



AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Act (No. 2) 1993

No. 73 of 1993

An Act to amend the *Crimes Act 1900*

[Notified in ACT Gazette S215: 22 October 1993]

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

Short title

1. This Act may be cited as the *Crimes (Amendment) Act (No. 2) 1993*.

Principal Act

2. In this Act, “Principal Act” means the *Crimes Act 1900*.¹

Commencement

3. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Maintaining a sexual relationship with a young person

4. Section 92EA of the Principal Act is amended by omitting from subsection (8) “subsection 443 (3)” and substituting “subsection 443 (1)”.

Insertion

5. After the heading to Part XII of the Principal Act the following heading and sections are inserted:

“Division 1—General principles and procedures

Sentencing to be just and appropriate

“429. (1) The sentence imposed by a court for an offence shall be just and appropriate.

“(2) Without limiting the generality of subsection (1), the sentence shall, as far as practicable, be such as to—

- (a) facilitate the offender’s rehabilitation into society; and
- (b) encourage the offender to make appropriate reparation to any victim of the offence.

Matters to which court to have regard

“429A. (1) In determining the sentence to be imposed on a person, the matters to which a court shall have regard include, but are not limited to, such of the following matters as are relevant and known to the court:

- (a) the nature and circumstances of the offence;
- (b) other offences (if any) that are required or permitted to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
- (d) where the personal circumstances of any victim of the offence were known to the offender at the time of committing the offence—those circumstances;
- (e) any injury, loss or damage resulting from the offence;
- (f) any action the person may have taken to make reparation for any injury, loss or damage resulting from the offence;
- (g) the degree of responsibility of the person for the commission of the offence;
- (h) the degree to which the person has cooperated, or undertaken to cooperate, with law enforcement agencies in the investigation of the offence or other offences;

- (i) the deterrent effect that any sentence or order under consideration may have on any person;
- (j) the need to ensure that the person is adequately punished for the offence;
- (k) the cultural background, character, antecedents, age, means and physical or mental condition of the person;
- (l) the prospect of rehabilitation of the person;
- (m) the probable effect that any sentence or order under consideration would have on any of the person's family or dependants;
- (n) whether the person was affected by a drug or alcohol and the circumstances in which the person became so affected;
- (o) the degree to which the offence was the result of provocation, duress or entrapment;
- (p) whether the recording of a conviction or the imposition of a particular sanction would be likely to cause particular hardship to the person;
- (q) a jury recommendation for mercy;
- (r) whether the person is voluntarily seeking treatment for any physical or mental condition which may have contributed to the commission of the offence;
- (s) whether the person was in a position of trust or authority at the time of the commission of the offence;
- (t) current sentencing practice;
- (u) whether the person has pleaded guilty;
- (v) whether the person has demonstrated remorse;
- (w) the reason or reasons why the person committed the offence.

“(2) Without limiting the generality of subsection (1), in determining whether a sentence or order under subsection 556A (1) or 556B (1) is appropriate in respect of an offence against a law of the Territory, the court shall have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the person, under that sentence or order.

Matters not to be taken into account

“429B. The court shall not, in determining the sentence to be imposed on a person, increase the severity of the sentence that would otherwise be imposed because of any of the following:

- (a) legislation which has not come into operation;

- (b) any alleged offences which the person has not admitted in accordance with section 448;
- (c) that the person chose not to give evidence on oath;
- (d) that the person may have committed perjury or been guilty of contempt of court during the course of proceedings;
- (e) the prevalence of the offence;
- (f) the person's behaviour in court;
- (g) that the person chose to plead not guilty.

Restriction on imposing sentences of imprisonment

“429C. (1) A court shall not pass a sentence of imprisonment on any person for an offence against a law of the Territory unless the court, after having considered all other available penalties, is satisfied that no other penalty is appropriate in all the circumstances of the case.

“(2) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory, the court shall—

- (a) state the reasons for its decision that no other sentence is appropriate; and
- (b) cause those reasons to be entered in the records of the court.

“(3) The failure of a court to comply with the provisions of this section does not invalidate any sentence.

“(4) This section applies subject to any contrary intention in the law creating the offence.”.

Insertion

6. After section 431 of the Principal Act the following section is inserted:

Fines

“431A. Before imposing a fine on a person for an offence against a law of the Territory, the court shall take into account the financial circumstances of the person, where those circumstances can be ascertained, in addition to any other matters that the court is required or permitted to take into account.”.

When sentence takes effect

7. Section 441A of the Principal Act is amended by inserting “, subject to this Part,” after “shall”.

Substitution

8. Section 443 of the Principal Act is repealed and the following section substituted:

Concurrent and cumulative sentences

“443. (1) Every term of imprisonment (except a term imposed in default of payment of a fine or sum of money or one imposed on a person in respect of an offence committed while in custody) shall, unless the court otherwise directs, be served concurrently with any uncompleted part of any sentence of imprisonment imposed on that person, whether before or at the same time as that term.

“(2) Where a court sentences a person to a term of imprisonment in default of payment of a fine or sum of money, the term shall, unless the court otherwise directs, be served—

- (a) cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that person in default of payment of a fine or sum of money; and
- (b) concurrently with any other uncompleted part of any sentence of imprisonment imposed on that person.

“(3) Where a court sentences a person to a term of imprisonment in respect of an offence committed while in custody, the term shall, unless the court otherwise directs, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that person, whether before or at the same time as that term.

“(4) A court which imposes a term of imprisonment for an offence against the law of the Territory on a person already serving a sentence or sentences of imprisonment for an offence against the law of the Territory, the Commonwealth, a State or another Territory, shall direct when the new term commences which shall be no later than immediately after—

- (a) if a non-parole period or pre-release period (as defined in Part 1B of the *Crimes Act 1914* of the Commonwealth) was fixed in respect of the sentence or the last of those sentences—the end of the period so fixed; and
- (b) in any other case—the completion of the sentence or the last of those sentences.

“(5) A court may direct that part of a sentence be served concurrently with or cumulatively upon another sentence.

“(6) Where a court directs that 2 or more sentences shall be cumulative, they shall take effect one after another as the court directs or, in default of any direction, in accordance with the sequence in which the convictions are recorded.

“(7) In this section—

- (a) a reference to a fine shall be read as including a reference to a pecuniary penalty, an amount in respect of costs or any other amount ordered to be paid by a person for or in respect of an offence; and
- (b) a reference to any uncompleted part of any sentence of imprisonment shall be read as including a reference to the remainder of a period for which a child has been committed to an institution by an order under paragraph 47 (1) (j) or 47 (1) (k) of the *Children’s Services Act 1986*.”.

Insertion

9. After section 448 of the Principal Act the following sections and Division are inserted in Part XII:

Appeal where promised cooperation not forthcoming

“449. (1) Where a sentence or a non-parole period is reduced because of the person’s promised cooperation, of the kind referred to in paragraph 429A (1) (h), the court shall—

- (a) in relation to the sentence—specify the reason for the reduction and the sentence that would have been imposed but for the reduction; and
- (b) in relation to the non-parole period—specify the reason for the reduction and the period that would have been fixed but for the reduction.

“(2) Where—

- (a) a sentence or non-parole period is reduced because the person has undertaken to cooperate with law enforcement agencies; and
- (b) after sentence, the person does not cooperate in accordance with the undertaking;

the Director of Public Prosecutions may, at any time while the person is under sentence, if the Director is of the opinion that it is in the interests of the administration of justice to do so, appeal against the inadequacy of the sentence or of the non-parole period.

“(3) The court hearing the appeal—

- (a) if it is satisfied that the person has failed entirely to cooperate in accordance with the undertaking—shall substitute for the reduced sentence or non-parole period the sentence or non-parole period that would have been imposed on, or fixed in respect of, the person but for the reduction; and
- (b) if it is satisfied that the person has failed in part to cooperate in accordance with the undertaking—may substitute for the reduced sentence or non-parole period such a sentence or non-parole period as it thinks appropriate.

“(4) The sentence or non-parole period that may be substituted under paragraph (3) (b) shall not exceed that which may be imposed or fixed under paragraph (3) (a).

Court to explain sentence

“450. (1) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory and fixes a non-parole period in respect of the sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of fixing that non-parole period including, in particular, an explanation—

- (a) that service of the sentence will entail a period of imprisonment of not less than the non-parole period and, if a parole order is made, a period of service in the community to complete service of the sentence;
- (b) that, if a parole order is made, the order will be subject to conditions;
- (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
- (d) that the parole order may be amended or revoked.

“(2) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory but gives a direction under paragraph 556B (1) (b) in respect of that sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of giving that direction including, in particular, an explanation—

- (a) that service of the sentence will entail a period of imprisonment equal to the pre-release period (if any) specified in that direction and a period of service in the community equal to the balance of the sentence;

- (b) of the conditions to which that direction is subject;
- (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
- (d) that any recognisance given in accordance with that direction may be discharged or varied under section 556D.

“(3) Where—

- (a) a court explains or causes to be explained to a person, in accordance with subsection (1) or (2), the matters specified in that subsection; and
- (b) that person is to serve a term of imprisonment;

the Registrar of the court shall provide or cause to be provided to that person, or his or her legal representative, a written record of those matters.

Time held in custody to count

“451. (1) If an offender is sentenced to a term of imprisonment in respect of an offence, any period of time during which he or she was held in custody in relation to proceedings for that offence or proceedings arising from those proceedings shall be reckoned as a period of imprisonment already served under the sentence.

“(2) Subsection (1) does not apply—

- (a) to a period of custody of less than 1 day;
- (b) to a sentence of imprisonment of less than 1 day; or
- (c) to a sentence of imprisonment which has been wholly suspended or to the suspended part of a partly suspended sentence of imprisonment.

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

Sentence to be adjusted if no remission laws apply

“452. If an offender’s sentence is to be served in a prison of a State or another Territory where sentences are not subject to remission or reduction, the court imposing the sentence shall take that fact into account in determining the length of the sentence and shall adjust the sentence accordingly.

“Division 2—Pre-sentence reports

Interpretation

“453. In this Division—

‘authorised officer’ means a public servant who is authorised in writing by the administrative head for the purposes of this Division.

Court may order pre-sentence reports

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

“(2) A pre-sentence report may be presented to the court either orally or in written form.

“(3) A court shall not order a pre-sentence report in respect of a person before the court finds that person guilty of an offence unless the person has indicated that he or she proposes to plead guilty to the offence.

“(4) The authorised officer shall conduct any investigation that he or she thinks appropriate or that is directed by the court.

Contents of pre-sentence report

“455. (1) The authorised officer shall, so far as practicable, include in a pre-sentence report particulars of each of the following matters which, on investigation, appear to be relevant to sentence:

- (a) the age of the offender;
- (b) the social history and background (including cultural background) of the offender;
- (c) the medical and psychiatric history of the offender;
- (d) the offender’s educational background;
- (e) the offender’s employment history;
- (f) the circumstances of any offences of which the offender has been found guilty and in respect of which the offender is to be sentenced;
- (g) the extent to which the offender is complying, or has complied, with any sentence;
- (h) the offender’s financial circumstances;
- (i) any special needs of the offender;
- (j) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which he or she may benefit;

- (k) the authorised officer's opinion about—
 - (i) the offender's attitude to the offence; and
 - (ii) the offender's propensity to commit further offences;
- (l) any other facts which the authorised officer considers to be relevant.

“(2) The authorised officer shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

Circulation of the report

“456. The authorised officer shall, before the court passes sentence, provide a copy of any written pre-sentence report to—

- (a) the prosecutor;
- (b) any legal practitioner representing the offender; and
- (c) where—
 - (i) the court has so directed; or
 - (ii) the offender is not legally represented;the offender.

Right of cross-examination

“457. The prosecution and the defence may cross-examine the author of a pre-sentence report on its contents.”.

Conditional release of offenders

10. Section 556B of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) A court shall not release a person under subsection (1) on condition that the person perform unpaid community work.”.

NOTE

1. Reprinted as at 8 July 1992. See also Acts Nos. 65 and 76, 1992 and No. 3, 1993.

[Presentation speech made in Assembly on 25 March 1993]

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