



SAMOA

SENTENCING ACT 2016

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SENTENCING ACT 2016

2016,

No. 9

AN ACT to set out the purposes for which defendants may be sentenced or otherwise dealt with by the courts, to promote those purposes, to aid in the public’s understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with defendants, to provide a sufficient range of sentences and other means of dealing with defendants and to provide for the interests of victims of crime and for related purposes.

[Assent date: 09th February 2016]

[Commencement date: 01st November 2016]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement - This Act may be cited as the Sentencing Act 2016, and commences on a date nominated by the Minister.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

“Commissioner” means the Commissioner of Prisons and Corrections;

“community-based sentence” has the meaning given to it in section 33;

“court” means any court exercising criminal jurisdiction conferred under an enactment, and includes any specialist court, such as the Youth Court or the Family Court;

“curfew address” means the address, specified by a court, where a defendant must remain during the curfew period;

“curfew period” means any period specified by a court, during which a defendant sentenced to community detention must remain at the curfew address;

“defendant” includes a person who is dealt with or is liable to be dealt with for non-payment of a sum of money, disobedience of a court order, or contempt of court;

“determinate sentence of imprisonment” means a sentence of imprisonment for a fixed term;

“District Court” includes the Fa’amasino Fesoasoani Court or a division of the District Court, such as the Youth Court or the Family Court;

“hospital” means a hospital or health centre listed under the Schedule of the National Health Service Act 2014;

“immediate family”, in relation to a victim:

(a) means a member of the victim’s family, or other culturally recognised family group, who is in a close relationship with the victim at the time of the offence; and

(b) includes a person who is –

(i) the victim’s spouse or de facto partner; or

(ii) the victim’s child or stepchild, under the age of 18 years; or

(iii) the victim’s brother or sister or step-brother or step-sister; or

(iv) a parent or step-parent of the victim; or

(v) a grandparent of the victim;

(vi) Sa’o or otherwise other matai of the victim’s family.

“incapable”, in relation to a person:

(a) means that the person –

(i) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or

(ii) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of matters of

that kind; and

(b) includes the person being in a state of continuing unconsciousness.

“indeterminate sentence of imprisonment” means a sentence of imprisonment for life;

“lawyer” has the meaning in the Lawyers and Legal Practice Act 2014;

“minimum period of imprisonment” means the period of imprisonment that the court has, under section 65 or 68, ordered that a defendant must serve before the defendant can be released under section 10A of the Prisons Parole Board Act 1977;

“non-release day” means a Sunday or a public holiday;

“Parole Board” means the Prisons Parole Board established under the Prisons Parole Board Act 1977;

“police officer” means a sworn member of the Samoa Police Service, and includes a constable;

“post-detention condition” means any standard post-detention condition or special post-detention condition;

“prescribed restorative justice process” means a process for restorative justice prescribed by regulations made under this Act;

“pre-sentence report” means a report prepared under section 19;

“prison” has the meaning in the Prisons and Corrections Act 2013;

“probation area” means an area designated under section 37(1)(b);

“probation officer”:

(a) means –

(i) the Principal Probation Officer or a probation officer or parole officer of the Probation and Parole Service, appointed under the Community Justice Act 2008; or

(ii) a probation officer appointed to the Probation Service under the Young Offenders Act 2007; and

(b) includes a person appointed as such to exercise only some of the functions or powers of a probation officer under those Acts.

“reparation” includes payment in kind or any form of work or service in a village, such as providing fine mats or food to the victim or work on village land;

“sentence of imprisonment”:

- (a) includes a determinate sentence of imprisonment or an indeterminate sentence of imprisonment; but
- (b) does not include a term of imprisonment imposed, whether by committal, sentence, or order, for -
 - (i) non-payment of a sum of money; or
 - (ii) disobedience of a court order; or
 - (iii) contempt of court.

“sentence term”, for a sentence of community detention, means the period that the sentence of community detention is in force;

“victim”:

(a) means –

(i) a person against whom an offence is committed by another person; or

(ii) a person who, through, or by means of, an offence committed by another person, suffers physical harm, or loss of, or damage to, property; or

(iii) a parent or legal guardian of a person, who falls within subparagraph (i) or (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; or

(iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; or

(b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to -

(i) that offence; or

- (ii) an offence relating to the same incident or series of incidents as that offence.
- (2) For the purposes of this Act:
- (a) a defendant is subject to a sentence of imprisonment until the sentence expires;
 - (b) except as provided in paragraph (c), a defendant is subject to a sentence of community work from the date that the sentence commences pursuant to section 47 until the date that it expires pursuant to section 48(6);
 - (c) except as provided in paragraph (d), a defendant is subject to a sentence of community detention from the date that the sentence commences pursuant to section 47 or 49 until the date that it expires;
 - (d) a defendant is not subject to a community-based sentence during any period that the community-based sentence is suspended under section 50(2)(a) or (6).
- (3) For the purposes of this Act, otherwise dealing with a defendant or other means of dealing with a defendant:
- (a) means dealing with the defendant in relation to an offence following a finding of guilt or a plea of guilty, instead of imposing a sentence; and
 - (b) does not include dealing with a person for non-payment of a sum of money, disobedience of a court order, or contempt of court.

3. Act binds the State and application-(1) This Act binds the State.

(2) This Act applies to any defendant sentenced by a court on or after the commencement of this Act, subject to sections 84 to 89 and any transitional regulations made under section 83(2).

4. Penal enactments not to have retrospective effect to disadvantage defendant - A defendant has the right to the benefit of the lesser penalty if convicted of an offence for which the penalty has been varied between the commission of the offence and the sentencing.

PART 2

**PURPOSES AND PRINCIPLES OF SENTENCING AND
GENERAL PROVISIONS***Division 1 - Sentencing purposes and principles*

5. Purposes of sentencing or otherwise dealing with defendants - (1) The purposes for which a court may sentence or otherwise deal with a defendant are either 1 or more of the following:

- (a) to hold the defendant accountable for harm done to the victim and the community by the offending;
- (b) to promote in the defendant a sense of responsibility for, and an acknowledgment of, that harm;
- (c) to provide for the interests of the victim of the offence;
- (d) to denounce the conduct in which the defendant was involved;
- (e) to deter the defendant or other persons from committing the same or a similar offence;
- (f) to protect the community from the defendant;
- (g) to assist in the defendant's rehabilitation and reintegration.

(2) Nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

6. Principles of sentencing or otherwise dealing with defendants - In sentencing or otherwise dealing with a defendant, the court must:

- (a) take into account the gravity of the offending in the particular case, including the degree of culpability of the defendant; and
- (b) take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
- (c) impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the defendant make that inappropriate; and

- (d) impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the defendant make that inappropriate; and
- (e) take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with defendants in respect of similar defendants committing similar offences in similar circumstances; and
- (f) take into account any information provided to the court concerning the effect of the offending on the victim; and
- (g) take into account any particular circumstances of the defendant that mean that a sentence or other means of dealing with the defendant that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and
- (h) take into account the defendant's personal, family, community, and cultural background in imposing a sentence or other means of dealing with the defendant with a partly or wholly rehabilitative purpose.

7. Aggravating and mitigating factors - (1) In sentencing or otherwise dealing with a defendant, the court must take into account the following aggravating factors to the extent that they are applicable in the case:

- (a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon;
- (b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place;
- (c) that the offence was committed while the defendant was on bail or still subject to a sentence;
- (d) the extent of any loss, damage, or harm resulting from the offence;
- (e) particular cruelty in the commission of the offence;
- (f) that the defendant was abusing a position of trust or authority in relation to the victim;

- (g) that the victim was particularly vulnerable because of his or her age or health or because of any other factor known to the defendant;
 - (h) that the defendant committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and –
 - (i) the hostility is because of the common characteristic; and
 - (ii) the defendant believed that the victim has that characteristic;
 - (i) premeditation on the part of the defendant and, if so, the level of premeditation involved;
 - (j) the number, seriousness, date, relevance, and nature of any previous convictions of the defendant and of any convictions for which the defendant is being sentenced or otherwise dealt with at the same time.
- (2) In sentencing or otherwise dealing with a defendant the court must take into account the following mitigating factors to the extent that they are applicable in the case:
- (a) the age of the defendant;
 - (b) whether and when the defendant pleaded guilty;
 - (c) that there was a limited involvement in the offence on the defendant's part;
 - (d) that the defendant has, or had at the time the offence was committed, diminished intellectual capacity or understanding;
 - (e) any remorse shown by the defendant, or action as described in section 9.
- (3) As an exception to subsection (2)(d), the court must not take into account by way of mitigation the fact that the defendant was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for *bona fide* medical purposes).
- (4) Nothing in subsection (1) or (2):
- (a) prevents the court from taking into account any other aggravating or mitigating factor that the court thinks fit; or

- (b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the court might take into account.

Division 2 - Additional aggravating factors in cases involving violence against, or neglect of, persons under 18 years

8. Cases involving violence against, or neglect of, persons under 18 years - (1) This section applies if the court is sentencing or otherwise dealing with a defendant in a case involving violence against, or neglect of, a person under the age of 18 years.

(2) The court must take into account the following aggravating factors to the extent that they are applicable in the case:

- (a) the defencelessness of the victim;
- (b) in relation to any harm resulting from the offence, any serious or long-term physical or psychological effect on the victim;
- (c) the magnitude of the breach of any relationship of trust between the victim and the defendant;
- (d) threats by the defendant to prevent the victim reporting the offending;
- (e) deliberate concealment of the offending from authorities.

(3) The factors in subsection (2) are in addition to any aggravating or mitigating factors the court might take into account under section 7.

(4) Nothing in this section implies that a factor referred to in subsection (2) must be given greater weight than any other factor that the court might take into account.

Division 3 - Taking into account offer or agreement to make amends

9. Court may take into account offer, agreement, response, or measure to make amends - (1) In sentencing or otherwise dealing with a defendant, the court may take into account the following:

- (a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the defendant to the victim;

- (b) any agreement between the defendant and the victim as to how the defendant may remedy the wrong, loss, or damage caused by the defendant or ensure that the offending will not continue or recur;
- (c) the response of the defendant or the defendant's family, or family group to the offending;
- (d) any measures taken or proposed to be taken by the defendant or the family, or family group of the defendant to –
 - (i) make compensation to any victim of the offending or family, or family group of the victim; or
 - (ii) apologise to any victim of the offending or family, or family group of the victim; or
 - (iii) otherwise make good the harm that has occurred;
- (e) any remedial action taken or proposed to be taken by the defendant in relation to the circumstances of the offending.

(2) If a court determines that, despite an offer, agreement, response, measure, or action referred to in subsection (1), it is appropriate to impose a sentence, it may take that offer, agreement, response, measure, or action into account when determining the appropriate sentence for the defendant.

(3) In deciding whether and to what extent any matter referred to in subsection (1) should be taken into account, the court must take into account:

- (a) whether or not it was genuine and capable of fulfilment;
and
- (b) whether or not it has been accepted by the victim as expiating or mitigating the wrong.

(4) Without limiting any other powers of a court to adjourn, in any case contemplated by this section a court may adjourn the proceedings until:

- (a) compensation has been paid; or
- (b) the performance of any work or service has been completed; or
- (c) any agreement between the victim and the defendant has been fulfilled; or

- (d) any measure proposed under subsection (1)(d) has been completed; or
- (e) any remedial action referred to in subsection (1)(e) has been completed.

Division 4 - Hierarchy of sentences and orders

10. Hierarchy of sentences and orders - (1) The hierarchy of sentences and orders set out in subsection (2) reflects the relative level of supervision and monitoring of, and restrictions imposed on, a defendant under each sentence or order.

(2) The hierarchy of sentences and orders, from the least restrictive to the most restrictive, is as follows:

- (a) discharge or order to come up for sentence if called on;
- (b) sentences of a fine and reparation;
- (c) community-based sentences of community work and supervision;
- (d) sentence of imprisonment.

Division 5 - General provisions about discharge without conviction, etc., and imposition of reparation, fines, community-based sentences, and imprisonment

11. Discharge or order to come up for sentence if called on-

(1) If a defendant is found guilty, or pleads guilty, before entering a conviction and imposing a sentence the court must consider whether the defendant would be more appropriately dealt with by:

- (a) discharging the defendant without conviction under section 69; or
- (b) convicting and discharging the defendant under section 71; or
- (c) convicting the defendant and ordering the defendant, under section 73, to come up for sentence if called on.

(2) If any provision applicable to the particular offence in this Act or any other enactment provides a presumption in favour of imposing, on conviction, a sentence of imprisonment, a community-based sentence, or a fine, then:

- (a) despite subsection (1), a court is not obliged to consider whether the defendant would be more appropriately

dealt with in the manner described in subsection (1);
but

- (b) the court is not prevented from dealing with the defendant in that manner if the court thinks that it is appropriate in the circumstances.

12. Reparation, fines, and financial capacity of defendant-(1)

A court may decide not to impose a fine if it is satisfied that the defendant does not or will not have the means to pay it even if it would be appropriate to impose a fine pursuant to subsection (6).

(2) If a court considers that it would otherwise be appropriate to impose a sentence of reparation and a sentence of a fine, but it appears to the court that the defendant has or will have the means to pay a fine or make reparation, but not both, the court must sentence the defendant to make reparation.

(3) If a court is required to impose a sentence or order of reparation, it must impose it unless it is satisfied that the sentence or order would result in undue hardship for the offender or the dependants of the offender, or that any other special circumstances would make it inappropriate.

(4) A sentence of reparation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.

(5) If a court does not impose a sentence or order of reparation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.

(6) If a court is lawfully entitled under this or any other enactment to impose a fine in addition to, or instead of, any other sentence, the court must regard a fine as the appropriate sentence for the particular offence unless:

- (a) the court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by imposing a fine; or
- (b) the court is satisfied that the application of any of the principles in section 6 to the particular case make a fine inappropriate; or
- (c) any provision applicable to the particular offence in this Act or any other enactment provides a presumption in favour of imposing any other sentence or requires the court to impose any other sentence; or

(d) the court is satisfied that a fine, on its own or in addition to a sentence of reparation, would otherwise be clearly inadequate in the circumstances.

(7) In this section, “order of reparation” means an order under section 69(3)(a) and (b), 71(2)(a) and (b), or 73(3).

13. Community-based sentence-(1) If a court is lawfully entitled under this Act or any other enactment to impose a community-based sentence or a fine, or both, it may impose a community-based sentence only if:

(a) the court does not regard a fine as the appropriate sentence; or

(b) the court is not going to impose a fine because of either of the circumstances referred to in section 12.

(2) This section is subject to any provision in this Act or any other enactment that:

(a) provides a presumption in favour of or against imposing a particular sentence in relation to a particular offence; or

(b) requires a court to impose a particular sentence in relation to a particular offence.

Division 6 - Permitted combinations of sentences and provisions of general application restricting cumulative sentences

14. Permitted combinations of sentences - (1) A court may impose a combination of sentences of different types on a defendant in respect of 1 or more offences as provided in this section.

(2) A sentence of reparation may be imposed with any sentence.

(3) A sentence of a fine may be imposed with any other sentence, but may only be imposed with a sentence of imprisonment in respect of a particular offence if authorised by the enactment specifying the offence.

(4) A sentence of supervision may be combined with any other sentence.

(5) A sentence of community work, subject to section 15(2), may be combined with any other sentence except imprisonment.

(6) A sentence of community detention may be combined with any other sentence except imprisonment.

(7) A sentence of imprisonment may be combined with a sentence of reparation or, subject to subsection (3), a fine.

15. Guidance on use of combinations of sentences-(1) A court may impose a particular combination of sentences on a defendant only if satisfied that any of the sentences making up the combination, if imposed alone or in any less restrictive combination, would not be in accordance with:

- (a) any purpose for which sentence is imposed; or
- (b) the application of the principles in section 6 to the particular case.

(2) A court may only combine a sentence of community work with a sentence of supervision if satisfied that:

- (a) a sentence of community work is appropriate; but
- (b) the defendant requires the imposition of standard conditions or any of the special conditions available under a sentence of supervision to address the causes of his or her offending.

16. No sentence may be cumulative on indeterminate sentence of imprisonment - Any other kind of sentence may not be imposed cumulatively on an indeterminate sentence of imprisonment.

Division 7 - Proof of facts and sentencing procedure

17. Proof of facts-(1) In determining a sentence or other disposition of the case, a court:

- (a) may accept as proved any fact that was disclosed by evidence at the hearing or trial and any facts agreed on by the prosecutor and the defendant; and
- (b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.

(2) If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by 1 party and disputed by the other:

- (a) the court must indicate to the parties the weight that it would be likely to attach to the disputed fact if it were found to exist, and its significance to the sentence or other disposition of the case;

- (b) if a party wishes the court to rely on that fact, the parties may adduce evidence as to its existence unless the court is satisfied that sufficient evidence was adduced at the hearing or trial;
- (c) any fact in dispute must be established to the satisfaction of the judge;
- (d) either party may with the leave of the judge cross-examine any witness called by the other party.

18. Power of adjournment for inquiries as to suitable punishment - (1) A court may adjourn the proceedings in respect of any offence after the defendant has been found guilty or has pleaded guilty and before the defendant has been sentenced or otherwise dealt with for any 1 or more of the following purposes:

- (a) to enable inquiries to be made or to determine the most suitable method of dealing with the case;
- (b) to enable a prescribed restorative justice process to occur;
- (c) to enable a prescribed restorative justice agreement to be fulfilled;
- (d) to enable a rehabilitation programme or course of action to be undertaken;
- (e) to enable the court to take account of the defendant's response to any process, agreement, programme, or course of action referred to in paragraph (b), (c), or (d).

(2) If proceedings are adjourned under this section or under section 9(4), a Judge or Fa'amasino Feasoasoani having jurisdiction to deal with offences of the same kind (whether or not the same Judge or Fa'amasino Feasoasoani before whom the case was heard) may, after inquiry into the circumstances of the case, sentence or otherwise deal with the defendant for the offence to which the adjournment relates.

19. Pre-sentence reports - (1) If a defendant charged with an offence punishable by imprisonment is found guilty or pleads guilty, the court may direct a probation officer to provide a report to the court under subsection (2).

(2) A pre-sentence report may include the following:

- (a) information regarding the personal, family, community, and cultural background, and social circumstances of the defendant;
- (b) information regarding the factors contributing to the offence, and the rehabilitative needs of the defendant;
- (c) information regarding any offer, agreement, response, or measure of a kind referred to in section 9(1) or the outcome of any other prescribed restorative justice processes that have occurred in relation to the case;
- (d) recommendations on the appropriate sentence or other disposition of the case, taking into account the risk of further offending by the defendant;
- (e) for a proposed sentence of supervision, recommendations on the appropriate conditions of that sentence;
- (f) for a proposed sentence of supervision involving 1 or more programmes, a report on the programme or programmes, including a general description of the conditions that the defendant will have to abide by; and
- (g) for a proposed sentence of supervision, involving a special condition requiring the defendant to take prescription medication, confirmation that the defendant –
 - (i) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of the medication and any known risks; and
 - (ii) consents to taking the prescription medication;
- (h) for a proposed sentence of community work –
 - (i) information regarding the availability of community work of a kind referred to in 30A of the Community Justice Act 2008 in the area in which the defendant will reside; and
 - (ii) recommendations on whether the court should authorise, under 31B of the Community Justice Act 2008, hours of work to be spent undertaking training in basic work and living skills.

(3) The court may not direct the preparation of a report under subsection (1) on any aspects of the personal characteristics or personal history of a defendant if a report covering those aspects is readily available to the court and there is no reason to believe that there has been any change of significance to the court since the report was prepared.

(4) On directing the preparation of a report under subsection (1), the court may indicate to the probation officer the type of sentence or other mode of disposition that the court is considering, and may also give any other guidance to the probation officer that will assist the officer to prepare the report.

(5) If a court has directed the preparation of a report under subsection (1), the probation officer charged with the preparation of the report may seek further directions of the court on:

- (a) any particular item of information sought by the court; or
- (b) any alternative sentence or other mode of disposition that may be considered by the court if it appears that the sentence or other mode of disposition under consideration is inappropriate.

(6) If a court requires a pre-sentence report, the court may remand the offender, on bail or in custody, for such time as may be necessary to enable the report to be prepared and submitted to the Court.

20. Additional requirements when considering sentence of community detention - (1) If the court has directed a probation officer to provide a pre-sentence report, the probation officer must prepare the pre-sentence report pursuant to subsection (2) if:

- (a) the court has indicated that it is considering a sentence of community detention; or
- (b) the probation officer intends to recommend a sentence of community detention.

(2) A pre-sentence report to which subsection (1) applies may include any of the matters outlined in section 19(2), and must include:

- (a) information regarding the suitability of the proposed curfew address, including the safety and welfare of the occupants of the proposed curfew address; and

- (b) for a sentence of community detention, confirmation whether the defendant consents to the conditions of the sentence and the proposed curfew period.
- (3) Before completing a report that covers the matters in subsection (2), the probation officer must:
 - (a) ensure that every relevant occupant of the proposed curfew address is aware of the nature of the defendant's past and current offending; and
 - (b) tell every relevant occupant that the reason for giving that information is to enable the occupant to make an informed decision about whether to consent to the defendant remaining at the curfew address during the curfew period; and
 - (c) tell every relevant occupant that the information provided about the defendant must not be used for any purpose other than that described in paragraph (b); and
 - (d) obtain the consent of every relevant occupant to the defendant remaining at the curfew address during the curfew period; and
 - (e) inform every relevant occupant that they may withdraw their consent, at any time, to the defendant serving the sentence at the curfew address.
- (4) In subsection (3), "relevant occupant" means:
 - (a) for a residence that the probation officer is considering as a residence -
 - (i) if the residence is a family residence, the occupant who ordinarily lives there; and
 - (ii) for any other residence, a person whom the probation officer identifies as being a relevant occupant for the purposes of subsection (3); or
 - (b) for an address that the probation officer is considering as a curfew address -
 - (i) if the address is a residence, any person referred to in paragraph (a); and
 - (ii) for any other place, any person whom the probation officer identifies as being authorised to give consent for the purposes of subsection (3).

21. Defendant may request court to hear person on personal, family, community, and cultural background of defendant - (1)

If a defendant appears before a court for sentencing, the defendant may request the court to hear any person or persons called by the defendant to speak on any of the following:

- (a) the personal, family, community, and cultural background of the defendant;
- (b) the way in which that background may have related to the commission of the offence;
- (c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the defendant and his or her family, or community and the victim or victims of the offence;
- (d) how support from the family or community may be available to help prevent further offending by the defendant;
- (e) how the defendant's background, or family or community support may be relevant in respect of possible sentences.

(2) The court may hear any person called by the defendant under this section on any of the matters specified in subsection (1).

(3) Without limiting any other powers of a court to adjourn, the court may adjourn the proceedings to enable arrangements to be made to hear any person under this section.

(4) If a defendant does not make a request under this section, the court may suggest to the defendant that it may be of assistance to the court to hear a person or persons called by the defendant on any of the matters specified in subsection (1).

22. Disclosure of reports - (1) If a written report is submitted to a court, whether under section 19 or 25 or otherwise, a copy of the report must be given:

- (a) except as provided in subsection (2), to the defendant;
and
- (b) if the defendant is represented, to the defendant's lawyer, whether or not an order is made under subsection (2);
and
- (c) to the prosecutor.

(2) The court may order that any part of the report not be disclosed to the defendant if it is of the opinion that the disclosure would be likely to prejudice the defendant's physical or mental health or endanger the safety of any person.

(3) The defendant or his or her lawyer may tender evidence on any matter referred to in a written or oral report that is submitted to a court under section 19 or 25.

(4) Failure to give a copy of any report under this section does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

23. Access to reports - The following persons may have access to any report submitted to a court under section 19 or 25, and held by the court:

- (a) the officer-in-charge of the prison to which the defendant is sent, whether during any proceedings or pursuant to any sentence imposed;
- (b) a prison officer or an officer of a court who requires access to the report for the purposes of his or her official duties;
- (c) a member of the Parole Board;
- (d) the prosecutor appearing on sentence or on appeal against sentence.

PART 3

SENTENCES, ORDERS AND RELATED MATTERS

Division 1 - Monetary penalties

Subdivision A - Reparation

24. Sentence of reparation - (1) A court may impose a sentence of reparation if a defendant has, through or by means of an offence of which the defendant is convicted, caused a person to suffer:

- (a) loss of or damage to property; or
- (b) physical harm; or
- (c) loss or damage consequential on any physical harm or loss of, or damage to, property.

(2) Despite subsection (1), a court must not impose a sentence of reparation in respect of physical harm, or loss or damage consequential on physical harm, unless the person who suffered the physical harm is a person described in paragraph (a) of the definition of “victim” in section 2.

(3) In determining whether a sentence of reparation is appropriate or the amount of reparation to be made for any consequential loss or damage described in subsection (1)(c), the court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.

(4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

(5) When determining the amount of reparation to be made, the court must take into account any offer, agreement, response, measure, or action as described in section 9.

(6) The court may impose as part of a sentence of reparation an obligation on the defendant to perform any form of work or service for the person who suffered the harm, loss, or damage.

(7) A sentence of reparation may be enforced in the same manner as a fine.

(8) A sentence of reparation does not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the sentence of reparation.

25. Court may order reparation report - (1) If the court considers that a sentence of reparation is appropriate, the court may order a probation officer, or any other person designated by the court for the purpose, to prepare a reparation report for the court under section 26 on any or all of the following matters:

- (a) for loss of or damage to property, the value of that loss or damage and any consequential loss or damage;
- (b) for physical harm, the nature of that harm and the value of any consequential loss or damage;
- (c) for any loss or damage consequential on physical harm –
 - (i) the nature and value of the loss or damage;
 - and
 - (ii) the extent to which the person who suffered the loss or damage is likely to be covered by entitlements under the applicable contract of insurance;
- (d) the financial capacity of the defendant;

- (e) the maximum amount that the defendant is likely to be able to pay under a sentence of reparation;
- (f) the frequency and magnitude of any payments that should be required under a sentence of reparation, if provision for payment by instalments is thought desirable.

(2) The court may decline to seek a report under subsection (1) and impose a sentence of reparation without further inquiry if:

- (a) the court is satisfied as to the amount of reparation that the defendant should pay; or
- (b) the type of information referred to in a reparation report is available through other means; or
- (c) in all the circumstances the court considers that a report is unnecessary.

(3) For the purposes of the preparation of a reparation report, a court may direct the defendant to make a declaration as to his or her financial capacity pursuant to section 31.

26. Reparation reports - (1) A probation officer or other person who is required by a court to prepare a report under section 25 must attempt to gain agreement between the defendant and the person who suffered the harm, loss, or damage on the amount that the defendant should be required to pay by way of reparation.

(2) If agreement is reached, the probation officer or other person must report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).

(3) If no agreement is reached, the probation officer or other person must:

- (a) for physical harm, state in the report the respective positions of the defendant and the person who suffered the harm, and that the matter is unresolved; and
- (b) for loss of, or damage to, property, either –
 - (i) determine the value of the loss or damage and the consequential loss or damage on the evidence available, and include that value in the report; or
 - (ii) state in the report that the matter is unresolved; and

(c) for loss or damage consequential on physical harm, either

—
(i) determine the value of the loss or damage on the evidence available, and include that value in the report; or

(ii) state in the report the respective positions of the defendant and the person who suffered the loss or damage, and that the matter is unresolved.

(4) Despite subsections (1) to (3), the person who suffered the harm, loss, or damage is not obliged to meet with the defendant or otherwise participate in the preparation of the report.

(5) The person who prepared a report under this section must give a copy:

(a) to the person who suffered the harm, loss, or damage unless the court orders otherwise;

(b) to the defendant; and

(c) to the prosecutor.

(6) Failure to give a copy of any report pursuant to subsection (5) does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

27. Taking into account financial capacity of defendant - (1)

If the defendant has insufficient means to pay the total value of the loss, damage, or harm, the court may sentence the defendant to make either or both of the following:

(a) reparation for any amount that is less than the value of the loss, damage, or harm;

(b) payment by instalments in respect of the loss, damage, or harm.

(2) If the court imposes on a defendant a sentence of reparation and a sentence of a fine, any payments received from the defendant must be applied first in satisfaction of the amount due under the sentence of reparation.

28. Conditions of sentence of reparation - (1)

If a court sentences a defendant to make reparation, the court must determine the conditions of the sentence in respect of the following matters:

(a) the total amount of reparation to be paid by the defendant;

(b) whether the amount is to be paid in 1 lump sum or in instalments;

- (c) if the amount is to be paid in 1 lump sum, whether it is to be paid immediately or at some specified future date;
- (d) if the amount is to be paid in instalments, the frequency and amounts of the instalments.

(2) The court may not impose a condition that an amount to be paid in 1 lump sum must be paid immediately unless the court is satisfied that the defendant has sufficient means to pay it immediately.

(3) The court may impose a term of imprisonment if the defendant fails to pay the total amount of the reparation as if the reparation were a fine.

29. Copy of conditions of reparation to be given to person who suffered harm, loss, or damage - (1) A copy of the conditions of a sentence of reparation must be given to the person who suffered the harm, loss, or damage.

(2) Failure to give a copy of the conditions of the sentence pursuant to this section does not affect the validity of the proceedings in the court or of the sentence imposed by the court.

30. Payment of sums to person who suffered harm, loss, or damage-(1) Any sum payable under a sentence of reparation must be paid to the person who suffered the harm, loss, or damage.

(2) A sentence of reparation does not affect any right that the person who suffered the harm, loss, or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

Subdivision B - Declaration as to financial capacity

31. Declaration as to financial capacity - A declaration as to financial capacity must contain information on all sources of income, assets, liabilities, and outgoings, including, without limitation, the following:

- (a) salary and wages;
- (b) benefits and pensions;
- (c) commissions;
- (d) interest and dividends;
- (e) income from rental property;
- (f) ownership of real estate;

- (g) vehicle ownership;
- (h) ownership of other property;
- (i) income and realisable assets that the defendant does not currently have but which it is anticipated that the defendant will receive during the 12 months following the date of giving the declaration;
- (j) debts;
- (k) essential outgoings of the defendant and his or her dependants.

32. Offence of providing false or misleading information - A person who provides false or misleading information in a declaration of financial capacity provided under section 31 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

Division 2 - Community-based sentences

Subdivision A - General

33. Community-based sentences - (1) In this Act, “community-based sentence” means any of the following:

- (a) a community-based sentence imposed under Part III of the Community Justice Act 2008;
- (b) a sentence of community detention imposed under this Act.

(2) In sentencing a defendant to a community-based sentence, a court may have regard to the potential effect that a particular sentence may have in contributing to the development of a defendant’s work and living skills.

(3) In this Division, “an officer” means a person (whether or not a prison officer) appointed by the Commissioner pursuant to the Prisons and Corrections Act 2013.

34. Sentence of community detention - (1) A court may sentence a defendant to community detention if:

- (a) the defendant is convicted of an offence punishable by imprisonment; or
- (b) the defendant is convicted of an offence and the enactment prescribing the offence expressly provides

that a community-based sentence or a sentence of community detention may be imposed on conviction.

(2) The sentence term may be for a period, being no more than 2 years, that the court thinks fit.

(3) The court must specify the curfew period and the curfew address when sentencing the defendant to a sentence of community detention.

(4) Any curfew period specified under subsection (3) must not be for a period of less than 2 hours, and the total of any curfew period for any week must not be more than 84 hours.

(5) A defendant is not in custody during the curfew period.

35. Guidance on use of sentence of community detention - (1)

A court may impose a sentence of community detention if the court is satisfied:

(a) that a sentence of community detention –

(i) would reduce the likelihood of further offending by restricting the defendant's movements during specified periods, including, but not limited to, offending of a particular type or at a particular time; or

(ii) would achieve one or more of the purposes set out in section 5(1)(a), (b), (e) or (f); and

(b) that a curfew is appropriate, taking into account the nature and the seriousness of the offence and the circumstances and the background of the defendant.

(2) A court may sentence a defendant to community detention if the court is satisfied that:

(a) the proposed curfew address is suitable; and

(b) the relevant occupants (as defined in section 20(4)) of the proposed curfew address –

(i) understand the conditions of the curfew that will apply to the defendant; and

(ii) consent to the defendant remaining at the address in accordance with the curfew; and

(iii) have been informed that they may withdraw their consent, at any time, to the defendant serving the sentence at the curfew address; and

- (c) the defendant has been made aware of and understands all the conditions that will apply during the sentence and he or she agrees to comply with them.

36. Concurrent and cumulative sentences of community detention - (1) If a court imposes a sentence of community detention on a defendant who is already subject to a sentence of community detention, both sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes cumulative sentences of community detention or imposes 1 or more sentences of community detention on a defendant who is already serving a sentence of community detention, the total term of all the sentences of community detention must not be more than 12 months.

(3) If a court imposes a sentence of community work and a sentence of community detention, or imposes one of them on a defendant who is already subject to the other, all the sentences must be served concurrently.

37. Conditions of community detention during sentence term - (1) A defendant sentenced to community detention is subject to the following conditions during the sentence term:

- (a) during the curfew period –
 - (i) the defendant must not, at any time, leave the curfew address except in the circumstances set out in subsection (2);
 - (ii) the defendant is under the supervision of an officer and must co-operate with an officer and comply with any lawful direction given by that officer;
- (b) the defendant must report, in person to an officer, to the probation area (designated in writing by the Commissioner for the administration of release conditions, community-based sentences or orders) not later than 24 hours, after the sentence is imposed, unless the 24 hours elapses on a non-release day, in which case the defendant must report on the next working day;
- (c) the defendant must report to an officer as and when required to do so by an officer, and must notify an

officer of his or her residential address, any change to that address, and the nature and place of his or her employment when asked to do so;

- (d) the defendant must keep in his or her possession the order drawn up under section 46 relating to the curfew and, if requested to do so by a police officer or an officer, must produce the order for inspection;
- (e) the defendant must, when required to do so by an officer, submit to any monitoring compliance with the conditions of his or her sentence.

(2) A defendant may leave the curfew address during the curfew period only:

- (a) to seek medical or dental treatment; or
- (b) to avoid or minimise a serious risk of death or injury to the defendant or any other person; or
- (c) with the approval of an officer –
 - (i) to seek or engage in employment; or
 - (ii) to attend training or other rehabilitative or re-integrative activities or programmes; or
 - (iii) to attend a prescribed restorative justice conference or other process relating to the defendant's offending; or
 - (iv) to carry out any undertaking arising from any prescribed restorative justice process; or
- (d) with the approval of an officer and subject to any conditions imposed by an officer, on humanitarian grounds.

(3) An officer may only give an approval under subsection (2)(c) if the defendant is serving a sentence of supervision together with the sentence of community detention.

(4) An officer may approve an alternative curfew address under section 41, pending determination of an application to vary the curfew address under section 40.

38. Offence to breach conditions of community detention - A defendant commits an offence, and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months, who:

- (a) fails, without reasonable excuse, to comply with any condition of a sentence of community detention; or

- (b) fails, without reasonable excuse, to report when required to do so under section 50(5) or 52(3).

39. Offence to refuse entry to community detention curfew address-(1) A person commits an offence if the person refuses or fails, without reasonable excuse:

- (a) to allow an officer, who has identified himself or herself, to enter into the curfew address if the defendant is required to be at the address at the time that an officer seeks entry; or
 - (b) to allow an authorised person to enter into the curfew address for the purpose of monitoring of the defendant's compliance with the condition that the defendant remain at the curfew address during the curfew period (whether or not the defendant is required to be at the curfew address at the time).
- (2) For subsection (1)(b), an authorised person is a person who:
- (a) is an officer and has identified himself or herself; or
 - (b) accompanies a person described in paragraph (a); or
 - (c) is authorised in writing by an officer and has produced that written authority to an occupant of the residence.
- (3) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months.

40. Variation or cancellation of sentence of community detention - (1) A defendant who is subject to a sentence of community detention, or an officer, may apply, under section 45, for an order under subsection (3) on the grounds that:

- (a) the defendant is unable to comply, or has failed to comply, with any conditions of the sentence; or
- (b) the curfew address is no longer available or suitable because of a change in circumstances; or
- (c) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence -
 - (i) the rehabilitation and reintegration of the defendant would be advanced by the suspension or variation of the curfew period; or
 - (ii) the continuation of the sentence is no

longer necessary in the interests of the community or the defendant.

(2) An officer may apply for an order under subsection (3) if a defendant, who is subject to a sentence of community detention, is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established:

- (a) suspend or vary the curfew period; or
- (b) vary the curfew address; or
- (c) cancel the sentence; or
- (d) cancel the sentence and substitute any other sentence (including another sentence of community detention) that could have been imposed on the defendant at the time that the defendant was convicted of the offence for which the sentence was imposed.

(4) When determining a substitute sentence to be imposed under subsection (3)(d), the court must take into account the portion of the original sentence that remains un-served at the time of the order.

(5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(6) If an application is made under this section to suspend or vary the curfew period, an officer may suspend the curfew period until the application has been heard and disposed of.

41. Alternative curfew address pending determination of application under section 40 - (1) This section applies if an officer or a defendant who is subject to a sentence of community detention intends to apply, or has applied, for a variation of conditions under section 40 on the ground specified in section 40(1)(b).

(2) An officer may approve an alternative curfew address at which the defendant must remain during the curfew period pending the determination of an application.

(3) If an officer approves an alternative curfew address before an application under section 40 has been made, an officer must apply, within 5 working days, to the court under that section.

(4) Subsection (3) does not apply if a defendant applies under section 40 within the 5-day period specified in subsection (3).

(5) If, in the opinion of an officer, there is no suitable alternative curfew address available and an officer has not applied under section 40, an officer must apply to the court under that section at the earliest opportunity.

42. When sentence ends on non-release day - If the last day of a defendant's sentence of community detention falls on a non-release day, the defendant ceases to be subject to the sentence on the nearest preceding day that is not a non-release day.

Subdivision B - Offences relating to community-based sentences

43. Offences relating to breach of conditions of supervision -

(1) A defendant commits an offence, who fails, without reasonable excuse:

- (a) to comply with a condition of a sentence of supervision;
or
- (b) to report when required to do so under section 50(5) or 52(3).

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 6 months.

44. Offences relating to breach of sentence of community work-

(1) A defendant who is sentenced to community work commits an offence, and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 6 months, who:

- (a) fails, without reasonable excuse, to report to a probation officer under section 27 of the Community Justice Act 2008 or section 50(5) or 52(3) of this Act; or
- (b) fails, without reasonable excuse, to notify a probation officer of any new residential address pursuant to section 28 of the Community Justice Act 2008; or
- (c) fails, without reasonable excuse, to –
 - (i) do any work satisfactorily under the sentence; or
 - (ii) comply with the terms of any agreement entered into for the purposes of section 30B(1) of

- the Community Justice Act 2008; or
- (d) fails, without reasonable excuse, to complete the required number of hours of work within the period set out in section 26 of the Community Justice Act 2008 or within any extended period granted under section 33B of the Community Justice Act 2008; or
 - (e) accepts remuneration for any work that the defendant is required to do for the purposes of the sentence; or
 - (f) fails, without reasonable excuse, to report or to remain at any place as required by or under this Subdivision; or
 - (g) fails, without reasonable excuse, to obey any rules governing a prescribed community work centre; or
 - (h) fails, without reasonable excuse, to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of a probation officer under section 31 of the Community Justice Act 2008; or
 - (i) refuses to work, or fails to work in the manner reasonably required of the defendant, or neglects or intentionally mismanages his or her work, while under the supervision of a probation officer under section 31 of the Community Justice Act 2008; or
 - (j) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while under the supervision of a probation officer under section 31 of the Community Justice Act 2008.

(2) A person commits an offence, and is liable on conviction to a fine not exceeding 50 penalty units, who, without lawful justification or excuse, loiters about any prescribed community work centre or any place where persons sentenced to community work are placed, and refuses or neglects to depart after being warned by a police officer or by a probation officer.

Subdivision C - Review of community-based sentences

45. Jurisdiction and procedure - (1) An application under section 22 or 33A of the Community Justice Act 2008 or section 40 of this Act must be made:

- (a) to the Supreme Court, if the sentence was passed by the Supreme Court, or imposed by the Court of Appeal on appeal originated from the Supreme Court; or
- (b) to a District Court, if the sentence was passed -
 - (i) by the Court of Appeal on appeal from the Supreme Court for an appeal originated from the District Court to the Supreme Court; or
 - (ii) by the Supreme Court on appeal originated from a District Court; or
 - (iii) by a District Court.

(2) A copy of the application must, either before or as soon as practicable after the application is lodged in a court, be served:

- (a) on the defendant, if the defendant is not the applicant; or
- (b) on the Commissioner, if a probation officer is not the applicant.

(3) If an application under section 22 or 33A of the Community Justice Act 2008 or section 40 of this Act has been lodged in a court by a probation officer, a probation officer or a police officer may, for the purpose of having the defendant brought before the court dealing with the application, apply to a court for the issue of a warrant to arrest the defendant.

(4) A warrant issued under subsection (3) is to be executed only by a police officer.

(5) If a defendant is arrested under a warrant issued under subsection (3) of this section, the Criminal Procedure Act 2016 so far as they are applicable and with any necessary modifications, applies as if the application were an information or a charging document filed under that Act.

Subdivision D - Miscellaneous provisions

46. Order must be drawn up and copy given to defendant, etc. - (1) If a court imposes a community-based sentence on a defendant, the particulars of the sentence must be drawn up in the form of an order.

(2) Wherever practicable, a copy of the order must be given to the defendant before he or she leaves the court.

(3) The order must include information regarding:

- (a) the nature of the sentence; and
- (b) the initial reporting obligations; and

- (c) the date on which the sentence commences; and
- (d) the obligations to comply with the instructions of a probation officer and the terms of the sentence; and
- (e) the consequences of non-compliance with the terms of the sentence; and
- (f) the statutory provisions under which the sentence may be varied or cancelled.

(4) If the community-based sentence is a sentence of community detention, then, in addition to the information required to be included in the order under subsection (3), the order must also include:

- (a) the sentence term; and
- (b) the curfew period; and
- (c) the conditions that apply, including those that apply for the duration of the sentence term and those that only apply during the curfew period.

(5) For the purposes of subsection (1), a court may direct that the defendant be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the defendant.

(6) If it is not practicable to give a copy of the order to the defendant before the defendant leaves the court, a copy must be given to the defendant in person as soon as practicable after the defendant leaves the court.

(7) A copy of the order must be given to the Commissioner as soon as possible after it is drawn up.

47. Commencement of community-based sentences - A community-based sentence commences on the day on which it is imposed.

48. Commencement of cumulative sentences of community work - (1) If a sentence of community work is imposed cumulatively on another sentence of community work imposed at the same time:

- (a) at least one of the sentences must commence on the day that sentence is imposed; and
- (b) the commencement date for the subsequent sentence is the date of the completion of the hours of community

work under the first sentence of community work to be served.

(2) If a sentence of community work is imposed cumulatively on another sentence of community work to which the defendant is already subject, the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(3) If a sentence of community work is imposed cumulatively on another sentence of community work, hours of work done under either of the sentences on the date referred to in subsection (1)(b) or (2) are not counted towards the hours of work required to be done under the other sentence.

(4) If a sentence of community work is imposed cumulatively on another sentence of community work (the first sentence), whether or not imposed at the same time, and the first sentence is subsequently quashed:

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any hours of work completed under the quashed sentence must be treated as having been done under the subsequent sentence.

(5) If a sentence of community work is imposed cumulatively on another sentence of community work (the “first sentence”), whether or not imposed at the same time, and the first sentence is subsequently cancelled:

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) hours of work completed under the cancelled sentence are not to be treated as having been done under the subsequent sentence.

(6) A sentence of community work expires on the date that the defendant completes the hours of work required under the sentence (taking into account any hours remitted under section 33 of the Community Justice Act 2008), whether or not the period of time allowed under section 26 of the Community Justice Act 2008 or any extended period granted under section 33B of the Community Justice Act 2008 has expired.

49. Commencement of cumulative sentences of community detention - (1) If a sentence of community detention is imposed cumulatively on another sentence of community detention imposed at the same time:

- (a) at least one of the sentences must commence on the day that sentence is imposed; and
- (b) the commencement date for the subsequent sentence is the date of the completion of the term of community detention under the first sentence of community detention to be served.

(2) If a sentence of community detention is imposed cumulatively on another sentence of community detention to which the defendant is already subject, the commencement date for the subsequent sentence is the date of the completion of the term of community detention under the first sentence of community detention to be served.

(3) If a sentence of community detention is imposed cumulatively on another sentence of community detention, any period during which the defendant was subject to either of the sentences referred to in subsection (1)(b) or (2) is not counted towards the term of the other sentence.

(4) If a sentence of community detention is imposed cumulatively on another sentence of community detention (the first sentence), whether or not imposed at the same time, and the first sentence is subsequently quashed:

- (a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and
- (b) any period during which the defendant was subject to the quashed sentence must be treated as having been served under the subsequent sentence.

(5) If a sentence of community detention is imposed cumulatively on another sentence of community detention (the first sentence), whether or not imposed at the same time, and the first sentence is subsequently cancelled:

- (a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and
- (b) to avoid doubt, any period during which the defendant was subject to the cancelled sentence must not be

treated as having been served under the subsequent sentence.

50. Effect of subsequent sentence of imprisonment - (1)

Subsection (2) applies if a defendant who is subject to a community-based sentence is subsequently sentenced to:

- (a) a term of imprisonment of not more than 12 months; or
- (b) two or more terms of imprisonment to be served concurrently, each term of which is not more than 12 months; or
- (c) two or more terms of imprisonment that are cumulative, the total term of which is not more than 12 months.

(2) If this subsection applies, the court must either:

- (a) order that the community-based sentence be suspended; or
- (b) order that the community-based sentence be suspended for the duration of the period in which the defendant is detained under the sentence or sentences of imprisonment.

(3) If the court suspends the community-based sentence under subsection (2)(b), the court may, if it thinks fit, remit, suspend, or vary any conditions of the sentence imposed by the court, or impose new conditions.

(4) The court must not vary any existing condition or impose any new condition of a kind referred to in section 20(2)(b) of the Community Justice Act 2008 unless the defendant:

- (a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If a community-based sentence is suspended under subsection (2)(b):

- (a) except as provided in paragraph (b), the defendant must report to a probation officer as soon as practicable, and not later than 72 hours, after being released from detention; and

- (b) a defendant who is sentenced to community detention must report to a probation officer within 24 hours after being released from detention, unless the 24 hours elapses on a non-release day, in which case the defendant must report to a probation officer on the next working day; and
- (c) the sentence does not resume until the defendant has reported to a probation officer as required by paragraph (a) or (b).

(6) A community-based sentence is suspended if a defendant who is subject to a community-based sentence is subsequently sentenced to:

- (a) a term of imprisonment of more than 12 months; or
- (b) two or more terms of imprisonment to be served concurrently, each term of which is more than 12 months; or
- (c) two or more terms of imprisonment that are cumulative, the total term of which is more than 12 months.

51. Period of suspension not counted towards sentence-(1) A period during which a sentence of supervision is suspended under section 50(2) or (6) of this Act is not counted towards the period under section 13(2) of the Community Justice Act 2008.

(2) A period during which a sentence of community work is suspended under section 50(2) or (6) of this Act is not counted towards the periods referred to in section 26(1) and (2) of the Community Justice Act 2008.

52. Resumption of community-based sentence if sentence of imprisonment quashed-(1) This section applies to a community-based sentence that is suspended under section 50(2)(a) or (6).

(2) The community-based sentence is suspended until the earlier of the following events:

- (a) it resumes under subsection (3); or
- (b) it is cancelled under subsection (5).

(3) If the sentence or sentences of imprisonment based on which the community-based sentence was suspended are quashed and that results in the defendant no longer being detained under a sentence of imprisonment:

- (a) except as provided in paragraph (b), the defendant must report to a probation officer as soon as practicable, and not later than 72 hours, after being released from detention; and
- (b) a defendant who is sentenced to community detention must report to a probation officer within 24 hours after being released from detention, unless the 24 hours elapses on a weekend or public holiday, in which case the defendant must report to a probation officer on the next working day; and
- (c) the sentence resumes when the defendant has reported as required by paragraph (a) or (b).

(4) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the Commissioner.

(5) If the community-based sentence never resumes under subsection (3), it is cancelled when the defendant ceases to be detained under the sentence or sentences of imprisonment.

Division 3 - Imprisonment

Subdivision A - General

53. Length of sentence of imprisonment - If under any enactment a defendant is liable to imprisonment for life or for any specified term, the court may, in accordance with this Act, impose imprisonment for the maximum term provided for the particular offence or any lesser term, unless a minimum term of imprisonment is expressly provided for in an enactment.

54. Cumulative and concurrent sentences of imprisonment-

(1) A determinate sentence of imprisonment may be imposed cumulatively on any other determinate sentence of imprisonment that the court directs, whether then imposed or to which the defendant is already subject, including any sentence for which a direction of that kind is or has been given.

(2) Despite subsection (1), a court may not impose a sentence of imprisonment cumulatively on another sentence of imprisonment if, at the time of sentencing, the defendant is subject to a sentence of imprisonment but, having commenced serving the sentence, is no longer detained under it.

(3) For the purposes of subsection (2), a person who is detained under an interim recall order under the Prisons Parole Board Act 1977 is not detained under the sentence to which the interim recall order applies.

(4) An indeterminate sentence of imprisonment must not be imposed cumulatively on any other sentence.

(5) Any sentence of imprisonment may be imposed concurrently with any other sentence of imprisonment.

(6) For the purpose of this section, a term of imprisonment imposed on a defendant (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is taken to be a determinate sentence of imprisonment.

55. Guidance on use of cumulative and concurrent sentences of imprisonment - (1) Cumulative sentences of imprisonment are generally appropriate if the offences for which a defendant is being sentenced are different in kind, whether or not they are a connected series of offences.

(2) Concurrent sentences of imprisonment are generally appropriate if the offences for which a defendant is being sentenced are of a similar kind and are a connected series of offences.

(3) In determining for the purpose of this section whether two (2) or more offences committed by 1 defendant are a connected series of offences, the court may consider:

- (a) the time at which they occurred; or
- (b) the overall nature of the offending; or
- (c) any other relationship between the offences that the court considers relevant.

56. Court to consider totality of offending-(1) Subject to this section, if a court is considering imposing sentences of imprisonment for 2 or more offences, the individual sentences must reflect the seriousness of each offence.

(2) If cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.

(3) If, because of the need to ensure that the total term of cumulative sentences is not disproportionately long, the imposition

of cumulative sentences would result in a series of short sentences that individually fail to reflect the seriousness of each offence, then longer concurrent sentences, or a combination of concurrent and cumulative sentences, must be preferred.

- (4) If only concurrent sentences are to be imposed:
 - (a) the most serious offence must, subject to any maximum penalty provided for that offence, receive the penalty that is appropriate for the totality of the offending; and
 - (b) each of the lesser offences must receive the penalty appropriate to that offence.

Subdivision B - Warrant of commitment for sentence of imprisonment

57. Warrant of commitment for sentence of imprisonment-

(1) If a court imposes a sentence of imprisonment, a warrant must be issued stating briefly the particulars of the offence and directing the detention of the defendant pursuant to the sentence.

(2) If the sentence is imposed by a District Court, any District Court Judge may sign the warrant.

(3) If the sentence is imposed by the Supreme Court, any Judge of that court may sign the warrant.

(4) If the sentence is imposed by the Court of Appeal, any Judge of that court may sign the warrant.

(5) A warrant under this section may be issued in respect of any number of sentences imposed in respect of the same defendant at the same sitting of the court.

Subdivision C - Interpretation provision relating to references to defendant being sentenced to imprisonment for particular period

58. References to period of imprisonment for purposes of

section 59-(1) For the purposes of section 59, a court sentences a defendant to imprisonment for a particular period if:

- (a) in a case where the defendant was not already subject to a sentence or sentences of imprisonment, it sentences the defendant to 1 sentence of imprisonment, the term of which is equal to that period; or

- (b) in a case where the defendant was not already subject to a sentence or sentences of imprisonment, it sentences the defendant to 2 or more sentences of imprisonment, the total term of which is equal to that period; or
- (c) in a case where the defendant was already subject to a sentence or sentences of imprisonment, it sentences the defendant to 1 or more sentences of imprisonment the total term of which, including the existing sentences of imprisonment, is equal to that period.

(2) For the purposes of this section, the total term of 2 or more sentences of imprisonment is a term beginning with the commencement date of the first of the sentences to commence and ending with the sentence expiry date of the sentence last to expire.

Subdivision D - Conditions on release of defendant sentenced to imprisonment for short term

59. Imposition of conditions on release of defendant sentenced to imprisonment for short term-(1) A court that sentences a defendant to a term of imprisonment of 12 months or less may impose the standard conditions and any special conditions on the defendant and, if it does so, must specify when the conditions expire.

(2) If a court sentences a defendant to a term of imprisonment of more than 12 months but not more than 24 months:

- (a) the standard conditions apply to the defendant until the sentence expiry date, unless the court specifies otherwise; and sections 60, 61 and 62 apply as if the standard conditions had been imposed by order of the court; and
- (b) the court may at the same time impose any special conditions on the defendant and, if it does so, must specify when the conditions expire.

(3) The court may specify that conditions imposed under this section expire on:

- (a) the sentence expiry date; or
- (b) the date that is a specified period before the sentence expiry date; or

(c) the date that is a specified period of up to 6 months after the sentence expiry date.

(4) In this section:

“sentence expiry date” means the date on which the defendant who is subject to the sentence has served its full term and therefore ceases to be subject to it;

“special conditions” includes, without limitation:

- (a) conditions relating to the defendant’s place of residence (which may include a condition that the defendant reside at a particular place), or his or her finances or earnings;
- (b) residential restrictions;
- (c) conditions requiring the defendant to participate in a programme to reduce the risk of further offending by the defendant through the rehabilitation and reintegration of the defendant;
- (d) conditions that the defendant not associate with any person, persons, or class of persons;
- (e) conditions requiring the defendant to take prescription medication;
- (f) conditions prohibiting the defendant from entering or remaining in specified places or areas, at specified times, or at all times;
- (g) conditions requiring the defendant to submit to monitoring of compliance with any release conditions, or conditions of an extended supervision order, that relate to the whereabouts of the defendant.

“standard conditions” are:

- (a) the defendant must report in person to a probation officer in the probation area in which the defendant resides as soon as practicable, and not later than 72 hours, after release;
- (b) the defendant must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the defendant must not move to a new residential address in another probation area without the prior written consent of the probation officer;

- (d) if consent is given under paragraph (c) the defendant must report in person to a probation officer in the new probation area in which the defendant is to reside as soon as practicable, and not later than 72 hours, after the defendant's arrival in the new area;
 - (e) if a defendant intends to change his or her residential address within a probation area, the defendant must give the probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address;
 - (f) the defendant must not reside at any address at which a probation officer has directed the defendant not to reside;
 - (g) the defendant must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the defendant not to engage or continue to engage;
 - (h) the defendant must not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed the defendant not to associate;
 - (i) the defendant must take part in a rehabilitative and re-integrative needs assessment if and when directed to do so by a probation officer.
- (5) A special condition must not be imposed unless it is designed to:
- (a) reduce the risk of reoffending by the defendant; or
 - (b) facilitate or promote the rehabilitation and reintegration of the defendant; or
 - (c) provide for the reasonable concerns of victims of the defendant.
- (6) A defendant may not be made subject to a special condition that requires the defendant to take prescription medication unless the defendant:
- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
 - (b) consents to taking the prescription medication.

(7) If a court sentences a defendant to a term of imprisonment of more than 24 months, it must not impose conditions on the defendant's release from imprisonment.

(8) A court must not impose conditions on a defendant's release from imprisonment if:

- (a) the court sentences a defendant to an indeterminate sentence of imprisonment; or
- (b) the court sentences a defendant to imprisonment who is already subject to an indeterminate sentence of imprisonment.

(9) If the court sentences the defendant to more than 1 term of imprisonment on the same occasion:

- (a) only 1 order under this section may be made; and
- (b) that order applies in respect of all the sentences of imprisonment imposed on that occasion.

60. Variation of release conditions-(1) A defendant who is subject to conditions imposed under section 59, or a probation officer, may apply for an order under subsection (3).

(2) Section 45 applies, with any necessary modifications, to an application under this section.

(3) On an application under subsection (1), the court may, if it thinks fit:

- (a) suspend any condition or vary the duration of any condition, or impose new conditions; or
- (b) discharge a condition and substitute any other condition described in section 59 that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the sentence was imposed.

(4) The court must not vary any existing condition, or impose any new condition, of a kind referred to in the definitions of "special conditions" or "standard conditions" under section 59(4) (which involves prescription medication) unless the defendant:

- (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and
- (b) consents to taking the prescription medication.

(5) If an application is made under this section to suspend, vary, or discharge of any condition, a probation officer may suspend the condition until the application has been heard and disposed of.

61. Review of conditions if conditions incompatible-(1) This section applies if:

- (a) a defendant is, at the same time, subject to conditions imposed under 2 or more orders made under section 59; and
- (b) a probation officer is satisfied that -
 - (i) any condition to which the defendant is subject under any of the orders is incompatible with any other condition to which the defendant is subject under any other of the orders; or
 - (ii) in light of all the conditions to which the defendant is subject under the orders, it is unreasonable to expect the defendant to comply with any 1 or more of the conditions.

(2) The probation officer must apply for a review of the conditions to which the defendant is subject under the orders made under section 59.

(3) Section 60 applies with any necessary modifications to an application made under this section.

62. Offence to breach conditions-(1) A defendant commits an offence, and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 1 year, who breaches, without reasonable excuse, any conditions imposed under section 59 or 60.

(2) In the case of a condition of a kind referred to in section 59(4) (which involves prescription medication) a defendant does not breach his or her conditions for the purposes of this section if the defendant withdraws consent to taking prescription medication.

*Subdivision E - Provisions about start date
of sentence of imprisonment*

63. Court may defer start date of sentence of imprisonment-
(1) The court may defer the start date of a sentence of imprisonment for a specified period of up to 3 months on humanitarian grounds.

(2) If an order is made under this section, the sentence of imprisonment starts on the date on which the defendant is taken into custody after the expiry of the period specified by the Court.

(3) A defendant whose sentence is deferred under this section must be granted bail.

(4) As an exception to subsection (1), a court may not defer the start date of a sentence of imprisonment if:

- (a) the sentence of imprisonment is imposed cumulatively on any other sentence of imprisonment; or
- (b) the sentence of imprisonment is imposed in substitution for a sentence of imprisonment that has been quashed or set aside; or
- (c) an order under this section has already been made in respect of the sentence; or
- (d) the defendant has already commenced serving the sentence or is detained under any other sentence or order.

(5) For the purpose of this section, a term of imprisonment imposed on a defendant (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is taken to be a determinate sentence of imprisonment.

64. Start date of sentence of imprisonment-(1) Except as provided in section 63, the start date of a sentence of imprisonment is the date on which it is imposed.

(2) For the purpose of this section, a term of imprisonment imposed on a defendant (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is taken to be a determinate sentence of imprisonment.

Division 4 - Sentencing for murder and other imprisonment

65. Imposition of minimum period of imprisonment for murder-(1) If a court sentences a defendant convicted of murder to imprisonment for life it may order that the defendant serve a minimum period of imprisonment under that sentence.

(2) The minimum term of imprisonment ordered must not be less than 10 years, and must be the minimum term of imprisonment that

the court considers necessary to satisfy all or any of the following purposes:

- (a) holding the defendant accountable for the harm done to the victim and the community by the offending;
- (b) denouncing the conduct in which the defendant was involved;
- (c) deterring the defendant or other persons from committing the same or a similar offence;
- (d) protecting the community from the defendant.

66. Imposition of minimum period of imprisonment of 17 years or more - The court must make an order under section 65 imposing a minimum period of imprisonment of at least 17 years in the following circumstances, unless it is satisfied that it would be manifestly unjust to do so:

- (a) if the murder was committed in an attempt to avoid the detection, prosecution, or conviction of any person for any offence or in any other way to attempt to subvert the course of justice; or
- (b) if the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another; or
- (c) if the murder involved the unlawful entry into, or unlawful presence in, a dwelling place; or
- (d) if the murder was committed in the course of another serious offence; or
- (e) if the murder was committed with a high level of brutality, cruelty, depravity, or callousness; or
- (f) if the murder was committed as part of a terrorist act under the laws relating to counter terrorism; or
- (g) if the deceased was a police officer or a prison officer acting in the course of his or her duty; or
- (h) if the deceased was particularly vulnerable because of his or her age, health, or because of any other factor; or
- (i) if the defendant has been convicted of 2 or more counts of murder, whether or not arising from the same circumstances; or
- (j) in any other exceptional circumstances.

67. Appeal against imposition of minimum period of imprisonment - For the purposes of Part 11 of the Criminal Procedure Act 2016, an order under section 65 of this Act is a sentence.

68. Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment-(1) If a court sentences a defendant to a determinate sentence of imprisonment of more than 2 years for a particular offence, it may, at the same time as it sentences the defendant, order that the defendant serve a minimum period of imprisonment for that particular sentence.

(2) The court may impose a minimum period of imprisonment that is longer than the minimum period otherwise applicable under sections 65 and 66 if it is satisfied that that period is insufficient for all or any of the following purposes:

- (a) holding the defendant accountable for the harm done to the victim and the community by the offending;
- (b) denouncing the conduct in which the defendant was involved;
- (c) deterring the defendant or other persons from committing the same or a similar offence;
- (d) protecting the community from the defendant.

(3) A minimum period of imprisonment imposed under this section must not exceed the lesser of:

- (a) two-thirds of the full term of the sentence; or
- (b) 10 years.

(4) For the purposes of Part 11 of the Criminal Procedure Act 2016, an order under this section is a sentence.

Division 5 - Discharge, orders and miscellaneous

Subdivision A - Discharge

69. Discharge without conviction-(1) If a person who is charged with an offence is found guilty or pleads guilty, the court may discharge the defendant without conviction, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.

(2) A discharge under this section is taken to be an acquittal.

(3) A court discharging a defendant under this section may:

- (a) make an order for payment of costs or the restitution of any property; or
- (b) make an order for the payment of any sum that the court thinks fair and reasonable to compensate person who, through, or by means of, the offence, has suffered -
 - (i) loss of, or damage to, property; or
 - (ii) physical harm; or
 - (iii) loss or damage consequential on any physical harm or loss of, or damage to, property;or
- (c) make an order that the court is required to make on conviction.

(4) If the court is considering making an order under subsection (3)(b), it may order a reparation report to be prepared under section 25 as if the court were considering imposing a sentence of reparation.

(5) Despite subsection (3)(b), the court must not order the payment of compensation in respect of any physical harm, or loss or damage consequential on physical harm, unless the person who suffered the physical harm is a person described in paragraph (a) of the definition of “victim” in section 2.

70. Guidance for discharge without conviction - The court must not discharge a defendant without conviction unless the court is satisfied that the direct and indirect consequences of a conviction to the defendant would be out of all proportion to the gravity of the offence.

71. Conviction and discharge-(1) If a defendant is convicted of an offence, a court before which the defendant appears for sentence may, instead of imposing sentence, direct that the defendant be discharged, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.

- (2) A court discharging a defendant under this section may:
 - (a) make an order for the payment of costs or for the restitution of any property; or
 - (b) make an order for the payment of any sum that the court thinks fair and reasonable to compensate a person

who, through, or by means of, the offence, has suffered -

- (i) loss of, or damage to, property; or
 - (ii) physical harm; or
 - (iii) loss or damage consequential on any physical harm or loss of, or damage to, property;
- (c) make an order that the court is required to make on conviction.

(3) If the court is considering making an order under subsection (2)(b), it may order a reparation report to be prepared under section 25 as if the court were considering imposing a sentence of reparation.

(4) As an exception to subsection (2)(b), no order is to be made for the payment of compensation for any physical harm, or loss or damage consequential on physical harm, unless the person who suffered the physical harm is a person described in paragraph (a) of the definition of “victim” in section 2.

72. Guidance on conviction and discharge - The court may convict and discharge a defendant if it is satisfied that a conviction is sufficient penalty in itself.

Subdivision B - Order to come up for sentence if called on

73. Order to come up for sentence if called on-(1) If a defendant is convicted of an offence, a court before which the defendant appears for sentence may, instead of imposing sentence, order the defendant to appear for sentence if called on to do so within the period described in subsection (2).

(2) The period referred to in subsection (1) is a period, not exceeding 1 year commencing with the date of conviction, that the court may specify in the order.

(3) A court making an order under this section may:

- (a) make an order for the payment of costs or for the restitution of any property; or
- (b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered -
 - (i) loss of, or damage to, property; or

(ii) physical harm; or

(iii) loss or damage consequential on any physical harm or loss of, or damage to, property.

(4) If the court is considering making an order under subsection (3)(b), it may order a reparation report to be prepared under section 25 as if the court were considering imposing a sentence of reparation.

(5) Despite subsection (3)(b), no order is to be made for the payment of compensation for any physical harm, or loss or damage consequential on physical harm, unless the person who suffered the physical harm is a person described in paragraph (a) of the definition of “victim” in section 2.

74. Calling defendant to come up for sentence-(1) This section applies if a defendant in respect of whom an order is made under section 73:

(a) is convicted of a subsequent offence punishable by imprisonment for a term of more than 3 months; or

(b) fails to comply with any other order referred to in section 73(3); or

(c) fails to comply with any agreement or fails to take any measure or remedial action of a kind referred to in section 9(1)(b), (d) or (e) that was brought to the attention of the court at the time the court made the order under section 73.

(2) Any of the following persons may, at any time within the period specified in the order, apply to a court having jurisdiction to deal with the original offence to have the defendant brought before the court to be dealt with for that offence:

(a) a police officer;

(b) a prosecutor authorised for that purpose by the AttorneyGeneral;

(c) any person designated by the Chief Executive Officer of the Ministry of Justice and Courts Administration or the Commissioner.

(3) On an application under subsection (2), the court may:

(a) issue a summons, pursuant to any enactment or the rules of the court, requiring the defendant to appear at the time and place appointed in the summons to show

cause why he or she should not be dealt with for the original offence; or

(b) if the defendant fails to appear before the court in answer to the summons issued under paragraph (a), issue a warrant to arrest the defendant and bring him or her before the court; or

(c) issue an arrest warrant without first issuing a summons.

(4) If an application is made under subsection (2), the Criminal Procedure Act 2016 applies, with any necessary modifications, as if the application were an information or other document filed under that Act.

(5) If a person appears before a court under this section and the court is satisfied of any of the matters specified in subsection (1), the court:

(a) must inquire into the circumstances of the original offence and the conduct of the defendant since the order was made (including, where appropriate, the circumstances and gravity of the subsequent offence); and

(b) may sentence or otherwise deal with the defendant for the original offence.

Subdivision C - Miscellaneous provisions

75. Sentence not invalidated by mistake in age of defendant-

(1) A sentence imposed on a defendant for a particular offence is not invalid by reason only of the fact that the defendant was, at the time when the offence was committed, under the age at which he or she was liable to the sentence imposed.

(2) If a sentence to which subsection (1) applies has been imposed on a defendant, the defendant or the prosecutor may, at any time, apply under this section for the substitution of some other sentence.

(3) An application under this section must be made:

(a) to the Supreme Court if the sentence was passed -

(i) by the Court of Appeal on original appeal from the Supreme Court; or

(ii) by the Supreme Court on original appeal from a District Court; or

- (b) to a District Court if the sentence was passed by the Supreme Court on appeal from a District Court; or
- (c) to a District Court presided over by any Judge, in any other case.

(4) The Judge to whom the application is made, after inquiry into the circumstances of the case, may impose in substitution for the original sentence any sentence that could have been imposed on the defendant at the time of conviction.

(5) For the purposes of an appeal or application for leave to appeal against the substituted sentence:

- (a) the substituted sentence is taken to be a sentence passed on the conviction of the defendant; but
- (b) the time allowed for giving notice of the appeal or application runs from the date on which the substituted sentence was in fact imposed.

76. Enforcement of payment of amounts under sentence of reparation, reparation orders, etc.-(1) This section applies to:

- (a) any amount that is required to be paid under a sentence of reparation; or
- (b) any amount that is required to be paid under any order made under section 69, 71 or 73.

(2) The Criminal Procedure Act 2016 applies with necessary modifications as if the amount to be paid were a fine.

(3) The remission of the whole or any part of the amount required to be paid under a sentence of reparation does not affect the right of the person who suffered the harm, loss, or damage to bring civil proceedings, or make claims under the Accident Compensation Act 1989 or any other enactment applicable at the time of the offending, to recover the amount so remitted.

77. Manner in which amounts of reparation must be applied in cases involving same offence-(1) This section applies if a person (the liable person) is required to pay an amount of reparation to 2 or more persons in relation to the same offence (whether the requirement to pay the amount of reparation arose before or after the commencement of this section).

(2) Any payments received from the liable person must be applied, as between the persons in whose favour the sentence of reparation or order of reparation (or both) was made, in the proportion that

reflects the relative total or proportionate amounts ordered to be paid to each of them under the sentence or order (or both or if there was no such order, in equal amounts).

(3) Subsection (2) applies subject to any contrary direction by a court.

78. Manner in which amounts of reparation must be applied in cases involving different offences - (1) This section applies:

- (a) if a person (the liable person) is required to pay an amount of reparation to any other person in relation to an offence; and
- (b) if the liable person is later required to pay an amount of reparation to any other person in relation to another offence; and
- (c) if both the amounts referred to in paragraphs (a) and (b) have not been paid in full; and
- (d) whether the requirements to pay the amounts referred to in paragraphs (a) and (b) arose before or after the commencement of this section.

(2) For the purpose of subsection (1) it does not matter whether or not the offence referred to in subsection (1)(b) is of the same kind as the offence referred to in subsection (1)(a).

(3) Any payments received from the liable person must, in respect of 1 or more sentences of reparation or orders of reparation (or both) imposed on the same day for different offences committed by the liable person, be applied (under section 77 if applicable):

- (a) as between the persons in whose favour the sentences of reparation or orders of reparation (or both) were made; and
- (b) in the proportion that reflects the relative total or proportionate amounts ordered to be paid to each of them under the sentences or orders (or both).

(4) Any payments received from the liable person must, in respect of sentences of reparation or orders of reparation (or both) imposed on the liable person on different days, be applied (under section 77 or subsection (3), if applicable) first in satisfaction of the amount of reparation that is payable to any person in whose favour the sentence of reparation or the order of reparation (or both) was made first.

(5) After the amount of reparation referred to in subsection (4) has been paid in full, any further payments received from the liable

person must next be applied (in accordance with section 77 or subsection (3), if applicable) to any person in whose favour the sentence of reparation or the order of reparation (or both) was next made.

(6) This section applies subject to any contrary direction by a court.

79. No State liability for error, etc., in applying payments of amounts of reparation - The State is not liable to any person for any error, omission, or delay in applying any payment of an amount of reparation under section 77 or 78.

80. Definitions - In sections 77, 78 and 79, “amount of reparation” means an amount that is required to be paid under a sentence of reparation or under any order of reparation.

81. Consent to treatment, etc., not affected-(1) A sentence or condition imposed or order made under this Act does not limit or affect in any way any enactment or rule of law relating to consent to any medical or psychiatric treatment.

(2) Subsection (1) applies except as expressly provided by any other enactment.

PART 4 MISCELLANEOUS

Division 1 - General

82. Re-vesting and restitution of property-(1) If the defendant is convicted of any offence, any property found in the defendant’s possession, or in the possession of any other person for the defendant, may be ordered by a court to be delivered to the person who appears to the court to be entitled to it.

(2) If:

- (a) an order is made under subsection (1); and
- (b) it appears to the court that a purchaser has bought the property in good faith and without knowledge that it was dishonestly obtained,

the court may order that on the restitution of the property the defendant must pay to the purchaser a sum not exceeding the amount paid by the purchaser.

(3) An order made under this section:

- (a) has no further effect than to change the possession; and
- (b) does not affect any right of property, or any right of action in respect of any property, existing or acquired in the goods either before or after the offence was committed.

(4) The operation of any order for the restitution of any property to any person, and the operation of the provisions of Sale of Goods Act 1975 as to the re-vesting of the property in stolen goods on conviction, are (unless the court by which the order was made or by which the defendant was convicted directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) suspended:

- (a) in any case, until the expiration of 21 days after the date of the conviction; or
- (b) if notice of appeal is given, within 21 days after the date of conviction, until the determination of the appeal.

(5) If the operation of the order or the operation of a provision of the Sale of Goods Act 1975 is suspended until the determination of the appeal, the order or provision does not take effect as to the property in question if the conviction is quashed on appeal.

(6) The Supreme Court may by order annul or vary any order for the restitution of any property to any person, although the conviction is not quashed; and the last-mentioned order, if annulled, does not take effect, and, if varied, takes effect as so varied.

(7) This section does not limit other provision of this Act relating to reparation.

83. Regulations-(1) The Head of State may, acting on the advice of Cabinet, make regulations to give effect to the provision or for the purposes of this Act, and in particular to make regulation for any or all of the following purposes:

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing offences for regulations and penalties for breach of regulations to fines not exceeding 50 penalty units or imprisonment not exceeding 3 months.

(2) The Head of State acting on the advice of Cabinet may, within 2 years of commencement of this Act (“commencement date”), make regulations to deal with any other transitional or saving matters.

Division 2 - Transitional and consequential amendments

84. Community-based sentence for offence committed before commencement date-(1) This section applies if a defendant is sentenced on or after the commencement date for an offence committed before that date.

(2) The court may, subject to section 14:

- (a) sentence the defendant to community work under this Act if, had it been dealing with the defendant immediately before the commencement date, it would have sentenced the defendant to community service or community detention; or
- (b) sentence the defendant to supervision under this Act if, had it been dealing with the defendant immediately before the commencement date, it would have sentenced the defendant to supervision or a community detention.

(3) When determining the length of, or number of hours of work to be done under, a sentence imposed under this section, the court:

- (a) must take into account the length of the sentence or the number of hours of work or service that it could have imposed had it dealt with the defendant immediately before the commencement date; and
- (b) must not impose a greater number of hours or a longer sentence than it would have imposed had it sentenced the defendant immediately before the commencement date.

85. Section 68 not to apply to defendant convicted of offence committed before commencement date-(1) Except as provided in subsection (2), section 68 does not apply to a defendant who is sentenced on or after the commencement date for an offence committed before that date.

(2) If a defendant is sentenced on or after the commencement date for an offence committed before that date that is a serious violent offence, section 68 applies.

86. Defendant convicted of murder committed before commencement date-(1) This section applies if a defendant is sentenced on or after the commencement date for the crime of murder committed before that date.

(2) Except as provided in subsection (3), the defendant must be sentenced under this Act.

(3) Section 66 does not apply to the sentencing of a defendant to whom this section applies.

87. Suspended sentences of imprisonment-(1) This section applies to a defendant who, immediately before the commencement date, was subject to a suspended sentence of imprisonment.

(2) The defendant continues to be subject to the suspended sentence on and after the commencement date and any other enactment relating to suspended sentences applies as if it had not been amended or repealed by this Act.

(3) If a court decides that a suspended sentence is not to take effect for the period specified in the order, the court must either:

(a) order that the suspended sentence -

(i) take effect with the substitution of a lesser term of imprisonment; or

(ii) be cancelled and replaced by any sentence of reparation or a fine that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the suspended sentence was imposed, or a community-based sentence under this Act; or

(iii) be cancelled; or

(b) decline to make any order referred to in paragraph (a) concerning the suspended sentence.

88. Defendants liable to come up for sentence if called on-(1) This section applies to an order made under an enactment requiring a defendant to appear for sentence if called upon to do so that was still in force immediately before the commencement date.

(2) The order:

- (a) continues in force as if it were an order made under section 73; and
- (b) ceases to have effect on the date on which it would have ceased to have effect had this Act not been enacted.

89. Person under 18 years of age imprisoned-(1) This section applies if, immediately before the commencement date:

- (a) a defendant was subject to a sentence of imprisonment imposed for any offence other than a purely indictable offence; and
- (b) at the time of the commission of that offence the defendant had not attained the age of 18 years.

(2) The defendant continues to be subject to the sentence although at the time of the commission of the offence the defendant had not attained the age of 18 years.

(3) Section 75(2) does not apply to the defendant.

90. Prisons Parole Board Act 1977 amended - In the Prisons Parole Board Act 1977:

(a) for section 4(1), for paragraph (a) substitute:

- “(a) the Chief Justice or a Judge of the Supreme Court designated by the Chief Justice, as Chairperson;
- (aa) the Attorney General;
- (ab) the Commissioner of Police;”;

(b) for Part 3, substitute:

**“PART 3
RELEASE ON PAROLE OR AT
SENTENCE EXPIRY DATE**

10. Discretionary release on parole-(1) Subject to subsection (2), a defendant who is subject to an indeterminate sentence of imprisonment (as defined under the Sentencing Act 2016) is eligible to be released on parole after the expiry of 10 years of that sentence.

(2) A defendant to whom subsection (1) applies who is subject to a minimum period of imprisonment imposed under

section 65 or 68 of the Sentencing Act 2016 is eligible to be released on parole after the expiry of the minimum period specified in the order.

(3) A defendant who is subject to a determinate sentence of imprisonment for a term of more than 12 months is eligible to be released on parole after the expiry of one-half of that sentence if the court does not order that the defendant serve a minimum period of imprisonment for that sentence.

(4) A defendant who is subject to a sentence of imprisonment for a term of 16 years or more is eligible to be released on parole after the expiry of 7 years of that sentence.

(5) A defendant who has been recalled under this Part or a defendant in respect of whom a direction for return has been made under this Act, whether before or after that defendant's final release date under section 10A(1), may be released again on parole at any time before the final release date specified in section 11(4).

(6) As an exception to this section, a defendant is not eligible to be released on parole under this section:

- (a) if an application for an order under this section in respect of the defendant has been made to, but not determined by, the Parole Board; or
- (b) while the defendant is detained by the Police.

10A. Final release-(1) Subject to subsection (2), a defendant is to be released:

- (a) if the defendant is subject to a sentence of imprisonment for a term of 12 months or less, after the expiry of one-half of the sentence; or
- (b) where the defendant is subject to a sentence of imprisonment for a term of more than 12 months after the expiry of two-thirds of that sentence.

(2) If a defendant has been recalled or a direction for the return of a defendant has been made under this Act, the defendant is to be released not later than 3 months before the sentence expiry date.

(3) For the purposes of this section, a person on whom a term of imprisonment is imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience of a court order or for contempt of court is treated

as a defendant who is subject to a sentence of imprisonment for that term.

10B. Commissioner to determine defendant's final release dates - For each defendant who is detainable in a prison (other than a police jail) for the purpose of any sentence or term of imprisonment, the Commissioner of Prisons and Corrections Service may determine, under sections 10A and 11 and any regulations made under this Act, the defendant's final release date.

11. Calculation of parole, final release, and sentence expiry dates-(1) If a defendant is subject to cumulative or concurrent sentences on imprisonment, or both, the parole, final release and sentence expiry dates of those sentences are to be calculated under this section.

(2) For the purposes of this Part, terms of imprisonment under cumulative sentences are to be treated as 1 term as provided in this section.

(3) The date on which a defendant who is subject to cumulative sentences of imprisonment is eligible for parole under section 10 is to be determined by:

- (a) calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with the close of the date on which the defendant becomes eligible for parole under section 10, or, in respect of any sentence where there is no such parole eligibility date, the final release date for that sentence; and
- (b) taking the longest period within each link; and
- (c) adding that period to the longest periods from the other links in the cumulative chain.

(4) The date on which a defendant who is subject to cumulative sentences of imprisonment is to be finally released under section 10A is to be determined by:

- (a) calculating, for each sentence within each link in the cumulative chain, the period beginning with the commencement of the sentence and ending with

the close of the final release date specified in section 48 of the Sentencing Act 2016; and

- (b) taking the longest period within each link; and
- (c) adding that period to the longest periods from the other links in the cumulative chain.

(5) The sentence expiry date for a defendant who is subject to cumulative sentences of imprisonment is to be determined by:

- (a) determining the term imposed by the court for each sentence within each link in the cumulative chain; and
- (b) taking the longest term within each link; and
- (c) adding that term to the longest term from the other links in the cumulative chain.

(6) For the purposes of subsections (3), (4), and (5), each sentence or group of sentences that is cumulative on another sentence or group of sentences or on which another such sentence or group of sentences is cumulative constitutes a link in the cumulative chain.

(7) A defendant who is subject to 2 or more concurrent sentences of imprisonment is not eligible to be released on parole under this Part until the defendant is so eligible under section 10 in respect of each of those sentences.

(8) If, in a case to which subsection (7) relates, the defendant is subject to one or more sentences of imprisonment that do not carry eligibility for parole under section 10, the final release date of each such sentence is to be treated for the purposes of this section as if the defendant were eligible to be released on parole under that sentence at that date.

(9) For the purposes of this Part, references to a defendant's final release date mean, in relation to a defendant who is subject to 2 or more concurrent sentences, the later or latest date by which the defendant is to be released in respect of each of those sentences.

(10) For the purposes of this section, a term of imprisonment imposed (whether by way of committal, sentence, or order) for non-payment of a sum of money or for disobedience or a court order or for contempt of court is to be treated as a sentence of imprisonment.

11A. Release for purpose of deportation-(1) If:

- (a) a defendant who is subject to a sentence of imprisonment has been ordered to be deported under section 32 of the Immigration Act 2004; and
- (b) a copy of the order, or a notice of the making of the order, has been served on the defendant; and
- (c) the defendant -
 - (i) has no right of appeal under that Act against the making of that order; or
 - (ii) the time for bringing the appeal has expired and the defendant has not brought an appeal; or
 - (iii) the appeal has been determined and the order has not been quashed,

the Minister for Immigration may, by notice in writing to the officer-in-charge of the prison in which the defendant is detained, order the release of the defendant into the custody of a police officer for the purpose of deportation.

(2) A notice issued under subsection (1) is sufficient authority for the officer-in-charge of the prison to release the defendant accordingly on request by the police officer.

(3) When a ship or aircraft becomes available to take the defendant from Samoa, and it is practicable in all the circumstances for the defendant to leave on that ship or aircraft, a police officer must require the officer-in-charge of the prison, pursuant to subsection (1), to deliver the defendant into the custody of the police officer who must escort the defendant or arrange for the defendant to be escorted to the seaport or airport and ensure that the defendant is placed upon the ship or aircraft and detained there until the ship or aircraft leaves Samoa.

(4) If, for any reason, that ship or aircraft is delayed in Samoa for more than 24 hours, the defendant is to be returned to the custody of the officer-in-charge of the prison; and for that purpose the warrant by which the defendant was originally committed to the institution is still treated to be in force.

(5) Thereafter, the officer-in-charge of the prison must, on request by a police officer, release the defendant into the custody of that police officer for deportation, and the provisions of this section apply to the request until the defendant is finally deported.

(6) As an exception to subsection (1), in respect of a defendant to whom subsection (1) applies, the Commissioner for Prisons and Corrections Service may, at any time within 28 days preceding the defendant's final release date, by notice in writing to the officer-in-charge of the prison in which the defendant is detained, order the release of the defendant into the custody of a police officer in possession of the notice; and that notice is sufficient authority for the officer-in-charge of the prison to release the defendant accordingly.

(7) Thereafter, subsections (3) to (5) apply as if the release were ordered by the Minister responsible for Immigration.

(8) If a defendant is released and deported pursuant to this section, the defendant's sentence continues to run, and, if the defendant subsequently returns to Samoa before the sentence expiry date the defendant is, subject to section 10 and 10A, liable to resume serving it.

11B. Jurisdiction of Parole Board to release defendants on parole-(1) Subject to subsections (3), (4), and (7), the Parole Board must consider the case of a defendant to whom this section applies, as soon as practicable after the defendant becomes eligible to be released on parole under section 10, and at least once in every 12 months after the defendant becomes so eligible.

(2) Subject to subsections (3), (4), and (7), a defendant to whom this section applies and whose case has been considered by the Parole Board, may thereafter apply to the Board to have the case considered again; and the Board must consider the case again unless the application is made within 6 months after a previous application by the defendant under this subsection, when it may refuse to consider the case.

(3) A defendant who has been recalled to a prison to continue serving his or her sentence pursuant to section 15, or in respect of whom a direction for return has been made under this Act must have his or her case for further release considered by the Board not later than 12 months after the date of recall or return, as the case may be, and at least once in every 12 months thereafter.

(4) A defendant referred to in subsection (3) who has been recalled or returned to a prison may:

(a) at any time after his or her recall or return, apply to the Parole Board to have his or her case considered for parole; and

(b) from time to time thereafter, apply to the Board to have his or her case considered again,

and the Board must consider the case as soon as practicable after an application is made under paragraph (a), and must consider the case again as soon as practicable after each subsequent application under paragraph (b) unless the application is made within 6 months after a previous application by the defendant under this subsection, when it may refuse to consider the case.

(5) As an exception to section 10 or any order made under section 68 of the Sentencing Act 2016, a member of the Parole Board may, at any time, refer to the Board the case of a defendant to whom this section applies, and the Board must consider the case as soon as practicable.

(6) As an exception to section 10, but subject to subsection (7), the Parole Board must consider the case of each defendant belonging to any class of defendants, being defendants to whom this section applies, that the Minister designates as a class to be so considered.

(7) The Parole Board must not consider under subsection (2), (3), or (6) the case of a defendant in respect of whom an order was made under section 65 or 68 of the Sentencing Act 2016 or until the expiry of the period specified in the order.

(8) If, after considering any case to which any of subsections (1) to (6) applies, the Parole Board is of the opinion that the defendant should be released on parole, it may direct that the defendant be released on parole accordingly, despite anything to the contrary in section 10.

(9) A direction given by the Parole Board for the release of any defendant on parole may be revoked by the Parole Board at any time before the defendant is released.

12. Matters to be considered when determining release on parole - In determining, pursuant to section 11B, whether to release a defendant on parole, the Parole Board must consider the need to protect the public or any person or class of persons who may be affected by the release of the defendant, and must also consider the following matters:

- (a) generally, the likelihood of the defendant committing further offences upon his or her release;
- (b) the welfare of the defendant and any change in his or her attitude during the sentence;
- (c) the nature of the offence;
- (d) for a defendant who is subject to an order for recall or a defendant in respect of whom a direction for return has been made under this Act, the reasons for the order or discretion, as the case may be.

12A. Conditions of release-(1) Subject to subsection (6), if a defendant who is subject to an indeterminate sentence is directed by the Parole Board to be released on parole (including a release following recall), the defendant is subject to:

- (a) the standard conditions under section 12B for the life of the defendant; and
- (b) any special conditions as the Parole Board may impose, under section 13, for any period as the Parole Board may determine.

(2) Subject to subsection (6), if a defendant who is subject to a sentence of imprisonment for a term of more than 12 months is released pursuant to section 10 or 10A (including a release following recall), the defendant is to be subject to:

- (a) the standard conditions under section 12B for any period, being not less than 6 months from the date of release or if the period from that date to the sentence expiry date is less than 6 months, that period, determined by the Parole Board; and
- (b) any special conditions impose under section 13 for any period from the date of release determined by the Parole Board.

(3) Subject to subsection (5), in determining the duration of any conditions imposed under this section, the Board must fix a period that is not longer than is reasonably necessary in the circumstances of the particular case to reduce the risk of re-offending.

(4) In no case must any conditions imposed under this section apply for any period after the sentence expiry date nor must any special conditions imposed under section 13 apply for

a period when the defendant is not also subject to standard conditions under section 12B.

(5) Residential conditions apply for a period not exceeding 12 months as the Parole Board may determine, and may before the expiry of the period be extended for one further period not exceeding 12 months, if the defendant consents.

(6) If the Parole Board imposes residential conditions on a defendant to whom subsection (2) applies, it may, at the same time, direct that standard conditions under section 12B and any special conditions imposed under section 13 apply to that defendant from the date that the residential conditions terminate.

12B. Standard conditions - If standard conditions are imposed on a defendant under this Part, the following conditions apply:

- (a) as soon as practicable and in any event not later than 72 hours after release, the defendant must report in person to a designated probation officer;
- (b) the defendant must report to the probation officer under whose supervision he or she is, as and when required to do so by the probation officer, and must notify the officer of his or her residential address and the nature and place of his or her employment on request;
- (c) the defendant must obtain the consent of the probation officer before moving from his or her residential address, and if the defendant moves to any place within the district of another probation officer, the defendant must, within 72 hours after arriving in that district, notify that other probation officer of his or her address, and the nature and place of his or her employment;
- (d) the defendant must not reside at an address at which the probation officer has directed the defendant not to reside unless that place has been approved by the Parole Board;
- (e) the defendant must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the defendant not to engage or continue to engage;

- (f) the defendant must not associate with any specified person, or with persons of any specified class, with whom the probation officer, or the Parole Board has, in writing, directed the defendant not to associate.

13. Special conditions - (1) Subject to section 12A and to subsection (3), the Parole Board may impose on a defendant any special conditions as it thinks necessary to protect the public or any person or class of persons who may be affected by the release of the defendant, or for:

- (a) the rehabilitation of the defendant; or
- (b) the welfare of the defendant.

(2) Without limiting subsection (1), the Parole Board may impose under that subsection a condition that the defendant must undergo a programme, on terms as are specified by the Board.

(3) Nothing in this section authorises the imposition on a defendant of any special conditions unless the conditions are designed to reduce the risk of his or her re-offending.

13A. Variation and discharge of conditions - (1) If a defendant is released on conditions, a probation officer, or the defendant, may apply at any time for the variation, discharge, or suspension of any or all of the conditions of the defendant's release.

(2) If a defendant is released on conditions, a probation officer may apply at any time for:

- (a) the imposition of any new condition or conditions of the defendant's release;
- (b) the extension of the period during which the defendant is to be subject to any or all conditions.

(3) On an application under this section, any probation officer may suspend any conditions to which the application relates until the application is determined.

(4) An application under this section must be made to the Parole Board.

(5) Subject to subsection (6), the Chairperson of the Board may:

- (a) determine an application under this section and give directions; or

(b) refer the application to the Board for determination.

(6) If the defendant wishes to appear (in person or by a lawyer) before the Board to state his or her case, the Board must determine the application.

(7) Section 12A applies, with any necessary modifications, to an application and determination made under this section.

(8) If a defendant is discharged under this section from all conditions to which the defendant was subject, those conditions ceases to apply on the date specified in the direction.

(9) Nothing in this section allows any condition to be imposed in respect of any period after the sentence expiry date.

13B. Breach of conditions - (1) A defendant commits an offence who fails, without reasonable excuse, to comply with any conditions of his or her release under this Part, and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months.

(2) If a probation officer or police officer believes on reasonable and probable grounds that a defendant who has been released under this Part has committed a breach of a condition of his or her release, that officer may arrest the defendant without warrant.

(3) The conviction and sentencing of a defendant under this section does not limit the power to recall under this Part.

14. Application for recall - (1) Subject to subsections (2) and (6), the chief parole officer may apply to the Parole Board for an order that any defendant who is subject to an indeterminate sentence and has been released under this Part be recalled to a prison to continue serving his or her sentence.

(2) Subject to subsection (3), if a defendant subject to a determinate sentence is released under this Part, a probation officer may, at any time not later than 3 months before the sentence expiry date, apply to the Parole Board for an order that the defendant be recalled to a prison to continue serving his or her sentence.

(3) An application may be made under this section if the applicant believes on reasonable grounds that:

(a) the defendant has breached the conditions of his or her release; or

- (b) the defendant has committed an offence; or
- (c) because of the defendant's conduct, or a change in his or circumstances since release, further offending is likely.

(4) An application made under this section must specify the grounds in subsection (3) on which the applicant relies and the reasons for believing that the grounds apply.

(5) If an application is made under this section, the sentence to which the application relates ceases to run except for any period between the date of lodgement of the application and the date it is determined under section 15 or 15A, during which the defendant is held in custody.

(6) If an order recalling a defendant is made under section 15 or 15A and the sentence to which the order relates had ceased to run by virtue of subsection (5), that sentence begins to run again only when the defendant is taken into custody.

14A. Interim order for recall - (1) If an application is made under section 14, the Chairperson of the Parole Board must, on behalf of the Board, make an interim order for the recall of the defendant if:

- (a) the defendant is subject to a sentence for a serious violent offence; or
- (b) the defendant is subject to a sentence of life imprisonment for murder or manslaughter; or
- (c) the Chairperson believes on reasonable grounds that

(i) the defendant poses an immediate risk to the safety of the public or of any person or any class of persons; or

(ii) the defendant is likely to abscond before the determination of the application for recall.

(2) In determining an application for an interim order in respect of subsection (1)(b), the Chairperson must disregard the fact that the defendant is or is not for the time being in custody.

(3) If the Chairperson makes an interim order under this section, the Chairperson must issue a warrant in the prescribed form for the defendant to be detained in prison and if, on the giving of the order, the defendant is still at large, a police officer

may arrest the defendant without warrant for the purpose of returning him or her to prison.

(4) If an order is made under this section and a warrant is issued, the defendant must on, or as soon as practicable after, being taken into custody be given:

(a) a copy of the application made under section 14; and

(b) a notice -

(i) specifying the date on which the application is to be determined, being a date not earlier than 14 days, nor later than 1 month, after the date on which the defendant is taken into custody pursuant to this section; and

(ii) advising the defendant that he or she is entitled to be heard and to state his or her case in person or by a lawyer; and

(iii) requiring the defendant to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by a lawyer.

(5) If an order is made under this section, any conditions of release in existence are to be suspended and the defendant must be detained in the prison specified in the warrant where he or she is to continue to serve his or her sentence pending the determination of the application for recall.

14B. Other section 14 applications - If an application is made under section 14 and no order is made under section 14A, the Chairperson of the Parole Board, must cause to be served on the defendant:

(a) a copy of the application made under section 14; and

(b) a notice -

(i) specifying the date on which the application is to be determined, being a date not earlier than 14 days, not later than two (2) months, after the date on which a copy of the application is served on the defendant; and

(ii) advising the defendant that he or she

is entitled to be heard and to state his or her case in person or by a lawyer; and

(iii) requiring the defendant to notify the Board, not later than 7 days before the date on which the application is to be determined, whether he or she wishes to make written submissions or to appear in person or be represented by a lawyer.

15. Order for recall - (1) Subject to subsection (9), the Parole Board must determine the application made under section 14:

- (a) if an interim order is made under section 14A, not earlier than 14 days, nor later than 1 month, after the date on which the defendant is taken into custody pursuant to this section; or
- (b) in any case, not earlier than 14 days, nor later than 2 months, after the date on which a copy of the application is served on the defendant.

(2) The Board may order the recall of a defendant if it is satisfied, on the balance of probabilities, that 1 or more of the grounds in section 14(3) have been established.

(3) Without limiting the matters that the Board may consider in determining the application, the Board must consider the need to protect the public or any person or class of persons from the defendant.

(4) An order for the recall of a defendant may be made under this section whether or not the defendant is in custody relating to a charge, and whether or not the defendant is alleged to have:

- (a) breached any of the conditions of his or her release;
- or
- (b) committed any offence.

(5) On an application under this section, the Board may receive any evidence that it thinks fit, whether or not the evidence would otherwise be admissible in court.

(6) Section 15B applies to an application made under section 14 as if the application were related to the defendant's release on parole under section 10, as far as applicable and with any necessary modifications.

(7) If the Board orders the recall of a defendant, the Chairperson of the Board must issue a warrant in the prescribed form for the defendant to be detained in prison and if, on the giving of the order, the defendant is still at large, a police officer may arrest the defendant without warrant for the purpose of returning him or her to prison.

(8) If the Board orders the recall of a defendant under this section, any suspended or existing release conditions must be cancelled and the defendant must, on being returned to custody, subject to sections 10 and 10A, continue to serve his or her sentence.

(9) If the Board refuses to grant an interim order for recall under section 14A:

- (a) the Board must direct the defendant's release if he or she is in custody under this section or section 14A unless the defendant is liable to be detained under any other provision of this Act or any other enactment;
- (b) the Board may, at the same time, exercise any of its powers under section 13A to vary or discharge the conditions of release as it thinks fit without the necessity for an application under that section;
- (c) subject to paragraph (b), the Board may adjourn, the hearing of an application made under section 14, and, if the defendant is in custody pursuant to an order made and a warrant issued under section 14A, that warrant may be extended accordingly, but in such a case the period of the adjournment must not exceed 8 days unless both parties consent.

15A. Appeal from order for recall - (1) If the Parole Board has ordered the recall of a defendant under section 15, the defendant may, within 28 days of the date of the order, or any longer time as the court may on application allow, appeal to the Supreme Court against the making of the order.

(2) Subject to this section, and with any necessary modifications, Part 11 of the Criminal Procedure Act 2016 apply

to an appeal under this section as if the determination of the Board appealed against were an order.

(3) The defendant is to be detained in custody pending the determination of any appeal under this section and the defendant's sentence continues to run during that period.

(4) On hearing an appeal pursuant to this section, the Supreme Court may:

- (a) confirm the order for recall;
- (b) refer the matter back to the Board with a direction to reconsider the application for an order for recall;
- (c) quash the order for recall and, unless the defendant is liable to be detained under any other provision of this Act or any other enactment -
 - (i) direct the release of the defendant from custody; or
 - (ii) direct the release of the defendant from custody and refer the defendant to the Board to consider the imposition of release conditions under this Part;
- (d) make such further or other orders as the case may require.

(5) In the exercise of its powers under this section, the Court may receive as evidence any statement, document, information, or matter that the Board would have been entitled to receive at first instance.

(6) The Supreme Court is not bound to allow the appeal on the ground merely of the improper admission or rejection of evidence unless in the opinion of the Court a substantial wrong or miscarriage of justice has been occasioned.

(7) Without limiting the matters that the Supreme Court may consider in determining the appeal, the Court must consider the need to protect the public or any person or class of persons from the defendant.

(8) In referring a matter back to the Board under subsection (4)(b), the Supreme Court must:

- (a) advise the Board of its reasons for so doing; and
- (b) give the Board any direction as it thinks just as to any rehearing or to the reconsideration or determination of the whole or any part of the matter.

15B. Rights of defendant whose case is to be considered by Parole Board

(1) A defendant (including a defendant who has been recalled to serve a sentence) who is subject to 1 or more indeterminate sentences or to 1 or more sentences of imprisonment for a term of 7 years or more, and who is eligible under section 10 to be released on parole must be given an opportunity of appearing before the Parole Board and stating his or her case in person or, with leave of the Chairperson of the Board, by a lawyer:

- (a) when it is considered under section 11B; and
- (b) at least once in every 12 months thereafter.

(2) A defendant who is to be released at his or her final release date and whose case is to be considered under section 16 must be given an opportunity of appearing before the Parole Board and stating his or her case in person or, with leave of the Chairperson of the Board, by a lawyer.

(3) Except as provided in this section, a defendant whose case is to be considered under section 11B or 16 is not entitled to appear before the Parole Board to state his or her case in person; but the Board may invite the defendant to do so if it considers fit on any particular occasion.

(4) Subject to subsection (3), when a case is to be considered under any of section 11B or 16, a copy of any report to be submitted to the Parole Board under section 16A must be given to the defendant in sufficient time to enable the defendant to submit any comments he or she may wish to make on the report or reports for consideration by the Board.

(5) The Parole Board may, if it is of the opinion that the disclosure under subsection (4) to the defendant of any part of any report, other than a report by the officer-in-charge of the prison in which the defendant is detained, would be likely to prejudice the defendant's physical or mental health or endanger the safety of any person, order that any part of the report not be disclosed to the defendant; but if the defendant is represented, the whole of the report must be shown to the defendant's lawyer.

(6) When the Parole Board has completed its consideration of any case under section 11B or 16, it must notify the defendant of its decision, and, if it declines to direct the release of the defendant on parole, the reasons for that decision.

16. Jurisdiction of the Parole Board where defendant to be released at final release date - (1) This section applies to defendants who are subject to 1 or more sentences of imprisonment for a term of 12 months or more and who are to be released at their final release date pursuant to section 10A(1).

(2) The Parole Board must:

(a) consider the case of a defendant to whom this section applies before the defendant's final release date; and

(b) determine pursuant to section 12A, the nature and duration of the conditions to which the defendant is to be subject on release.

(3) The jurisdiction of the Board under subsection (2) may be exercised where, following the final review of a defendant who is eligible to be released under section 10, the Board declines to release that person on parole.

(4) The Parole Board may, at any time before the defendant is released, amend or revoke any direction under this section.

16A. Reports and submissions to the Board - (1) In determining any application or considering any matter under this Act, the Board must have regard to the following:

(a) any submissions, written or oral, made by the defendant or any person on the defendant's behalf;

(b) any report made by the officer-in-charge of the prison in which the defendant is detained;

(c) any submissions, written or, with the leave of the Board, oral, from or on behalf of any victim of the offence in respect of which the defendant is serving the sentence or sentences in respect of which release on parole is being sought.

(2) If submissions are made in writing under subsection (1)(c) the defendant must be shown a copy of that submission before the hearing to which it relates, but he or she may not retain the copy.”.

91. Community Justice Act 2008 amended - In the Community Justice Act 2008:

(a) for section 10, substitute:

“10. Pre-sentencing report - A court may require a probation officer to prepare a pre-sentencing report pursuant to the Sentencing Act 2016.”; and

(b) for Part III, substitute:

**“PART 3
COMMUNITY-BASED SENTENCES**

Division 1 - General

12. Community-based sentences - (1) This Part applies to the Sentencing Act 2016 for community-based sentences in this Part.

(2) In sentencing a defendant to a community-based sentence in this Part, a court may have regard to the potential effect that a particular sentence may have in contributing to the development of a defendant’s work and living skills.

Division 2 - Sentence of supervision

13. Sentence of supervision - (1) A court may sentence a defendant to supervision if:

- (a) the defendant is convicted of an offence punishable by imprisonment; or
- (b) the defendant is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for a period, being not less than 6 months and not more than 2 years, that the court thinks fit.

(3) This section is subject to sections 14 and 15.

14. Guidance on use of sentence of supervision - A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

15. Sentences of supervision in respect of 2 or more offences must be served concurrently - If a court imposes a sentence of supervision for each of 2 or more offences (whether on the same occasion or on different occasions), the sentences must be served concurrently.

16. Conditions of sentence of supervision - A defendant who is sentenced to supervision is subject to any or both of the following:

- (a) the standard conditions in section 17;
- (b) any special conditions imposed by the court under sections 18 and 20.

17. Standard conditions of supervision - (1) If a defendant is sentenced to supervision, the following standard conditions apply:

- (a) the defendant must report in person to a probation officer in the probation area in which the defendant resides as soon as practicable, and not later than 48 hours, after the sentence is imposed;
- (b) the defendant must report to a probation officer as and when required to do so by a probation officer, and must notify the officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- (c) the defendant must not move to a new residential address in another probation area without the prior written consent of a probation officer;
- (d) if consent is given under paragraph (c), the defendant must report in person to a probation officer in the new probation area in which the defendant is to reside as soon as practicable, and not later than 48 hours, after the defendant's arrival in the new area;
- (e) if a defendant intends to change his or her residential address within a probation area, the defendant must give a probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the

- circumstances) and must advise the probation officer of the new address;
- (f) the defendant must not reside at any address at which a probation officer has directed the defendant not to reside;
 - (g) the defendant must not engage, or continue to engage, in any employment or occupation in which a probation officer has directed the defendant not to engage or continue to engage;
 - (h) the defendant must not associate with any specified person, or with persons of any specified class, with whom a probation officer has, in writing, directed the defendant not to associate;
 - (i) the defendant must take part in a rehabilitative and re-integrative needs assessment if and when directed to do so by a probation officer.
- (2) The conditions in subsection (1)(c) to (f) do not apply to the extent that they are inconsistent with:
- (a) any special conditions imposed by the court; or
 - (b) for a defendant who is also subject to a sentence of community detention under the Sentencing Act 2016, any condition of that sentence.

18. Special conditions related to programme - A court may impose any special condition or conditions related to a programme if the court is satisfied that:

- (a) there is a significant risk of further offending by the defendant; and
- (b) standard conditions alone would not adequately reduce that risk; and
- (c) the defendant requires a programme to reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

19. Meaning of “programme” - In section 18, “programme” means any of the following that is not residential in nature:

- (a) any psychiatric or other counselling or assessment;

- (b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or re-integrative programme;
- (c) placement in the care of any appropriate person, persons, or agency, approved by the Commissioner, such as, without limitation -
 - (i) family;
 - (ii) a village;
 - (iii) members or particular members of any of the above.

20. Other special conditions - (1) A court may impose any of the special conditions described in subsection (2) if the court is satisfied that:

- (a) there is a significant risk of further offending by the defendant; and
- (b) standard conditions alone would not adequately reduce that risk; and
- (c) the imposition of special conditions would reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

(2) The following conditions are referred to in subsection (1):

- (a) any conditions that the court thinks fit relating to the defendant's place of residence (which may include a condition that the defendant not move residence), finances, or earnings;
- (b) conditions requiring the defendant to take prescription medication;
- (c) conditions requiring the defendant to undertake training in basic work and living skills;
- (d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the defendant.

(3) No court may impose a condition under this section that the defendant pay any fine, reparation, or other sum ordered to be paid on conviction, or that the defendant perform any service

that he or she could have been required to perform if he or she had been sentenced to community work.

(4) No defendant may be made subject to a special condition that requires the defendant to take prescription medication unless the defendant:

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

(5) A defendant does not breach his or her conditions for the purposes of section 43 of the Sentencing Act 2016 if the defendant withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of supervision under section 22 of this Act.

21. Defendant to be under supervision of probation officer - A defendant who is subject to a sentence of supervision must be under the supervision of a probation officer in the probation area in which the defendant resides for the time being, or of any other probation officer that the Commissioner may direct.

22. Variation or cancellation of sentence of supervision-
(1) A defendant who is subject to a sentence of supervision, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section on the grounds that:

(a) the defendant is unable to comply, or has failed to comply, with any of the conditions of the sentence;

(b) any programme to which the defendant is subject is no longer available or suitable for the defendant;

(c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence –

(i) the rehabilitation and reintegration of the defendant would be advanced by the

remission, suspension, or variation of special conditions, or the imposition of new special conditions; or

(ii) the continuation of the sentence is no longer necessary in the interests of the community or the defendant.

(2) A probation officer may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section if a defendant who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established:

(a) remit, suspend, or vary any special conditions imposed by the court, or impose new special conditions;

(b) cancel the sentence;

(c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the sentence was imposed.

(4) The variation of any existing condition or imposition of any new condition of a kind referred to in section 20(2)(b) requires the consent of the defendant.

(5) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains un-served at the time of the order.

(6) If the court cancels a sentence under this section, the sentence expires on the date that the order is made, or on any other date that the court may specify.

(7) If an application is made under this section for the remission, suspension, or variation of any condition imposed by the court, a probation officer may suspend the condition until the application has been heard and disposed of.

Division 3 - Community work

23. Sentence of community work - (1) A court may sentence a defendant to community work:

- (a) if the defendant is convicted of an offence punishable by imprisonment; or
 - (b) if the defendant is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.
- (2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the court thinks fit.
- (3) This section is subject to sections 24 and 25.

24. Guidance on use of sentence of community work - (1)

In considering whether to impose a sentence of community work, the court must give particular consideration to:

- (a) whether the nature and circumstances of the offending make it appropriate for the defendant to be held accountable to the community by making compensation to it in the form of work, in addition to, or instead of, making reparation to any person in respect of the offending; and
 - (b) whether the sentence is appropriate having regard to the defendant's character and personal history, and to any other relevant circumstances.
- (2) A sentence of community work is inappropriate if the court is satisfied that:
- (a) the defendant has alcohol, drug, psychiatric, or intellectual problems that indicate that it is unlikely that the defendant would complete a sentence of community work; or
 - (b) for any other reason it is unlikely that the defendant would complete a sentence of community work.
- (3) The court may assume that suitable work is available for the defendant to perform under the sentence unless the court is advised otherwise by a probation officer.

25. Concurrent and cumulative sentences of community work - (1) If a court imposes a sentence of community work on a defendant who is already subject to a sentence of community work, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes a sentence of community work in respect of each of 2 or more offences, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(3) If a court directs that sentences of community work be served cumulatively (whether or not the sentences are imposed at the same time), the total term of the sentences must not be more than 400 hours.

(4) A sentence of community work must be served concurrently with any sentence of supervision, community detention, whether or not the sentences are imposed at the same time.

26. Length of sentence of community work - (1) If the court imposes a sentence of community work of 100 hours or less, that sentence must be served within 6 months of the date that it commences under section 47 or 48 of the Sentencing Act 2016.

(2) If the court imposes a sentence of community work of more than 100 hours, the defendant must serve at least 100 hours in every 6-month period from the date on which the sentence commences until the number of hours imposed under the sentence has been served.

(3) A work done by a defendant under a sentence of community work is treated as having been done under that sentence and under any and each other concurrent sentence of community work that the defendant was subject to at the time that the work was done.

27. Defendant must report to probation office - A defendant who is subject to a sentence of community work must report in person to a probation officer in the probation area in which the defendant resides:

- (a) as soon as practicable, and not later than 72 hours, after the sentence is imposed; and
- (b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

28. Defendant must notify probation officer if defendant changes residential address - If a defendant who is subject to a

sentence of community work moves to a new residential address, the defendant must, within 72 hours, notify a probation officer of the defendant's new residential address.

29. Probation officer must determine placement of defendant for community work - As soon as practicable after a sentence of community work is imposed, and at any other time during the sentence if the probation officer thinks fit, a probation officer must determine in accordance with sections 30 and 30A whether the community work will be done:

- (a) on placement at a prescribed community work centre;
or
- (b) on placement with another agency; or
- (c) on placement at a prescribed community work centre for a certain number of the hours of work and on placement with another agency for a certain number of the hours of work, as specified by the probation officer.

30. Guidance to probation officer in determining placement of defendant for community work - For the purposes of section 29, the probation officer must take into account:

- (a) the circumstances of the offending; and
- (b) how the defendant could benefit from learning work habits or skills through the sentence; and
- (c) the defendant's character and personal history; and
- (d) the defendant's physical and mental capabilities; and
- (e) the outcome of any prescribed restorative justice processes that have occurred in the case; and
- (f) whether there is a prescribed community work centre within a reasonable distance of the defendant's place of residence; and
- (g) whether there is any agency within a reasonable distance of the defendant's place of residence that has sufficient suitable work available for the defendant; and
- (h) any other relevant circumstances.

30A. Authorised work for person sentenced to

community work - (1) The type of work that a defendant may be required to perform for the purposes of a sentence of community work is work:

- (a) at or for any hospital or church or at or for any charitable, educational, cultural, or recreational institution or organisation (including a village);
or
- (b) at or for any other institution or organisation for old, infirm, or disabled persons, or at the home of any old, infirm, or disabled person; or
- (c) on any land of which the State or any public body is the owner or lessee or occupier, or any land that is administered by the State or any public body;
or
- (d) at or for any village or district.

(2) No defendant may be directed for the purposes of a sentence of community work to do any work if, in doing so, the defendant would take the place of any person who would otherwise be employed in doing that work in the ordinary course of that person's paid employment.

30B. When community work must be done - (1) If community work is to be done on placement with an agency other than a prescribed community work centre, the days on which and the times at which the defendant does the work must be fixed by agreement between a probation officer and the agency and notified in writing to the defendant.

(2) If the community work is to be done on placement at a prescribed community work centre, the days on which and the times at which the defendant performs the work must be determined by a probation officer and notified in writing to the defendant.

(3) It is not necessary for all the periods of work to be of the same duration, but no period may be longer than 10 hours and no defendant may be required to do more than 40 hours of community work per week.

(4) The times at which the defendant is required to report, and the periods during which he or she is required to do community work, must be such as to avoid interference, so far as practicable, with the defendant's attendance at any place of

education or employment, or with his or her religious observances.

31. Supervision of defendant while doing community work - (1) A defendant who is directed to do community work on placement at a prescribed community work centre is subject to the control, direction, and supervision of a probation officer:

- (a) while the defendant is at a prescribed community work centre; and
- (b) while the defendant is at any other place at the direction, or with the permission, of a probation officer; and
- (c) while the defendant is travelling between a prescribed community work centre and any other place referred to in paragraph (b), or between any 2 such places.

(2) A defendant who is directed to do community work on placement with an agency other than a prescribed community work centre is subject to the control, direction, and supervision of a probation officer at all times while the defendant is doing work or is required to be doing work under the sentence.

31A. Defendant excused from reporting in certain circumstances - (1) A defendant who is subject to a sentence of community work may be excused from reporting during any period when the prescribed community work centre or other agency at which the defendant is required to report is closed.

(2) In special circumstances, a probation officer may excuse a defendant from reporting on any day or during any period.

(3) Without limiting subsection (2), if a defendant is unable to report on any day or during any period because of illness or injury, a probation officer must, on being satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the defendant from the requirement to report on that day or during that period.

(4) For the purpose of determining whether or not to excuse a defendant under subsection (3), the probation officer may require that the defendant obtain a certificate from a registered medical practitioner as to whether the defendant is, will be, or was unfit to report on the day or during the period.

(5) A certificate obtained under subsection (4) is not conclusive as to whether the defendant is, will be, or was unfit to report.

(6) If a defendant is excused under this section from reporting, that does not have the effect of remitting any of the hours of community work required to be done under the sentence.

31B. Court may authorise hours of work to be converted into training - (1) This section applies to sentences of community work of at least 80 hours.

(2) A court may, when imposing a sentence of community work, or at any time on application by a probation officer, authorise a probation officer to direct that some of the hours of work ordered to be undertaken be instead spent in training in basic work and living skills.

(3) In determining whether to give an authorisation under this section, the court must take account of both:

- (a) the benefits of skill development to the defendant for reducing the likelihood of his or her reoffending; and
- (b) the need to hold the defendant accountable to the community by making compensation to it.

32. Some hours of work may be converted to training - (1) If authorised by a court under section 31B, a probation officer may, but is not obliged to, direct that a specified number of hours of work, not exceeding 20% of the total number of hours under the sentence, be instead spent in training in basic work and living skills.

(2) A probation officer may not give a direction under subsection (1) unless:

- (a) it is reasonably practicable for the defendant to undertake training in basic work and living skills (having regard to the availability of that training in the place where the defendant lives); and
- (b) the defendant consents to undertake that training.

(3) Any hours spent by the defendant training in basic work and living skills under a direction given under subsection (1) must, for all legal purposes, be treated as hours of authorised

community work undertaken by the defendant under his or her sentence.

(4) Subsection (3) is subject to section 32A.

32A. Consequences of failing without excuse to complete training - If a defendant fails, without reasonable excuse, to complete the number of hours training in basic work and living skills directed under section 32:

- (a) any hours spent by the defendant undertaking that training are not to be treated as hours of authorised community work undertaken by the defendant under his or her sentence; and
- (b) the defendant must, in addition to the period spent in training, but subject to section 33, undertake community work for the total number of hours ordered under the sentence.

32B. When hours of community work not counted - (1) If a defendant fails to carry out any work under a sentence of community work to the satisfaction of the probation officer, the probation officer may, subject to subsection (2), refuse to treat that work as work undertaken under the sentence.

(2) The number of hours that the probation officer may refuse to treat as work undertaken under the sentence must not exceed 10% of the total number of hours under the sentence.

33. Remission of sentence of community work - If a probation officer is satisfied that the defendant has a good record of compliance with a sentence of community work, the probation officer may remit up to 10% from the number of hours of community work imposed by the court.

33A. Variation or cancellation of sentence of community work - (1) A defendant who is subject to a sentence of community work, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section on the grounds that:

- (a) there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or

(b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the defendant.

(2) A probation officer may apply under section 45 of the Sentencing Act 2016 for an order under subsection (3) of this section:

(a) if a defendant who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or

(b) on the grounds that the defendant has behaved in a manner described in section 44(1)(a) to (j) of the Sentencing Act 2016.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established:

(a) vary the sentence by reducing the number of hours of work to be done; or

(b) cancel the sentence; or

(c) cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the defendant at the time when the defendant was convicted of the offence for which the sentence was imposed.

(4) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains un-served at the time of the order.

(5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

33B. Extension of period within which community work must be done - (1) A defendant who is subject to a sentence of community work, or a probation officer, may apply under section 45 of the Sentencing Act 2016 for an extension of the period within which the work must be done on the grounds that:

- (a) because of incapacity or any humanitarian or other reasons, it will be impossible for the defendant to do the work during a certain period; or
 - (b) it would be unreasonable to require the defendant to do the work during that period.
- (2) On an application under subsection (1), the court may, if it is satisfied that any of the grounds in subsection (1) has been established, extend the period within which the work must be done by the amount that the court thinks fit.”.

REVISION NOTES 2016 – 2023

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division in 2016 – 2023 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) insertion of the commencement date;
- (b) numbers in words deleted;
- (c) roman numerals changed to decimal numbers.

*This Act is administered by the
Ministry of Justice and Courts Administration.*