

2013

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (SENTENCING) AMENDMENT BILL 2013

EXPLANATORY STATEMENT

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CRIMES (SENTENCING) AMENDMENT BILL 2013

Outline

The Crimes (Sentencing) Amendment Bill 2013 amends the *Crimes (Sentencing) Act 2005* to permit a reduced sentence to be imposed where an offender has facilitated the administration of justice by cooperating to ensure that the trial is focused as efficiently as possible on the real issues in dispute.

These amendments do not affect an accused person's right to remain silent in relation to a criminal charge. Furthermore, the amendments do not interfere with the right of an accused person to plead not guilty and be tried according to the law.

CRIMES (SENTENCING) AMENDMENT BILL 2013

Detail

Clause 1—Name of Act

This is a technical clause that names the short title of the Act

Clause 2—Commencement

This clause fixes the date for commencement of the Act.

Clause 3—Legislation amended

This clause provides that the legislation being amended is the *Crimes (Sentencing) Act 2005*.

Clause 4—Sentencing—relevant considerations New section 33 (1) (ka)

This clause inserts new paragraph (ka) into section 33(1) of the *Crimes (Sentencing) Act 2005*.

Section 33(1) of the Act provides a list of matters that the court must consider in deciding how an offender should be sentenced, if at all, for an offence.

This clause inserts a new matter into this list; new paragraph (ka). The new paragraph requires the court to consider any assistance by the defence in the administration of justice.

The amendment is a consequence of the amendment made in clause 5 below which allows the court to impose a lesser penalty on an offender having regard to the degree of assistance provided in the administration of justice.

Clause 5—New section 35A

This clause inserts new section 35A into the *Crimes (Sentencing) Act 2005*.

New section 35A allows a court to impose a lesser penalty, including a shorter non-parole period, on an offender than it would otherwise have imposed having regard to the degree of assistance provided in the administration of justice. The provision is designed to encourage cooperation in ensuring that the trial is focused as efficiently as possible on the real issues in dispute. The provision will extend to allowing a reduced sentence to be imposed where an offender, while maintaining a not guilty plea through to trial, has nevertheless facilitated the administration of justice through pre-trial disclosures, disclosures made during trial or otherwise.

An example is provided in the new section of the type of matter that may be considered by the court as assisting in the administration of justice; an admission made by the defence pre-trial or during a trial.

A similar provision exists in New South Wales in section 22A of the *Crimes (Sentencing Procedure) Act 1999*. The case law that exists on this provision in New South Wales will serve as a guide to the ACT judiciary in applying new section 35A.

New section 35A ensures that a lesser penalty imposed must not be unreasonably disproportionate to the nature and circumstances of the offence. The new section also clarifies that the power is not intended to limit the operation of existing sections 35 and 36 which allow for reduced sentences in certain circumstances. While a plea of guilty or assistance provided to law enforcement agencies can be considered to meet the requirements of facilitating the administration of justice, new section 35A(4) is designed to provide that other actions are required to trigger the reduction under the new section.

Defence is defined to mean either the offender, or any lawyer representing the offender.

**Clause 6—Reduction of sentence—statement by court about penalty
Section 37 (1)**

This clause inserts a reference to new section 35A in section 37 (1). Section 37 requires the court to state the penalty (including any shorter non-parole period) it would otherwise have imposed

Clause 7—Section 37 (2) (b)

This clause inserts a reference to new section 35A in section 37 (2). Section 37 requires the court to state the penalty (including any shorter non-parole period) it would otherwise have imposed