

2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Mr Bill Stefaniak)

# Sentencing Reform Amendment Bill 2003

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(Mr Bill Stefaniak)

# **Sentencing Reform Amendment Bill 2003**

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## **A Bill for**

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Sentencing Reform Amendment Act 2003*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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



## Part 2                      Supreme Court Act 1933

### **3      Act amended—pt 2**

This part amends the *Supreme Court Act 1933*.

### **4      New sections 37SA and 37SB**

*in part 2A, insert*

#### **37SA Guideline judgments**

- (1) The Court of Appeal may, on its own initiative or at the request of the Attorney-General under section 37SB, give a guideline judgment to be taken into account by courts when sentencing offenders.
- (2) A guideline judgment may be given separately or in any proceeding that the Court of Appeal considers appropriate.
- (3) A guideline judgment may be given in a proceeding even if it is not necessary for deciding the proceeding.
- (4) A guideline judgment may be reviewed, varied or revoked in a later guideline judgment.
- (5) This section does not limit any power or jurisdiction that the Court of Appeal has apart from this section.

#### **37SB Attorney-General may request guideline judgment**

- (1) The Attorney-General may request the Court of Appeal to give a guideline judgment.
- (2) The request for a guideline judgment may include submissions about the proposed guidelines.

**5 Act amended—pt 3**

This part amends the *Crimes Act 1900*.

*insert*

- s 28A (Setting trap etc)
- s 35A (Assault, stalking etc of police officer)
- s 35B (Obtaining personal information about police officer)
- s 35C (Stalking etc person associated with police officer)
- s 111A (Carjacking)

*omit*

20 years

*substitute*

25 years

*omit*

15 years

*substitute*

20 years

1 **9 Recklessly inflicting grievous bodily harm**  
2 **Section 20**

3 *omit*

4 10 years

5 *substitute*

6 15 years

7 **10 Wounding**  
8 **Section 21**

9 *omit*

10 5 years

11 *substitute*

12 15 years

13 **11 Assault with intent to commit certain indictable offences**  
14 **Section 22**

15 *omit last mention of*

16 5 years

17 *substitute*

18 10 years

19 **12 Acts endangering life etc**  
20 **Section 27 (3) (f)**

21 *omit*

Section 13

---

**13 Section 27 (3)**

omit

10 years

substitute

20 years

**14 Section 27 (3)**

renumber paragraphs when Act next republished under Legislation Act 2001

**15 Section 27 (4)**

omit

15 years

substitute

25 years

**16 Acts endangering health etc  
Section 28 (2) (c)**

omit

**17 Section 28 (2)**

renumber paragraphs when Act next republished under Legislation Act 2001

**18 Section 28 (2)**

omit

5 years

substitute

20 years

---

1 **19 New section 28A**

2 *insert*

3 **28A Setting trap etc**

4 (1) A person commits an offence if the person, with intent to kill or  
5 inflict grievous bodily harm on a person—

6 (a) places or sets a trap, device or thing capable of killing a person  
7 or inflicting grievous bodily harm on a person; or

8 (b) knowingly permits any trap, device or thing to continue to be  
9 placed or set.

10 Maximum penalty: imprisonment for 10 years.

11 (2) This section does not apply in relation to a trap, device or thing  
12 placed or set in a dwelling for the protection of the dwelling.

13 **20 Culpable driving of motor vehicle**  
14 **Section 29 (2)**

15 *omit*

16 7 years

17 *substitute*

18 14 years

19 **21 Section 29 (3)**

20 *omit*

21 4 years

22 *substitute*

23 11 years

1 **22 Possession of object with intent to kill etc**  
2 **Section 33**

3 *omit*

4 5 years

5 *substitute*

6 10 years

7 **23 New sections 35A to 35C**

8 *insert*

9 **35A Assault, stalking etc of police officer**

10 (1) A person commits an offence if—

11 (a) the person assaults or stalks, harasses or intimidates another  
12 person; and

13 (b) the other person is a police officer acting in the course of the  
14 officer's duty.

15 Maximum penalty: imprisonment for 5 years.

16 (2) A person commits an offence if—

17 (a) the person assaults another person, and by the assault occasions  
18 actual bodily harm; and

19 (b) the other person is a police officer acting in the course of the  
20 officer's duty.

21 Maximum penalty: imprisonment for 7 years.

22 (3) A person commits an offence if—

23 (a) either—

24 (i) the person wounds another person; or

25 (ii) the person assaults another person, and by the assault  
26 occasions grievous bodily harm; and

1 (b) the other person is a police officer acting in the course of the  
2 officer's duty.

3 Maximum penalty: imprisonment for 20 years.

4 (4) Strict liability applies to subsections (1) (b), (2) (b) and (3) (b).

5 (5) For this section, an action is taken to be done to a police officer  
6 acting in the course of the officer's duty, even if the officer is not on  
7 duty at the time, if it is carried out—

8 (a) as a consequence of, or in retaliation for, something done by  
9 the officer in the course of the officer's duty; or

10 (b) because the officer is a police officer.

11 (6) In a prosecution for an offence against subsection (1) in relation to  
12 the stalking, harassing or intimidating of a police officer, it is not  
13 necessary to prove that the officer apprehended or feared harm or  
14 was harassed.

15 (7) For this section:

16 *stalk*—see section 35 (2).

### 17 **35B Obtaining personal information about police officer**

18 (1) A person commits an offence if—

19 (a) the person obtains personal information about a police  
20 officer—

21 (i) as a consequence of, or in retaliation for, something done  
22 by the officer in the course of the officer's duty; or

23 (ii) because the officer is a police officer; and

24 (b) the person intends to use the information, or allow its use, to  
25 assault, stalk, harass or otherwise harm the officer.

26 Maximum penalty: imprisonment for 2 years.

1 (2) For this section:

2 *harm*—see section 35 (6).

3 *police officer* means a member of any Commonwealth, State or  
4 Territory police force or service.

5 **35C Stalking etc person associated with police officer**

6 (1) A person commits an offence if—

7 (a) the person stalks someone (the *person stalked*) who is or has  
8 been personally associated with a police officer; and

9 (b) the person intends to cause the person stalked harm or  
10 apprehension or fear of harm; and

11 (c) the stalking is—

12 (i) as a consequence of, or in retaliation for, something done  
13 by the officer in the course of the officer's duty; or

14 (ii) because the officer is a police officer.

15 Maximum penalty: imprisonment for 5 years.

16 (2) A person commits an offence if—

17 (a) the person obtains personal information about someone who is  
18 or has been personally associated with a police officer; and

19 (b) the person obtains the information—

20 (iii) as a consequence of, or in retaliation for, something done  
21 by the officer in the course of the officer's duty; or

22 (iv) because the officer is a police officer; and

23 (c) the person intends to use the information, or allow its use, to  
24 cause the officer to fear personal harm or harm to a person who  
25 is or has been personally associated with the officer.

26 Maximum penalty: imprisonment for 2 years.



- 
- 1 (3) Without limiting subsection (1), a person is taken to have the intent  
2 mentioned in the subsection if the person knows that, or is reckless  
3 about whether, stalking the other person would be likely to cause  
4 apprehension or fear of harm in the person stalked.
- 5 (4) In a prosecution for an offence against subsection (1), it is not  
6 necessary to prove that the person stalked apprehended or feared  
7 harm.
- 8 (5) For this section, a person is *personally associated* with a police  
9 officer if the person—
- 10 (a) is married to or in a domestic relationship with the officer; or  
11 (b) has an intimate relationship with the officer, whether or not of  
12 a sexual nature; or  
13 (c) is living in the same household or residential facility as the  
14 officer; or  
15 (d) is in a relationship with the officer that involves dependence or  
16 ongoing paid or unpaid care; or  
17 (e) is a member of the officer's family.
- 18 (6) For this section:
- 19 *domestic relationship*—see the *Domestic Relationships Act 1994*,  
20 section 3 (1).
- 21 *harm*—see section 35 (6).
- 22 *member of the family*, of a police officer, means a parent, step-  
23 parent, parent-in-law, grandparent, child, stepchild, grandchild, son-  
24 in-law, daughter-in-law, brother, sister, half-brother, half-sister,  
25 brother-in-law, sister-in-law, uncle, aunt, nephew, niece or cousin of  
26 the officer or of a person married to, or in a domestic relationship  
27 with, the officer.
- 28 *police officer* means a member of any Commonwealth, State or  
29 Territory police force or service.
- 30 *stalk*—see section 35 (2).
-

Section 24

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1 **24 Abduction of young person**  
2 **Section 37**

3 *omit*

4 5 years

5 *substitute*

6 10 years

7 **25 Neglect etc of children**  
8 **Section 39 (1), penalty**

9 *omit*

10 2 years

11 *substitute*

12 5 years

13 **26 Section 39 (3), penalty**

14 *omit*

15 1 year

16 *substitute*

17 5 years

18 **27 Alternative verdicts for certain offences against the**  
19 **person**  
20 **Section 49, table, item 10**

21 *omit*

22 **28 Section 49, table, item 11**

23 *renumber as item 10*

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1 **29 Section 49, table**

2 *insert*

11	section 35A (1) (a) (Assault, stalking etc of police officer) if the offence charged is an assault	section 26
12	section 35A (1) (a) if the offence charged is stalking	section 35
13	section 35A (2)	(a) section 23 (b) section 24 (c) section 26
14	section 35A (3) (a) (i)	section 21
15	section 35A (3) (a) (ii)	(a) section 20 (b) section 21 (c) section 23 (d) section 24 (e) section 25 (f) section 26

3 **30 Sexual assault in the first degree**  
 4 **Section 51 (1)**

5 *omit*

6 17 years

7 *substitute*

8 25 years

9 **31 Section 51 (2)**

10 *omit*

11 20 years

12 *substitute*

13 life

Section 32

---

1 **32 Sexual assault in the second degree**  
2 **Section 52 (1)**

3 *omit*

4 14 years

5 *substitute*

6 20 years

7 **33 Section 52 (2)**

8 *omit*

9 17 years

10 *substitute*

11 25 years

12 **34 Sexual assault in the third degree**  
13 **Section 53 (1)**

14 *omit*

15 12 years

16 *substitute*

17 15 years

18 **35 Section 53 (2)**

19 *omit*

20 14 years

21 *substitute*

22 18 years

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1 **36 Sexual intercourse without consent**  
2 **Section 54 (1)**

3 *omit*

4 12 years

5 *substitute*

6 15 years

7 **37 Section 54 (2)**

8 *omit*

9 14 years

10 *substitute*

11 18 years

12 **38 Sexual intercourse with young person**  
13 **Section 55 (1)**

14 *omit*

15 17 years

16 *substitute*

17 20 years

18 **39 Maintaining a sexual relationship with young person**  
19 **Section 56 (5)**

20 *omit*

21 7 years

22 *substitute*

23 10 years

Section 40

---

1 **40 Act of indecency in the first degree**  
2 **Section 57**

3 *omit*

4 15 years

5 *substitute*

6 20 years

7 **41 Act of indecency in the second degree**  
8 **Section 58**

9 *omit*

10 12 years

11 *substitute*

12 15 years

13 **42 Act of indecency without consent**  
14 **Section 60 (1)**

15 *omit*

16 5 years

17 *substitute*

18 10 years

19 **43 Section 60 (2)**

20 *omit*

21 7 years

22 *substitute*

23 15 years

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1	<b>44</b>	<b>Acts of indecency with young people</b>
2		<b>Section 61 (1)</b>
3		<i>omit</i>
4		12 years
5		<i>substitute</i>
6		15 years
7	<b>45</b>	<b>Incest and similar offences</b>
8		<b>Section 62 (4)</b>
9		<i>omit</i>
10	<b>46</b>	<b>Section 62</b>
11		<i>renumber subsections when Act next republished under Legislation</i>
12		<i>Act 2001</i>
13	<b>47</b>	<b>Abduction</b>
14		<b>Section 63</b>
15		<i>omit</i>
16		10 years
17		<i>substitute</i>
18		14 years
19	<b>48</b>	<b>Employment of young people for pornographic purposes</b>
20		<b>Section 64 (1)</b>
21		<i>omit</i>
22		10 years
23		<i>substitute</i>
24		14 years

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Section 49

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1 **49 Possession of child pornography**  
2 **Section 65 (1)**

3 *omit*

4 5 years

5 *substitute*

6 7 years

7 **50 Using the Internet etc to deprave young people**  
8 **Section 66 (1), penalty, paragraph (a)**

9 *omit*

10 5 years

11 *substitute*

12 7 years

13 **51 Section 66 (1), penalty, paragraph (b)**

14 *omit*

15 10 years

16 *substitute*

17 12 years

18 **52 Section 66 (2), penalty**

19 *omit*

20 100 penalty units, imprisonment for 5 years

21 *substitute*

22 200 penalty units, imprisonment for 7 years



1 **53 Minor theft**  
2 **Section 90**

3 *omit*

4 **54 Making off without payment**  
5 **Section 98 (2)**

6 *omit*

7 **55 Section 98 (3)**

8 *omit*

9 Subsections (1) and (2) do

10 *substitute*

11 This section does

12 **56 Section 98**

13 *renumber subsections when Act next republished under Legislation*  
14 *Act 2001*

15 **57 False accounting**  
16 **Section 100 (1)**

17 *omit*

18 7 years

19 *substitute*

20 10 years

1 **58 False statements by officers of associations**  
2 **Section 102 (1)**

3 *omit*

4 7 years

5 *substitute*

6 10 years

7 **59 Suppression etc of documents**  
8 **Section 103 (1)**

9 *omit*

10 7 years

11 *substitute*

12 10 years

13 **60 New section 111A**

14 *insert*

15 **111A Carjacking**

16 (1) A person commits an offence if the person—

17 (a) assaults someone else with intent to take a motor vehicle; and

18 (b) takes and drives the motor vehicle, or takes the motor vehicle  
19 for the purpose of driving it, without the consent of the owner  
20 or person in lawful possession of the motor vehicle.

21 Maximum penalty: imprisonment for 10 years.

22 (2) A person commits an offence if the person—

23 (a) takes and drives a motor vehicle, or takes a motor vehicle for  
24 the purpose of driving it, without the consent of the owner or  
25 person in lawful possession of the motor vehicle; and

- 1 (b) someone else is in or on the motor vehicle.
- 2 Maximum penalty: imprisonment for 10 years.
- 3 (3) A person commits an offence against this subsection if the person
- 4 commits an offence against subsection (1) or (2) in circumstances of
- 5 aggravation.
- 6 Maximum penalty: imprisonment for 14 years.
- 7 (4) For subsection (3), a person commits an offence in *circumstances of*
- 8 *aggravation* if—
- 9 (a) the person is in company with someone else; or
- 10 (b) the person is armed with an offensive weapon or instrument; or
- 11 (c) the person inflicts actual bodily harm on someone else.
- 12 (5) In this section:
- 13 *motor vehicle*—see *Road Transport (General) Act 1999*, dictionary.

14 **61 Aiding prisoner to escape**

15 **Section 159**

- 16 *omit*
- 17 5 years, a fine of \$10 000
- 18 *substitute*
- 19 7 years, 200 penalty units

20 **62 Escaping**

21 **Section 160**

- 22 *omit*
- 23 5 years, a fine of \$10 000
- 24 *substitute*
- 25 10 years, 200 penalty units

Section 63

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**63 Section 341**

*omit everything before paragraph (a), substitute*

**341 Purposes to which court to have regard**

In deciding a sentence to be imposed, the court must have regard to the following purposes:

**64 Section 341 (a)**

*omit*

or

**65 Section 341 (b)**

*omit last mention of*

or

**66 Section 341 (c) and (d)**

*omit*

or

**67 Section 341 (e) and (f)**

*substitute*

(e) to protect the community from the offender.

**68 Matters to which court to have regard  
Section 342 (1)**

*omit everything before paragraph (a), substitute*

(1) In deciding the sentence to be imposed on a person, a court must have regard to any of the following matters that are relevant and known to the court:

- 
- 1 **69 Section 342 (1) (i)**
- 2 *omit*
- 3 cultural background,
- 4 **70 Section 342 (1) (j) and (m)**
- 5 *omit*
- 6 **71 Section 342 (1) (q)**
- 7 *substitute*
- 8 (q) current sentencing practice in other States;
- 9 **72 Section 342 (1) (s)**
- 10 *omit*
- 11 **73 Section 342 (1)**
- 12 *renumber paragraphs when Act next republished under Legislation*
- 13 *Act 2001*
- 14 **74 Section 342 (2)**
- 15 *substitute*
- 16 (2) The court may have regard to any other matter the court considers
- 17 appropriate.
- 18 **75 New section 342A**
- 19 *insert*
- 20 **342A Guideline judgments**
- 21 (1) In deciding the sentence to be imposed on a person for an offence, a
- 22 court must have regard to any relevant guideline judgment.

Section 76

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1       (2) If a court imposes on a person a sentence that is inconsistent with a  
2       relevant guideline judgment, the court must give written reasons for  
3       the inconsistency.

4       (3) This section is in addition to and does not limit section 342.

5       (4) For this section:

6       *relevant guideline judgment*, for an offence, means a judgment of  
7       the Court of Appeal that is expressed to contain guidelines to be  
8       taken into account by courts sentencing offenders.

9       **76   Matters not to be taken into account**  
10      **Section 344 (d) and (e)**

11      *omit*

12      **77   Section 344**

13      *renumber paragraphs when Act next republished under Legislation*  
14      *Act 2001*

15      **78   Restriction on imposing sentences of imprisonment**  
16      **Section 345**

17      *omit*

18      **79   Summary disposal of certain cases**  
19      **Section 375 (1) (b)**

20      *substitute*

21      (b) an offence punishable by imprisonment for not longer than  
22      15 years.

## Part 4 Rehabilitation of Offenders (Interim) Act 2001

### 80 Act amended—pt 4

This part amends the *Rehabilitation of Offenders (Interim) Act 2001*.

### 81 Court to set nonparole period Section 31 (1), note

*substitute*

*Note 1* Section 31A provides for standard nonparole periods for certain offences.

*Note 2* Section 43 provides that, if the person is released on parole, the sentence is not discharged unless the parole is completed without the parole order being revoked.

### 82 New section 31A

#### 31A Standard nonparole period

- (1) When setting a nonparole period under section 31 (1) in relation to an offence for which there is a standard nonparole period, the court must set the standard nonparole period as the nonparole period for the offence unless the court considers that there are reasons for setting a nonparole period for the offence that is longer or shorter than the standard nonparole period.
- (2) When setting the nonparole period for the offence, the court may have regard to any relevant aggravating circumstance mentioned in subsection (3) (other than a circumstance that is an element of the offence) and any relevant mitigating circumstance mentioned in subsection (4).

- 1       (3) Aggravating circumstances to which the court may have regard  
2       include the following:
- 3           (a) the victim is a police officer, emergency services worker,  
4           correctional officer, judicial officer, health professional, health  
5           or community worker or teacher and the offence arose because  
6           of the victim's occupation;
- 7           (b) the offence involved the actual or threatened use of violence;
- 8           (c) the offence involved the actual or threatened use of a weapon;
- 9           (d) the offender has a record of previous convictions;
- 10          (e) the offence was committed in company with someone else;
- 11          (f) the offence involved gratuitous cruelty;
- 12          (g) the injury, emotional harm, loss or damage caused by the  
13          offence was substantial;
- 14          (h) the offence was motivated by hatred for or prejudice against a  
15          group of people to which the offender believed the victim  
16          belonged;
- 17               **Examples**
- 18               1 people of a particular religion, racial or ethnic origin
- 19               2 people who speak a particular language
- 20               3 people of a particular sexual orientation
- 21               4 people of a particular age
- 22               5 people with a disability
- 23               *Note*           An example is part of the Act, is not exhaustive and may  
24                               extend, but does not limit, the meaning of the provision in  
25                               which it appears (see Legislation Act, s 126 and s 132).
- 26          (i) the offence was committed without regard for public safety;
- 27          (j) the offence was committed while the offender was on bail in  
28          relation to an offence or alleged offence;



1 (k) the offender abused a position of trust or authority in relation  
2 to the victim;

3 (l) the victim was vulnerable because of age or occupation;

4 **Examples**

5 1 the victim was very young or old

6 2 the victim had a disability

7 3 the victim was a taxi driver, bank teller or service station attendant

8 (m) the offence involved multiple victims or a series of criminal  
9 acts;

10 (n) the offence was part of a planned or organised criminal activity.

11 (4) Mitigating circumstances to which the court may have regard  
12 include the following:

13 (a) the injury, emotional harm, loss or damage caused by the  
14 offence was not substantial;

15 (b) the offence was not part of a planned or organised criminal  
16 activity;

17 (c) the offender was provoked by the victim;

18 (d) the offender was acting under duress;

19 (e) the offender does not have any record, or any significant  
20 record, of previous convictions;

21 (f) the offender was a person of good character;

22 (g) the offender is unlikely to reoffend;

23 (h) the offender has good prospects of rehabilitation, whether  
24 because of age or otherwise;

25 (i) the offender has shown remorse for the offence by making  
26 reparation for any injury, loss or damage or in any other way;

27 (j) the offender was not fully aware of the consequences of his or  
28 her actions because of the offender's age or any disability;

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- 1 (k) a plea of guilty by the offender;
- 2 (l) if the offender is tried on indictment—the degree of pre-trial  
3 disclosure by the defence for the purposes of the trial;
- 4 (m) the degree to which the offender has assisted, or undertaken to  
5 assist, law enforcement authorities in the prevention, detection  
6 or investigation of, or in a proceeding in relation to, the offence  
7 concerned or any other offence.
- 8 (5) If the court sets a nonparole period that is different to the standard  
9 nonparole period for the offence, the court must give written reasons  
10 for the difference.
- 11 (6) The *standard nonparole period* for an offence mentioned in  
12 column 2 in the table is the period mentioned in column 3 of the  
13 same item.

14 **Table Standard nonparole periods**

column 1 item	column 2 offence	column 3 period
1	offence against <i>Crimes Act 1900</i> , section 12 (Murder), other than an offence to which item 2 applies	20 years
2	offence against <i>Crimes Act 1900</i> , section 12 (Murder), if the victim is a police officer, emergency services worker, correctional officer, judicial officer, health professional, health or community worker or teacher and the offence arose because of the victim's occupation	25 years
3	offence against the Criminal Code, section 44 (Attempt), if the offence attempted is murder	10 years
4	offence against <i>Crimes Act 1900</i> , section 51 (2) (Sexual assault in the first degree)	15 years
5	offence against <i>Crimes Act 1900</i> , section 19 (Intentionally inflicting grievous bodily harm)	5 years

column 1 item	column 2 offence	column 3 period
6	offence against <i>Crimes Act 1900</i> , section 27 (4) (b) (Acts endangering life etc)	7 years
7	offence against <i>Crimes Act 1900</i> , section 92 (Armed robbery)	7 years
8	offence against <i>Crimes Act 1900</i> , section 93 (Burglary), if the offender has been convicted of a burglary offence in the previous 5 years	2 years
9	offence against <i>Crimes Act 1900</i> , section 94 (Aggravated burglary), if serious injury is caused to a person	7 years
10	offence against <i>Crimes Act 1900</i> , section 111A (1) or (2) (Carjacking)	3 years
11	offence against <i>Crimes Act 1900</i> , section 111A (3) (Carjacking) (which is about carjacking in aggravated circumstances)	5 years
12	offence against <i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 50 times the quantity prescribed as a trafficable quantity	15 years
13	offence against <i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 30 but less than 50 times the quantity prescribed as a trafficable quantity	10 years
14	offence against <i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 20 but less than 30 times the quantity prescribed as a trafficable quantity	5 years

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## **Endnotes**

### **Republications of amended laws**

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### **Penalty units**

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

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