

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AMENDMENT (MANDATORY  
MINIMUM SENTENCES) ACT 2013

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Act No. 1 of 2013

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 1 of 2013

An Act to amend the to amend the *Sentencing Act* and to make consequential amendments to another Act

[Assented to 13 March 2013]  
[Second reading 29 November 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*.

### 2 Commencement

This Act commences immediately after the commencement of the *Criminal Code Amendment (Assaults on Workers) Act 2013*.

## Part 2 Amendment of Sentencing Act

### 3 Act amended

This Part amends the *Sentencing Act*.

### 4 Section 3 amended

- (1) Section 3(1), definition *violent offence*  
*omit*

## (2) Section 3(1)

*insert (in alphabetical order)*

***impose a minimum sentence***, for Part 3, Division 6A, see section 78DH.

***impose a term of actual imprisonment***, for Part 3, Division 6A, see section 78DG.

***level 1 offence***, for Part 3, Division 6A, see section 78CA(5).

***level 2 offence***, for Part 3, Division 6A, see section 78CA(4).

***level 3 offence***, for Part 3, Division 6A, see section 78CA(3).

***level 4 offence***, for Part 3, Division 6A, see section 78CA(2).

***level 5 offence***, for Part 3, Division 6A, see section 78CA(1).

***physical harm***, for Part 3, Division 6A, see section 78C.

***violent offence*** means the following:

- (a) for section 39A – see section 39A(2);
- (b) for section 48A – see section 48A(2);
- (c) for sections 65, 67, 68 and 74 – see section 65(1);
- (d) for section 52 and Part 3, Division 6A – see section 78C.

**5 Section 54 amended**

After section 54(3)

*insert*

- (4) If the court is required under Division 6A to impose a minimum sentence of 12 months actual imprisonment for an offence, the period fixed under section 53(1) for that offence must be not less than 12 months.

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**6 Part 3, Division 6A replaced**

Part 3, Division 6A

*repeal, insert*

**Division 6A Mandatory imprisonment for violent offences**

**Subdivision 1 Preliminary matters**

**78C Definitions**

In this Division:

*impose a minimum sentence*, see section 78DH.

*impose a term of actual imprisonment*, see section 78DG.

*level 1 offence*, see section 78CA(5).

*level 2 offence*, see section 78CA(4).

*level 3 offence*, see section 78CA(3).

*level 4 offence*, see section 78CA(2).

*level 5 offence*, see section 78CA(1).

*physical harm*, in relation to a person, means a physical injury that interferes with the person's health.

*violent offence* means:

- (a) an offence against a provision of the Criminal Code listed in Schedule 2; or
- (b) an offence substantially corresponding to an offence mentioned in paragraph (a) against:
  - (i) a law that has been repealed; or
  - (ii) a law of another jurisdiction (including a jurisdiction outside Australia).

**78CA Offence levels**

- (1) Each of the following is a *level 5 offence*:
  - (a) an offence against section 181 of the Criminal Code;
  - (b) an offence against section 155A (if the offender assaulted the other person), 186, 188 (if the offence is committed in circumstances mentioned in section 188(2), other than paragraph (k)), 188A, 189A, 190, 191, 193 or 212 of the Criminal Code if:
    - (i) commission of the offence involves the actual or threatened use of an offensive weapon (as defined in section 1 of the Criminal Code); and
    - (ii) the victim suffers physical harm as a result of the offence.
- (2) An offence against section 188A or 189A of the Criminal Code is a *level 4 offence* if:
  - (a) the victim suffers physical harm as a result of the offence; and
  - (b) the offence is not a level 5 offence.
- (3) An offence against section 188 of the Criminal Code is a *level 3 offence* if the offence:
  - (a) is committed in circumstances mentioned in section 188(2), other than paragraph (k); and
  - (b) is not a level 5 offence.
- (4) An offence against section 186 of the Criminal Code is a *level 2 offence* if:
  - (a) the victim suffers physical harm as a result of the offence; and
  - (b) the offence is not a level 5 offence.
- (5) Any other violent offence is a *level 1 offence*.

**Subdivision 2 Mandatory imprisonment****78D Level 5 offence – first offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 5 offence; and

(b) the offender has not previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

**78DA Level 5 offence – second or subsequent offence**

(1) This section applies if:

(a) a court finds an offender guilty of a level 5 offence; and

(b) the offender has previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 12 months actual imprisonment.

**78DB Level 4 offence – any offence**

(1) This section applies if a court finds an offender guilty of a level 4 offence (whether or not the offender has previously been convicted of a violent offence).

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

**78DC Level 3 offence – first offence**

(1) This section applies if:

(a) a court finds an offender guilty of a level 3 offence; and

(b) the victim suffers physical harm as a result of the offence; and

(c) the offender has not previously been convicted of a violent offence.

(2) The court must impose a term of actual imprisonment.

**78DD Level 3 offence – second or subsequent offence**

(1) This section applies if:

(a) a court finds an offender guilty of a level 3 offence; and

(b) the offender has previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

**78DE Level 2 offence – any offence**

- (1) This section applies if a court finds an offender guilty of a level 2 offence (whether or not the offender has previously been convicted of a violent offence).
- (2) The court must impose a term of actual imprisonment.

**78DF Level 1 offence – second offence**

- (1) This section applies if:
  - (a) a court finds an offender guilty of a level 1 offence; and
  - (b) the offender has previously been convicted of a violent offence.
- (2) The court must impose a term of actual imprisonment.

**78DG Imposition of term of actual imprisonment**

If a court is required to *impose a term of actual imprisonment* in relation to an offender, the court:

- (a) must record a conviction against the offender; and
- (b) must sentence the offender to a term of imprisonment; and
- (c) may make an order under section 40 or 44 in relation to part, but not the whole of, the term of imprisonment.

**78DH Imposition of minimum sentence**

- (1) If a court is required to *impose a minimum sentence* of a specified period of actual imprisonment in relation to an offender, the court:
  - (a) must record a conviction against the offender; and
  - (b) must sentence the offender to a term of imprisonment of not less than the specified period; and
  - (c) cannot make an order under section 40 or 44 in relation to the imprisonment for the specified period.
- (2) However, if the offender is a youth (as defined in section 6 of the *Youth Justice Act*):
  - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and



- (b) the court must instead comply with section 78DG as if that section applied to the case.

#### **78DI Exceptional circumstances exemption**

- (1) This section applies if:
  - (a) a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence; and
  - (b) the court is satisfied that the circumstances of the case are exceptional.
- (2) If this section applies:
  - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
  - (b) the court must instead comply with section 78DG as if that section applied to the case.
- (3) In deciding whether it is satisfied as mentioned in subsection (1)(b), the court may have regard to:
  - (a) any victim impact statement or victim report presented to the court under section 106B; and
  - (b) any other matter the court considers relevant.
- (4) For subsection (1)(b), the following do not constitute exceptional circumstances:
  - (a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;
  - (b) that another person:
    - (i) was involved in the commission of the offence; or
    - (ii) coerced the person to commit the offence.

### **Subdivision 3 General matters**

#### **78E Other powers not affected**

This Division does not prevent a court from exercising any of its powers that may be exercised consistently with this Division.

**78EA Division does not apply to offence committed before commencement**

This Division does not apply in relation to an offence committed before the commencement of section 6 of the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013*.

**7 Section 78BB renumbered**

Section 78BB

*renumber* as section 78F

**8 Schedule 2 replaced**

Schedule 2

*repeal, insert*

**Schedule 2 Violent offences**

section 78C, definition *violent offence*

**Criminal Code**

section 54	Terrorism
section 55	Contribution towards acts of terrorism
section 155A	Assault, obstruction etc. of persons providing rescue, medical treatment or other aid if the offender assaulted the other person
section 156	Murder
section 160	Manslaughter
section 161A	Violent act causing death
section 165	Attempt to murder
section 166	Threats to kill
section 175	Disabling in order to commit crime
section 176	Stupefying in order to commit crime
section 177	Acts intended to cause serious harm or prevent apprehension
section 181	Serious harm
section 182	Attempting to injure by explosive substances
section 185	Setting man-traps
section 186	Harm
section 188	Common assault other than in circumstances mentioned in section 188(2)(k)

section 188A	Assaults on workers
section 189	Unlawful stalking
section 189A	Assaults on police
section 190	Assaults on the Administrator or judges or magistrates
section 191	Assaults on member of crew of aircraft
section 193	Assaults with intent to commit an offence
section 194	Kidnapping for ransom
section 211	Robbery
section 212	Assault with intent to steal

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**Part 3            Amendment of Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act**

**9            Act amended**

This Part amends the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act*.

**10          Section 30 amended**

Section 30(3)

*omit*

and 78BB

*insert*

to 78F