

NORTHERN TERRITORY OF AUSTRALIA
SENTENCING AMENDMENT ACT (NO. 2) 1998

No. 91 of 1998

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NORTHERN TERRITORY OF AUSTRALIA

No. 91 of 1998

AN ACT

to amend the *Sentencing Act*

[Assented to 11 December 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Sentencing Amendment Act (No. 2) 1998*.

2. COMMENCEMENT

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

3. NEW DIVISION

Part 3 of the *Sentencing Act* is amended by adding at the end the following:

"Division 8 — Perpetrators' Program Orders

"78H. INTERPRETATION

"(1) In this Division —

'domestic violence offence' has the meaning given in subsection (2);

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'domestic relationship' has the meaning given in section 3(2) of the *Domestic Violence Act*;

'perpetrators' program' means a program in respect of which a declaration under section 78J is in force;

'perpetrators' program order' means an order under section 78K;

'restraining order' has the meaning given in section 3(1) of the *Domestic Violence Act*.

"(2) For the purposes of this Division, an offender is to be taken to have been found guilty of a domestic violence offence –

(a) if the offender is found guilty of an offence against section 177, 181, 182, 188, 189 or 193 of the Criminal Code in respect of a person who is in a domestic relationship with the offender;

(b) if the offender is been found guilty of an offence relating to damaging property owned by or in the custody of a person who is in a domestic relationship with the offender;

(c) if –

(i) the offender is found guilty of having behaved in a provocative or offensive manner towards a person who is in a domestic relationship with the offender; and

(ii) the behaviour is such as is likely to lead to a breach of the peace including, but not limited to, behaviour that may cause another person to reasonably fear violence or harassment against himself or herself or another person; or

(d) if the offender is found guilty of a prescribed offence in respect of a person who is in a domestic relationship with the offender.

"78J. DECLARATION OF PERPETRATORS' PROGRAM

"The Minister may, by notice in the *Gazette*, declare a program to be a perpetrators' program for the purposes of this Division.

"78K. MAKING OF PERPETRATORS' PROGRAM ORDERS

"(1) Where a court finds a person guilty of —

- (a) a domestic violence offence; or
- (b) an offence under section 10(1) of the *Domestic Violence Act*,

the court may order the offender to participate in a perpetrators' program on the terms and conditions specified in the order.

"(2) A court may only make an order under subsection (1) if the court receives a report from the Director stating —

- (a) that the offender is a suitable person to participate in the perpetrators' program; and
- (b) that there is a place available in the perpetrators' program for the offender.

"(3) A court —

- (a) may only make an order under subsection (1) after it has made any other sentencing order that it thinks fit or that it is required to make in relation to the offence; and
- (b) in making any other sentencing order, must not take into account the fact that it can make an order under subsection (1).

"(4) A court must not make an order under subsection (1) if the offender has been found guilty of an offence under section 162 of the Criminal Code.

"(5) A court may make an order under subsection (1) without the offender's consent.

"78L. DUTIES OF OFFENDER PARTICIPATING IN PERPETRATORS' PROGRAM

"An offender in respect of whom a perpetrators' program order is in force —

- (a) must attend sessions of the perpetrators' program as required by the Director;
- (b) must be present at each session of the program that the offender is required to attend for the duration of the session;

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- (c) must not, while attending a session of the program or carrying out work for the program, be under the influence of alcohol or other drugs;
- (d) must, while attending a session of the program and carrying out work for the program, co-operate with the other participants in the program, the Director and the persons authorised by the Director to conduct the program;
- (e) must not, while attending a session of the program or carrying out work for the program, act in a manner that disrupts the session or work or is threatening or intimidating towards other participants in the program, the Director or the persons authorised by the Director to conduct the program;
- (f) must, while attending a session of the program and carrying out work for the program, comply with any reasonable direction of the Director or a person authorised by the Director to conduct the program.

"78M. REVIEW OF PERPETRATORS' PROGRAM ORDERS

"(1) A court may, on the application of the Director or the offender in respect of whom a perpetrators' program order is in force -

- (a) discharge the order; or
- (b) vary the terms and conditions of the order.

"(2) The terms and conditions of a perpetrators' program order may be varied by the Director if the Director and the offender agree.

"(3) Where the Director makes an application under subsection (1), the court -

- (a) must summons the offender to appear before it on the hearing of the application; and
- (b) if the offender does not appear in answer to the summons - may order that a warrant to arrest the offender be issued.

"(4) Where an offender makes an application under subsection (1), the court must cause notice of the application and of the time and place fixed for the hearing to be served on the Director.

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"(5) Without limiting the matters that a court may take into consideration in reviewing a perpetrators' program order, the grounds for review include —

- (a) that the offender is in custody;
- (b) that the offender's behaviour is such that the carrying out of the order is impracticable; and
- (c) that the circumstances of the offender have materially altered since the order was made and as a result the offender will not be able to comply with the order.

"78N. BREACH OF PERPETRATORS' PROGRAM ORDER

"(1) An offender is in breach of a perpetrators' program order if at any time while the order is in force he or she —

- (a) without reasonable excuse — contravenes or fails to comply with a term or condition of the order;
- (b) without reasonable excuse — fails to carry out his or her obligations under section 78L;
- (c) contravenes or fails to comply with a restraining order in force; or
- (d) commits a domestic violence offence.

"(2) Where a Justice is satisfied that an offender is in breach of a perpetrators' program order, the Justice may —

- (a) unless the offender is in custody — issue a summons directing the offender to appear before the court on a date and at a time specified in the summons; or
- (b) where the Justice is satisfied the offender may not appear — issue a warrant for the arrest of the offender.

"(3) Where an offender served with a summons issued under subsection (2)(a) fails to attend before the court, the court may issue a warrant for the arrest of the offender.

"(4) Where a court is satisfied that the offender is in breach of a perpetrators' program order, the court may confirm, vary or revoke the order if the order is still in force.

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"(5) The offender has the onus of proving reasonable excuse in subsection (1).

"(6) An offender who is in breach of a perpetrators' program order commits an offence.

Penalty: \$5,000.

"(7) An offence against subsection (6) is a regulatory offence."

4. APPLICATION

A court cannot make a perpetrators' program order in respect of an offence committed before the day on which this Act commences.
