2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CRIMES (SENTENCING) BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
Jon Stanhope MLA

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Crimes (Sentencing) Bill 2005

Outline

The Crimes (Sentencing) Bill 2005 consolidates existing sentencing laws set out in a number of different statutes. The Bill also introduces a number of new options for sentencing courts and modernises the law.

The Bill introduces the concept of combination sentences that allow for greater flexibility in sentencing. The Bill enables Courts to combine penalties for individual convictions, allowing greater flexibility to customise sentences to the offence, the offender and the circumstances of the offence. Combination sentences aim to improve the options available to Courts to maximise the prevention, management and rehabilitation of offending behaviour, depending upon the nature of the offending person.

Other new sentencing options are non-association orders and place restriction orders against offenders who commit offences involving violence against a person. Non-association orders prohibit an offender from associating with a specified person for a specified time. Place restriction orders prohibit an offender from frequenting, or visiting, a specified place or district for a specified time.

The Bill also formalises and extends the *Griffiths* remand option, under the label of deferred sentence orders. These orders will enable the Court to adjourn proceedings to provide an offender with an opportunity to address their criminal behaviour before sentencing. In this way the Court can assess the offender's prospects for rehabilitation, or the offender's ability to address their criminal behaviour.

While maintaining traditional sentencing options, the Bill also modernises sentencing terminology. For example, the term recognisance has been replaced with good behaviour order.

The Bill changes how certain non-imprisonment orders can be made. Rather than existing as a stand-alone dispositions, probation, community service and rehabilitation are all conditions of a good behaviour order. Greater flexibility for community service is provided by increasing the maximum number of hours that can be ordered to 500 and the provisions dealing with how community service hours work is counted are updated. Changing the framework for these orders also enables a consistent and simple procedure for dealing with breaches.

Victim impact statements can now be made by people with parental responsibility for a victim, a close family member of a victim as provisions, a carer of a victim and a person with an intimate personal relationship with the victim. Victim impact statements can be given orally in court by, or for, a victim and can be made if the trial was for an offence holding a punishment of more than a year's imprisonment.

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Detail

Chapter 1 — Preliminary

Clause 1 — Name of Act

This is a technical clause which names the short title of the Act. The name of the Act would be the *Crimes (Sentencing) Act 2005*.

Clause 2— Commencement

This clause enables the Act to commence on a day nominated by the Minister in a commencement notice. The provisions for a commencement notice are set out in section 77 of the *Legislation Act 2001*.

If the Minister does not commence the Act six months after the Act is notified on the Legislation Register, then the Act automatically commences the following day. The provisions for automatic commencement are set out in section 79 of the *Legislation Act 2001*.

Clause 3— Dictionary

This is a technical clause identifying the dictionary and explaining conventions used to define words and terms.

Clause 4 — Notes

This is a technical clause explaining the status of notes to the Act.

Clause 5 — Offences against Act — application of Criminal Code etc

This clause makes it clear that the *Criminal Code 2002* applies to the Act.

Chapter 2 — Objects and important concepts

Clause 6 — Objects of Act

The objects in clause 6, and the purposes informing 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.

In *Veen v The Queen* [No.2] 164 CLR 465 Chief Justice Mason and Justices Brennan, Dawson and Toohey of the High Court noted that:

> . . . sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal

> punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. [at 476.]

Clause 7 — Purposes of sentencing

The purposes of sentencing set out in clause 7 represent the purposes articulated by Courts and Parliaments accrued over centuries of law. The clause intends to maintain the historical continuity. Clause 7(2) ensures there is no weight attached to the order of the purposes in 7(1).

Clause 8 — Meaning of *offender*

Clause 8 specifies that an offender is a person who is either found guilty of an offence or convicted of an offence. Found guilty includes a finding of guilt by a jury and conditional release by a Court after it has found charges proven but has not convicted a person.

A conviction is the complete orders made by a court after finding an accused person guilty of an offence including both the finding of guilt and the sentence passed. In some instances a Court may have reached a finding of guilt yet not completed its official function by formally convicting and sentencing a person, because for example, the Court has ordered something else to happen in the interim. In other instances a court may convict a person by its actions when it finds a person guilty and proceeds to sentence the person without explicitly stating that the person is convicted.

The clause includes a particular definition of offender for pre-sentence reports, namely that a person has indicated that they will plead guilty to an offence.

Chapter 3 — Sentencing and non-conviction options

Part 3.1 — General

Clause 9 — Imposition of penalties

Clause 9(1) stipulates that a penalty that a court of the Australian Capital Territory can impose is any penalty set out in the Bill or any existing Australian Capital Territory law.

Clause 9(2) specifies that the procedure in this Bill for the imposition of penalties applies to all Territory penalties. Note 1 is a useful summary of the sentencing dispositions available to the courts. Note 2 indicates that the Bill would authorise a combination of the sentencing dispositions.

Part 3.2 — Sentences of imprisonment

Clause 10 — Imprisonment

Clause 10 provides the overarching power for a court to sentence a convicted person to imprisonment. Imprisonment is the confinement of an offender in the custody of the state, and restrains the liberty of the person during the time of imprisonment.

Clause 10(2) makes it clear that all, or part of a sentence, can be served in prison.

Clause 10(3) states that imprisonment must be served by full-time detention in custody unless another disposition is ordered or authorised by a court, or authorised by legislation. Examples include a suspended sentence order made by a court (clause 12), periodic detention (clause 11) and release on parole (part 5.2).

Clause 10(4) requires the court to give reasons if imprisonment is imposed, and clause 10(7) clarifies that clause 10 is subject to chapter 5.

Clause 10(5) enables the substance of sentence to be upheld despite the fact that a Court or the Executive did not comply with clause 10.

Clause 10(6) clarifies that the section applies to Territory law unless a contrary intention is established in the law that creates an offence.

Clause 11 — Periodic detention

Periodic detention is part-time imprisonment. An offender is in full-time custody for a period of a week, usually over the weekend. This arrangement allows both the imposition of a custodial sentence and the maintenance of an offender's positive contribution to the community such as family life, work or study.

The Government has opted for a form of periodic detention linked to a sentence of imprisonment. A Court may set a period of periodic detention if a sentence of imprisonment is imposed. ACT Corrective Services has the responsibility of implementing the periodic detention and the Sentence Administration Board has the responsibility of addressing any breaches of periodic detention and if necessary reverting the offender to full-time imprisonment.

Clause 11(1) stipulates that periodic detention is only available if a person is convicted and sentenced to imprisonment.

Clause 11(2) authorises the Court set a period of imprisonment that may be served by way of periodic detention.

Clause 11(3) allows periodic detention to be set for all, or part, of a sentence of imprisonment. However, a period of periodic detention has to be at least three months but no longer than two years.

In clause 11(4) the Court is required to state when the period of periodic detention should begin, and the length of the period, and the first day of detention. This allows the Court to contemplate time already spent by the offender in custody.

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Clause 11(5) enables the Court to recommend to the Sentence Administration Board any conditions to be imposed upon the offender the Court considers appropriate for enforcing or managing the offender during the period of periodic detention.

Clause 11(6) clarifies that clause 11 is subject to chapter 5 of the Bill.

Clause 12 — Suspended sentences

A suspended sentence enables a court to sentence an offender to a term of imprisonment and then suspend the execution of that imprisonment on the basis that the offender complies with conditions set by the Court. The tool for setting conditions in this Bill is the good behaviour order. If the offender breaches the good behaviour order made in conjunction with a suspended sentence, the Court will have authority to execute the sentence or re-sentence the offender.

Clause 12(1) states that a suspended sentence can only be ordered if the offender is both convicted of an offence and sentenced to imprisonment.

Clause 12(2) enables the Court to suspend all or part of the imprisonment. The offender will be imprisoned for the period of time not suspended by the Court.

Clause 12(3) requires the Court to make a good behaviour order for the period of the suspended sentence, and longer if the Court determines. In making a good behaviour order in conjunction with the suspended sentence the Court will impose conditions upon the offender that the Court requires the offender to meet to prevent the execution of the sentence.

If a sentence is fully suspended, clause 12(4) requires the Court to notify the offender and give them a copy of the order. However, if a court does not succeed in doing this, 12(5) ensures that the order still stands.

Clause 12(6) clarifies that clause 12 is subject to the provisions governing good behaviour orders at clause 13 and chapter 6, and imprisonment at chapter 5. These are discussed below.

Part 3.3 — Non-custodial alternatives

Clause 13 — Good behaviour orders

Good behaviour orders replace recognisances and options available currently under section 403 of the *Crimes Act 1900*. The Bill contemplates these orders to be used in conjunction with other orders, such as suspended sentences, combination sentences, periodic detention, non-conviction orders etc.

Clause 13(1) enables good behaviour orders to be made by a court if an offender is convicted or found guilty. (Clause 8 above discusses the nuances of convicted and found guilty.)

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Clause 13(2) empowers the Court to make good behaviour orders that requires an offender to sign an undertaking to comply with the order's obligations. The foreshadowed Crimes (Sentence Administration) Bill will include an obligation to comply with any statutory conditions and conditions set by the Court.

Clause 13(3) sets out the overarching conditions that can be imposed by a good behaviour order. In 13(3)(a) the offender, or another person (a surety), can be required to lodge an amount of money with the Court. The amounts can be up to $10,000 for the Supreme Court and $2000 for the Magistrates Court. These amounts are at risk of forfeiture if the offender does not comply with the good behaviour order.

In 13(3)(b) the Court can impose a condition that the offender carries out community service. Community service work is discussed below at part 6.1.

In 13(3)(c) the Court can impose a condition that the offender engages in a rehabilitation program. Rehabilitation programs are discussed at part 6.2.

Clause 13(3)(d) enables the Court to impose a probation condition as part of a good behaviour order. In essence, probation requires the person to be under the supervision of a corrections officer, or other authority, and to obey the directions of that officer.

Clause 13(3)(e) authorises the Court to impose a reparation order as part of the good behaviour order. Reparation orders are discussed at clause 19.

Clause 13(3)(f) authorises the Court to impose any condition prescribed in regulations made by the Executive.

Clause 13(3)(g) authorises the Court to impose any conditions the Court considers appropriate and consistent with this Bill and the foreshadowed Crimes (Sentence Administration) Bill. Examples are provided.

Clause 13(4) makes it clear that a court can make a good behaviour order in lieu of imprisonment, or in combination with imprisonment.

Clause 13(5) clarifies that clause 13(4) does not limit the Court's power to impose sentences.

Clause 13(6) enables a synonymous relationship between good behaviour orders and specific conditions set in the good behaviour order. So a good behaviour order with a community service condition can be regarded, and treated, as a community service order.

Clause 13(7) establishes that clause 13 is subject to clause 17 dealing with non-conviction orders and chapter 6 dealing with good behaviour orders.

Clause 14 — Fines — orders to pay

Clause 14(1) and (2) empowers a court to make an order to pay a fine if a person is convicted of an offence.

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Clause 14(3) clarifies that the Court does not have an obligation to investigate, inquire or seek evidence about a person's financial circumstances before making a fine order. However, if an offender presents evidence of their financial situation the Court must consider the facts when contemplating a fine order. This will enable the Court to assess if a fine order will have any utility, given the offender's financial circumstances.

Clause 14(4) provides courts with the discretion to make a fine order if no explicit punishment of a fine exists in the expression of the offence.

Clause 14(5) requires the Court to state the amount of the fine and the method of paying the fine.

Clause 14(6) obliges the Court to provide a written notice of the fine order and a copy of the order to the offender. However, if a court does not succeed in doing this, 14(7) ensures that the order still stands.

Clause 15 — Fines — maximum amounts

Clause 15 sets out the maximum fine the Supreme Court ($10,000) and the Magistrates Court ($2000) is authorised to impose if the offence itself does not stipulate the maximum fine.

Clause 16 — Driver licence disqualification orders — motor vehicle theft

Offences involving theft of a motor vehicle or taking a motor vehicle without consent may attract a penalty of licence disqualification. Clause 16(1) sets out the type of offences that hold this penalty if the person is found guilty or convicted.

Clause 16(2) authorises the Court to disqualify an offender's licence for a period set by the Court.

Clause 16(3) clarifies that the exercise of the power to disqualify licences does not impede or vary any other power the Court may have in Territory law.

Clause 16(4) obliges the Court to provide a written notice of the fine order and a copy of the order to the offender and the road transport authority. However, if a court does not succeed in doing this, 16(5) ensures that the order still stands.

Clause 16(6) defines certain terms in cause 16. 'Motor vehicle' means a car, car derivative or motorbike. 'Road transport legislation' is the sum of the following Acts: *Road Transport (General) Act 1999*; *Road Transport (Alcohol and Drugs) Act 1977*; *Road Transport (Dimensions and Mass) Act 1990*; *Road Transport (Driver Licensing) Act 1999*; *Road Transport (Public Passenger Services) Act 2001*; *Road Transport (Safety and Traffic Management) Act 1999*; *Road Transport (Vehicle Registration) Act 1999*; and any other Act or any regulations prescribed under the *Road Transport (General) Act 1999*.

Clause 17 — Non-conviction orders

This clause replaces the commensurate provisions in section 402 of the *Crimes Act 1900.*

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Clause 17(1) authorises non-conviction orders to be made if a person is found guilty but the Court does not proceed to conviction. (Clause 8 above discusses found guilty and conviction.) In *Properjohn v Gaughan* [1998] SCACT 26 No. SCA 100 of 1997, Justice Gallop discussed non-conviction orders in reference to the High Court's judgement in *Griffiths v The Queen* 137 CLR 293. Justice Gallop concluded that a non-conviction order is an alternative to conviction and punishment.

A non-conviction order is, therefore, not a sentence. However, if a person breaches any conditions set by the non-conviction order the Court is still empowered to bring the person before the Court and sentence the person for the offence in question.

Clause 17(2) authorises the Court to make a non-conviction order if the Court considers punishment is not appropriate. The order can dismiss the charge or make a good behaviour order for no longer than three years.

When made in conjunction with a non-conviction order, a good behaviour order cannot include a punishment, as discussed by Justice Gallop in *Properjohn.* However, the person found guilty can agree to abide by a good behaviour order and conditions of the order — such as probation and rehabilitation, fulfilling a reparation order etc — knowing that a breach of the order may result in a sentence. (A reparation order is not a sentence in the context of a non-conviction order, as reparation involves returning property unlawfully taken or making up for a loss as a direct consequence of an offence.)

Clause 17(3) and (4) set out the criteria the Court must consider when contemplating a non-conviction order.

Clause 17(5) obliges the Court to provide a written notice of the non-conviction order and a copy of the order to the offender. However, if a court does not succeed in doing this, 17(6) ensures that the order still stands.

Clause 17(7) clarifies that clause 17 is subject to the provisions governing good behaviour orders at clause 13 and chapter 6. These are discussed below.

Clause 18 — Non-conviction orders — ancillary orders

In conjunction with a non-conviction order, clause 18 enables the Court to impose ancillary orders of: restitution; compensation; costs; forfeiture; destruction; or licence disqualification or suspension.

Clause 19 — Reparation orders — losses and expenses generally

Clause 19(1) allows a reparation order to be made if a person is found guilty of an offence and a victim of the crime suffers a loss or incurs an expense as a direct consequence of the offence.

By reference to the *Criminal Code 2002,* clause 19(5) defines 'loss' as a loss in property, whether temporary or permanent, and includes not getting what one might get.

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Clauses 19(2) and (3) enables 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.

Clause 19(4) clarifies that clause 19 is subject to chapter 7.

Clause 20 — Reparation orders — stolen property

If an offender is convicted or found guilty of an offence that involves stealing property, clause 20 enables a reparation order to be made.

Clauses 20(2) and (3) enables 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. The order can require the property in question to be returned to the person who has the right to own or possess the property. Alternatively, the order can require the offender to pay an amount equal to the value of the stolen property to the person who had the right to own or possess the property.

Orders under clauses 19 and 20 can be made in conjunction with one another, as clause 19 contemplates loss other than just property stolen. For example, if a plumber's tools are stolen and the plumber is unable to work until alternative tools are obtained, the loss in earnings for that time may be contemplated by a reparation order in clause 19.

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 20(4) contemplates people who have innocently purchased stolen property or people who have borrowed money using the property in question as security for the loan.

If the Court makes a reparation order under clause 20(3)(a), or the Director of Public Prosecutions makes an application, the Court can order the offender to pay an innocent purchaser the money paid by the purchaser, or pay a lender the amount owed by the innocent borrower.

Clause 20(5) clarifies that clause 20 is subject to chapter 7.

Clause 20(6) defines stolen property by reference to the *Criminal Code 2002,* being: original stolen property; or previously received property; or tainted property.

Stolen property may include all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated or obtained over a period.

Stolen property does not include land appropriated or obtained in the course of theft or obtaining property by deception.

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Property is original stolen property if it is property, or a part of property, that was appropriated in the ACT in the course of theft or a related offence; or in a place outside the ACT in the course of an offence in that place that would have been theft or a related offence if it had happened in the ACT, whether or not the property, or the part of the property, is in the state it was in when it was appropriated; and is in the custody or possession of the person who appropriated it.

Original stolen property is also property, or a part of property, that was obtained in the ACT in the course of obtaining property by deception; or in a place outside the ACT in the course of an offence in that place that would have been obtaining property by deception if it had happened in the ACT whether or not the property, or the part of the property, is in the state it was in when it was obtained; and is in the custody or possession of the person who obtained it or for whom it was obtained.

Property is previously received property if it is property that was received in the ACT in the course of an offence of receiving; or in a place outside the ACT in the course of an offence in that place that would have been receiving if it had happened in the ACT; and is in the custody or possession of the person who received it in the course of that offence.

Property is tainted property if it is, in whole or part, the proceeds of sale of, or property exchanged for: original stolen property; or previously received property; and in the custody in possession of the person who appropriated it or obtained it.

If an amount credited to an account held by a person is property obtained in the ACT in the course of obtaining property by deception (or outside the ACT in the course of an offence that would have been obtaining property by deception if it had happened in the ACT):
the property is taken to be in the possession of the person while all or any part of the amount remains credited to the account; and
the person is taken to have received the property if the person fails to take the steps that are reasonable in the circumstances to ensure that the credit is cancelled.

Part 3.4 — Non-association and place restriction orders

Clause 21 — Definitions for part 3.4

A non-association order is an order prohibiting an offender from associating with a specified person for a specified time. A place restriction order is an order prohibiting an offender from frequenting, or visiting, a specified place or district for a specified time. Further, a non-association order can be limited (prohibiting the offender from being in company with a specified person) or unlimited (prohibiting the offender from being in company with or communicating by any means with a specified person).

Clause 21 defines non-association orders and place restriction orders.

Clause 22 — Application of part 3.4

Clause 22 establishes that non-association and place restriction orders can be made if a periodic detention period is set or a good behaviour order is made. If any combination of these orders are made consecutively or concurrently, then again, place restriction and non-association orders can be made.

Clause 23 — Non-association and place restriction orders — when may be made

Clause 23(1) allows the Court to make a non-association or place restriction order if the offence contemplated is a personal violence offence and the Court considers the order necessary and reasonable to prevent harassment, prevent further offences or assist to manage offending behaviour.

Clause 23(2) requires the Court to make the order proportionate to the purpose of the order.

Examples:

Darryn is convicted of stalking. During the trial it was evident that Darryn was obsessed with a particular person who works at a restaurant in Civic. The court sentences Darryn to a term of periodic detention and orders Darryn not to go to the restaurant, the restaurant's outdoor eating area or the home of the victim, or to associate with the victim or specified friends of the victim for 12 months. The order is proportionate to the purpose of the order.

If the court had ordered that Darryn could not associate with anyone of the same gender and age of the victim, or that Darryn couldn't go to Civic, the order would not be proportionate to the purpose of the order.

Patricia is convicted of common assault. The assault arose in the context of an industrial dispute. The court sentences Patricia to periodic detention for a year and orders Patricia not to associate with the victim of the assault for 12 months.

If the court had ordered that Patricia should not associate with anyone in her industrial organisation, it would be disproportionate and a breach of human rights. If the court had ordered that Patricia should not associate with anyone from the industrial organisation the assaulted person belongs to, this would also be disproportionate.

Todd is found to have committed an act of indecency in the presence of a young person. During the trial the court heard evidence that Todd frequented schools and committed the offence in the grounds of a school. Todd has a mental impairment. Although the trial established that Todd did know the act was wrong, the Court has taken Todd's impairment into account. Todd is sentenced to a good behaviour bond. Amongst other things, the Court makes a place restriction orders that prohibits Todd from being in, or going within a stated distance of, schools.

Clause 23(3) makes it clear that the exercise of the power to impose non-association and place restriction orders not impede or vary any other power the Court may have in Territory law.

Clause 23(4) defines harm and personal violence offence for the purposes of non-association orders and place restriction orders.

Harm mean physical harm to a person, including unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that a person might reasonably object to in the circumstances (whether or not the person was

aware of it at the time). Harm also means harm to a person's mental health, including psychological harm, but not including mere ordinary emotional reactions (for example, distress, grief, fear or anger) — whether temporary or permanent — but does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

Personal violence offence means any offence that causes harm or threatens harm to anyone. Personal violence offence also contemplates domestic violence offences. A domestic violence offence

Domestic violence offences are set out in the *Protection Orders Act 2001.* Section 9(1) of the *Protection Orders Act 2001* sets out the meaning of domestic violence. Section 9(2) refers to the various criminal offences that are taken to be domestic violence when they are committed in a domestic context.

In essence, a person's behaviour is domestic violence if the behaviour:

- causes, or threatens, physical injury to a relevant person;
- causes, or threatens, damage to the property of a relevant person;
- is directed, or threatened to be directed, at a relevant person and is a domestic violence offence; or
- is harassing or offensive towards a relevant person.

A relevant person, in relation to the *Protection Orders Act 2001*, is either a domestic partner; a relative; a child of a domestic partner; or a parent of a child when the other parent of the child is the alleged offender.

Clause 24 — Non-association and place restriction orders — maximum period

Clause 24 limits the length of a non-association order and a place restriction order to 12 months from the day the order starts. However, clause 24(2) makes it clear that the term of any other sentence does not limit the length of a non-association or place restriction order. For example, if a good behaviour order and a non-association order is made at the same time and the good behaviour order only lasts for six months, the Court is still able to order that the non-association order last 12 months.

Clause 25 — Non-association and place restriction orders — explanation and official notices

Clause 25(1) requires the Court to explain to the offender the nature of the order imposed, the obligations upon the offender because of the order and the consequences of failing to comply with the order. This clause only requires the Court to do what is reasonable to explain the order to the offender.

Clause 25(2) obliges the Court to provide a written notice of the non-association or place restriction order (or both) and a copy of the order to the offender. However, if a court does not succeed in doing this, 25(3) ensures that the order still stands.

Clause 26 — Non-association orders — disclosure of identifying information

Clause 26 upholds the privacy of people who may benefit from non-association orders. For example, Alice has been stalked by Mary. Mary becomes subject to a non-association order that stipulates Mary cannot attempt to be with or communicate

with Alice. Alice benefits from the order and clause 26 protects Alice's privacy despite the fact that Mary's sentencing hearing was in open court.

Clause 26(1) creates an offence for publishing the fact that someone, other than an offender, is named by a non-association order. An offence is also created if information that could identify an individual, other than an offender, as being named in a non-association order.

Clause 26(2) excludes specific classes of people who would not be liable for the offence in clause 26(1). There are particular people who because of their profession or job would be privy to the information. These people are defined as relevant people in clause 26(5), namely: the offender; any person named in the order; police; anyone who administers the order or other relevant orders; anyone involved in breaches of the order; any person named in the order as a person who may be told, informed, or written to about the order (as per clause 26(5)(b)); and anyone else authorised by Australian law.

Clause 26(2) also exempts from prosecution people named in the order and anyone involved in publishing the Court's proceedings.

Clause 26(3) obliges the Court not to authorise publication to named people unless the Court is satisfied that the interests of justice will be served.

Clause 26(4) stipulates that the offence created by clause 27 is a strict liability offence. The *Criminal Code 2002* sets out the nature of a strict liability offence at section 23:

> (1) If a law that creates an offence provides that the offence is a strict liability offence—
>
> (a) there are no fault elements for any of the physical elements of the offence; and
>
> (b) the defence of mistake of fact under section 36 (Mistake of fact—strict liability) is available.
>
> (2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence—
>
> (a) there are no fault elements for the physical element; and
>
> (b) the defence of mistake of fact under section 36 is available in relation to the physical element.
>
> (3) The existence of strict liability does not make any other defence unavailable.

Part 3.5 — Deferred sentence orders

Deferred sentence orders are a codification of an existing power available to the Court known as *Griffiths* remands following the High Court's decision in *Griffiths v The Queen* 137 CLR 293.

Deferred sentence orders will enable the Court to adjourn proceedings to provide an offender with an opportunity to address their criminal behaviour before sentencing. In

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this way the Court can assess whether the offender demonstrates prospects for rehabilitation, or the offender's ability to address their criminal behaviour.

Clause 27 — Deferred sentence orders — making

Clause 27(1) sets out the criteria that must exist before a deferred sentence order can be made. Clause 27(1)(a) requires that the offender has been convicted or found guilty, while (1)(b) and (c) requires that the offender isn't already serving a prison sentence or liable to serve a prison sentence.

Clause 27(1)(d) is the consideration that gives the deferred sentence order its particular quality, namely that the Court considers the offender should be given an opportunity to address their criminal behaviour.

Clause 27(1)(e) requires the Court to consider if the offender would be entitled to bail under the *Bail Act 1992*. The *Bail Act 1992* contemplates a presumption against bail for certain offences and circumstances in Division 2.4. Likewise the *Bail Act 1992* also includes a neutral presumption for offences contemplated by Division 2.3.

If an offender was not entitled to bail, a deferred sentence order could not be made.

Clause 27(2) authorises the Court to make a deferred sentence order and to require the offender to appear before it at a later, stated time. Clause 125 (discussed below) limits the order to a period of 12 months.

Clause 27(3) requires the Court to apply the *Bail Act 1992* to the person's release if a deferred sentence order is made.

Clause 27(4) clarifies that deferred sentence orders are not limited to sentences of imprisonment, but may also be used for other sentences such as good behaviour orders.

Clause 27(5) enables the Court to apply any conditions the Court deems appropriate. These conditions are in addition to any conditions the Court may set under the *Bail Act 1992*.

Clause 27(6) clarifies that clause 27 is subject to chapter 8 (discussed below).

Part 3.6 — Combination sentences

Part 3.6 provides for combination sentences. The Court will have the flexibility of imposing any number of orders as part of a whole sentence. For example, the Court may impose a sentence of full-time imprisonment with a period of periodic detention, followed by a good behaviour order with a community service conditions.

Clause 28 — Application of part 3.6

Clause 28 stipulates that part 3.6 applies only if an offender is convicted of an offence.

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Clause 29 — Combination sentences — offences punishable by imprisonment

Clause 29(1) authorises the Court to impose a sentence that combines a number of orders. The orders are:
(a) a sentence of imprisonment (see part 3.2 above);
(b) a suspended sentence (see clause 12 above);
(c) a good behaviour order (see clause 13 above);
(d) a fine order (see clause 14 above);
(e) a diver licence disqualification order (see clause 16 above);
(f) a reparation order (see clauses 19 and 20 above);
(g) & (h) a non-association or place restriction order, or both, (see part 3.4) above;
(i) a treatment order under the *Drugs of Dependence Act 1989*; and
(j) any order imposing any other penalty available under any other Territory law.

Item (j) is included to contemplate any type of lawful penalty that has yet to be made or was not contemplated at the time the Bill was made.

Clause 29(1) provides three examples of how combination sentences are intended to work.

Clause 29(2) clarifies that combination sentences are intended to only involve orders that the relevant court has jurisdiction to issue and are issued in a lawful way.

Clause 30 — Combination sentences — offences punishable by fine

In the ACT there are a range of offence that hold a punishment of a fine but none of imprisonment. Akin to combination sentences that can be made for offences punishable by imprisonment, clause 30(1) authorises combination sentences for offences punishable by fine.

The orders are:
(a) a good behaviour order (see clause 13 above);
(b) a fine order (see clause 14 above);
(c) a diver licence disqualification order (see clause 16 above);
(d) a reparation order (see clauses 19 and 20 above);
(e) & (f) a non-association or place restriction order, or both, (see part 3.4) above; and
(g) any order imposing any other penalty available under any other Territory law.

Item (g) is included to contemplate any type of lawful penalty that has yet to be made or was not contemplated at the time the Bill was made.

Clause 30(2) clarifies that combination sentences for fines are intended to only involve orders that the relevant court has jurisdiction to issue and are issued in a lawful way.

Clause 31 — Combination sentences — start and end

Clause 31 provides three triggers for the Court to use when authorising the start and end dates of sentences and within combination sentences. The Court is able to name particular days or sentencing events, such as the beginning of parole, to determine when aspects of the sentence will be imposes. An example is provided with the clause.

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Chapter 4 — Sentencing procedures generally

Part 4.1 — General principles

Clause 32 — Power to reduce penalties

In English and Australian legal tradition, statutory penalties have been interpreted as providing the maximum penalty a court can impose. In *Sillery v The Queen* (1981) 180 CLR 353 Chief Justice Gibbs stated that if the legislature intends to impose a mandatory penalty the legislature must clearly and explicitly do so.

Clause 32 re-states the present principle in the ACT, namely that sentences of life imprisonment, statutory terms of imprisonment or fines attached to Territory offences may be reduced by a court. For example, if an offence in the *Criminal Code 2002* holds a penalty of 15 years imprisonment, the Court has the power to apply a sentence of 12 years. However, the Court could not impose a penalty greater than 15 years imprisonment.

Clause 33 — Sentencing — relevant considerations

The task of a judge or magistrate sentencing an offender is to impose a sentence in a manner that applies sentencing principles and considerations to all cases equally. The sentencing court must balance the needs of the victim, the community and the offender; determine the factual basis upon which the sentence should be imposed; and consider the circumstances of the offence. The last item is set out in clause 33. Historically, the ACT has had the longest list of matters that the Court must consider when determining a sentence.

The majority of items in clause 33(1) re-state the existing provisions in section 342 of the *Crimes Act 1900*. The additional items in this Bill are (f) and (j).

Clause 33(f) requires the Court to consider the effect of the offence on the victim(s) of the offence and anyone closely connected to the victim who is also affected because of how the victim is affected. Clause 49 (below) explains the people who are contemplated for making victim impact statements.

Clause 33(j) enables the Court to consider disclosures by the defence prior to the trial. Disclosures made by the defence that save a traumatised witness from having to give evidence, for example, or conserve court time, can be considered in favour of the offender.

If the Court is considering a good behaviour order as an appropriate penalty, in clause 33(2) the Court must consider the affect of any conditions it wishes to impose upon the offender.

Clause 33(3) makes it clear that the Court is not limited to the factors in (1) and (2) and may develop the common law by requiring, or considering, other factors.

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Clause 33(4) upholds the Court's discretion to sentence an offender by clarifying that the factors in clause 33 hold no requirement to increase or decrease the severity of a sentence.

Clause 33(5) qualifies the meaning of the word 'defence'.

Clause 34 — Sentencing — irrelevant considerations

Clause 34 sets out what factors the Court must not take into account to increase or decrease the severity of a sentence. Clause 34 re-states the existing provisions in section 344 of the *Crimes Act 1900.*

Clause 35 — Reduction of sentence — guilty plea

Discounting for guilty pleas on the basis of contrition or pragmatism, or both, is accepted by the majority of Australian courts.

Clause 35(1) sets out the circumstances that enable the Court to take into account a guilty plea: firstly the offender must plead guilty to an offence and secondly the Court must be considering a sentence of imprisonment for the offence.

Clause 35(2) lists a set of factors the Court must consider in determining the quantum of the reduction, if any. Clause 35(2)(b) is included as an early guilty plea may be an indication of the offender's remorse, but also provides considerable practical assistance to the criminal justice system and saves court time.

In relation to clause 35(2)(b), clause 35(5) enables the Court to increase any reduction for a guilty plea commensurate to the stage in criminal proceedings,

Clause 35(2)(c) is included to enable the Court to discern whether or not a guilty plea associated with negotiations is intended to induce the prosecution not to proceed with a more serious charge. Diminishing credit for guilty pleas associated with negotiations or bargaining is consistent with *R v Gray* [1977] VR 225, *R v Shannon* (1979) 21 SASR 442 and *R v Lyons* (unreported) 1993 CCA Tas 29. These cases argued that a lesser discount, or no discount, for a plea of guilty is appropriate in circumstances where the defendant enters a plea as a means of inducing the prosecution not to proceed with a more serious charge.

However, discussions and negotiations between prosecution and defence to determine the correct charges to lay and prosecute may have no connection to inducing the prosecution not to proceed with other charges. Clause 35(2)(c) leaves the Court to determine the circumstances.

Clause 35(3) is the crux of the Court's authority to impose a lesser sentence if the offender pleaded guilty, compared to the same situation if the offender pleaded not-guilty.

Clause 35(4) requires the Court to diminish any amount of reduction for a guilty plea if the prosecution's case was overwhelmingly strong.

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Clause 35(6) obliges the Court to act proportionally to the seriousness of the offence if it imposes a lesser penalty for a guilty plea. The penalty cannot be unreasonably remote from the nature and circumstances of the offence.

Clause 35(7) provides definitions for the terms 'available documents', 'defence' and 'established facts'.

Clause 36 — Reduction of sentence — assistance to law enforcement authorities

Clause 36 authorises a reduction in a sentence if the offender has helped the police or any other law enforcement agencies.

Clause 36 applies if the conditions in 36(1) are met: the offender is convicted or found guilty of an offence; and the offender has helped law enforcement agencies to prevent, detect or investigate any offence; or the offender has assisted in legal proceedings relating to any offence.

Having considered the degree of assistance provided by an offender, clause 36(2) authorises the Court to make a reduction in sentence it would have otherwise imposed.

Clause 36(3) outlines the factors the Court must consider when it determines if a lesser penalty, or the quantum of a reduction to a penalty, should be imposed.

Clause 36(4) obliges the Court to act proportionally to the seriousness of the offence if it imposes a lesser penalty for cooperation with law enforcement agencies. The penalty cannot be unreasonably remote from the nature and circumstances of the offence.

Clause 37 — Reduction of sentence — statement by court about penalty

Clauses 35 and 36 would be an important means to encourage offenders to plead guilty when appropriate and to cooperate with law enforcement agencies. To give the full-effect to these provisions clause 37 requires the sentencing court to state what the penalty would have been if the offender had not pleaded guilty or cooperated with police, as the case may be.

A consistent record of penalties imposed in sentencing decisions when clauses 35 or 36 apply will greatly assist defence solicitors, prosecution and police to demonstrate the utility of pleading guilty or cooperating with police.

Clause 38 — Sentence of imprisonment and uncompleted young offender orders

Clause 38 re-states the current law set out in section 355 of the *Crimes Act 1900.* This provision contemplates an offender who was a juvenile for an earlier offence but has become an adult when the Court considers a sentence for another offence.

The clause will enable the Court to contemplate any existing sanction applying to the person when sentencing the person who has become an adult. The Court may discharge the young offender order when sentencing and account for the outstanding period of the young offender order in the adult sentence.

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Clause 39 — Judgement after sentence deferred

Clause 39 should be distinguished between a deferred sentence order and deferring a sentence in general. Clause 39 simply empowers a court to sentence an offender if there has been some procedural time between when the person was found guilty or convicted and the imposition of a sentence. Deferring sentence is not an unlimited power: a person could not be indefinitely detained, for example, on the basis that a court had not imposed a sentence.

Part 4.2 Pre-sentence reports

Clause 40 — Application of part 4.2

Clause 40 stipulates that part 4.2 has effect when an offender is found guilty or a person indicates an intention to plead guilty to an offence.

Clause 41 — Pre-sentence reports — order

Clause 41(1) enables the Court to adjourn proceedings and order the Chief Executive, of the relevant department to prepare a pre-sentence report. (Part 19.4 of the *Legislation Act 2001* enables the Chief Executive to delegate this function as a matter of course. References to the Chief Executive may be taken to include a person delegated by the Chief Executive to exercise the power or carry out the function.)

Clause 41(2) gives the Court the ability to determine the scope of the pre-sentence report by indicating the relevant matters the report should cover. It is envisaged that a form would be developed to facilitate the order. The Court can simply ask for a report of the core pre-sentence issues (41(2)(a)) or ask for the offenders suitability for a deferred sentence order and a sentence of imprisonment by way of periodic detention, or ask for a report on the offender's suitability for all of the options.

Clause 41(3) requires the Chief Executive to organise person delegated by the Chief Executive to prepare the pre-sentence report. In clause 41(4) the word 'assessor' is used to define the Chief Executive's delegate responsible for preparing the report.

Clause 42 — Presentence reports — contents

Clause 42(1), (2) and (3) obliges the assessor to conduct a pre-sentence report commensurate with the scope of the report ordered by the Court. (Clause 41(2) above discusses the scope of reports.)

Clause 42(4) sets out the core matters that should be addressed by the pre-sentence report. Items (j), (k), (l)(iii), and (l)(iv) intend to provide the Court with information that will assist the Court to determine if any orders conducive to managing offending behaviour or rehabilitating the offender are of use.

In (k) it is intended that where an assessor uses an instrument, or tool, to assess an offender's risk of re-offending the assessment should be cited in the report. It is not expected that the assessor would be required to explain the whole assessment process or methodology, simply that the assessor would cite the basis that informs the pre-sentence report's comments on the likelihood of re-offending.

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In (l)(iii) the assessor may cite any criminogenic factors that contribute to increasing the probability of an offender re-offending.

In (l)(ii) the assessor can provide an assessment of a victim's need for protection from violence or harassment. This provision will assist the Court to determine if any relevant orders to manage the behaviour should be made.

Clause 43 — Pre-sentence reports — powers of assessors

Clause 43 provides clear authority for assessors to conduct investigations to address a pre-sentence report. The assessor may request information from a broad range of government authorities. Clause 43(2) and (3) stipulates that prompt and open cooperation is expected and that any cooperation in good faith is not a breach of professional standards or a ground for civil proceedings.

Clause 43 authorises assessors to seek information from victims. However, clause 43(2) ensures that victims are not obliged to provide information or cooperate with an assessor in any way. Clause 43 does not require the assessor to directly approach victims in person. The Chief Executive may determine how, who and when victims may be approached: for example via a victim liaison officer or the Victims of Crime Coordinator.

Clause 43(5) would authorise the Executive to make regulations governing the preparation and provision of pre-sentence reports and the conduct of assessments in relation to deferred sentence orders. (For deferred sentence orders see clause 27 above.)

Clause 44 — Pre-sentence reports — provision to court

This clause enables reports to be given orally or in writing.

Clause 45 — Pre-sentence reports — availability of written reports

In clause 45, if a pre-sentence report is in writing and a copy has been provided to the Court more than two days before a sentencing hearing, the Court must make available a copy of the report two days before the sentencing hearing to the parties mentioned in 45(2).

If the Court has not received the report in time, there is no obligation to provide the report.

Clause 45 does not impose any obligation upon the Chief Executive to provide reports two days before a hearing. Timelines governing the provision of pre-sentence reports will remain a matter for ACT Corrective Services and ACT Courts to determine by agreement.

Clause 46 — Pre-sentence reports — cross-examination

Clause 46 authorises cross-examination of an assessor during sentencing proceedings.

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Part 4.3 — Victim impact statements

Clause 47 — Definitions for part 4.3

Clause 47 provides specific definitions for 'because of', 'harm', 'victim' and 'victim impact statement' for part 4.3. The intent of the definitions is to ensure that the ambit of 'victim' intended by the Government is clear.

Clause 48 — Application of part 4.3

Clause 48 expands the availability of victim impact statements. Presently victim impact statements can only be tendered if the offence in question holds a penalty of at least five year's gaol. Clause 48(a) enables victim impact statements to be tendered for any indictable offence, which is an offence punishable by imprisonment for longer than one year. 48(b) ensures that the summary offence of common assault is also contemplated. (The summary offence of common assault holds a penalty of 6 months imprisonment.) 48(c) would authorise the Executive to list other offences for which a victim impact statement could be tendered.

Clause 49 — Victim impact statements — who may make

Clause 49 enables victims, parents, close family members of victims, people who are carers of victims, and people who are in an intimate relationship with a victim (such as a spouse, life partner, lover, boyfriend, girlfriend etc) to make a victim impact statement.

Clause 50 — Victim impact statements — oral or written

Clause 50 enables victim impact statements to be given orally or in writing.

Clause 51 — Victim impact statements — form and contents

Clause 51 sets out what must be in a victim impact statement, including identifying the status of any person providing a victim impact statement.

Clause 52 — Victim impact statements — use in court

Clause 52 enables a victim impact statement to be tendered or given orally by the person who makes or made the victim impact statement or someone else on behalf of the person making the statement.

Clause 52(2) gives the Court the discretion to consider the report anytime after the offender is convicted and before sentencing.

Clause 53 — Victim impact statements — effect

Clause 53 provides for the effect of a victim impact statement on the sentencing hearing.

Clause 53(1) requires the Court to consider a victim impact statement. If an statement is not provided, the Court cannot inherently infer that the victim suffered no harm.

In clause 53(2)Written victim impact statements can only be tendered to Court if the statement is consistent with clause 51 and a copy is provided to the defence.

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Clause 53(3) authorises cross examination of the person who makes or has made a victim impact statement.

Clause 53(4) provides protection from potential intimidation to people who make victim impact statements when an offender is representing themself in a sentencing hearing. In these circumstances, the offender must tell the Court what the offender wants to ask the person who made the victim impact statement and the Court must give leave to cross-examine.

Clause 53(5) provides specific definitions of 'defence' and 'given' for clause 53.

Part 4.4 Taking additional offences into account

Clause 54 — Definitions for part 4.4

Clause 54 points to the source of the definitions for particular terms used throughout part 4.4.

Clause 55 — Application of part 4.4

Clause 55 sets out the conditions that enliven the application of the provisions that govern the Court's authority to take additional offences into consideration when sentencing.

An offender must be convicted or found guilty of an offence but a sentence not yet passed. The Director of Public Prosecutions must also submit a list of additional offences alleged to have been committed by the offender.

Clause 55(2) stipulates that part 4.4 cannot be invoked if the offence contemplated for sentencing holds a penalty of life imprisonment.

Clause 56 — List of additional offences

Clause 56 the list of additional offences can only include offences the offender wants the Court to take into account when sentencing. The list must be signed by the Director of Public Prosecutions and the offender, and the offender must have a copy.

Clause 57 — Outstanding additional offences taken into account in sentencing

Clause 57 requires the Court to confirm that the offender wants the additional offences taken into account when sentencing.

The Court can take the additional offences into account if the offender admits guilt to the additional offences, the offender confirms their want to have the additional offences accounted, and the Director of Public Prosecutions agrees.

Clause 57(3) makes it clear that taking additional offences into account does not mean the Court can impose a sentence greater than the maximum penalty attached to the offence the offender is being sentenced for. In other words, taking the additional offences into account does not allow additional penalties to be imposed: the additional offences are considered in the context of the penalty allowed for by the original offence.

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Clause 57(4) and (5) clarifies that if the Court does not have lawful jurisdiction to pass sentence on the additional offences, then the additional offences cannot be accounted for. Clause 57(6) provides the Supreme Court with the jurisdiction to account for a summary offence.

Clause 58 — Ancillary orders relating to offences taken into account in sentencing

Although clause 57 provides that penalties cannot be imposed for additional offences accounted for in sentencing, clause 58 enables the Court to impose ancillary orders of: restitution; compensation; costs; forfeiture; destruction; or licence disqualification or suspension.

Clause 59 — Consequences of taking offences into account in sentencing

Clause 59 links the sentence imposed for the principal offence with the additional offences accounted for by the Court. Proceedings for the additional offences on the list cannot begin or continue unless the outcome for the principal offence is changed.

While the admission of guilt in relation to the additional offence is not admissible in proceedings involving the additional offences, the offender is not taken to have been convicted or found guilty of the additional offences.

Clause 60 — Evidence of offences taken into account in sentencing

Clause 60 enables the fact that additional offences had been taken into account during sentencing to be admitted as evidence in subsequent proceedings if the conviction for the principal offence is admissible in the proceedings and the additional offence could have been admitted if a conviction, or a finding of guilt, had been made.

Part 4.5 Correction and adjustment of penalties

Clause 61 — Reopening proceedings to correct penalty errors

Sentencing is a skilful task that brings together qualitative determination about the appropriate penalty and a quantitative expression of the penalty itself.

Clause 61 enables the Court to re-open proceedings on its own initiative or upon application from a party to correct a sentence, or to make a sentence when one should have been made.

If an order is made to correct an error using these provisions, clause 61(5) provides that the allowable appeal period begins on the day the order is made under clause 61. This does not affect other rights of appeal.

Clause 61(7) clarifies that the term ‘sentence related order’ includes an order imposing a penalty, a deferred sentence order, a non-conviction order and any ancillary orders.

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Chapter 5 — Imprisonment

Part 5.1 — Imprisonment — start and end of sentences

Clause 62 — Start and end of sentences — general rule

Clause 62(1) simply states that a sentence begins on the day it is imposed or when the person is arrested if they are at large. Clause 62(2) corrals the relevant provisions of the Bill that impact upon the beginning or end of a sentence, or periods within a sentence. The clause also refers to the foreshadowed Crimes (Sentence Administration) Bill 2005.

Clause 62(3) and (4) clarifies the beginning and end of a day. This is consistent with section 151 of the *Legislation Act 2001,* which provides for the reckoning of time.

Clause 62(5) ensures that sentence of imprisonment for this clause does not include a suspended sentence, as a suspended sentence does not immediately execute the sentence. Suspended sentences are discussed in clause 12 above.

Clause 63 — Start of sentence — backdated sentences

Clause 63 authorises the Court to backdate a sentence to a day named by the Court. If this power is used, the sentence will be regarded as having begun on the named day. Clause 63(2) requires the Court to account for any period the offender has already spent in custody. Time in custody is usually spent on remand in accordance with the *Bail Act 1992.*

Clause 63(3) sets out the exceptions to time in custody that must be accounted for in clause 63(2).

For simplicity clause 63(4) enables the Court to consider all time in custody since the person was arrested, irrespective of the fact that the arrest and remand may be for various offences. Clause 63(5) clarifies that the period of custody after arrest or remand for other offences is still relevant even though the person was not found guilty or convicted of the other offences.

Part 5.2 — Imprisonment — non-parole periods

The purpose of parole is to moderate a sentence of imprisonment to enable the offender to rehabilitate. In *R v Shrestha* (1991) 173 CLR 48, Justices Deane, Dawson and Toohey said:

> The basic theory of the parole system is that, notwithstanding that a sentence of imprisonment is the appropriate punishment for the particular offence in all the circumstances of a case, considerations of mitigation or rehabilitation may make it unnecessary, or even undesirable, that the whole of that sentence should actually be served in custody. [at 67]

To enable parole to occur, the sentencing Judge or Magistrate must determine what period of a sentence must be served by imprisonment, leaving the remaining period to be eligible for parole. For example, if a court imposed a four year sentence of imprisonment the Court could determine that the first three years are a nonparole

period. After serving the first three years of the sentence the offender would be eligible for parole.

Clause 64 — Application of part 5.2

Clause 64 establishes the scope of sentences that can have non-parole periods set. A sentence of imprisonment can have a nonparole period set, unless it is an excluded sentence in clause 64(3). The excluded sentences are: life imprisonment, imprisonment served by way of periodic detention; imprisonment for offences committed in custody (usually in prison); imprisonment for not paying a fine; and a suspended sentence. (A suspended sentence is a sentence that is not executed: see clause 12 above.)

Clause 64(2) clarifies that a nonparole period can be set for sentences of imprisonment where part of the imprisonment is served by periodic detention. The nonparole period can only be set for the period of imprisonment that isn't the period of periodic detention.

Clause 65 — Nonparole periods — courts to set

Clause 65(1) authorises a court to set a non-parole period if an offender is sentenced to at least a year's imprisonment, or at least two terms of imprisonment adding up to at least a year or more.

Clause 65(2) requires a nonparole period to be set. During the nonparole period the offender is not entitled to parole.

Clause 65(3) requires the Court to determine when the nonparole period starts and ends.

Clause 65(4) enables the Court to decline from setting a nonparole period given the nature of the offence and the offenders criminal history.

Clause 65(5) stipulates that a nonparole period cannot be set for a sentence of imprisonment imposed upon an offender who is already sentenced to life imprisonment.

Clause 65(6) clarifies that if a sentence of imprisonment is partly suspended, then only the actual period of imprisonment should be considered by the Court for a nonparole period.

Clause 66 — Nonparole periods — setting if sentence currently being served

Clause 66 applies to offenders who are already imprisoned for one offence and are being sentenced to imprisonment for a subsequent offence.

Clause 66(2), (3) and (4) works by cancelling any nonparole period for the first sentence. The Court then applies the method of setting parole in clause 65 above but accounts for both the sentence the offender is already serving and the sentence the Court is imposing as one whole. In any case, the Court is not entitled to set a nonparole period that would totally nullify the addition of the subsequent sentence.

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Clause 67 — Nonparole periods — recommended conditions

Clause 67 enables the Court to recommend parole conditions for the Sentence Administration Board to consider when the Board considers applications for release on parole. The Sentence Administration Board's procedures will be set out in the foreshadowed Crimes (Sentence Administration) Bill.

Clause 68 — Nonparole periods — review of decision on nonparole period

This clause enables a review of a decision, or lack of a decision, on nonparole periods.

Part 5.3 — Imprisonment — concurrent and consecutive sentences

Clause 69 — Definitions for part 5.3

Clause 69 sets out definitions by reference to clauses in the Bill and section 146 of the *Magistrates Court Act 1930* for the meaning of fine. Section 146 states:

> ***fine*** means—
> (a) a pecuniary penalty imposed by a court in relation to an offence; or
> (b) a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence; or
> (c) costs payable to the Territory under a court order in a proceeding for an offence; or
> (d) a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*; or
> (e) an amount payable to the territory under an order for reparation under the *Crimes Act,* section 350.

Clause 70 — Application of part 5.3

Clause 70(1) identifies two concepts: a primary sentence and an existing sentence. In essence the primary sentence is the sentence being contemplated at the time the court is sentencing an offender. A existing sentence is either: another sentence already being served by the offender; another sentence against the offender made but not yet executed; or another sentence being imposed at the same time as the primary sentence.

In essence, part 5.3 contemplates how courts should deal with two or more sentences. This part assists the Court to answer the question: should the sentences be served concurrently, consecutively, or partially overlap? Concurrent has its common meaning of 'occurring side by side', or 'existing together'. Likewise, consecutive has its common meaning of 'following one another'.

Clause 70(1)(b) clarifies that clause 70 can apply to an offence committed under ACT law or another jurisdiction, where courts in the ACT have authority to impose a sentence.

Clause 70(1)(c) excludes fully suspended sentences from decisions about whether sentences should be served consecutively or concurrently.

Clause 70(2) defines 'sentence of imprisonment' for clause 70.

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Clause 71 — Concurrent and consecutive sentences — general rule

Clause 71 stipulates the application concurrent and consecutive sentences. The default position is that both sentences are served concurrently.

Clause 71(2) provides the Court with a power to direct that sentences are served consecutively or are to partially overlap.

Clause 71(3) indicates other provisions in the Bill that qualify the operation of clause 71. For clause 38, see above. For clauses 72, 73, 82 and 87, see below.

Clause 72 — Concurrent and consecutive sentences — offences in custody or unlawfully at large

For sentences imposed for offences committed in custody (such as in prison) or involving escape from custody, the default position is that they are served consecutively with existing sentences.

However, clause 72(3) enables the Court to direct that the sentences are to be served consecutively or are to partially overlap.

Clause 72(4) qualifies clause 72(3) where a corrections officer is harmed or threatened. If this is the case, then the sentences must be served consecutively unless the Court considers that special circumstances apply.

Clause 73 — Concurrent and consecutive sentences — fine default offences

Clause 73 establishes that the sentences for fine default are to be served consecutively unless the Court makes a contrary order. However, a fine default sentence is to be served concurrently when the existing sentence is not a fine default sentence.

Clause 73(3) enables the Court to direct that fine default sentences are to be served consecutively or are to partially overlap.

Clause 74 — Amending of start of sentences on setting aside or amending other sentences

Clause 74 empowers the Court to amend the starting day of other sentences imposed upon an offender if a court sets aside or amends a sentence.

However, nonparole periods cannot be amended in these circumstances.

Clause 75 — Previous sentences to be noted in new sentence

If the Court has ordered a sentence to be served concurrently with an existing sentence, or to overlap with an existing sentence, the Court must record information about the existing sentences in the sentence. This will greatly assist corrections staff to calculate the precise terms of imprisonment.

Part 5.4 — Periodic detention

Periodic detention is part-time imprisonment. An offender is in full-time custody for a period of a week, usually over the weekend. This arrangement allows both the imposition of a custodial sentence and the maintenance of an offender's positive contribution to the community such as family life, work or study.

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Clause 76 — Application of part 5.4

Part 5.4 covers the provisions a court must consider if the Court contemplates setting a periodic detention period for a sentence of imprisonment, as per clause 12, above.

Clause 77 — Periodic detention — eligibility

An offender cannot serve a sentence of imprisonment by way of periodic detention unless the offender is both eligible and suitable to serve periodic detention.

Clause 77 stipulates that a court cannot set a period of periodic detention unless the court is satisfied:

- the offender is suitable for periodic detention;
- periodic detention is appropriate for the offender;
- there is an appropriate facility available for periodic detention; and
- the offender formally agrees to comply with the periodic detention obligations in the foreshadowed Crimes (Sentence Administration) Bill.

Clause 77(2) ensures that the Court can decline to set a periodic detention period if an offender does not participate in a medical examination directed by the Court.

Clause 78 — Periodic detention — suitability

Clause 78(1) stipulates that the Court cannot set a period of periodic detention if a pre-sentence report assessing suitability for periodic detention has not been provided to the Court.

Clause 78(2) lists what the Court must consider before setting a periodic detention period. However, (3) makes it clear that the Court can consider other matters.

Clause 78(4) refers to table 79, discussed below, in relation to other issues that may render the offender unsuitable for periodic detention.

Clause 78(5) empowers the Court to set, or not set, a periodic detention order despite the recommendation of a pre-sentence report. However, clause 78(6) requires the Court to state its reasons why it has acted contrary to the pre-sentence report.

Clause 78(7) ensures that an error in applying clause 78(6) does not undermine a periodic detention period.

Clause 79 — Periodic detention — pre-sentence report matters

Clause 79 augments the matters that must be considered in a pre-sentence report, if the Court orders that an assessment for periodic detention is included in a pre-sentence report. Part 4.2 above discusses pre-sentence orders.

Clause 79 provides a table of matters that must be addressed in a pre-sentence report contemplating periodic detention.

Clause 80 — Periodic detention — concurrent and consecutive periods

Clause 80 applies if an offender is already serving a sentence of imprisonment by way of periodic detention and the Court is considering another sentence of imprisonment

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to be served by periodic detention. Under these circumstances, a new period of periodic detention cannot be longer than 2 years after the day the period is set.

Part 5.5 — Imprisonment — explanation and information

Clause 81 — Application of part 5.5

Clause 81 stipulates that part 5.5 relates to sentences of imprisonment that are not fully suspended. See clause 12 above for suspended sentences.

Clause 82 — Imprisonment — explanation to offender

Clause 82 is a restatement of section 359 of the *Crimes Act 1900.* The Court is obliged to explain the reason and purpose of the sentence. Any periods of full-time imprisonment and periodic detention should be explained as well as the offenders obligations under the foreshadowed Crimes (Sentence Administration) Bill. Dates relating to the start of the sentence, suspended sentences and nonparole periods must be explained. The fact that conditions apply to parole must be explained.

It should be noted that clause 82(1) only requires the Court to take reasonable steps to explain these matters.

Clause 82(2) ensures that an error in applying clause 82 does not undermine a sentence.

Examples are provided with the clause.

Clause 83 — Imprisonment — written record of explanation

Apart from the requirement to provide a written explanation no later than 10 days, clause 83 is also a restatement of section 359 of the *Crimes Act 1900.*

Clause 83 obliges the Court to provide the explanation of the sentence, under clause 82, in writing to the offender, their lawyer no later than 10 days after the sentencing hearing when the sentence was explained to the offender.

The written explanation can be a transcript of the sentencing hearing or a standard form.

Clause 83(2) ensures that an error in applying clause 90 does not undermine a sentence.

Clause 84 — Imprisonment — official notice of sentence

Clause 84 ensures that official notice of a sentence of imprisonment is provided to the relevant parties and relevant authorities. The intent of this common notice is to provide the same information to all involved and to maximise accuracy in the administration of the sentence.

In clause 84(1) reference to the Chief Executive is the Chief Executive of ACT Corrective Services. The Sentence Administration Board receives a copy of the order to facilitate the administration of the sentence.

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Clause 84(2) sets out what must be in the official notice. A notice can be made by a standard form, as per the *Legislation Act 2001*.

Clause 84(3) enables the Court to remand an offender in custody until official notice of periodic detention is given. The Court is not required to remand the offender.

Clause 84(4) ensures that an error in applying clause 84 does not undermine a sentence.

Chapter 6 — Good behaviour orders

Good behaviour orders replace recognisances and options available currently under section 403 of the *Crimes Act 1900*. The Bill contemplates these orders to be used in conjunction with other orders, such as suspended sentences, combination sentences, periodic detention, non-conviction orders etc.

Good behaviour orders can also be used in relation to non-conviction orders, explained above at clause 18. However, a good behaviour order cannot include a condition that amounts to a sentence.

Chapter 6 distinguishes between conditions that can be applied in a good behaviour order following conviction, and following non-conviction.

Part 6.1 — Good behaviour orders — community service conditions

Clause 85 — Meaning of community service conditions

A community service condition is a requirement to perform community service for a stated number of hours as part of a good behaviour order.

Clause 86 — Application of part 6.1

Part 6.1 applies if a court considers community service could be appropriate as part of a sentence, or as a sentence.

Clause 87 — Community service — convicted offenders only

As discussed in relation to clause 17 above, clause 87 ensures that community service can only be imposed upon convicted people, as it is a sentence.

Clause 88 — Community service — eligibility

Clause 88 stipulates that an offender is eligible for community service if the offender is suitable (discussed at clause 89) and it is appropriate that community service is imposed.

In clause 88(2), if the offender does not participate in a medical examination directed by the Court, the Court may decline to impose community service.

Clause 89 — Community service — suitability

A community service condition cannot be imposed unless a pre-sentence report is provided to the Court about the offenders suitability for community service.

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Clause 89(2) lists what the Court must consider before imposing a community service condition. However, (3) makes it clear that the Court can consider other matters.

Clause 89(4) refers to table 90, discussed below, in relation to other issues that may render the offender unsuitable for community service.

Clause 89(5) empowers the Court to impose, or not, a community service condition despite the recommendation of a pre-sentence report. However, clause 89(6) requires the Court to state its reasons why it has acted contrary to the pre-sentence report.

Clause 89(7) ensures that an error in applying clause 89(6) does not undermine a community service condition.

Clause 90 — Community service — pre-sentence report matters

Clause 90 augments the matters that must be considered in a pre-sentence report, if the Court orders that an assessment for a community service condition is included in a pre-sentence report. Part 4.2 above discusses pre-sentence reports.

Clause 90 provides a table of matters that must be addressed in a pre-sentence report contemplating periodic detention.

Clause 91 — Community service — hours to be performed

Clause 91 sets the maximum and minimum limits on the number of hours of community service that can be imposed.

Clause 92 — Community service — concurrent and consecutive orders

Clause 92 enables the court to impose subsequent community service for another sentence either concurrently, consecutively or overlapping. The total hours of the existing sentence and the new sentence cannot be greater than 500 hours.

Part 6.2 — Good behaviour orders — rehabilitation program orders

Clause 93 — Definitions for part 6.2

A rehabilitation program can be prescribed by the Executive in regulations. If a court imposes a rehabilitation program condition, the offender is obliged to participate in the specific program(s) stated.

Clause 94 — Application for part 6.2

Part 6.2 applies if a court considers a rehabilitation program could be appropriate or of benefit to the offender or community as part of a sentence, or as a sentence.

Clause 95 — Rehabilitation programs — probation condition required

A condition to participate in a rehabilitation program must include a probation condition. As defined in the Bill's dictionary, a probation condition contemplates the offender being supervised by a relevant authority during the probation period and to obey the reasonable directions of the authority.

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Clause 96 — Rehabilitation programs — eligibility

Imposing a rehabilitation condition requires both eligibility and suitability.

Clause 96(1) requires the court to be satisfied that the offender is suitable for a rehabilitation program (discussed at clause 97 below), it is appropriate that the offender undertake the program, and that a place is available in the program within reasonable time.

In clause 96(2), if the offender does not participate in a medical examination directed by the Court, the Court may decline to impose a rehabilitation condition.

Clause 97 — Rehabilitation programs — suitability

A rehabilitation condition cannot be imposed without a pre-sentence report assessing the offender's suitability for the program. Information about the program that justifies a rehabilitation program's suitability for the offender must also be provided before a rehabilitation condition can be imposed.

Clause 97(2) lists what the Court must consider before imposing a rehabilitation program condition. However, (3) makes it clear that the Court can consider other matters.

Clause 97(4) empowers the Court to impose, or not, a rehabilitation program condition despite the recommendation of a pre-sentence report, or evidence provided by the reporter. However, clause 97(5) requires the Court to state its reasons why it has acted contrary to the pre-sentence report.

Clause 97(6) ensures that an error in applying clause 97(5) does not undermine a rehabilitation program condition.

Clause 98 — Rehabilitation programs — pre-sentence report matters

Clause 98 augments the matters that must be considered in a pre-sentence report, if the Court orders that an assessment for a rehabilitation program condition is included in a pre-sentence report. Part 4.2 above discusses pre-sentence orders.

Clause 99 — Rehabilitation programs — maximum period

A rehabilitation program condition cannot be imposed for longer than 3 years.

Clause 100 — Rehabilitation programs — concurrent and consecutive orders

Clause 100 enables the court to impose a subsequent rehabilitation communication program for another sentence either concurrently, consecutively or overlapping. The new condition imposed must not be longer than 3 years after the day the order is made.

Part 6.3 — Good behaviour orders — explanations and official notice

Clause 101 — Application of part 6.3

Part 6.3 applies to good behaviour orders.

Clause 102 — Good behaviour orders — explanation to offenders

If good behaviour orders are made, clause 102 requires the Court to explain to the offender any conditions imposed under the good behaviour order, any obligations under the foreshadowed Crimes (Sentence Administration) Bill; and the consequences of breaching any conditions imposed or statutory conditions.

Clause 102(2) ensures that if an error is made in applying clause 102 a good behaviour order is not undermined.

Clause 103 — Good behaviour orders — official notice of order

Clause 103 ensures that official notice of a good behaviour order is provided to the offender and the relevant authority. The intent of this common notice is to provide the same information to all involved and to maximise accuracy in the administration of the order.

Clause 103(2) sets out what must be in the official notice. A notice can be made by a standard form, as per the *Legislation Act 2001*.

Clause 103(3) ensures that an error in applying clause 103 does not undermine a sentence.

Clause 104 — Good behaviour orders — explanation and notice to sureties

Clause 13(3)(a) enables another person (a surety) to lodge an amount of money with the Court. The amounts can be up to $10,000 for the Supreme Court and $2000 for the Magistrates Court. These amounts are at risk of forfeiture if the offender does not comply with the good behaviour order.

If good behaviour orders are made, clause 104 requires the Court to explain to the surety any conditions imposed upon the offender under the good behaviour order, any obligations under the foreshadowed Crimes (Sentence Administration) Bill; and the consequences of the offender breaching any conditions imposed or statutory conditions.

Clause 104(3) requires the Court to provide a copy of the good behaviour order to any surety under the order.

Clause 104(4) ensures that an error in applying clause 104 does not undermine a sentence.

Part 6.4 — Good behaviour orders — other provisions

Clause 105 — Good behaviour — consequences of failure to sign undertaking

Clause 13(2) empowers the Court to make good behaviour orders that requires an offender to sign an undertaking to comply with the order's obligations. The foreshadowed Crimes (Sentence Administration) Bill will include an obligation to comply with any statutory conditions and conditions set by the Court.

If the offender fails to sign the undertaking, clause 105 empowers the Court to re-sentence the offender. Re-sentencing does not affect any rights of appeal.

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Clause 106 — Good behaviour — maximum amount of security

Clause 13(3)(a) enables an offender, or another person (a surety), to lodge an amount of money with the Court. The amounts can be up to $10,000 for the Supreme Court and $2000 for the Magistrates Court. These amounts are at risk of forfeiture if the offender does not comply with the good behaviour order.

Clause 106(2) qualifies the imposition of a condition of providing security. Security can only be imposed for offences holding a penalty of over six months imprisonment or a suspended sentence. (See clause 12 for suspended sentences.)

Chapter 7 — Reparation orders

Chapter 7 contains further provisions about reparation orders. Clause 19 allows a reparation order to be made if a person is found guilty of an offence and a victim of the crime suffers a loss or incurs an expense as a direct consequence of the offence.

Clause 107 — Application of chapter 7

Chapter 7 applies to reparation orders being made.

Clause 108 — Reparation orders — no agreement about amount of loss

Clause 108 authorises the Court to settle any dispute about the value of the loss contemplated for a reparation order. Clause 108(2) refers to clause 110 about the evidential basis for forming a reparation order.

Clause 109 — Reparation orders — payment by instalments

Clause 109 enables the Court to order reparation payments to be paid in instalments and for the offender, or a surety, to give security that for the payment in instalments.

Clause 110 — Reparation orders — evidential basis for orders

Clause 110 sets out the types of information the Court may consider for making a reparation order. Clause 110(2) defines the meaning of the term ‘available documents’, which is used in clause 110(1). An example is provided as part of the clause.

Clause 111 — Reparation orders — power to make other orders etc

Clause 111 clarifies that the Court has the power to make reparation orders and other orders authorised by Territory law. The making of a reparation order for one type of loss does not prevent making another reparation order for another type of loss as a consequence of a particular offence, a series of offences connected to an event, or additional offences taken into account during sentencing. (See clause 58 above for the imposition of ancillary orders in relation to the account of additional offences.)

The example provided in clause 111 clarifies that a reparation order for stolen property can be made under clause 20 and a concurrent reparation order under clause 19 can be made for the damaged caused by the burglary.

Clause 112 — Reparation orders — Confiscation of Criminal Assets Act

The *Confiscation of Criminal Assets Act 2003* is a scheme to restrain and forfeit property, income, or any form of assets derived from, or used in, the commission of crime.

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Clause 112 ensures that property restrained or forfeited under the *Confiscation of Criminal Assets Act 2003* cannot be the subject of a reparation order. If a victim has a claim over the property, the victim can use the proceedings in the *Confiscation of Criminal Assets Act 2003* to have the property returned, or to be compensated for the loss of the property.

Clause 113 — Reparation orders — official notice of order

Clause 113 ensures that official notice of reparation order is provided to the offender and the person who will have the loss restored. The intent of this common notice is to provide the same information to all involved and to maximise accuracy in the administration of the order.

Clause 113(3) provides that if clause 113 is not followed the reparation order is not undermined.

Chapter 8 — Deferred sentence orders

Deferred sentence orders are a codification of an existing power available to the Court known as *Griffiths* remands following the High Court's decision in *Griffiths v The Queen* 137 CLR 293.

Deferred sentence orders will enable the Court to adjourn proceedings to provide an offender with an opportunity to address their criminal behaviour before sentencing. In this way the Court can assess whether the offender demonstrates prospects for rehabilitation, or the offender's ability to address their criminal behaviour.

Part 8.1 — Deferred sentence orders — making

Clause 114 — Application of part 8.1

Chapter 8 applies to the making of deferred sentence orders under part 3.5 above.

Clause 115 — Meaning of deferred sentence obligations for part 8.1

Clause 115 is a definition that relies upon a meaning in clause 120.

Clause 116 — Deferred sentence orders — eligibility

Offenders must be both eligible and suitable for a deferred sentence order.

Clause 116 enables a deferred sentence order to be made if the Court believes the offender's release would provide an opportunity for the offender to address their criminal behaviour and any factors contributing to the behaviour, and consequently encourage the Court to impose a lesser penalty.

A deferred sentence can be made even if the offence justifies imprisonment.

Clause 117 — Deferred sentence orders — suitability

Clause 117 sets out the matters the Court must consider when deciding to impose a deferred sentence order. The Court is not limited to these matters.

Clause 117(3) empowers the Court to impose, or not, a deferred sentence order despite the recommendation of a pre-sentence report, or evidence provided by the reporter. However, clause 117(4) requires the Court to state its reasons why it has acted contrary to the pre-sentence report.

Clause 117(5) ensures that an error in applying clause 117(4) does not undermine an order.

Clause 118 — Deferred sentence orders — indication of penalties

If a deferred sentence order is made, the Court must provide an overview of the penalty the Court thinks it might impose if the offender complies with the order, and the penalty the Court thinks it might impose if the offender doesn't comply withe order. This will provide the offender with further incentive to comply with the order.

Clause 119 — Deferred sentence orders — review requirements in orders

Clause 119 enables the Court to set some times for the offender to appear before the Court so the Court can monitor the offender's compliance and progress with the order.

Clause 120 — Deferred sentence orders — obligations

During a deferred sentence order the offender is obliged to abide by any conditions in the order itself, any conditions set under the *Bail Act 1992,* and any statutory obligations in this Bill.

Clause 121 — Deferred sentence orders — explanation and official notice

A court must explain a deferred sentence order to an offender, including the conditions and obligations imposed upon the offender and the consequences of failing to meet the conditions and obligations.

Clause 121(2) requires the Court to notify the offender of the order and give the offender a copy of the order. If the Court fails to do this clause 121(3) ensures that the order is not invalidated.

Clause 122 — Deferred sentence orders — period of effect

A deferred sentence order cannot last longer than 12 months after the day it is made. At the end of the order, or after the Court cancels the order, the Court must sentence the offender. See also clause 27 above.

Part 8.2 — Deferred sentence orders — supervision

Clause 123 — Application of part 8.2

Part 8.2 applies if a court makes a deferred sentence order.

Clause 124 — Deferred sentence orders — arrest without warrant

Clause 124 empowers police to arrest an offender, who is subject to a deferred sentence order, if the officer believes the offender has breached the order or any obligations related to the order or the bail conditions.

After arrest, the police officer must bring the offender before the Court that made the order, or a magistrate.

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Clause 125 — Deferred sentence orders — arrest warrant

Clause 125 provides for an arrest warrant to be issued and executed if there are reasonable grounds that an offender, who is subject to a deferred sentence order, has breached the order or any obligations related to the order or the bail conditions.

After arrest, the police officer must bring the offender before the Court that made the order, or a magistrate.

Clause 126 — Deferred sentence orders — review

Clause 126 enables the Court to review a deferred sentence order.

The Chief Executive of ACT Corrective Services and the Director of Public Prosecutions may apply for a review of the order.

Clause 127 — Deferred sentence orders — notice of review

If a court decides to review a deferred sentence order it must give a notice of the review, which includes reasons and a hearing time, to the offender and the Director of Public Prosecutions.

Part 8.3 — Deferred sentence orders — change or cancellation

Clause 128 — Deferred sentence orders — court's powers on review

Clause 128 set out what the court can do having reviewed a deferred sentence order.

If the Court has reviewed a deferred sentence order decides not to cancel the order, the Court may warn the offender, vary the conditions of the order, or take no action.

Clause 129 — Deferred sentence orders — when changes to obligations take effect

Clause 129 stipulates when a new order following a review takes effect.

The Court must give notice and a copy of the new order to the offender. However, clause 129(6) ensures that failure to do so does not invalidate the cancellation.

Clause 130 — Deferred sentence orders — when cancellation takes effect

If a deferred sentence order is cancelled it takes effect on the day it is cancelled.

The Court must give notice of the cancellation and a copy of the order to the offender. However, clause 130(5) ensures that failure to do so does not invalidate the cancellation.

Clause 131 — Deferred sentence orders — effect of cancellation

If a deferred sentence order is cancelled, bail is automatically revoked on the day the order is cancelled and the Court must sentence the offender.

Part 8.4 — Deferred sentence orders — other provisions

Clause 132 — Deferred sentence orders — automatic cancellation on bail revocation

To carry out a deferred sentence order an offender is released on bail under the B*ail Act 1992*. The *Bail Act 1992* requires the offender to comply with any conditions of bail and any undertakings made by the offender.

Clause 132 stipulates that if an offender breaches their bail conditions or undertakings the deferred sentence order is automatically revoked. In these circumstances an offender can be arrested under clauses 124 and 125 above or by the authority of sections 56A and 56B of the *Bail Act 1992*.

Clause 133 — Deferred sentence orders — relationship with Bail Act

Clause 133 governs the relationship between the *Bail Act 1992* and a deferred sentence order.

Clause 133(1)(a) ensures that the Court's power to require people to appear before it under the *Bail Act 1992* is not impeded in any way by a deferred sentence order.

Clause 133(1)(b) clarifies that the entitlement to liberty following bail under the *Bail Act 1992* is qualified by a deferred sentence order. If a deferred sentence order is breached the offender is not entitled to liberty despite not having breached the bail conditions.

Clause 133(2), (3) and (4) ensures that any conditions, varied conditions or power to review under a deferred sentence order does not directly, indirectly, limit the Court's powers under the *Bail Act 1992*.

Chapter 9 — Miscellaneous

Clause 134 — Reparation — other actions for recovery

Australians have legal rights to take civil action to recover property and seek damages for a civil 'wrong' against a person's possession of goods (known in traditional legal language as 'torts' from a French word used in French Law for 'wrong'.) Likewise, Australians have legal rights to make claims on insurance policies covering loss or damage to goods.

Clause 134 clarifies that the Bill would not abolish or impede upon any civil cause of action a person may have to recover goods or property, or to recover damages, or claim insurance for loss or expense.

Clause 134 does not mean, however, that in civil proceedings a Court is barred from considering any amounts paid to a claimant under a reparation order.

Clause 135 — Information exchanges between criminal justice entities

Clause 135 creates an explicit authority for the exchange of information between criminal justice agencies, including the Attorney General's department in its role of

supervising criminal justice agencies. The authority is limited to the agencies' responsibilities in relation to an offence.

The National Privacy Principles (2000) allow exchange of information by criminal justice agencies if the purpose of the exchange includes prevention, detection, investigation, prosecution or punishment of a criminal offence. The preparation for, or conduct of, proceedings before any court or implementation of the orders of a court are also exceptions to the privacy principles.

Clause 136 — Reduction of sentence — appeal if assistance undertaking breached

Clause 36 (above) authorises a reduction in a sentence if an offender has helped the police or any other law enforcement agencies. Clause 136 enables a right of appeal against a sentence if an offender has breached an undertaking made under clause 36 to assist law enforcement authorities.

If the offender has completely failed to assist the authorities the Court must substitute the sentence with the sentence the Court said it would have imposed if the assistance was not forthcoming.

If the offender partly fails to assist authorities, the Court may substitute another sentence in place of the existing sentence.

Clause 136(6) ensures that the Court cannot impose a sentence or nonparole period greater than the Court said it would have imposed if the assistance was not forthcoming.

Clause 137 — Effect of failure to comply with Act

Clause 139 stipulates that the Bill would not oust any ability for a court, in an appeal, to consider a failure to comply with the Bill. Even though the Bill includes provisions that ensure a failure to comply with the Bill does not invalidate a sentence, the Court hearing the appeal would still have jurisdiction to consider the lack of compliance.

Clause 138 — Regulation making power

Clause 140 authorises the Executive to make regulations for the Act.

Chapter 10 — Transitional

Clause 139 — Application of Act — charges after commencement

Clause 139 stipulates that the new Bill would only apply to offences charged after the enactment of the Bill. Offences charged before the enactment of the Bill would be sentenced under the existing scheme.

Clause 139(3) prevents a home detention order being made once the Bill commences, whether the person is charged or not.

However, in relation to the administration of sentences in the foreshadowed Crimes (Sentence Administration) Bill some procedures for administration and enforcement will apply to offences committed before the commencement of the Bill.

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Clause 139(5) provides a definition of 'old sentencing law', being the range of laws that apply to sentencing the day before the commencement of this Bill.

These provisions expire five years after commencement of the Bill.

Clause 140 — Nonparole periods — Rehabilitation of Offenders (Interim) Act s 31

Clause 140 provides that a non-parole period set under section 31 of the *Rehabilitation of Offenders (Interim) Act 2001* continues to apply if the nonparole period was set before the commencement of this Bill. After this Bill commences, the nonparole period is taken to be a non-parole period set under this Act, even if it was set using section 31 of the *Rehabilitation of Offenders (Interim) Act 2001*.

Clause 141 — Reparation orders — Crimes Act s 350

Clause 141 provides that a reparation order made under section 350 of the *Crimes Act 1900* will be taken to be a reparation order under part 3.3 of this Bill. The reparation order may be enforced under this Act whenever made.

Clause 142 — Transitional regulations

Clause 142 authorises the Executive to make regulations that address any transitional needs that were not contemplated at the time the foreshadowed Act was passed.

Any regulations made under this clause would have the effect and force of a provision of the foreshadowed Act.

Dictionary

The Bill includes a dictionary of definitions for the Bill, including definitions made by reference to provisions in the Bill and provisions of other Acts.

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