

2006

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (SENTENCING) AMENDMENT REGULATION 2006 (No 1)

SL2006-25

EXPLANATORY STATEMENT

Circulated by authority of the
Attorney General
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Crimes (Sentencing) Amendment Regulation 2006 (No 1)

Outline

The *Crimes (Sentencing) Act 2005* consolidates sentencing laws previously set out in a number of different statutes. The Act also introduced a number of new options for sentencing courts and modernised the law.

While maintaining traditional sentencing options, the Act also modernised sentencing terminology. For example, the term recognisance was replaced with good behaviour order.

The Act changed how certain non-custodial 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.

This regulation amends the existing *Crimes (Sentencing) Regulation 2006* to uphold a minimum standard of reporting for drug and alcohol rehabilitation service providers when a service is provided to a person under sentence.

The regulation ensures that drug and alcohol rehabilitation service providers has an agreement in place with the Chief Executive of Justice and Community Safety, or their delegate. Alternatively, if an agreement has not been finalised, the Chief Executive may consent to the provider's service, having consulted with the Chief Executive of ACT Health.

ACT Health has the primary responsibility to regulate the therapeutic standards of drug and alcohol providers. Justice and Community Safety has a responsibility to ensure that a minimum standard of reporting is provided for the supervision of offenders who are ordered to attend drug and alcohol rehabilitation as part of their sentence.

Crimes (Sentencing) Amendment Regulation 2006 (No 1)

Detail

Clause 1 — Name of regulation

This is a technical clause which names the regulation. The name of the regulation would be the *Crimes (Sentencing) Amendment Regulation 2006 (No 1)*.

Clause 2 — Commencement

The regulation commences when the *Crimes (Sentencing) Act 2005* commences, being 2 June 2006.

Clause 3 — Legislation amended

This clause identifies the regulation to be amended, namely the *Crimes (Sentencing) Regulation 2006*.

Clause 4 — Amendment to section 2

Clause 4 is a technical amendment to break the section into 2(1) and 2(2).

Clause 5 — Amendment to section 2(e)

Clause 5 amends section 2(e) of the *Crimes (Sentencing) Regulation 2006*.

Section 2 of the *Crimes (Sentencing) Regulation 2006* lists the items that inform the meaning of rehabilitation program for the *Crimes (Sentencing) Act 2005*.

Section 2(e) deals with drug and alcohol program providers. The new 2(e)(i) qualifies that drug and alcohol program providers are those providers which have entered into an agreement under section 101 of the *Crimes (Sentence Administration) Act 2005*.

Section 101 of the *Crimes (Sentence Administration) Act 2005* contemplates agreements made between the Chief Executive responsible for the *Crimes (Sentence Administration) Act 2005* and rehabilitation providers. In any agreement made the Chief Executive must ensure that the provider gives the Chief Executive written reports about the an offender's participation in a program. For example: if the person was admitted to the program at the pre-arranged time; if the person is actually residing at a residential program; or if the person is participating in the program.

New 2(e)(ii) enables the Chief Executive of the *Crimes (Sentencing) Act 2005* to give consent to a drug and alcohol program providing a service to an offender as part of a good behaviour order. This provision authorises the Chief Executive to allow a program to provide a service if an agreement is yet to be made.

Clause 6 — New section 2(2)

This clause requires the Chief Executive to consult the Chief Executive of ACT Health if a decision to consent to a drug and alcohol program providing a service to an offender is required.

As discussed in the outline, ACT Health has the primary responsibility to regulate the therapeutic standards of drug and alcohol providers. Justice and Community Safety, has a responsibility to ensure that a minimum standard of reporting is provided for the supervision of offenders who are ordered to attend drug and alcohol rehabilitation as part of their sentence.

Clause 7 — New section 3

Clause 7 introduces schedule 1 which will modify the transitional provisions in chapter 10 of the *Crimes (Sentencing) Act 2005*.

The legislative authority to temporary amend a provision of the Act for transitional purposes is at section 143 of the *Crimes (Sentencing) Act 2005*.

Clause 8 — Schedule 1

Clause 8 sets out schedule 1.

1.1 inserts new section 140A into chapter 10 of the *Crimes (Sentencing) Act 2005*.

Section 140 does not currently contemplate an originating process other than charge. Charge is not currently defined in the ACT statute book to a degree required for the purposes of the Supreme Court's procedures.

New section 140A contemplates commencement of criminal proceedings by methods other than charge. It is not intended to be exhaustive. It includes informations and indictments (which would include *ex-officio* indictments) and contemplates amendments and substitutions of informations and indictments.

The provision recognises that there may be any number of originating processes arising out of one series of circumstances giving rise to a criminal prosecution being commenced.

The purpose of the amendment is to ensure that all originating processes are recognised. In particular, where offenders are ultimately sentenced by the Supreme Court the new section identifies the originating process in the Supreme Court, rather than the Magistrates Court, as the relevant point in time for determining whether the new sentencing law applies.

The section further clarifies that where there are a number of originating process relating to the same circumstances, and those originating process take place both prior to, and after, the commencement of the new sentencing law then the new sentencing law is to be applied.

Section 140A(2) clarifies that for the purposes of 140(1) it is the latest manifestation of the charge that is to be considered.

Section 140A(3) further clarifies that if the latest manifestation of the charge invokes the operation of section 140(1) then the earlier manifestations of the charge must be disregarded for section 140(2).

Example: Jon is arrested and charged with armed robbery on 12 March 2006. He appears in the ACT Magistrates Court that same day. He pleads not guilty and the matter is committed for trial in the Supreme Court on a date to be fixed. The new Sentencing Acts commence on 2 June 2006. An indictment is filed in the Supreme Court on 12 June 2006. The indictment is amended on the morning of his trial. His trial takes place in October 2006. He is found guilty of the charge and is sentenced on 12 November 2006. Pursuant to s140A he was charged on 12 March 2006, 12 June and again in October when the indictment was amended. By the operation of 140A and 140(1) he will be sentenced according to the new sentencing law because the point in time that determines the application of the new law is the latest manifestation of the charge in the Supreme Court.