

2004

**LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (SENTENCING) BILL 2004
EXPOSURE DRAFT**

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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Outline

The Crimes (Sentencing) Bill 2004 (the Bill), together with the Crimes (Sentence Administration) Bill 2004 consolidates existing sentencing laws currently contained in 12 different Acts and several more subordinate laws.

The consolidation is being undertaken as a response to the Government's election platform which promised a review of Territory sentencing procedures and the criteria used by the judiciary when setting sentences. It is intended that the new legislation will maximise sentencing effectiveness and remove anomalies or inconsistencies in current legislation.

The consolidation is essentially a complete overhaul of sentencing laws.

The Bill introduces a number of changes to current terminology. For example, the term recognisance has been replaced with good behaviour bond.

The Bill introduces a number of new concepts including rehabilitation program conditions, non-conviction orders, financial penalty orders and non-conviction donation orders.

The Bill introduces several new sentencing options including non-association/place restriction orders and formalises and extends upon the Griffith's remand process through the introduction of pre-sentence orders.

The Bill introduces the concept of combination sentences that allow for greater flexibility in sentencing options by removing restrictions on combining penalties on individual charges allowing greater flexibility to customise sentences for the individual and the circumstances of the offence.

Community service orders have been revised to no longer be a stand-alone penalty but rather an order that attaches to a good behaviour bond. Greater flexibility has been provided in the scheme by increasing the maximum number of hours that can be ordered pursuant to a community service order to 500 and the provisions dealing with how community service hours work is counted have been re-written. This change allows streamlining of procedures for dealing with breaches.

Victim impact statement provisions have been reviewed and the classes of people who can make a victim impact statement has been extended to include a person with parental responsibility for a victim of the offence and a carer for a victim of the offence. Victim impact statements can be given orally in court by or for a victim.

The Bills substantially revise procedures for dealing with breaches of court orders to ensure swift and prompt responses to allegations of breach of a range of sentencing orders. This includes the introduction of a new court attendance notice requiring offenders to appear before the court or board, as applicable, within much shorter periods of time. A police officer or a corrections officer is responsible for requesting that the offender enter into the

agreement to attend and sign the notice and a failure to attend before the court or board pursuant to the agreement will provide a basis for the issue of an arrest warrant. The availability of arrest warrants generally has also been extended.

The provisions of the Bill are explained in detail below.

Part 1 – Preliminary

This part contains the formal clauses for the Bill, setting out the name of the Act, arrangements for commencement and how the dictionary and notes to the Act should be used. For the purposes of comparison, the notes include references to relevant provisions of the legislation that will be consolidated by the Act.

Part 2 – Objects and purposes

This part is a general “road marker” part and provides a description of the objects and principles of the Act and how the Act may be used.

The objects in **clause 6**, and the purposes underpinning sentencing outlined in **clause 7** are a legislative statement of the fundamental reasons for the Act and the balancing of interests that occurs in sentencing orders. The paramount consideration under the Act is the need to ensure that an offender is adequately punished for the offence in a way that is just and appropriate in all the circumstances. This needs to be achieved, however, taking into account the need to prevent crime by deterring the offender and other people from committing the same or similar offences, protect the community from the offender, and promote the rehabilitation of the offender.

Clause 8 defines offender for the Act as a person convicted or found guilty of an offence by a court.

Part 3 – Sentencing and non-conviction options

Division 3.1 – General

Clause 9 deals with the imposition of penalties and sets out the penalty a court may impose for an offence.

Division 3.2 – Sentences of imprisonment

Clause 10 deals with imprisonment generally and provides for the circumstances in which a court can make an order sentencing an offender to imprisonment.

Division 3.3 – Alternatives to full-time imprisonment in a correctional centre

Clause 11 provides for home detention as an alternative to full-time detention.

Clause 12 provides for periodic detention as an alternative to full-time detention.

Division 3.4 – Non custodial alternatives

Clause 13 provides for good behaviour bonds generally. Good behaviour bonds replace recognisances and options available currently under section 403 of the *Crimes Act 1900*.

Clause 14 provides for good behaviour bonds with an attached community service order. Community service orders have been streamlined and brought into line with other community based orders. Community service orders will no longer be stand-alone orders but will attach to good behaviour bonds.

Clause 15 provides for good behaviour bonds and introduces the concept of a rehabilitation program order that would attach to the good behaviour bond.

Clause 16 provides for the court to make a non-conviction order and outlines the circumstances in which a court may make a non-conviction order. Non-conviction orders replace the current options available under section 402 (1)(b) of the *Crimes Act 1900*.

Clause 17 provides for the court to make a suspended sentence order and outlines the circumstances in which a court may make a suspended sentence order. Suspended sentence orders replace the current option available under section 403(1)(b) of the *Crimes Act 1900*.

Division 3.5 – Pre-sentence orders

Clauses 18 and 19 introduce the new concept of a pre-sentence order. The pre-sentence order will formalise the procedure currently referred to by the courts as a Griffith's remand. Pre-sentence orders will be available in wider circumstances than a Griffith's remand and the clauses outline the circumstances in which the court may make a pre-sentence order.

Clause 20 sets out the period of effect of a pre-sentence order.

Clause 21 details the level of explanation the court is required to give to the offender when explaining a pre-sentence order.

Division 3.6 – Financial penalties

Clause 22 provides for the imposition of financial penalty orders where a conviction is recorded. A financial penalty can be a fine and/or donation.

Clause 23 provides for the imposition of bonded financial penalty orders where a conviction is recorded. A financial penalty can be a fine and/or donation.

Clause 24 provides for the imposition of bonded donation orders when a non-conviction order is made.

Clause 25 sets out the maximum amount of financial penalties that can be imposed by a court by reference to jurisdiction.

Division 3.7 – Non-association and place restriction conditions

Clause 26 outlines the application of division 3.7. A non-association and/or place restriction condition can be imposed where the court makes a non-conviction order, good behaviour order, periodic detention order or home detention order.

Clause 27 defines non-association condition and place restriction condition.

Clause 28 details the circumstances under which the court may include a non-association condition or a place restriction condition in a bond or order.

Clause 29 makes it an offence in particular circumstances for an offender who is the subject to a non-association and/or place restriction condition from disclosing identifying information about the associated person.

Division 3.8 – Driver licence disqualification orders

Clause 30 allows the court to order a driver licence disqualification order if an offender is convicted of an offence against a Territory law or the *Criminal Code 2002* for particularised offences.

Division 3.9 – Reparation orders

Clause 31 outlines the application of division 3.9 – reparation orders.

Clause 32 allows the Director of Public Prosecutions to apply to the court for a reparation order, or for a court on its own initiative to make a reparation order for a person who has suffered loss or incurred expense as a direct result of the commission of the offence. This clause also details the conditions under which a reparation order may be granted. The amount recoverable will be an amount not exceeding the value of the stolen property together with the amount of any additional loss suffered, or expense, including any out-of-pocket expenses, incurred as a direct result of the commission of the offence.

Clause 33 allows the court to make additional reparation orders to provide for the restoration of stolen property to the person entitled to its recovery, or, an amount not exceeding the value of the property in situations where the property cannot be returned.

Clause 34 allows the court to make additional reparation orders to the honest purchaser of stolen property.

Clause 35 allows the court to make additional reparation orders to the mortgagee of stolen property.

Division 3.10 – Combination sentences

Clause 36 provides that division 3.10 applies if an offender is convicted of an offence punishable by imprisonment.

Clause 37 sets out the nature of combination sentences. The court is given the flexibility of imposing any two or more of a number of orders set out on each charge. For example, the imposition of a sentence of imprisonment followed by a periodic detention order followed by a suspended sentence order.

Clause 38 provides how a court may fix start and end times for an order under a combination sentence.

Clause 39 provides that a contravention of any order under a combination sentence will be taken to be a contravention of each order that forms part of the sentence.

Part 4 – Sentencing procedures generally

Division 4.1 – General principles

Clause 40 outlines the court's power to reduce penalties.

Clause 41 details the relevant considerations that the court must have regard to in deciding what sentence to impose on an offender.

Clause 42 details the irrelevant considerations that the court must not use to increase the severity of a sentence.

Clause 43 allows the court to reduce a sentence in recognition of an offender's plead guilty to an offence.

Clause 44 allows the court to impose a lesser penalty where an offender has assisted or undertook to assist law enforcement authorities in the prevention, detection or investigation of an offence. This clause also details the considerations the court must have in deciding whether to impose a lesser penalty.

Clause 45 provides for the sentencing of an offender any time after conviction of an offence where sentence is deferred.

Clause 46 provides that the court, in imposing a defined sentence on an adult offender who is at the time of sentencing the subject of a young offender order, must take into account uncompleted young offender orders.

Division 4.2 – Pre-sentence reports

Clause 47 outlines the application of division 4.2 – Pre-sentence reports.

Clause 48 provides for definitions under this division.

Clause 49 outlines the situations under which a court may order a pre-sentence report, the contents of the pre-sentence report and the form of any pre-sentence report.

Clause 50 specifies the contents required in a pre-sentence report.

Clause 51 details the requirements for circulation of a pre-sentence report.

Clause 52 provides for the right of cross-examination on a pre-sentence report.

Division 4.3 – Victim impact statements

Clause 53 outlines the application of division 4.3 – Victim impact statements.

Clause 54 provides for definitions under the division.

Clause 55 specifies who may make a victim impact statement, including a victim of an offence, a person with parental responsibility for a victim of an offence and a carer for a victim of an offence. Definitions for those terms are also provided for.

Clause 56 provides that victim impact statements may be oral or written.

Clause 57 specifies the form and contents required of a victim impact statement.

Clause 58 details how a court may receive victim impact statements.

Clause 59 outlines the effect of victim impact statements for the court in deciding what sentence to impose.

Division 4.4 – Taking further offences into account

Clause 60 outlines the application of division 4.4 – Taking further offences into account.

Clause 61 provides definitions for the division.

Clause 62 allows the prosecutor to file in court a list of additional charges that lists further offences allegedly committed by the offender. This section applies if a court has found an offence provided against a person but has not yet imposed a penalty for the offence.

Clause 63 allows the court, before imposing a penalty, to take into account outstanding further offences. The clause also outlines issues of consideration for the court in determining such an action.

Clause 64 provides for ancillary orders relating to offences to be taken into account by the court when imposing a penalty on an offender for a principal offence. Ancillary order is defined to mean an order or direction in relation to restitution, compensation, costs, forfeiture, destruction, and disqualification, loss, or suspension of a licence or privilege.

Clause 65 outlines the consequences for the court where a further offence is taken into account in imposing a penalty on the offender.

Clause 66 details situations when evidence of offences taken into account during sentencing is admissible.

Division 4.5 – Corrections and adjustment of penalties

Clause 67 provides for the re-opening of a criminal proceeding to correct errors where a court has made a sentence-related order contrary to law or has failed to make a sentence related order required by law and sets out the process for this to occur.

Part 5 – Imprisonment

Division 5.1 – Preliminary

Clause 68 outlines the application of Part 5 – Imprisonment

Division 5.2 – Start of sentences

Clause 69 sets out the general rule relating to the commencement of sentences.

Clause 70 sets out the start of combination sentences.

Clause 71 provides for backdated sentences.

Division 5.3 – Parole orders

Clause 72 outlines the non-application of division 5.3

Clause 73 sets out the circumstances in which a court must set a non-parole period.

Clause 74 provides that the court may, in sentencing an offender for imprisonment, recommend conditions for parole of the offender.

Clause 75 allows for review of a decision on a non-parole period.

Clause 76 outlines procedures and requires a court to set a new non-parole period for a sentence in certain circumstances.

Clause 77 provides for the amendment or revocation of non-parole period upon appeal to the court.

Clause 78 details the information the court is required to give to the Sentence Administration Board upon setting a non-parole period and sentencing a person to a term of imprisonment.

Division 5.4 – Explanation to offenders

Clause 79 provides that the court must provide certain information and an explanation of the type of information about the sentence of imprisonment that the court is required to give to an offender, following sentencing.

Clause 80 requires the court to give to an offender or an offender's lawyer a written record of the explanation provided under clause 79.

Division 5.5 – Concurrent and consecutive sentences

Clause 81 outlines the application of division 5.5 – Concurrent and consecutive sentences and provides definitions for the division.

Clause 82 provides further definitions for the division.

Clause 83 sets out the general rule and provides directions for the court in relation to concurrent and consecutive sentences.

Clause 84 provides direction for the court when sentencing for offences committed while in custody or involving escape from custody.

Clause 85 provides direction for the court when sentencing for fine default offences.

Clause 86 provides that a court that reverses or amends a sentence of imprisonment may amend the starting of any other sentence that has been imposed on the offender.

Clause 87 provides for previous sentences to be noted in a new sentence.

Division 5.6 – Imprisonment – breach of undertaking to cooperate with law enforcement authorities

Clause 88 allows the Director of Public Prosecutions to appeal against the inadequacy of a sentence or of the non-parole period if, after sentence, an offender does not cooperate in accordance with an undertaking.

Part 6 – Home detention

Division 6.1 – Home detention – preliminary

Clause 89 outlines the application of division 6.1 – Home detention - preliminary.

Clause 90 provides definitions for the division.

Division 6.2 – Home detention – eligibility

Clause 91 lists offences for which home detention is not available.

Clause 92 provides that home detention is not available for offenders or remandees with a certain history, and lists the convictions that do not permit home detention.

Clause 93 outlines the criteria for assessing offender or remandee's suitability for home detention.

Clause 94 requires the court to request a report or assessment on an offender or remandee's suitability for home detention before a home detention order can be made and outlines the circumstances under which such a request can be made.

Clause 95 allows the court to impose a sentence of home detention to operate concurrently or consecutively with an existing sentence.

Division 6.3 – Home detention – assessment

Clause 96 defines home detention assessor for the division.

Clause 97 provides for the court to refer an offender or remandee for assessment for home detention.

Clause 98 outlines the type of information the court is required to address in the home detention assessment report.

Clause 99 provides for the provision of information to the person who is preparing the assessment report on an offender's suitability for home detention.

Division 6.4 – Home detention – miscellaneous

Clause 100 requires the court to explain to an offender or remandee the home detention obligations on the offender and the consequences that may follow if those obligations are breached.

Clause 101 requires the court to give to an offender and the chief executive an official notice of the home detention order and details the type of information to be included.

Part 7 – Periodic detention

Division 7.1 – Periodic detention – preliminary

Clause 102 outlines the application of Part 7 – Periodic detention

Clause 103 defines periodic detention obligation for the part.

Division 7.2 – Periodic detention – eligibility

Clause 104 outlines the considerations to be taken into account by a court when determining an offender's suitability for periodic detention.

Clause 105 allows the court to impose concurrent and consecutive sentences of periodic detention.

Division 7.3 – Periodic detention – assessment

Clause 106 provides the definition for periodic detention assessor.

Clause 107 allows for the referral of an offender for an assessment of suitability to serve a sentence of periodic detention.

Clause 108 allows assessment reports to be provided to a court in relation to an offender's suitability for periodic detention and details relevant factors in determining suitability.

Clause 109 – provides for the provision of information to the person who is preparing the assessment report on an offender's suitability for periodic detention.

Division 7.4 – Periodic detention – miscellaneous

Clause 110 provides that a sentence of periodic detention commences on the date stated in the order.

Clause 111 provides for the extension of a periodic detention order where the periodic detention order is part of a combination sentence that is extended.

Clause 112 requires the court to explain to an offender, after sentencing, the periodic detention obligations on the offender and the consequences that may follow if those obligations are breached.

Clause 113 requires the court to give to an offender and the chief executive an official notice of the periodic detention order and details the type of information to be included.

Part 8 – Good behaviour bonds

Division 8.1 – Good behaviour bonds - preliminary

Clause 114 outlines the application of Part 8 – Good behaviour bonds - preliminary.

Division 8.2 – Good behaviour bonds - conditions

Clause 115 details the conditions relevant to good behaviour bonds.

Clause 116 details the amount of security that may be required by the offender or a surety as a condition of a good behaviour bond and outlines situations where security may not be required.

Division 8.3 – Good behaviour bonds – explanation

Clause 117 requires the court to explain to an offender the nature of a good behaviour bond, the conditions of the bond, and the consequences that may follow if those conditions are breached.

Clause 118 requires the court to explain to any surety who has given security for an offender the nature of a good behaviour bond, the conditions of the bond, and the consequences that may follow if those conditions are breached and provide the surety with a copy of the bond.

Part 9 – Community service

Division 9.1 – Community service orders – general

Clause 119 outlines the application of Part 9.

Clause 120 provides definitions for Part 9.

Clause 121 outlines the number of hours and the period of hours to be performed for a community service condition. It also specifies the period in which work must be performed and how time is counted towards fulfilment of the community service order requirement.

Division 9.2 – Community service – eligibility

Clause 122 provides for when a community service order can be made and sets out the type of information the court is required to consider in determining the suitability of an offender for community service work.

Clause 123 allows the court to impose a community service order to operate concurrently or consecutively with an existing community service order.

Division 9.3 – Community service – assessment

Clause 124 provides a definition for community service assessor.

Clause 125 provides that before sentencing an offender, the court may refer the offender for an assessment of suitability to undertake community service.

Clause 126 provides for assessment reports on an offender's suitability for community service to be provided to the court.

Clause 127 - provides for the provision of information to the person who is preparing the assessment report on an offender's suitability for community service.

Division 9.4 – Community service orders - miscellaneous

Clause 128 requires the court to explain to an offender the community service obligations and the consequences that may follow if those obligations are breached if a community service order is made.

Clause 129 requires official notice of a community service order to be given to an offender and the chief executive and details the information that must be contained in that notice.

Part 10 – Rehabilitation programs

Division 10.1 – Rehabilitation programs -preliminary

Clause 130 outlines the application of part 10 – Rehabilitation programs.

Clause 131 provides definitions for the part.

Division 10.2 – Rehabilitation programs – eligibility

Clause 132 details the type of information the court is required to consider in determining an offender's suitability for a rehabilitation program.

Clause 133 allows the court to impose a rehabilitation program order to operate concurrently or consecutively with an existing rehabilitation program order.

Division 10.3 – Rehabilitation program orders – assessment

Clause 134 provides the definition for rehabilitation program assessor for the division.

Clause 135 provides that before sentencing an offender, the court may refer the offender for an assessment of suitability to undertake a rehabilitation program.

Clause 136 provides an assessment report on an offender's suitability for a rehabilitation program that may be provided to the court.

Clause 137 provides for the provision of information to the person who is preparing the assessment report on an offender's suitability for a rehabilitation program.

Division 10.4 – Rehabilitation programs – miscellaneous

Clause 138 requires the court to explain to an offender the rehabilitation program obligations and the consequences that may follow if those obligations are breached.

Clause 139 requires the court to provide to the offender and the chief executive official notice of the rehabilitation program order and the good behaviour bond the offender is required to enter under the order.

Part 11 – Reparation

Clause 140 provides for the application of Part 11 – Reparation.

Clause 141 provides that the court must decide the amount to be paid as reparation in circumstances where there is no agreement about the amount of the loss between the parties.

Clause 142 provides that a reparation order may be enforced as if it were a final judgment of the court.

Clause 143 allows the payment of money by instalments in cases where the court makes a reparation order.

Clause 144 provides that if an offender contravenes a reparation order, the court may make an order for the payment of money against the offender in substitution for the contravened order.

Clause 145 provides that an offender may not be imprisoned for contravening a reparation order unless compliance with that order is a condition of a non-conviction order or good behaviour bond.

Clause 146 provides that the court must be satisfied of the evidentiary basis for making a reparation order before making a reparation order.

Clause 147 allows other actions for recovery other than those available under the Act.

Part 12 – Miscellaneous

Clause 148 provides that a failure to comply with the Act may be considered by an appeal court in any appeal against sentence even if the Act declares that the failure to comply does not invalidate the sentence.

Clause 149 contains the regulation making power of the Executive.

Part 13 – Transitional

Clause 150 contains the definition of commencement day.

Clause 151 sets out the application of the Act to offences that have already been committed.

Clause 152 provides that a non-parole period set under section 31 of the *Rehabilitation of Offenders (Interim) Act 2001* continues to apply and that after the commencement of this Act is taken to be a non-parole period set under this Act.

Clause 153 provides that a reparation order made under section 350 of the *Crimes Act 1900* will be taken to be a reparation order under division 3.9 of this Act. The reparation order may be enforced under this Act.

Clause 154 allows regulations under this Act to proscribe transitional matters that are necessary or convenient.

Clause 155 provides regulations may modify the operation of this part to provide for any matter that, in the Executive's opinion, is not adequately dealt with in this part.

Clause 156 provides that this part expires 2 years after the day it commences.

The **Dictionary** section of the Act contains definitions for the purposes of the Act.