentence of imprisonment may be imposed in respect of convictions for offences that are the subject of a rolled-up charge or a representative charge.

Note

A representative charge is a charge in an indictment for an offence that is representative of a number of offences of the same type alleged to have been committed by the accused. A rolled-up charge is a charge in an indictment that alleges that the accused has committed more than one offence of the same type between specified dates.

(5) Subsection (4) does not affect the requirements of section 6AAA.

…

11 Fixing of non-parole period by sentencing court

(1) If a court sentences an offender to be imprisoned in respect of an offence for—

(a) the term of his or her natural life; or

(b) a term of 2 years or more—

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

(2) If a court sentences an offender to be imprisoned in respect of an offence for a term of less than 2 years but not less than one year, the court may, as part of the sentence, fix a period during which the offender is not eligible to be released on parole.

(2A) However, a court must not fix under subsection (2) a non-parole period as part of a sentence of imprisonment if the court, in accordance with section 44, makes a community correction order in respect of the offender in addition to imposing the sentence of imprisonment.

(3) A non-parole period fixed under subsection (1) or (2) must be at least 6 months less than the term of the sentence.

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

11A Fixing of non-parole period for baseline offence

(1) This section applies to a court when fixing, in accordance with section 11, a non-parole period—

(a) for a baseline offence; or

(b) in respect of a total effective sentence imposed in respect of 2 or more sentences, at least one of which is for a baseline offence.

(2) This section also applies to a court when fixing, in accordance with section 14, a new single non-parole period in circumstances where the further sentence is a sentence of imprisonment for a baseline offence.

(3) However, this section does not apply to a court when fixing a non-parole period for a baseline offence if—

(a) the offender was under the age of 18 at the time of its commission; or

(b) the offence is heard and determined summarily.

(4) The non-parole period must be at least—

(a) 30 years if the relevant term is the term of the offender's natural life; or

(b) 70% of the relevant term if that term is a term of 20 years or more; or

(c) 60% of the relevant term if that term is a term of less than 20 years.

(5) In subsection (4) ***the relevant term*** is—

(a) if a non-parole period is being fixed for a baseline offence, the sentence for that offence; and

(b) if a non-parole period is being fixed in respect of a total effective sentence referred to in subsection (1)(b), that sentence.

(6) Nothing in this section affects the fixing of a non-parole period for an offence that is not a baseline offence or in respect of a total effective sentence imposed in respect of 2 or more sentences, none of which is for a baseline offence.

…

16 Sentences—whether concurrent or cumulative

(1) Subject to subsection (1A), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment or detentio in a youth justice centre or youth residential centre imposed on that person, whether before or at the same time as that term.

……

18 Time held in custody before trial etc. to be deducted from sentence

(1) If an offender is in respect of an offence sentenced to a term of imprisonment or to a period of detention in an approved mental health service under a hospital security order, any period during which he or she was held in custody in relation to—

(a) proceedings for the offence; or

(b) proceedings arising from those proceedings including any period pending the determination of an appeal—

must be reckoned as a period of imprisonment or detention already served under the sentence unless the sentencing court or the court fixing a non-parole period in respect of the sentence otherwise orders.

…

Subdivision (4)—Youth justice centre orders and youth residential centre orders

32 Youth justice centre or youth residential centre order

(1) Subject to subsections (2A) and (2B), if a sentence involving confinement is justified in respect of a young offender a court may make a youth justice centre order or a youth residential centre order if it has received a pre-sentence report and—

(a) it believes that there are reasonable prospects for the rehabilitation of the young offender; or

(b) it believes that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

(2) In determining whether to make a youth justice centre order or a youth residential order, a court must have regard to—

(a) the nature of the offence; and

(b) the age, character and past history of the young offender.

(2A) A court must not make a youth justice centre order in respect of a young offender who at the time of being sentenced is under the age of 15 years.

(2B) A court must not make a youth residential centre order in respect of a young offender who at the time of being sentenced is aged 15 or more.

(3) The maximum period for which a court may direct that a young offender be detained in a youth justice centre or youth residential centre is—

(a) if the court is the Magistrates' Court—2 years; and

(b) if the court is the County Court or the Supreme Court—3 years.

(4) Subsection (3) applies irrespective of how many offences the young offender is convicted of in the same proceeding.

(5) If—

(a) a sentence of detention is imposed on a young offender already under such a sentence; and

(b) the subsequent sentence is cumulative on the prior sentence; and

(c) the aggregate of the periods of the unexpired portion of the prior sentence and the subsequent sentence exceeds the relevant maximum period set out in subsection (3)—

the subsequent sentence must be taken to be a sentence that the young offender be detained after the completion of the prior sentence for the period then remaining until that maximum period is reached.

33 Sentences to be concurrent unless otherwise directed

(1) Every term of detention imposed on a young offender by a court (except one imposed in default of payment of a fine or sum of money) must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of detention or imprisonment imposed on the young offender, whether before or at the same time as that term.

(2) Every term of detention imposed on a young offender by a court in default of payment of a fine or sum of money must, unless otherwise directed by the court, be served—

(a) cumulatively on any uncompleted sentence or sentences of detention or imprisonment imposed on the young offender in default of payment of a fine or sum of money; but

(b) concurrently with any other uncompleted sentence or sentences of detention or imprisonment imposed on the young offender—

whether that other sentence was, or those other sentences were, imposed before or at the same time as that term.

(3) A sentence of detention imposed on a young offender which is to be served concurrently with a sentence of imprisonment must be served as imprisonment in a prison until the young offender has served the sentence of imprisonment.

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

34 Commencement of sentences

(1) Subject to sections 33 and 35, a sentence of detention commences—

(a) if the young offender is immediately detained in custody under the sentence—on the day that it is imposed; or

(b) if the young offender is serving a sentence of imprisonment which is cumulative on the sentence of detention—on the day the sentence of imprisonment is completed; or

(c) in any other case—on the day the young offender is apprehended under a warrant to detain in a youth justice centre or a youth residential centre issued in respect of the sentence.

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

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

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

(5) If a young offender to whom subsection (3) applies is in the period during which service of the sentence is suspended under that subsection detained or imprisoned under another sentence, the unexpired portion of the suspended sentence takes effect—

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

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

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

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

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

(7) Subsection (6) applies unless the sentencing court or the court determining the appeal, question of law or case stated otherwise directs.

35 Time held in custody before trial etc. to be deducted from sentence

(1) If a young offender is sentenced to a term of detention in respect of an offence, any period during which he or she was held in custody in relation to—

(a) proceedings for the offence; or

(b) proceedings arising from those proceedings including any period pending the determination of an appeal—

must be reckoned as a period of detention already served under the sentence unless the sentencing court or the court making the order otherwise orders.

(2) Subsection (1) does not apply—

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

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

(c) to a period of custody previously declared under this section or section 18 as reckoned to be a period of detention or imprisonment already served under another sentence of detention or imprisonment or Court Secure Treatment Order imposed on the offender.

(3) If a young offender was held in custody in circumstances to which subsection (1) applies, then—

(a) the informant or person who arrested the young offender must, if present before the court, inform it, whether from his or her own knowledge or from inquiries made by him or her, of the length of the period of custody; or

(b) if that person is not present before the court, it may take and receive other evidence (whether oral or written and whether on oath or otherwise) of the length of the period of custody.

(4) If a young offender was held in custody in circumstances to which subsection (1) applies, then the court must declare the period to be reckoned as already served under the sentence and cause to be noted in the records of the court the fact that the declaration was made and its details.

(5) The person with custody of the record referred to in subsection (4) must indorse on the warrant or other authority for the detention of the young offender particulars of the matters referred to in that subsection.

(6) If a young offender charged with a series of offences committed on different occasions has been in custody continuously since arrest, the period of custody for the purposes of subsection (1) must be reckoned from the time of his or her arrest even if he or she is not convicted of the offence with respect to which he or she was first arrested or of other offences in the series.

(7) If on an application under this subsection the sentencing court is satisfied that the period declared under subsection (4) was not correct it may declare the correct period and amend the sentence accordingly.

(8) An application under subsection (7) may be made by—

(a) the young offender; or

(b) the Director of Public Prosecutions, if the sentencing court was the Supreme Court or the County Court; or

(c) the informant or police prosecutor, if the sentencing court was the Magistrates' Court.

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PART 3A—SENTENCES—COMMUNITY CORRECTION ORDERS

Division 1—Preliminary

36 Purpose of an order

(1) The purpose of a community correction order is to provide a community based sentence that may be used for a wide range of offending behaviours while having regard to and addressing the circumstances of the offender.

(2) Without limiting when a community correction order may be imposed, it may be an appropriate sentence where, before the ability of the court to impose a suspended sentence was abolished, the court may have imposed a sentence of imprisonment and then suspended in whole that sentence of imprisonment.

Division 2—General

37 Community correction order

Subject to any specific provision relating to the offence, a court may make a community correction order in respect of an offender if—

(a) the offender has been convicted or found guilty of an offence punishable by more than 5 penalty units; and

(b) the court has received a pre-sentence report (if required) and has had regard to any recommendations, information or matters identified in the report; and

(c) the offender consents to the order.

38 Period and commencement of a community correction order

(1) The period of a community correction order is the period determined by the court which must not exceed—

(a) in the case of an order made by the Magistrates' Court—

(i) in respect of one offence, 2 years; or

(ii) in respect of 2 offences, 4 years; or

(iii) in respect of 3 or more offences, 5 years; or

(b) in the case of an order made by the County Court or the Supreme Court in respect of one, or more than one, offence, 5 years.

(2) Unless section 44(3) applies, a community correction order must commence on a date specified by the court that is not later than 3 months after the making of the order.

39 Intensive compliance period

(1) If the court is making a community correction order for a period of 6 months or longer, the court may fix a period (being part of the period for which the order is in force) as the intensive compliance period.

Example

Where a court is making a community correction order that has a period of, for example, 2 years, the intensive compliance period fixed by the court may be for a lesser period of, for example, 8 months.

(2) A court that fixes an intensive compliance period under subsection (1) must determine that one or more conditions attached to a community

correction order are to be completed within the intensive compliance period.

(3) If—

(a) a court is sentencing an offender in respect of two or more offences in the same proceeding; and

(b) the court makes separate community correction orders in respect of any two or more of the offences, the periods of which are cumulative; and

(c) the court fixes intensive compliance periods for the orders that are cumulative—

the intensive compliance periods are to run cumulatively from the commencement of the first order and then the balance of the periods of the orders are to run cumulatively.

40 Community correction order may cover multiple offences

(1) If an offender is convicted or found guilty by a court of two or more offences, which are founded on the same facts or form or are part of a series of offences of the same or a similar character, the court may make one community correction order in respect of those offences in place of separate orders in respect of all or any two or more of them.

(2) A community correction order that is being made in respect of more than one offence must not exceed the maximum period for which a community correction order may be made under section 38.

41 Presumption of concurrency

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

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

41A Maximum cumulative community correction orders

A court must not impose on an offender in respect of 2 or more offences separate community correction orders with cumulative periods that are to take effect in succession for a period that exceeds in the whole 5 years.

42 Concurrent unpaid community work where there are several orders

(1) The number of hours of unpaid community work required to be performed under a fines order must, unless otherwise directed by the court, be performed concurrently with any hours of unpaid community work required to be performed under any community correction order that is in force in respect of the offender whether the community correction order is made before or at the same time as the fines order.

(2) In this section, ***fines order*** means a fine conversion order or fine default unpaid community work order.

43 Fine and a community correction order

A court may impose on an offender a fine authorised by law in addition to making a community correction order.

44 Imprisonment and a community correction order

S. 44(1) amended by No. 32/2013 s. 13(1), substituted by No. 69/2014 s. 18(1), amended by No. 65/2016 s. 12(1).

(1) Subject to any specific provision relating to the offence, when sentencing an offender in respect of one, or more than one, offence (other than an offence to which clause 5 of Schedule 1 applies), a court may make a community correction order in addition to imposing a sentence of imprisonment only if the sum of all the terms of imprisonment to be served (after deduction of any period of custody that under section 18 is reckoned to be a period of imprisonment or detention already served) is one year or less.

S. 44(1A) inserted by No. 69/2014 s. 18(1), amended by No. 65/2016 s. 12(2).

(1A) Subject to any specific provision relating to the offence, when sentencing an offender in respect of one, or more than one, offence to which clause 5 of Schedule 1 applies, a court may make a community correction order in addition to imposing any sentence of imprisonment.

(1B) In sentencing an offender in accordance with subsection (1) or (1A) in respect of 2 or more offences, the Magistrates' Court must not impose a sentence that exceeds in the whole 5 years.

* * * * *

(3) If a court makes a community correction order in respect of an offender in addition to imposing a sentence of imprisonment in accordance with this section, the community correction order commences on the release of the offender from imprisonment.

(4) A reference in this section to a sentence of imprisonment does not include a sentence that has been suspended.

Division 3—Making a community correction order

45 Terms of a community correction order

(1) The following terms are attached to each community correction order—

(a) the offender must not commit, whether in or outside Victoria, during the period of the order, an offence punishable by imprisonment;

(ab) the offender must comply with any obligation or requirement prescribed by the regulations;

(b) the offender must report to, and receive visits from the Secretary during the period of the order;

(c) the offender must report to the community corrections centre specified in the order within 2 clear working days after the order coming into force;

(d) the offender must notify the Secretary of any change of address or employment within 2 clear working days after the change;

(e) the offender must not leave Victoria except with the permission, either generally or in relation to a particular case, of the Secretary;

(f) the offender must comply with any direction given by the Secretary that is necessary for the Secretary to give to ensure that the offender complies with the order.

(2) A direction may be given by the Secretary under subsection (1)(f) either orally or in writing.

…

47 Court may attach conditions

(1) A court that is making a community correction order must attach at least one condition in accordance with subsection (2).

(2) A court that is making a community correction order may—

(a) attach one or more conditions under Division 4; or

(b) attach a condition under Division 2 of Part 3BA.

48 Residual condition

(1) A court that is making a community correction order may attach in addition to a condition attached in accordance with section 47 any other condition to the order that the court thinks fit, other than a condition about making restitution or the payment of compensation, costs or damages.

(2) A condition attached under subsection (1) to a community correction order must not be about the subject matter of a condition under Division 4 or Division 2 of Part 3BA.

48A Matters to be considered when attaching conditions

The court must attach conditions to a community correction order in accordance with—

(a) the principle of proportionality; and

(b) the purposes for which a sentence may be imposed as set out in section 5; and

(c) the purpose of a community correction order set out in section 36.

Division 4—Conditions

48B Definitions

In this Division—

child protection order means—

(a) a custody to third party order;

(b) an interim accommodation order;

(c) an interim protection order;

(d) a supervised custody order;

(e) a supervision order—

within the meaning of the **Children, Youth and Families Act 2005**;

family violence has the same meaning as in the **Family Violence Protection Act 2008**;

safety means safety from family violence, physical or mental harm.

48C Unpaid community work condition

(1) A court which is making a community correction order may attach a condition requiring an offender to perform unpaid community work.

(2) The purpose for attaching an unpaid community work condition is to adequately punish the offender in the community.

(3) Subject to section 48CA, the offender must perform the number of hours of unpaid community work specified by the court under an unpaid community work condition.

(3A) If the Secretary gives a direction under section 83AU the offender must perform the number of hours of unpaid community work specified by the Secretary.

(4) The total number of hours for which an offender may be required to perform unpaid community work under an unpaid community work condition must be determined by the court and must not exceed 600 hours.

(5) The total number of hours of unpaid community work that the offender must perform in any 7 day period must not exceed 20.

(6) An offender may perform unpaid community work for up to 40 hours in a period of 7 days if he or she requests to do so and signs a written consent to performing the extra number of hours.

(7) If a court attaches an unpaid community work condition as the sole condition under this Division of a community correction order for up to a maximum of 300 hours, the order expires on the satisfactory completion of those hours of work.

(8) If an offender is or will be subject to more than one community correction order the court must not make a direction under this Act that causes the time limits that apply under all unpaid community work conditions under the orders to exceed the maximum time limits for the orders under section 38.

(9) When attaching an unpaid community work condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

48CA Order with conditions under sections 48C and 48D

(1) This section applies if a court when making a community correction order attaches both an unpaid community work condition and a treatment and rehabilitation condition to the order.

(2) The court may determine that some or all of the hours satisfactorily undertaken for treatment and rehabilitation are to be counted as hours of unpaid community work for the purposes of the unpaid community work condition.

(3) If a court makes a determination under subsection (2) but does not specify the number of hours undertaken for treatment and rehabilitation that are to be counted as hours of unpaid community work for the purposes of the unpaid community work condition then all of the hours satisfactorily undertaken for treatment and rehabilitation are to be so counted as hours of unpaid community work.

48D Treatment and rehabilitation condition

(1) A court which is making a community correction order may attach a condition to the order that requires the offender to undergo treatment and rehabilitation specified by the court and directed by the Secretary unless otherwise directed by the court.

(2) When attaching a treatment and rehabilitation condition the court must—

(a) have regard to the need to address the underlying causes of the offending;

(b) have regard to the recommendations, information and matters identified in the pre-sentence report in relation to the treatment and rehabilitation of the offender.

(3) The treatment and rehabilitation that must be specified by the court in a treatment and rehabilitation condition must be any one or more of the following—

(a) any assessment and treatment (including testing) for drug abuse or dependency;

(b) any assessment and treatment (including testing) for alcohol abuse or dependency;

(c) any assessment and treatment (including testing) at a residential facility for—

(i) withdrawal from or rehabilitation for alcohol abuse or dependency; or

(ii) withdrawal from or rehabilitation for drug abuse or dependency;

(d) any medical assessment and treatment that may include general or specialist medical treatment or treatment in a hospital or residential facility;

(e) any mental health assessment and treatment that may include psychological, neuropsychological, psychiatric or treatment in a hospital or residential facility;

(f) any program that addresses factors related to his or her offending behaviour;

(g) any other treatment and rehabilitation that the court considers necessary and that is specified in the order that may include employment, educational, cultural and personal development programs that are consistent with the purpose of the treatment and rehabilitation condition.

(4) For the purposes of subsection (1) the Secretary may give a direction to the offender—

(a) to undergo the treatment and rehabilitation or kind of treatment and rehabilitation specified by the Secretary in the direction; and

(b) in relation to any aspect of the treatment and rehabilitation that the Secretary has specified, a direction—

(i) requiring the attendance of the offender at a specified location; and

(ii) requiring the participation of the offender in particular kinds of treatment or rehabilitation.

48E Supervision condition

(1) A court which is making a community correction order may attach a condition to the order that the offender be supervised, monitored and managed as directed by the Secretary.

(2) The court may attach a supervision condition for the purpose of addressing the need to ensure the compliance of the offender with the order.

(3) When attaching a supervision condition the court must have regard to the information, matters and recommendations made in the pre-sentence report.

(4) When attaching a supervision condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

48F Non-association condition

(1) A court which is making a community correction order may attach a condition to the order directing that—

(a) the offender must not contact or associate with a person specified in the order; or

Example

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must not contact or associate with a co-offender or co-offenders.

(b) the offender must not contact or associate with a class of person specified in the order.

Example

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not contact or associate with a member of a specified club or association.

(2) When attaching a non-association condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.

(3) When attaching a non-association condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

48G Residence restriction or exclusion condition

(1) A court which is making a community correction order may attach a condition to the order, directing that the offender must—

(a) reside at a place specified in the order; or

Example

An example of a direction that may be made under a condition attached under paragraph (a) is that the offender must reside at his or her current residential address.

(b) not reside at a place specified in the order.

Example

An example of a direction that may be made under a condition attached under paragraph (b) is that the offender must not reside at the residence of a co-offender.

(2) When attaching a residence restriction or exclusion condition the court may—

(a) have regard to the risk the condition poses to the safety of any person, including a child, who is likely to reside with the offender under the order; and

(b) have regard to any effect the attaching of the condition may have on any employment of the offender.

(3) When attaching a residence restriction or exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

(4) An offender to whom a residence restriction or exclusion condition applies must not change his or her place of residence unless the community correction order to which the condition is attached has been varied under section 48M(2)(d) to specify the new place at which the offender must or must not reside.

(5) The court must not attach a residence restriction or exclusion condition that is inconsistent with a child protection order, a family violence intervention order or a personal safety intervention order.

48H Place or area exclusion condition

(1) A court which is making a community correction order may attach a condition to the order, directing that the offender must not enter or remain in a specified place or area.

Example

The following are examples of directions that may be made under a condition attached under subsection (1)—

(a) that the offender must not enter or remain in a specified sporting venue in Victoria;

(b) that the offender must not enter or remain in the central business district of Melbourne.

Note

Exclusion from a place or area that is a licensed premises may be a condition of an order under section 48J, alcohol exclusion condition.

(2) When attaching a place or area exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.

(3) When attaching a place or area exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

(4) The court must not attach a place or area exclusion condition that is inconsistent with a child protection order, a family violence intervention order or a personal safety intervention order.

48I Curfew condition

(1) A court which is making a community correction order may attach a condition to the order, directing that the offender must remain at the place specified in the order between specified hours of each day for the period specified in the order.

Example

An example of a direction that may be made under a condition attached under subsection (1) is a direction that the offender must remain at home between 9pm and 6am each day.

(2) When attaching a curfew condition the court may—

(a) have regard to the risk the condition poses to the safety of any person, including a child, who is likely to reside with the offender under the order;

(b) have regard to any effect the attaching of the condition may have on any employment of the offender.

(3) The offender must remain at a place specified by the court under a curfew condition for—

(a) not less than 2 hours of each day; and

(b) not more than 12 hours of each day—

for the period specified in the order which must not be more than 6 months.

(3A) If the Secretary gives a direction under section 83AV the offender must remain at the place specified by the court for the increased hours or period that is specified by the Secretary.

(4) The court must not attach a curfew condition that is inconsistent with a child protection order, a family violence intervention order or a personal safety intervention order.

48J Alcohol exclusion condition

(1) A court which is making a community correction order may attach a condition directing that the offender comply with the restrictions in subsection (2).

(2) For the purpose of subsection (1) and subject to subsection (3) the restrictions are as follows—

(a) the offender must not enter or remain in any licensed premises characterised as a nightclub, bar, restaurant, cafe, reception centre or function centre; and

(b) the offender must not enter or remain in the location of any major event; and

(c) the offender must not enter or remain in a bar area of any licensed premises to which paragraph (a) or (b) does not apply; and

(d) the offender must not consume liquor in any licensed premises to which paragraph (a) or (b) does not apply.

(3) When attaching an alcohol exclusion condition a court may specify a licensed premises to which the restrictions under subsection (2)(a), (b) or (c) do not apply.

(4) The court may attach an alcohol exclusion condition to address the role of alcohol in the offending behaviour.

(5) When attaching an alcohol exclusion condition the court may have regard to any effect the attaching of the condition may have on any employment of the offender.

(6) When attaching an alcohol exclusion condition the court may specify whether the condition applies to the offender for a period of hours of each day or at all times.

(7) When attaching an alcohol exclusion condition the court may specify that the condition applies for the period of the order or for any lesser period specified in the order.

(8) In this section—

bar area means an area within a licensed premises that is set aside for the service of liquor for consumption on that premises;

licensed premises has the same meaning as in the **Liquor Control Reform Act 1998**;

liquor has the same meaning as in the **Liquor Control Reform Act 1998**;

major event has the same meaning as in the **Liquor Control Reform Act 1998**.

48JA Bond condition

(1) A court which is making a community correction order may attach a condition requiring an offender to pay an amount of money as a bond, the whole or part of which is subject to forfeiture if the offender fails to comply with the order.

(2) The court may attach a bond condition for the purpose of ensuring the compliance of the offender with the order.

(3) When attaching a bond condition the court must—

(a) have regard to adequacy of the financial circumstances of the offender as contained in the pre-sentence report to support the payment of the bond; and

(b) fix a time period for the payment of the bond by the offender.

(4) Any money paid by an offender under subsection (1)—

(a) must be paid to the court making the order; and

(b) despite any provision to the contrary in the **Supreme Court Act 1986**, the **County Court Act 1958** or the **Magistrates' Court Act 1989**, must be held on trust by the Crown in a trust account established by the Minister under section 23 of the **Financial Management Act 1994** until the money is required to be repaid or forfeited under this Act.

(5) If any interest is received from the investment of any money paid by an offender under subsection (1) the interest must be credited to the Consolidated Fund, whether or not any of the money is repaid to the offender under this section.

(6) If money paid under subsection (1) is to be repaid to an offender as a result of the making of an order to cancel or vary or otherwise deal with a community correction order or bond condition under section 48M(2) or 83AS(1), the Crown must repay the money to the offender within 7 days after the order is made, unless the court orders a longer period.

(7) The Crown must repay to the offender any money paid under subsection (1), that is not liable for forfeiture under section 83AS(4) and that subsection (6) does not apply to—

(a) 3 months after the expiry of the order; or

(b) if no later than 3 months after the expiry of the order, the offender is charged with an offence punishable by imprisonment that was committed during the period of the order, 7 days after the proceeding is finalised—

whichever is the later.

(8) For the purposes of this section a proceeding is finalised—

(a) after the final determination of the charge by a court; or

(b) when the charge is withdrawn; or

(c) when the prosecution of the charge is discontinued.

(9) All money forfeited to the Crown under section 83AS(4) must be paid into the Consolidated Fund.

48K Judicial monitoring condition

(1) A court which is making a community correction order may attach a condition to the order directing that the offender be monitored by the court, if the court is satisfied that it is necessary for the court to review (during the course of the order) the compliance of the offender with the order.

(2) The court may make a direction for the following matters in a judicial monitoring condition—

(a) a time or times at which the offender must re-appear before the court for a review under section 48L of the compliance of the offender with the order; and

(b) any information, report or test that must or may be provided in the course of a review under section 48L.

(3) A direction in a judicial monitoring condition made by the court under subsection (2)(a) or (b) is not to be taken to empower the medical testing of the offender or the making of a medical report as to the offender without the consent of the offender.

(4) A judicial monitoring condition attached to an order remains in force for the period specified by the court in the order, or, if no period is specified in the order, for the period of the order.

(5) Any proceeding where an offender re-appears before the court for review in accordance with a judicial monitoring condition may be conducted by the court constituted by the judicial officer who made the order or by the court constituted by another judicial officer.

48L Power of court on review under a judicial monitoring condition

(1) In any proceeding where an offender re-appears before a court for review of the offender's compliance with the order under a judicial monitoring condition—

(a) the court may require the offender, or may invite the offender to answer questions or produce information (including reports or the results of medical examinations or medical tests);

(b) the court may invite the offender's medical practitioner or any medical practitioner who has examined the offender to produce any medical report about the offender or the results of any medical test about the offender to the court;

(c) the court may require or invite any of the following persons to provide information to the court either verbally or in any written form—

(i) the Secretary;

(ii) the person or body who prosecuted the offender for the offence;

(iii) any other person the court considers appropriate.

(2) In any proceeding where an offender re-appears before a court for review in accordance with the terms of a judicial monitoring condition the court—

(a) may—

(i) cancel the condition; or

(ii) vary the condition, including shortening or extending the condition; or

(iii) take no further action in relation to the condition; or

(b) may give further directions as to—

(i) the time or times at which the offender must re-appear before the court for other reviews under this section of the compliance of the offender with the order; and

(ii) any information, report or test that must or may be provided in the course of another review under this section.

(3) If an offender fails to re-appear before a court for review in accordance with the terms of a judicial monitoring condition, the court may issue a warrant to arrest the offender.

48LA Electronic monitoring of offender

(1) A court, other than the Magistrates' Court, which attaches a monitored condition to a community correction order may attach to that condition a requirement that the offender is to be electronically monitored.

(2) The purpose of attaching an electronic monitoring requirement is to monitor the compliance of the offender with the monitored condition.

(3) When deciding whether to attach an electronic monitoring requirement, the court must have regard to the recommendations, information and matters identified in the pre-sentence report in relation to the electronic monitoring of the offender.

(4) A court may only attach an electronic monitoring requirement to a monitored condition if—

(a) the pre-sentence report in respect of the offender includes a positive statement that—

(i) having had regard to the circumstances of the offender's residence, the offender is a suitable person to be electronically monitored; and

(ii) appropriate resources or facilities are available to enable the offender to be electronically monitored; and

(b) the court is satisfied that—

(i) the offender is a suitable person to be electronically monitored; and

(ii) it is appropriate in all of the circumstances that the offender be electronically monitored; and

(iii) appropriate resources or facilities are available to enable the offender to be electronically monitored.

(5) A court, in attaching an electronic monitoring requirement to a monitored condition, must specify the period that the offender is to be electronically monitored that is the same or a lesser period than the period that has been specified in respect of the monitored condition.

Example

An example of a specification that may be made under subsection (5) is that the offender is to be electronically monitored for 4 months in respect of a place and area exclusion condition that the court specified applies to the order for a period of 6 months.

(6) If a court does not specify a period under subsection (5) the period of an electronic monitoring requirement is taken to be the same as the period specified in respect of the monitored condition.

(7) If the Secretary gives a direction under section 83AV and the offender is subject to an electronic monitoring requirement that is attached to a curfew condition, the offender must be monitored for the increased period in addition to any period specified under subsection (5) or period that applies under subsection (6), that does not exceed the requirements under section 48I(3).

(8) If an electronic monitoring requirement is attached to a monitored condition the following terms are attached to the community correction order—

(a) the offender must comply with any direction given by the Secretary, that is necessary for the Secretary to give, to ensure that the offender is electronically monitored in accordance with the requirement; and

(b) the offender must for 24 hours of each day be electronically monitored and wear an electronic monitoring device fitted to him or her at the direction of the Secretary for the specified period of the requirement; and

(c) the offender must not, without reasonable excuse, tamper with, damage, disable or remove any electronic monitoring device or equipment used for the electronic monitoring; and

(d) the offender must accept any visit by the Secretary to the place where the offender resides, at any time that it is reasonably necessary, for any purpose including to install, repair, fit or remove any electronic monitoring device or equipment used for the electronic monitoring; and

(e) the offender must comply with any direction given by the Secretary under section 83AV(3) in respect of the electronic monitoring requirement of a curfew condition.

Note

It is an offence under section 83AD for an offender to contravene a community correction order.

…

PART 3B—SENTENCES—FINES

Division 1—Fines

49 Power to fine

If a person is found guilty of an offence the court may, subject to any specific provision relating to the offence, fine the offender in addition to or instead of any other sentence to which the offender may be liable.

50 Maximum fine

(1) The maximum fine that a court may impose under section 49 is—

(a) the appropriate maximum specified in the specific provision; or

(b) if no maximum is specified there, then that specified in subsection (2).

(2) If a person is found guilty of an offence and the court has power to fine the offender but the amount of the fine is not prescribed anywhere, then the maximum fine that may be imposed is that set out in section 109(2) or (3) (as the case requires) according to the level of the offence or of the term of imprisonment that may be imposed in respect of the offence.

(3) In this section ***fine*** does not include costs.

51 Aggregate fines

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

(1A) Despite subsection (1), a court must not impose one fine in respect of 2 or more offences if at least one of them is a baseline offence.

(2) If a court imposes an aggregate fine in respect of 2 or more offences, the court—

(a) is not required to identify separate events giving rise to specific charges; and

(b) is not required to announce—

(i) the sentences that would have been imposed for each offence had separate sentences been imposed; or

(ii) whether those sentences would have been imposed concurrently or cumulatively.

(3) For the avoidance of doubt, an aggregate fine may be imposed in respect of convictions for offences that are the subject of a rolled-up charge or a representative charge.

Note

A representative charge is a charge in an indictment for an offence that is representative of a number of offences of the same type alleged to have been committed by the accused. A rolled-up charge is a charge in an indictment that alleges that the accused has committed more than one offence of the same type between specified dates.

(4) Subsection (2) does not affect the requirements of section 6AAA.

52 Financial circumstances of offender

(1) If a court decides to fine an offender it must in determining the amount and method of payment of the fine take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.

(2) A court is not prevented from fining an offender only because it has been unable to find out the financial circumstances of the offender.

53 Court to take forfeiture, compensation and restitution orders into account

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

(a) providing for the forfeiture of the offender's property or the automatic forfeiture of the offender's property by operation of law; or

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

(2) The court must give preference to imposing an order on the offender to make restitution or pay compensation, though it may impose a fine as well on the offender, if the court considers—

(a) that the offender has insufficient means to pay both a fine and a restitution or compensation order; and

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

54 Other matters court may have regard to in fixing amount of fine

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

(a) any loss or destruction of, or damage to, property suffered by a person as a result of the offence; and

(b) the value of any benefit derived by the offender as a result of the offence.

…

PART 3BA—SENTENCES—OTHER ORDERS

Division 1—Dismissals, discharges and adjournments

Subdivision (1)—General

70 Purpose of orders under this Division

(1) An order may be made under this Division—

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

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

(ba) to allow for the offender to demonstrate his or her remorse in a manner agreed to by the court;

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

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

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

(2) For the purpose of any proceedings under Subdivision (4), an order made under this Division on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought.

…

Subdivision (2)—Release on conviction

72 Release on adjournment following conviction

(1) A court, on convicting a person of an offence, may adjourn the proceeding for a period of up to 5 years and release the offender on the offender giving an undertaking with conditions attached.

(2) An undertaking under subsection (1) must have as conditions—

(a) that the offender attends before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned; and

(b) that the offender is of good behaviour during the period of the adjournment; and

(c) that the offender observes any conditions attached by the court and may include a condition requiring the offender to make a payment

to an organisation that provides a charitable or community service or to the court for payment to such an organisation.

(3) Subject to Division 2 of Part 3BA, a court may attach a justice plan condition that the offender participate in the services specified in a justice plan for a period of up to 2 years specified by the court or the period of the adjournment, whichever is the shorter.

(4) An offender who has given an undertaking under subsection (1) may be called on to attend before the court—

(a) by order of the court; or

(b) by notice issued by the proper officer of the court.

(5) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the attendance.

(6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.

73 Unconditional discharge

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

74 Compensation or restitution

A court may make an order for compensation or restitution in addition to making an order under this Subdivision.

Subdivision (3)—Release without conviction

75 Release on adjournment without conviction

(1) A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) adjourn the proceeding for a period of up to 60 months and release the offender on the offender giving an undertaking with conditions attached.

(2) An undertaking under subsection (1) must have as conditions—

(a) that the offender attends before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned; and

(b) that the offender is of good behaviour during the period of the adjournment; and

(c) that the offender observes any special conditions imposed by the court and may include a condition requiring the offender to make a payment to an organisation that provides a charitable or community service or to the court for payment to such an organisation.

(3) Subject to Division 2 of Part 3BA, a court may attach a justice plan condition that the offender participate in the services specified in a

justice plan for a period of up to 2 years specified by the court or the period of the adjournment, whichever is the shorter.

(4) An offender who has given an undertaking under subsection (1) may be called on to attend before the court—

(a) by order of the court; or

(b) by notice issued by the proper officer of the court.

(5) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the attendance.

(6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it must dismiss the charge without any further hearing of the proceeding.

76 Unconditional dismissal

A court, on being satisfied that a person is guilty of an offence, may (without recording a conviction) dismiss the charge.

77 Compensation or restitution

A court may make an order for compensation or restitution in addition to making an order under this Subdivision.

Division 2—Intellectually disabled offenders

80 Justice plan condition

(1) A court that is considering—

(a) making a community correction order; or

(b) releasing an offender on adjournment with or without recording a conviction—

may attach a condition to the order directing that the offender participate in the services specified in the plan prepared under subsection (3)(c).

(2) In attaching a condition under subsection (1) the court must—

(a) consider the plan and the other information requested under subsection (3); and

(b) have regard to those objectives and principles specified in Part 2 of the **Disability Act 2006**.

(3) A court which is considering making an order attaching a justice plan condition may request—

(a) a pre-sentence report under Division 1A of Part 3; and

(b) a statement from the Secretary to the Department of Human Services that the person has an intellectual disability within the meaning of the **Disability Act 2006**; and

(c) a plan of available services designed to reduce the likelihood of the offender committing further offences and that is in accordance

with the objectives and principles of Part 2 of the **Disability Act 2006**.

(4) When attaching a justice plan condition, the condition may apply for a period of up to 2 years, as specified by the court or the period of the sentence (whichever is the shorter).

(5) If a court attaches a justice plan condition it must cause a copy of the order to be supplied to the Secretary to the Department of Human Services.

…

Division 3—Deferral of sentencing in the Magistrates' Court or County Court

83A Deferral of sentencing

(1) If the Magistrates' Court or County Court finds a person guilty of an offence and—

* * * * *

(b) the court is of the opinion that sentencing should, in the interests of the offender, be deferred; and

(c) the offender agrees to a deferral of sentencing—

the court may defer sentencing the offender for a period not exceeding 12 months.

(1A) The court may defer sentencing the offender under subsection (1) for any one or more of the following purposes—

(a) to allow the offender's capacity for and prospects of rehabilitation to be assessed;

(b) to allow the offender to demonstrate that rehabilitation has taken place;

(c) to allow the offender to participate in a program or programs aimed at addressing the underlying causes of the offending;

(d) to allow the offender to participate in a program or programs aimed at addressing the impact of the offending on the victim;

(e) for any other purpose that the court considers appropriate having regard to the offender and the circumstances of the case.

(1B) In making an order deferring a sentence under subsection (1), the court may determine the date at which the offender must re-appear before the court for a review of the order.

(1C) Dates fixed under subsection (1B) must be between the date on which the order deferring the sentence is made and the date to which the proceeding has been adjourned.

(1D) On the review of an order deferring a sentence under this section, the court may—

(a) take no further action; or

(b) cancel the order deferring the sentence and proceed to sentence the offender, as if the matter were an adjourned hearing to which subsection (3) applies.

(1E) In making an order deferring a sentence under subsection (1), the court may order that any review of the order under subsection (1B) be dealt with by the court constituted by the person who made the order deferring the sentence.

(2) If the Magistrates' Court or County Court defers sentencing an offender, it—

(a) must adjourn the proceeding for a period of up to 12 months; and

(b) may release the offender on his or her undertaking to attend before the court on the date fixed for sentence or release the offender on bail or extend his or her bail to that date; and

(c) may order a pre-sentence report in respect of the offender.

(3) On the adjourned hearing, the court must, in determining the appropriate sentence for an offender, have regard to—

(a) the offender's behaviour during the period of deferral; and

(b) subject to section 8D, any pre-sentence report ordered under subsection (2)(c); and

(c) any other relevant matter.

(4) If an offender is found guilty of an offence during a period of deferral under this section, the court may—

(a) re-list the adjourned proceeding on a day earlier than the day to which it was adjourned under subsection (2)(a); and

(b) on the adjourned hearing make any order that the court could have made if it had not deferred sentencing.

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

(6) Nothing in this section removes any requirement imposed on the Magistrates' Court or County Court by or under this or any other Act to impose any disqualification on, or make any other order in respect of, a person found guilty or convicted of an offence, including an order cancelling or suspending a driver licence or permit or disqualifying the offender from obtaining one for any period.

PART 4—ORDERS IN ADDITION TO SENTENCE

Division 1—Restitution

84 Restitution order

(1) If goods have been stolen and a person is found guilty or convicted of an offence connected with the theft (whether or not stealing is the gist of the offence), the court may make—

(a) an order that the person who has possession or control of the stolen goods restore them to the person entitled to them;

(b) an order that the offender deliver or transfer to another person goods that directly or indirectly represent the stolen goods (that is, goods that are the proceeds of any disposal or realisation of the whole or part of the stolen goods or of goods so representing them);

(c) an order that a sum not exceeding the value of the stolen goods be paid to another person out of money taken from the offender's possession on his or her arrest.

…

Division 2—Compensation

Subdivision (1)—Compensation for pain and suffering etc.

85A Definitions

(1) In this Subdivision—

compensation order means an order under section 85B(1);

injury means—

(a) actual physical bodily harm; or

(b) mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or

(c) pregnancy; or

(d) grief, distress or trauma or other significant adverse effect; or

(e) any combination of matters referred to in paragraphs (a), (b), (c) and (d) arising from an offence—

but does not include injury arising from loss of or damage to property;

medical expenses includes dental, optometry, physiotherapy, psychology treatment, hospital and ambulance expenses;

…

85B Compensation order

(1) If a court—

(a) finds a person guilty of an offence; or

(b) convicts a person of an offence—

it may, on the application of a person who has suffered any injury as a direct result of the offence, order the offender to pay compensation of such amount as the court thinks fit for any matter referred to in paragraphs (a) to (d) of subsection (2).

(2) A compensation order may be made up of amounts—

(a) for pain and suffering experienced by the victim as a direct result of the offence;

(b) for some or all of any expenses actually incurred, or reasonably likely to be incurred, by the victim for reasonable counselling services as a direct result of the offence;

(c) for some or all of any medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence;

(d) for some or all of any other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence, not including any expense arising from loss of or damage to property.

….

Subdivision (2)—Compensation for property loss.

…

86 Compensation order

(1) If a court finds a person guilty of, or convicts a person of, an offence it may order the offender to pay to a person who has suffered loss or destruction of, or damage to, property as a result of the offence any compensation (not exceeding the value of the property lost, destroyed or damaged) that the court thinks fit.

…

Division 3—Driver Licences and Learner Permits—Suspension, Cancellation and Driver Disqualification

87P Definition

In this Division—

serious motor vehicle offence means—

(a) manslaughter arising out of the driving of a motor vehicle; or

(b) an offence under section 24 of the **Crimes Act 1958** in respect of serious injury arising out of the driving of a motor vehicle; or

(c) an offence under section 318 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel); or

(d) an offence under section 319 of the **Crimes Act 1958** arising out of the driving of a motor vehicle (other than the operating of a vessel).

87Q Matters to be sent to Roads Corporation

A court that makes an order under section 89 or 89A or a finding under section 89C(1) must cause particulars of the order or finding (including the offence or offences of which the person was found guilty or convicted) to be sent immediately to the Roads Corporation.

88 Application of Evidence Act 2008

To avoid doubt, a proceeding under this Division is a proceeding that relates to sentencing for the purposes of section 4(2) of the **Evidence Act 2008**.

89 Suspension or cancellation of driver licence or learner permit and driver disqualification—certain motor vehicle offences

(1) If a person is found guilty or convicted of a serious motor vehicle offence, the court must—

(a) if the person is the holder of a driver licence or learner permit, cancel that licence or permit and disqualify him or her from obtaining a further one for the period of time that the court specifies; or

(b) if the person is not the holder of a driver licence or learner permit but is the holder of an equivalent licence or permit issued in another State or a Territory of the Commonwealth or another country, disqualify him or her from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified from obtaining a driver licence or learner permit, had he or she held one; or

(c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify him or her from obtaining one for the period of time that the court specifies.

(2) The court must not specify a period of disqualification under subsection (1) that is—

(a) for an offence to which paragraph (d) of the definition of ***serious motor vehicle offence*** in section 87P applies, less than 18 months; or

(b) for any other serious motor vehicle offence, less than 24 months.

(3) If a person is found guilty or convicted of an offence under section 319AA of the **Crimes Act 1958**, the court must—

(a) if the person is the holder of a driver licence or learner permit, cancel that licence or permit and disqualify him or her from obtaining a further one for the period of time that the court specifies, being not less than 12 months; or

(b) if the person is not the holder of a driver licence or learner permit but is the holder of an equivalent licence or permit issued in another State or a Territory of the Commonwealth or another country, disqualify him or her from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified from obtaining a driver licence or learner permit, had he or she held one; or

(c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify him or her from obtaining one for the period of time that the court specifies, being not less than 12 months.

(4) If a person is found guilty or convicted of stealing or attempting to steal a motor vehicle, the court may (in the case of a finding of guilt) and must (in the case of a conviction)—

(a) if the person is the holder of a driver licence or learner permit—

(i) suspend that licence or permit for the period of time that the court specifies; or

(ii) cancel that licence or permit and disqualify him or her from obtaining a further one for the period of time that the court specifies; or

(b) if the person is not the holder of a driver licence or learner permit but is the holder of an equivalent licence or permit issued in another State or a Territory of the Commonwealth or another country, disqualify him or her from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified from obtaining a driver licence or learner permit, had he or she held one; or

(c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify him or her from obtaining one for the period of time that the court specifies.

(5) If a period of suspension or disqualification is not specified by the court on making an order under subsection (4)(a), (b) or (c), the period is 3 months.

Notes

1 A person who is disqualified from obtaining a driver licence or learner permit under this section must apply to the Magistrates' Court under Part 3 of the **Road Safety Act 1986** for a licence eligibility order if he or she wishes to be granted a driver licence or learner permit under that Act.

On the making of a licence eligibility order the Magistrates' Court may give an alcohol interlock condition direction under Part 5 of the **Road Safety Act 1986** if a finding was made under section 89C(1) that the disqualifying offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence.

A person disqualified under this section who is granted a driver licence or learner permit must have zero concentration of alcohol present in his or her blood or breath while driving or in charge of a motor vehicle during the first 3 years of that licence or permit or any longer period during which the licence or permit is subject to an alcohol interlock condition. See section 52(1B) of the **Road Safety Act 1986**.

A person who is disqualified from obtaining a driver licence or learner permit or whose driver licence or learner permit is cancelled under this section by order of the Magistrates' Court or Children's Court may appeal to the County Court. See section 29 of the **Road Safety Act 1986**.

See sections 3AD and 3AE of the **Road Safety Act 1986** for circumstances in which a person is to be taken to be disqualified from obtaining a driver licence or learner permit or from driving a motor vehicle on a road in Victoria.

2 Particulars of any order made by a court under this section must be sent immediately to the Roads Corporation—see section 87Q.

89A Suspension or cancellation of driver licence or learner permit and driver disqualification—any offence

(1) If a person is found guilty or convicted of any offence the court may—

(a) if the person is the holder of a driver licence or learner permit—

(i) suspend that licence or permit for the period of time that the court specifies; or

(ii) cancel that licence or permit and disqualify him or her from obtaining a further one for the period of time that the court specifies; or

(b) if the person is not the holder of a driver licence or learner permit but is the holder of an equivalent licence or permit issued in another State or a Territory of the Commonwealth or another country, disqualify him or her from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified from obtaining a driver licence or learner permit, had he or she held one; or

(c) in any other case where the person is not the holder of a driver licence or learner permit, disqualify him or her from obtaining one for the period of time that the court specifies.

(2) If a period of suspension or disqualification is not specified by the court on making an order under subsection (1)(a), (b) or (c), the period is 3 months.

(3) A court that makes an order under subsection (1) must, at the time of doing so, cause to be entered in the records of the court the fact that it is an order made under this section and the offence or offences of which the person was found guilty or convicted.

(4) Subsection (1) does not apply to an offender found guilty or convicted of—

(a) a serious motor vehicle offence or an offence referred to in section 89(3) or (4); or

(b) an offence under the **Road Safety Act 1986** or regulations made under that Act or rules made under section 95D of that Act.

Notes

1 A person who is disqualified from obtaining a driver licence or learner permit under subsection (1) must apply to the Magistrates' Court under Part 3 of the **Road Safety Act 1986** for a licence eligibility order if he or she wishes to be granted a driver licence or learner permit under that Act.

On the making of a licence eligibility order the Magistrates' Court may give an alcohol interlock condition direction under Part 5 of the **Road Safety Act 1986** if a finding was made under section 89C(1) that the disqualifying offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence.

A person disqualified under subsection (1) who is granted a driver licence or learner permit must have zero concentration of alcohol present in his or her blood or breath while driving or in charge of a motor vehicle during any period when the licence or permit is subject to an alcohol interlock condition. See section 52(1BA) of the **Road Safety Act 1986**.

A person who is disqualified from obtaining a driver licence or learner permit or whose driver licence or learner permit is cancelled under this section by order of the Magistrates' Court or Children's Court may appeal to the County Court. See section 29 of the **Road Safety Act 1986**.

See sections 3AD and 3AE of the **Road Safety Act 1986** for circumstances in which a person is to be taken to be disqualified from obtaining a driver licence or learner permit or from driving a motor vehicle on a road in Victoria.

2 Particulars of any order made by a court under this section must be sent immediately to the Roads Corporation—see section 87Q.

89B Commencement of period of disqualification

A period of disqualification under section 89(1), (3) or (4) or section 89A(1) commences on the day that the order imposing it is made or on any later day that the court specifies in the order.

89C Finding on cancellation of driver licence or learner permit or driver disqualification

(1) Subject to subsection (2), a court, in addition to making an order under section 89(1), (3) or (4) or section 89A(1), may make a finding that the offence was committed while the offender was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence.

(2) If a person is found guilty or convicted of an offence under section 318(1) of the **Crimes Act 1958** in respect of which the culpable driving is constituted by behaviour referred to in paragraph (c) or (d) or in both paragraphs (c) and (d) of section 318(2) of that Act, in addition to making an order under section 89(1) the court must make a finding that the offence was committed while the offender was under the influence of alcohol or a drug, or both alcohol and a drug, (as the case requires) which contributed to the offence.

(3) If a finding of a kind referred to in subsection (2) is not made in the circumstances to which that subsection applies, the relevant finding must be taken to have been made.

Note

Particulars of any finding made by a court under this section must be sent immediately to the Roads Corporation—see section 87Q.

89D Presumption in favour of concurrency

(1) If the driver licence or learner permit of an offender is suspended under section 89(4) or 89A(1) (***later suspension***) and the driver licence or learner permit of the offender has previously been suspended under—

(a) either of those sections; or

(b) the **Road Safety Act 1986**; or

(c) regulations made under the **Road Safety Act 1986** or rules made under section 95D of that Act—

the later suspension is presumed to operate concurrently with the earlier suspension, unless the court orders otherwise.

(2) If a person is disqualified under section 89(1), (3) or (4) or 89A(1) from obtaining a driver licence or learner permit or from driving (***later disqualification***) and the offender has previously been disqualified from obtaining a driver licence or learner permit or from driving under—

(a) any of those sections; or

(b) the **Road Safety Act 1986**; or

(c) regulations made under the **Road Safety Act 1986** or rules made under section 95D of that Act—

the later disqualification is presumed to operate concurrently with the earlier disqualification, unless the court orders otherwise.

(3) The presumption—

(a) under subsection (1) does not apply if the **Road Safety Act 1986** or regulations made under that Act or rules made under section 95D of that Act require the suspension to be consecutive;

(b) under subsection (2) does not apply if the **Road Safety Act 1986** or regulations made under that Act or rules made under section 95D of that Act require the disqualification to be consecutive.

89DA Cancellation on disqualification

If under this Division a court disqualifies a person from obtaining a driver licence or learner permit for any time without expressly cancelling any driver licence or learner permit held by that person, any driver licence or learner permit held by that person is, unless the order specifies otherwise, to be taken to have been cancelled by that order.

89DB Effect of cancellation

A driver licence or learner permit cancelled by a court under this Act is of no effect.

Division 4—Alcohol exclusion orders

89DC Definitions

In this Division—

alcohol exclusion order means an order under section 89DE;

bar area means an area within a licensed premises that is set aside for the service of liquor for consumption on those premises;

intoxicated, in relation to a person, means the person's speech, balance, co-ordination or behaviour is noticeably affected as a result of the consumption of liquor;

licensed premises has the same meaning as in the **Liquor Control Reform Act 1998**;

liquor has the same meaning as in the **Liquor Control Reform Act 1998**;

major event has the same meaning as in the **Liquor Control Reform Act 1998**;

offender means a person referred to in section 89DE(1);

relevant offence means any of the following offences—

(a) murder;

(b) manslaughter;

(c) an offence against any of the following provisions of the **Crimes Act 1958**—

(i) section 15A(1) (Causing serious injury intentionally in circumstances of gross violence);

(ii) section 15B(1) (Causing serious injury recklessly in circumstances of gross violence);

(iii) section 16 (Causing serious injury intentionally);

(iv) section 17 (Causing serious injury recklessly);

(v) section 18 (Causing injury intentionally or recklessly);

(vi) section 19(1) (Offence to administer certain substances);

(vii) section 20 (Threats to kill);

(viii) section 22 (Conduct endangering life);

(ix) section 23 (Conduct endangering persons);

(x) section 24 (Negligently causing serious injury);

(xi) section 29(1) (Using firearm to resist arrest etc.);

(xii) section 30 (Threatening injury to prevent arrest);

(xiii) section 31(1) (Assaults);

(xiv) section 31A(1) (Use of firearms in the commission of offences);

(xv) section 38(1) (Rape);

(xvi) section 38A(1) (Compelling sexual penetration);

(xvii) section 39(1) (Indecent assault);

(xviii) section 40(1) (Assault with intent to rape);

(xix) section 45(1) (Sexual penetration of a child under age of 16);

(xx) section 47(1) (Indecent act with child under age of 16);

(xxi) section 48(1) (Sexual penetration of 16 or 17 year old child);

(xxii) section 49(1) (Indecent act with 16 or 17 year old child);

(xxiii) section 53(1) (Administration of drugs etc. with intention to perform act of sexual penetration);

(xxiv) section 53(2) (Administration of drugs etc. with intention to perform indecent act);

(xxv) section 57(1) (Procuring sexual penetration by threats);

(xxvi) section 57(2) (Procuring sexual penetration by fraud);

(xxvii) section 58(1) (Procuring child to take part in an act of sexual penetration);

(xxviii) section 58(2) (Procuring person to take part in an act of sexual penetration of a child);

(xxix) section 58(3) (Procuring person who is 16 or 17 and under their care to take part in an act of sexual penetration);

(xxx) section 60A(1) (Sexual offence while armed with an offensive weapon);

(xxxi) section 63A (Kidnapping);

(xxxii) section 68(1) (Production of child pornography);

(xxxiia) section 70AAAB (administering a child pornography website);

(xxxiib) section 70AAAC (encouraging use of a website to deal with child pornography);

(xxxiic) section 70AAAD (assisting a person to avoid apprehension);

(xxxiii) section 70AC (Sexual performance involving a minor).

89DD Alcohol exclusion order

(1) If a person has been charged with a relevant offence, the Director of Public Prosecutions or a police officer may make an application for an alcohol exclusion order.

(2) An application for an alcohol exclusion order under this section must be filed and served on the accused who is the subject of the application—

(a) in the case of a proceeding listed for a summary hearing in the Magistrates' Court, before the first mention hearing, or later with the leave of the court; or

(b) in the case of a committal proceeding, before the committal mention hearing, or later with the leave of the court; or

(c) in any other case, before the first directions hearing, or later with the leave of the court.

(3) An application for an alcohol exclusion order may be withdrawn by the Director of Public Prosecutions or a police officer at any time before it is determined.

(4) A court may also make an alcohol exclusion order in respect of an offender on the court's own motion if it is satisfied that the circumstances set out in section 89DE(1) apply to the offender.

(5) When making an alcohol exclusion order, the Supreme Court may direct that any application for the variation of that order is to be made to the Magistrates' Court for determination.

89DE When an alcohol exclusion order must be made

(1) A court must make an alcohol exclusion order in respect of an offender if—

(a) the court records a conviction against the offender for a relevant offence; and

(b) the court is satisfied on the balance of probabilities that—

(i) at the time of the relevant offence the offender was intoxicated; and

(ii) the offender's intoxication significantly contributed to the commission of the relevant offence; and

(c) the offender is not, or has not been, the subject of a previous alcohol exclusion order in relation to the circumstances that gave rise to the relevant offence.

(2) The court is not required to call further evidence for the purposes of satisfying itself of the matters set out in subsection (1)(b).

(3) The duration of an alcohol exclusion order is 2 years.

(4) Subject to subsection (5), an alcohol exclusion order prohibits an offender from—

(a) entering or remaining in any licensed premises characterised as a nightclub, bar, restaurant, cafe, reception centre or function centre; and

(b) entering or remaining in the location of any major event; and

(c) entering or remaining in a bar area of any licensed premises to which paragraph (a) or (b) does not apply; and

(d) consuming or attempting to consume any liquor in any licensed premises to which paragraph (a) or (b) does not apply.

(5) An alcohol exclusion order may be subject to exemptions that allow a person to enter or remain in a specified place for a specified purpose during the period of the order if—

(a) the Court considers that there is a good reason why the person should be allowed to enter or remain in the place; and

(b) the Court considers that it is appropriate in all the circumstances.

(6) An alcohol exclusion order takes effect—

(a) if the offender is not serving a custodial sentence for another offence and the order has not been made in combination with a custodial sentence, at the time the order is made; or

(b) if the offender is serving a custodial sentence for another offence at the time the order is made or the order has been made in combination with a custodial sentence, on the offender's release from prison.

(7) An alcohol exclusion order must state—

(a) the name of the offender; and

(b) the grounds on which the order is made; and

(c) the conduct that is prohibited by the order; and

(d) any exemptions imposed under subsection (5); and

(e) when the order takes effect in accordance with subsection (6); and

(f) the duration of the order.

(8) If a court makes an alcohol exclusion order in respect of a person, it must not, for the duration of the order, in respect of that person—

(a) make an exclusion order under Part 8A of the **Liquor Control Reform Act 1998** (except an order under section 148I(2)(a) of that Act); or

(b) attach an alcohol exclusion condition as a condition of a community corrections order.

PART 5—MENTALLY ILL OFFENDERS

Division 1—Court Assessment Orders

90 What is a Court Assessment Order?

(1) A Court Assessment Order is an Order made by the court that enables a person who is subject to the Court Assessment Order to be compulsorily—

(a) examined by an authorised psychiatrist to determine whether—

(i) the person should be made subject to a Temporary Treatment Order; and

(ii) the criteria specified in section 94B(1)(c) in relation to making a Court Secure Treatment Order apply to the person; or

(b) taken to, and detained at, a designated mental health service and examined there by an authorised psychiatrist to determine whether—

(i) the person should be made subject to a Temporary Treatment Order; and

(ii) the criteria specified in section 94B(1)(c) in relation to making a Court Secure Treatment Order apply to the person.

(2) A Court Assessment Order referred to in subsection (1)(a) is a ***Community Court Assessment Order***.

(3) A Court Assessment Order referred to in subsection (1)(b) is an ***Inpatient Court Assessment Order***.

91 When may the court make a Court Assessment Order?

(1) Subject to subsection (2), the court may make a Court Assessment Order in relation to a person if—

(a) on the trial or hearing of the person for an offence the person is found guilty or pleads guilty to an offence; and

(b) the person is not in custody pending sentencing; and

(c) the criteria set out in subsection (2) apply to the person; and

(d) the court has received a report from the authorised psychiatrist for the designated mental health service where it is proposed to assess the person stating that there are facilities or services available at that designated mental health service for the assessment of the person; and

(e) in the case of an Inpatient Court Assessment Order, the assessment cannot occur in the community.

(2) For the purposes of subsection (1), the criteria are—

(a) the person appears to have mental illness; and

(b) because the person appears to have mental illness, the person appears to need immediate treatment to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; and

(c) if the person is made subject to a Court Assessment Order, the person can be assessed; and

(d) there is no less restrictive means reasonably available to enable the person to be assessed.

92 Contents of a Court Assessment Order and notification requirements

(1) A Court Assessment Order must—

(a) state whether the Order is a Community Court Assessment Order or an Inpatient Court Assessment Order; and

(b) include any prescribed information.

(2) As soon as practicable after making a Court Assessment Order, the court must—

(a) notify the authorised psychiatrist that the Order has been made; and

(b) give the authorised psychiatrist a copy of the Order.

93 Effect and duration of Court Assessment Order

(1) As soon as practicable after an Inpatient Court Assessment Order is made, the person who is subject to the Order must be taken to a designated mental health service in accordance with any direction made by the court under section 94D.

(2) A Court Assessment Order comes into force when the Order is made and remains in force for a period of—

(a) in the case of a Community Court Assessment Order, 7 days; and

(b) the case of an Inpatient Court Assessment Order, 7 days after the day on which the person who is subject to the Order is received at the designated mental health service.

94 Court powers following Court Assessment Order

(1) If the court has considered a report made by an authorised psychiatrist after examining a person subject to a Court Assessment Order, the court may—

(a) make a Court Secure Treatment Order in relation to the person in accordance with section 94B; or

(b) impose sentence on the person according to law.

Note

Section 43(d) of the **Mental Health Act 2014** provides that an authorised psychiatrist must give a report to the court after assessing a person subject to a Court Assessment Order.

(2) The court must deduct from the duration of the Court Secure Treatment Order or the sentence, the period of time that the person was detained under the Court Assessment Order.

Division 2—Court Secure Treatment Orders

94A What is a Court Secure Treatment Order?

A Court Secure Treatment Order is an Order made by the court that enables a person who is subject to the Court Secure Treatment Order to be compulsorily taken to, and detained and treated, at a designated mental health service.

94B When may the court make a Court Secure Treatment Order?

(1) The court may make a Court Secure Treatment Order by way of sentence in relation to a person who is found guilty of an offence or who pleads guilty to an offence if—

(a) but for the person having mental illness, the court would have sentenced the person to a term of imprisonment; and

(b) the court has considered the person's current mental condition, his or her medical, mental health and forensic history and his or her social circumstances; and

(c) the person has been examined by a psychiatrist and the court is satisfied by production of the psychiatrist's report and any other evidence that the following criteria apply to the person—

(i) the person has mental illness; and

(ii) because the person has mental illness, the person needs treatment to prevent—

(A) serious deterioration in the person's mental or physical health; or

(B) serious harm to the person or to another person; and

(iii) the treatment referred to in subparagraph (ii) will be provided to the person if the person is made subject to a Court Treatment Order; and

(iv) there is no less restrictive means reasonably available to enable the person to receive the treatment; and

(d) the court has received a report from the authorised psychiatrist of the designated mental health service in which it is proposed that the person be detained and treated—

(i) recommending the making of the Order; and

(ii) stating that there are facilities or services available at the designated mental health service for the detention and treatment of the person.

(2) As soon as practicable after making a Court Secure Treatment Order, the court must—

(a) notify the authorised psychiatrist that the Order has been made; and

(b) give the authorised psychiatrist a copy of the Order.

94C Effect and duration of Court Secure Treatment Order

(1) As soon as practicable after a Court Secure Treatment Order is made, the person who is subject to the Order must be taken to the designated mental health service referred to in section 94B(1)(d) in accordance with any directions made by the court under section 94D.

(2) A person who is subject to a Court Secure Treatment Order becomes a security patient when he or she is received at the designated mental health service.

(3) A Court Secure Treatment Order must specify the duration of the Order which must not exceed the period of imprisonment to which the person would have been sentenced had the Order not been made.

(4) A court, when making a Court Secure Treatment Order, must fix a non-parole period in accordance with section 11 as if the Order were a term of imprisonment.

(5) If, at any time before the end of the period specified in a Court Secure Treatment Order, a person is discharged as a security patient under section 274 of the **Mental Health Act 2014**, the Court Secure Treatment Order has effect as a sentence of imprisonment and that unexpired portion must be served in a prison or other place of confinement unless the person is released on parole.

PART 10—MISCELLANEOUS PROVISIONS

109 Penalty scale

(1) An offence that is described in an Act, subordinate instrument or local law as being an offence of a level specified in column 1 of Table 1 or as being punishable by imprisonment of a level specified in that column is, unless the contrary intention appears, punishable by a term of imprisonment not exceeding that specified opposite it in column 2 of the Table.

TABLE 1

Column 1	*Column* 2
Level	*Maximum Term of Imprisonment*
1	Life
2	25 years
3	20 years
4	15 years
5	10 years
6	5 years
7	2 years
8	1 year
9	6 months

(2) An offence that is described in an Act, subordinate instrument or local law as being an offence of a level specified in column 1 of Table 2 or as being punishable by a fine of a level specified in that column is, unless the contrary intention appears, punishable by a fine not exceeding that specified opposite it in column 2 of the Table.

TABLE 2

Column 1	*Column 2*
Level	*Maximum Fine*
1	—
2	3000 penalty units
3	2400 penalty units
4	1800 penalty units
5	1200 penalty units
6	600 penalty units
7	240 penalty units
8	120 penalty units
9	60 penalty units
10	10 penalty units
11	5 penalty units
12	1 penalty unit.

…

…

112 Classification of offences as indictable or summary

(1) An offence that is described in a provision of an Act (other than the **Crimes Act 1958** or the **Wrongs Act 1958**), subordinate instrument or local law as being level 1, 2, 3, 4, 5 or 6 or as being punishable by level

1, 2, 3, 4, 5 or 6 imprisonment or fine or both is, unless the contrary intention appears, an indictable offence.

(2) Any other offence under an Act (other than the **Crimes Act 1958** or the **Wrongs Act 1958**), subordinate instrument or local law is, unless the contrary intention appears, a summary offence.

(3) If an offence is described as being punishable in more than one way or in one of two or more ways, subsection (1) applies even if only one of those ways is referred to in that subsection.

112A Maximum fine for indictable offence heard and determined summarily

(1) If a person is found guilty by the Magistrates' Court in a summary hearing of an indictable offence, the maximum fine that the Court may impose on the person is 500 penalty units.

(2) Subsection (1) is subject to any contrary intention in any Act other than this Act.

113 Maximum term of imprisonment for indictable offence heard and determined summarily

(1) If a person is convicted by the Magistrates' Court in a summary hearing of an indictable offence under section 28(1) of the **Criminal Procedure Act 2009**, the maximum term of imprisonment to which the Court may sentence the offender is 2 years.

(2) Subsection (1) is subject to any contrary intention appearing in any Act other than this Act.

113A Maximum term of imprisonment for summary offence

(1) If a person is convicted of a summary offence punishable, but for this section, by a term of imprisonment of more than 2 years, the maximum term of imprisonment to which a court may sentence the offender in respect of that offence is 2 years.

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

113B Maximum cumulative term of imprisonment imposable by Magistrates' Court

The Magistrates' Court must not impose on any person in respect of several offences cumulative sentences of imprisonment to take effect in succession for a term exceeding in the whole 5 years unless that term is expressly provided by an Act.

113C Maximum term of imprisonment where none prescribed

If a person is convicted of an offence against an enactment punishable by imprisonment but the maximum term of imprisonment is not prescribed anywhere, the maximum term of imprisonment to which a court may sentence the offender in respect of that offence is 2 years.