

NORTHERN TERRITORY OF AUSTRALIA  
SENTENCING AMENDMENT ACT (No. 2) 1996

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**No. 65 of 1996**

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 65 of 1996

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## AN ACT

to amend the *Sentencing Act*

[Assented to 31 December 1996]

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) 1996*.

2. COMMENCEMENT

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

3. INTERPRETATION

Section 3(1) of the *Sentencing Act* is amended -

- (a) by omitting the definition of "approved project" and substituting the following:

"'approved project', in relation to -

- (a) a community service order, means a rehabilitation program or work, or both, approved by a community service advisory committee under the *Prisons (Correctional Services) Act*; and
-

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(b) a punitive work order, means a project approved under section 78C(1);";

(b) by inserting, after the definition of "proper officer", the following:

"'property offence' means an offence specified in Schedule 1;"; and

(c) by inserting, after the definition of "prosecutor", the following:

"'punitive work order' means a punitive work order made under section 78C(2);".

4. BREACH OF ORDER FOR RELEASE ON BOND

Section 15 of the *Sentencing Act* is amended by omitting subsection (2) and substituting the following:

(1) - "(2) Where an application is made under subsection

(a) notice of the application shall be given to the offender; or

(b) where a Justice is satisfied that the offender has failed without reasonable excuse to comply with a condition of an order made under section 11 or 13 and that the offender may not appear, the Justice may issue a warrant for the arrest of the offender.".

5. BREACH OF COMMUNITY SERVICE ORDER

Section 39 of the *Sentencing Act* is amended -

(a) by omitting subsection (2) and substituting the following:

"(2) Where a Justice is satisfied that an offender is in breach of a community service order, the Justice may -

· (a) 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."; and

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(b) by inserting after subsection (3) the following:

"(3A) Where a court is satisfied, by evidence on oath or by affidavit, or by the admission of the offender, that the offender is in breach of a community service order, it may vary, confirm, or, (if the order is still in force) revoke the order and, whether or not it is still in force, taking into account the extent to which the offender had complied with the order, deal with him or her for the offence or offences with respect to which it was made in any manner in which the court could deal with the offender if it had just found him or her guilty of the offence or offences."

6. BREACH OF ORDER SUSPENDING SENTENCE

Section 43 of the *Sentencing Act* is amended by omitting subsection (3) and substituting the following:

"(3) Where an application is made under subsection (1) -

- (a) notice of the application shall be given to the offender; or
- (b) where a Justice is satisfied that the offender has, during the operational period of an order suspending a sentence, committed another offence punishable by imprisonment and that the offender may not appear, the Justice may issue a warrant for the arrest of the offender."

7. BREACH OF HOME DETENTION ORDER

Section 48 of the *Sentencing Act* is amended by omitting subsection (2) and substituting the following:

"(2) Where a Justice is satisfied, on reasonable grounds by an information laid before him or her, that an offender in respect of whom a home detention order has been made has breached the order as specified in subsection (1), the Justice may -

- (a) issue a summons directing the offender to appear at a court on a date and at a time specified in the summons to show cause why the offender should not be further dealt with under this section; or
- (b) where the information is on oath and the Justice is satisfied that proceedings against the offender by summons might not be effective, issue a warrant for the arrest of the offender."

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8. NEW DIVISION

The *Sentencing Act* is amended by inserting after Division 5 of Part 3 the following:

*"Division 6 - Custodial Orders for Property Offenders*

*"Subdivision 1 - Compulsory Imprisonment*

"78A. IMPRISONMENT FOR PROPERTY OFFENDERS

"(1) Where a court finds an offender guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 14 days.

"(2) Where a court finds an offender guilty of a property offence and the offender has once before been found guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 90 days.

"(3) Where a court finds an offender guilty of a property offence and the offender has 2 or more times before been found guilty of a property offence, the court shall record a conviction and order the offender to serve a term of imprisonment of not less than 12 months.

"(4) Where an offender is found guilty of more than one property offence specified in the same information, complaint or indictment, the findings of guilt are, for the purposes of this section, to be taken as a single finding of guilt, whether or not all the offences are the same.

"(5) Where an offender is found guilty of more than one property offence as part of a single criminal enterprise, all the property offences are together a single property offence for the purposes of this section, whether or not the offences are the same.

"(6) Where an offender is found guilty of a property offence, the offence is to be taken into account for the purposes of subsection (2) or (3) whether it was committed before or after the property offence in respect of which the offender is before the court.

"78B. ADDITIONAL ORDERS FOR PROPERTY OFFENDERS

"(1) In addition to the order required to be made under section 78A, the court may make a punitive work order or any other order it may make under this Act.

"(2) An order referred to in subsection (1) cannot be made if its effect would be to release the offender from the requirement to actually serve the term of imprisonment ordered under section 78A.

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*"Subdivision 2 - Punitive Work Orders*

"78C. PUNITIVE WORK ORDER

"(1) The Minister may, in writing, approve work as a project to be participated in under a punitive work order.

"(2) A court which finds an offender guilty of a property offence may order the offender to participate, within such time as the court may order, in an approved project for 224 hours.

"(3) A punitive work order may require an offender to present himself or herself -

- (a) at a place and to a person and within a time, specified in the order; or
- (b) at a place and to a person and within the time and by the means as directed by the Director in writing.

"(4) Where a court makes a punitive work order, the offender shall not leave the precincts of the court until he or she signs the order.

"(5) Where a court makes a punitive work order, it shall ensure that a copy of the order is -

- (a) given to the offender; and
- (b) sent to the Director.

"(6) Where a punitive work order contains a requirement in accordance with subsection (3)(b), the Director shall cause written notice of the direction to be given to the offender as soon as practicable after the order is made.

"78D. CIRCUMSTANCES IN WHICH PUNITIVE WORK ORDER MAY BE MADE

"A court shall not make a punitive work order unless it

- (a) has been notified by a probation officer that arrangements have been or will be made for the offender to participate in an approved project under the order; and
- (b) is satisfied, after considering a report from a probation officer about the offender and his or her circumstances, and, if the court thinks necessary, hearing a probation officer, that -
  - (i) the offender is a suitable person to participate in the approved project; and

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- (ii) the project is approved and can be provided under the arrangements referred to in paragraph (a) for the offender to carry out.

"78E. DUTIES OF OFFENDER IN CARRYING OUT PUNITIVE WORK ORDER

"(1) An offender in respect of whom a punitive work order is in force shall -

- (a) participate, for the number of hours specified in the order, in such approved project as a probation officer directs;
- (b) participate in the project in a satisfactory manner;
- (c) while participating in the project, comply with any reasonable direction of a probation officer or supervising officer; and
- (d) inform a probation officer of a change in his or her residential address not later than 48 hours after the change.

"(2) Except where he or she consents, an offender shall not be required to participate in an approved project under a punitive work order for more than 8 hours (exclusive of time allowed for meals) in any one day.

"78F. REVIEW OF PUNITIVE WORK ORDER

"(1) A court, on the application of the Director, may -

- (a) revoke a punitive work order and order the offender to serve a term of imprisonment of 28 days; or
- (b) vary the time within which the offender is to complete his or her participation in the approved project or otherwise vary the terms of the order, but shall not reduce the number of hours the offender is required to participate in an approved project under the order.

"(2) Where the Director makes an application under subsection (1), the court shall summons the offender to appear before it on the hearing of the application and, if the offender does not appear in answer to the summons, may order that a warrant to arrest the offender be issued.



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"(3) Without limiting the matters that a court may take into consideration in reviewing a punitive work order, the grounds for reviewing such an order include the fact -

- (a) that the offender is in custody on a charge for another offence;
- (b) that the offender's behaviour is such that the carrying out of the terms of the order is impracticable; or
- (c) that the operation of the order offends other persons.

"78G. BREACH OF PUNITIVE WORK ORDER

"(1) An offender is in breach of a punitive work order if he or she -

- (a) fails to comply with a term or condition of the order;
- (b) fails to carry out his or her obligations under section 78E(1);
- (c) disturbs or interferes with any other person participating in or doing anything under a punitive work order or a community service order;
- (d) assaults, threatens, insults or uses abusive language to a probation officer or supervising officer;
- (e) changes his or her address for the purposes of evading the execution of this Act; or
- (f) commits an offence against a law in force in the Territory during a time when he or she is participating in an approved project under the order.

"(2) Where a Justice is satisfied that an offender is in breach of a punitive work order, the Justice may -

- (a) 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.

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"(4) Where a court is satisfied that an offender is in breach of a punitive work order, the court shall, whether or not the order is in force at the time the offender appears before the court, and whether or not the offender has participated in a project under the order for some of the time he or she was required to participate in the project, order that the offender be imprisoned for 28 days.

"(5) Where a court imposes a term of imprisonment under subsection (4), the punitive work order shall be deemed to be revoked and the court -

(a) shall then deal with the offender for the offence in respect of which the punitive work order was made by -

- (i) varying the order made under section 78A in respect of the offence by extending the period of imprisonment the offender is required to serve; and/or
- (ii) making any other order it may make under this Act, other than an order the effect of which would be to release the offender from the requirement to actually serve the term of imprisonment ordered under section 78A or extended in accordance with subparagraph (i); and

(b) may, in dealing with the offender in accordance with paragraph (a), take into account the extent to which the offender had complied with the order or any other order made in respect of the offence.

"(6) Where a punitive work order is made in respect of more than one offence and a court is satisfied that the offender is in breach of the order, the court shall deal with the offender under this section in relation to all the offences in respect of which the order was made."

9. REPEAL

Section 129 of the *Sentencing Act* is amended by omitting "the Schedule" and substituting "Schedule 2".

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10. NEW SCHEDULE

The *Sentencing Act* is amended by inserting before the Schedule the following:

"SCHEDULE 1

Section 3(1)

COMPULSORY IMPRISONMENT OFFENCES  
UNDER CRIMINAL CODE

1. An offence against section 210 of the Criminal Code, except where -
  - (a) the offence occurred at premises, or a place, where goods are sold;
  - (b) the offence was not part of a single criminal enterprise during which the offender committed an offence against Part VI of the Criminal Code; and
  - (c) the offender was lawfully in the premises or at the place at the time of the offence.
2. An offence against section 211, 212, 213, 214, 215, 218, 229, 230, 231 or 251 of the Criminal Code.  
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11. SCHEDULE

The Schedule to the *Sentencing Act* is amended by omitting "SCHEDULE" and substituting "SCHEDULE 2".  
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