

NORTHERN TERRITORY OF AUSTRALIA
CRIMINAL CODE AMENDMENT ACT 2003

Act No. 4 of 2004

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 4 of 2004

AN ACT

to amend the *Criminal Code*

[Assented to 7 January 2004]
[Second reading 16 October 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Criminal Code Amendment Act 2003*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Major review of supervision orders

Section 43ZG of the Criminal Code is amended –

(a) by omitting subsection (1) and substituting the following:

"(1) When the court makes a supervision order, the court must fix a term in accordance with subsection (2), (3) or (4) that is appropriate for the offence concerned and specify the term in the order."; and

- (b) by omitting from subsection (3) "15 years as the term for the purposes of" and substituting "the period it would have set as the non-parole period for the offence under the *Sentencing Act* if the supervised person had been found guilty of the offence charged as the term under".

4. Repeal and substitution

Section 43ZL of the Criminal Code is repealed and the following substituted:

"43ZL. Reports on views of victim or next of kin

"(1) At the time the court is considering whether to make, vary or revoke a supervision order in respect of an accused person or a supervised person, or whether to determine to release a supervised person from a supervision order, the victim of the offence concerned or the next of kin of the victim (who may be a deceased victim) may prepare and submit a report to the court setting out the views of the victim or next of kin concerning one or more of the following:

- (a) the conduct of the accused person or supervised person;
- (b) the impact of the accused person's or supervised person's conduct on the victim or the next of kin or any other member of the victim's family;
- (c) if the court is considering whether to release a supervised person from a supervision order – the impact the supervised person's conduct could have on the victim or next of kin or any other members of the victim's family if the supervised person is released.

"(2) The court must receive all reports made to it under subsection (1).

"(3) The court may, on its own initiative if it considers it will assist in determining whether to make, vary or revoke a supervision order in respect of an accused person or a supervised person, or whether to release a supervised person from a supervision order, request one or more of the following reports:

- (a) a report setting out the views of the next of kin of the accused person or supervised person and the impact of the accused person's or supervised person's conduct on the next of kin or other members of the accused person's or supervised person's family;
- (b) if the accused person or supervised person is a member of an Aboriginal community – a report setting out the views of the members of the Aboriginal community.

"(4) The court must consider all reports made to it under this section."

5. Matters court is to take into account when making order

Section 43ZN of the Criminal Code is amended –

- (a) by inserting in subsection (2)(b) "subject to subsections (3) and (4)," before "the court";
- (b) by omitting from subsection (2)(b) "(ii) the next of kin" and substituting "(iia) the next of kin"; and
- (c) by adding at the end the following:

"(4) Notice is not to be given to a person referred to in subsection (2)(b)(i) or (ii) who has given notice to the court that he or she does not wish to be notified of any hearings in relation to the supervised person concerned and has not withdrawn that notice."

6. Interpretation

Section 406 of the Criminal Code is amended by omitting subsections (2) and (3) and substituting the following:

"(2) For the purposes of this Division, if, under Part IIA, a person is found not guilty of committing an offence because of his or her mental impairment and the defence of mental impairment was not raised by him or her, the finding is taken to be a finding of guilt at a trial and is subject to the same rights of appeal, and to appeal in the same manner, as if it were such a finding of guilt.

"(3) For the purposes of this Division, if a declaration is made under Part IIA that an accused person is liable to supervision or an order is made under that Part that an accused person be released unconditionally, the declaration or order is taken to be a sentence and is subject to the same rights of appeal, and to appeal in the same manner, as if it were a sentence."

7. Transitional

(1) If, immediately before the commencement of this Act, a proceeding against an accused person under former Part IIA has not been determined –

- (a) the proceeding is to be continued and determined in accordance with that Part; and
- (b) any declaration, finding or supervision order made in that proceeding is to be made in accordance with that Part.

(2) A declaration, finding or supervision order referred to in subsection (1)(b) is taken to be, and may be dealt with as if it were, a declaration, finding or supervision order made under the Criminal Code as amended by this Act.

Criminal Code Amendment Act 2003

(3) In this section –

"former Part IIA" means Part IIA of the Criminal Code as in force immediately before the commencement of this Act.