

Serial 162
Sentencing Amendment Act 1999
Mr Burke

**A BILL
for
AN ACT**

to amend the *Sentencing Act*



NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AMENDMENT ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

AN ACT

to amend the *Sentencing Act*

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Sentencing Amendment Act 1999*.

2. Commencement

(1) Section 19 commences on the day on which, but immediately after, the *Mental Health and Related Services (Consequential Amendments) Act 1999* commences.

(2) The remaining provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Sentencing Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended –

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- (a) by omitting from the definition of "mandatory period" in subsection (1) "found guilty of a property offence" and substituting "sentenced in respect of one or more property offences";
- (b) by omitting from subsection (1) the definition of "property offence" and substituting the following:

" 'property offence' means an offence specified in Schedule 1 that is committed on or after 8 March 1997;";
- (c) by inserting after the definition of "restricted area" in subsection (1) the following:

" 'sexual offence' means an offence specified in Schedule 3;";
- (d) by omitting from the definition of "undertaking" in subsection (1) "the court." and substituting "the court;"; and
- (e) by adding at the end of subsection (1) the following:

" 'violent offence' means an offence specified in Schedule 2."

5. Sentencing guidelines

Section 5 of the Principal Act is amended by inserting after subsection (2)(f) the following:

"(fa) in the case of an offender being sentenced under section 78A on a particular day – the number of property offences in respect of which the offender is being sentenced on that day;".

6. Breach of order for release on bond

Section 15 of the Principal Act is amended –

- (a) by inserting after subsection (3) the following:

"(3A) Where a court is satisfied that an offender who is before the court has failed without reasonable excuse to comply with a condition of an order made by the court under section 11 or 13, the court may of its own motion make an order under this section.

"(3B) Where the Court of Summary Jurisdiction is satisfied that an offender who is before that Court has failed without reasonable excuse to comply with a condition of an order made by the Supreme Court under section 11 or 13, the Court of Summary Jurisdiction may commit the offender to the Supreme Court to be dealt with by that Court under this section."; and

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- (b) by omitting from subsection (4) "under this section" and substituting "under subsection (1) or on the hearing of its own motion under subsection (3A)".

7. Revocation of community service order

Section 29 of the Principal Act is amended –

- (a) by omitting from subsection (4)(a) "distress; or" and substituting "distress;"; and
- (b) by inserting after subsection (4)(a) the following:
 - "(aa) where a warrant of commitment in respect of the offender had been issued under section 25 but had not been executed, the offender may be arrested under the warrant and imprisoned for the term specified in the warrant; or".

8. Circumstances in which community service order may be made

Section 35 of the Principal Act is amended –

- (a) by omitting "A court" and substituting "(1) A court";
- (b) by omitting from paragraph (a) "a probation officer" and substituting "the Director";
- (c) by omitting from paragraph (b) "from a probation officer" and substituting "from the Director";
- (d) by omitting from paragraph (b) "hearing a probation officer" and substituting "hearing the Director or a person authorised by the Director"; and
- (e) by adding at the end the following:

"(2) For the purpose of subsection (1)(b), a court must order the Director to prepare and provide to the court a report about an offender and his or her circumstances."

9. Suspended sentence of imprisonment

Section 40 of the Principal Act is amended by omitting from subsection (6) "from the date of the order during which" and substituting the following:

"from –

- (a) if the whole of the sentence is suspended – the date of the order; or

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- (b) if a part of the sentence is suspended – the date specified in the order,

during which".

10. Variation of order conditionally suspending sentence

Section 42 of the Principal Act is amended by inserting in subsection (1) "or partially" after "wholly".

11. Breach of order suspending sentence

Section 43 of the Principal Act is amended –

- (a) by omitting from subsection (1) "a prescribed person, or a member of a prescribed class of persons, that the offender, during the operational period, committed another offence" and substituting "a prescribed person or a member of a prescribed class of persons that, during the operational period, the offender committed another offence against a law in force in the Territory or elsewhere that is";

- (b) by omitting subsection (3) and substituting the following:

"(3) Where an application is made under subsection (1) or (2) –

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

- (b) where a Justice is satisfied –

- (i) in the case of an application under subsection (1) – that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment and that the offender may not appear; or
- (ii) in the case of an application under subsection (2) – that the offender has breached a condition to which the order suspending the sentence is subject and that the offender may not appear,

the Justice may issue a warrant for the arrest of the offender.";

- (c) by inserting after subsection (4) the following:

"(4A) Where –

- (a) an offender appears before a court –

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- (i) while an order made by the court suspending a sentence of imprisonment under section 40 is in force in respect of the offender; or
 - (ii) within the period of 2 years after the expiry of the operational period of a suspended sentence imposed by the court on the offender; and
- (b) the court is satisfied that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment,

the court may of its own motion make an order under this section.

"(4B) Where a court is satisfied that an offender who is before the court has breached a condition to which an order made by the court suspending a sentence imposed on the offender is subject, the court may of its own motion make an order under this section.

"(4C) Where the Court of Summary Jurisdiction is satisfied in respect of an offender who is before that Court –

- (a) that, during the operational period of a suspended sentence imposed on the offender by the Supreme Court, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or
- (b) that the offender has breached a condition to which an order made by the Supreme Court suspending a sentence imposed on the offender is subject,

the Court of Summary Jurisdiction may commit the offender to the Supreme Court to be dealt with by that Court under this section.";

- (d) by omitting from subsection (5) all the words from and including "Where" to and including "it may –" and substituting the following:

"Where –

- (a) on the hearing of an application under subsection (1) or on the hearing of its own motion under subsection (4A), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that, during the operational period of the suspended sentence, the offender committed another offence against a law in force in the Territory or elsewhere that is punishable by imprisonment; or

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- (b) on the hearing of an application under subsection (2) or on the hearing of its own motion under subsection (4B), a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has breached a condition of the order,

the court may –";

- (e) by omitting from subsection (5)(e) "order; or" and substituting "order suspending the sentence;"; and

- (f) by inserting after subsection (5)(e) the following:

"(ea) in the case of a partially suspended sentence – extend the operational period to a date after the date specified in the order suspending the sentence; or".

12. Circumstances in which home detention order may be made

Section 45 of the Principal Act is amended –

- (a) by omitting "A court" and substituting "(1) A court";

- (b) by inserting before subsection (2) the following:

"(1A) For the purpose of subsection (1)(a), a court must order the Director to prepare and provide to the court a report about the matters referred to in subsection (1)(a)(i), (ii) and (iii)."; and

- (c) by omitting from subsection (2) "For the purposes of making a report under subsection (1)" and substituting "In preparing a report for the purposes of subsection (1)(a)".

13. Breach of home detention order

Section 48 of the Principal Act is amended –

- (a) by omitting from subsection (1)(d) "blood test" and substituting "blood or urine test";

- (b) by inserting in subsection (1)(h) "or elsewhere" after "Territory";

- (c) by omitting subsection (6) and substituting the following:

"(6) Where a court is satisfied that an offender has breached a home detention order, subject to subsection (9) –

- (a) if the order is still in force, the court must revoke the order; and

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- (b) whether the order is revoked under paragraph (a) or is otherwise no longer in force, the offender must be imprisoned for the term suspended by the court on the making of the order as if the order had never been made and despite any period that the offender may have served under the order.";
- (d) by inserting in subsection (7) "or elsewhere" after "Territory";
- (e) by omitting subsection (9) and substituting the following:
 - "(9) Where –
 - (a) the offender has breached a home detention order by virtue of subsection (1)(a), (b), (c), (d), (e), (f) or (g) and, having regard to the circumstances of the offender or the breach, the court is of the opinion that it is appropriate to do so; or
 - (b) the offender has breached a home detention order by virtue of subsection (1)(h) and the offence committed is a regulatory offence or is not punishable by imprisonment,
despite subsection (6), the court may –
 - (c) if the order is still in force – direct that the order continue in force and, in so doing, may vary the terms and conditions of the order, including, subject to subsection (11), the period the order is to remain in force; or
 - (d) if the order is no longer in force – subject to subsection (11A), make another order under section 44(1) suspending the sentence on the offender entering into a home detention order."; and
- (f) by inserting after subsection (11) the following:
 - "(11A) A home detention order must not be made for the purpose of subsection (9)(d) if the aggregate of –
 - (a) the period of the order made for the purpose of subsection (9)(d); and
 - (b) so much of the period of the order that was breached as remained after the date of the breach,
exceeds 12 months."

14. Aggregate sentences of imprisonment

Section 52 of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) Subsection (1) does not apply if one of the offences in the information, complaint or indictment is a property offence, a violent offence or a sexual offence."

15. Indefinite sentence – imposition

Section 65 of the Principal Act is amended by adding at the end the following:

"(11) For the purpose of subsection (9), the Supreme Court may order the preparation and provision to the Court of such medical, psychiatric, prison and other reports as the Court considers relevant."

16. Imprisonment for property offences

Section 78A of the Principal Act is amended –

(a) by omitting subsections (1) to (6) (inclusive) and substituting the following:

"(1) Where –

- (a) an offender who has been found guilty of one or more property offences is before a court to be sentenced in respect of those offences; and
- (b) the offender has not on any previous day been sentenced under this section by that court or any other court in respect of one or more property offences,

subject to subsection (6B), the court must record a conviction and order the offender to serve one term of imprisonment of not less than 14 days in respect of all of the offences referred to in paragraph (a).

"(2) Where –

- (a) an offender who has been found guilty of one or more property offences is before a court to be sentenced in respect of those offences; and
- (b) the offender has on a previous day been sentenced under this section by that court or any other court in respect of one or more property offences,

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the court must record a conviction and order the offender to serve one term of imprisonment of not less than 90 days in respect of all of the offences referred to in paragraph (a).

"(3) Where –

- (a) an offender who has been found guilty of one or more property offences is before a court to be sentenced in respect of those offences; and
- (b) the offender has on 2 or more previous days been sentenced under this section by that court or any other court in respect of one or more property offences,

the court must record a conviction and order the offender to serve one term of imprisonment of not less than 12 months in respect of all of the offences referred to in paragraph (a).

"(4) If an offender who has been sentenced on a previous day under subsection (1), (2), (3) or (6D) is before a court to be sentenced in respect of one or more additional property offences that were committed before the offender was sentenced under that subsection –

- (a) this section (other than this subsection) does not apply in relation to those additional property offences;
- (b) the court may impose any sentence or make any order otherwise authorised by or under this or any other Act in relation to those additional property offences; and
- (c) if the offender subsequently appears before a court to be sentenced in respect of one or more property offences and it is necessary to determine the number of previous days on which the offender has been sentenced under this section, the day on which the offender was sentenced under this subsection is not to be taken into account as such a day.

"(5) For the purposes of subsections (1), (2), (3) and (6D), an offender is to be taken to be before a court to be sentenced in respect of 2 or more offences if the offender is before a court in respect of each of those offences on the same day –

- (a) whether or not the offender is before the same court in respect of each of the offences; and
- (b) whether or not the offender is before a court in respect of each of the offences at the same time.

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"(6) A reference in subsection (1), (2), (3) or (4) to an offender who has been sentenced under this section or a provision of this section is to be read as including a reference to an offender who has been sentenced under section 78A as in force at any time on or after 8 March 1997.

"(6A) Despite sections 50 and 51, the mandatory period of a term of imprisonment imposed under subsection (1), (2), (3) or (6D) is not to be served concurrently with either of the following:

- (a) the term of imprisonment for another offence that is not a property offence regardless of when the sentence in respect of that other offence was imposed;
- (b) the term of imprisonment for another property offence if the sentence in respect of that other property offence was or is imposed on a different day.

"(6B) A court is not required to make an order under subsection (1) if exceptional circumstances for not doing so exist and may instead impose any other sentence or make any other order authorised by this or any other Act.

"(6C) For the purposes of subsection (6B), exceptional circumstances will only exist if the offender is before the court to be sentenced in respect of a single property offence, the offender has not on any previous day been dealt with by a court under subsection (6B) and the court is satisfied of all of the following:

- (a) that the offence was trivial in nature;
- (b) that the offender has made, or has made reasonable efforts to make, full restitution;
- (c) that the offender is otherwise of good character and that there were mitigating circumstances (which it is noted do not include intoxication due to alcohol or the use of illegal drugs) that significantly reduce the extent to which the offender is to blame for the commission of the offence and demonstrate that the commission of the offence was an aberration from the offender's usual behaviour;
- (d) that the offender co-operated with law enforcement agencies in the investigation of the offence,

the onus of proving the existence of the matters referred to in paragraphs (a), (b), (c) and (d) being on the offender.

"(6D) If an offender who has been dealt with on a previous day under subsection (6B) is before a court to be sentenced in respect of one or more

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additional property offences that were committed before the offender was dealt with under subsection (6B) –

- (a) the court must record a conviction and order the offender to serve one term of imprisonment of not less than 14 days in respect of all of the additional offences; and
- (b) if the offender subsequently appears before a court to be sentenced in respect of one or more property offences and it is necessary to determine the number of previous days on which the offender has been sentenced under this section, the day on which the offender was sentenced under this subsection is to be taken into account as one such day.

"(6E) If an offender who has been dealt with on a previous day under subsection (6B) is before a court to be sentenced in respect of one or more property offences that were committed after the offender was dealt with under subsection (6B) and it is necessary to determine the number of previous days on which the offender has been sentenced under this section, the day on which the offender was dealt with under subsection (6B) is not to be taken into account as such a day.

"(6F) A court must not impose a term of imprisonment under subsection (1), (2), (3) or (6D) in respect of all of the property offences for which the offender is being sentenced on a particular day that exceeds the sum of the maximum terms of imprisonment that could be imposed if a separate term were imposed in respect of each offence.";

- (b) by omitting from subsection (7)(a) "a term of imprisonment that exceeds the mandatory period" and substituting "a term of imprisonment that exceeds the mandatory period in respect of all of the property offences for which the offender is being sentenced on a particular day"; and
- (c) by adding at the end the following:

"(8) For the avoidance of doubt, if an offender who has been dealt with on a previous day under section 53AE of the *Juvenile Justice Act* is before a court to be sentenced in respect of one or more property offences and it is necessary to determine the number of previous days on which the offender has been sentenced under this section, the day on which the offender was dealt with under section 53AE of the *Juvenile Justice Act* is not taken into account as such a day.

"(9) Despite anything in the *Juvenile Justice Act* or this Act, where –

- (a) an offender who has been found guilty of one or more property offences is before a court to be sentenced in respect of those offences; and

- (b) the offender has also been found guilty of one or more property offences committed before the offender attained the age of 17 years but has not been dealt with under the *Juvenile Justice Act* in respect of those offences,

the court may deal with the offender in respect of the offences referred to in paragraph (b) as if those offences had been committed by the offender after attaining the age of 17 years and this section applies accordingly."

17. New Divisions

Part 3 of the Principal Act is amended by inserting after Division 6 the following:

"Division 6A – Imprisonment for violent offences

"78BA. Imprisonment for violent offences

"(1) Where a court finds an offender guilty of a violent offence and the offender has one or more times before (whether prior to or after this section commencing) been found guilty of a violent offence, the court must record a conviction and must order that the offender serve –

- (a) a term of actual imprisonment; or
- (b) a term of imprisonment that is suspended by it partly but not wholly.

"(2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1).

"Division 6B – Imprisonment for sexual offences

"78BB. Imprisonment for sexual offences

"(1) Where a court finds an offender guilty of a sexual offence, the court must record a conviction and must order that the offender serve –

- (a) a term of actual imprisonment; or
- (b) a term of imprisonment that is suspended by it partly but not wholly.

"(2) Nothing in subsection (1) is to be taken to affect the power of a court to make any other order authorised by or under this or any other Act in addition to an order under subsection (1)."

18. Interpretation

Section 78H in Division 8 of Part 3 of the Principal Act is amended by omitting from subsection (2)(b) "been".

19. Section renumbering

Section 78H in Part 4 of the Principal Act is renumbered as section 78P.

20. New section

The Principal Act is amended by inserting after section 99 in Part 5 the following:

"99A. Forfeiture of property orders

"Where a court imposes a term of imprisonment or a fine on an offender, the court may also order that property owned by the offender and used in the commission of the offence for which the offender is being sentenced is forfeited to the Territory."

21. Victim impact statements and victim reports

Section 106B of the Principal Act is amended –

- (a) by omitting from subsection (1) "where the victim consents to its presentation" and substituting the following:

"where –

- (a) the victim consents to its presentation; or
 - (b) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – the report has been prepared by a person who, in the opinion of the court, has a sufficiently close relationship with the victim.";
- (b) by omitting from subsection (2)(a) "and has been informed of the contents of the victim report and does not object to its presentation; or" and substituting "but has been informed of the contents of the victim report and does not object to its presentation;"; and
- (c) by inserting after subsection (2)(a) the following:
- "(aa) in the case of a victim who, because of age or physical or mental disability, is incapable of giving consent – a person who, in the opinion of the court, has a sufficiently close relationship with the

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victim has been informed of the contents of the victim report and does not object to its presentation; or".

22. Repeal

Section 129 of the Principal Act is amended by omitting "Schedule 2" and substituting "Schedule 4".

23. Savings and transitional

Section 130 of the Principal Act is amended –

- (a) by inserting in subsection (2) "(whether or not, in the case of an order, the order is still in force)" after "under this Act"; and
- (b) by omitting from subsection (3) "a declaration under the section 397 or a direction under 401" and substituting "a declaration under section 397 or a direction under section 401".

24. Schedule 1

Schedule 1 to the Principal Act is amended by omitting "**COMPULSORY IMPRISONMENT OFFENCES UNDER CRIMINAL CODE**" and substituting "**PROPERTY OFFENCES**".

25. New schedules

The Principal Act is amended by inserting after Schedule 1 the following:

"SCHEDULE 2

VIOLENT OFFENCES

Section 3(1)

1. An offence against section 54, 55, 163, 165, 166, 175, 176, 177, 181, 182, 185 or 186 of the Criminal Code.
2. An offence section 188 of the Criminal Code, other than where the circumstance of aggravation specified in section 188(2)(k) exists.
3. An offence against section 189A, 190, 191 or 193 of the Criminal Code.

SCHEDULE 3
SEXUAL OFFENCES

Section 3(1)

1. An offence against section 125B or 125C of the Criminal Code, where the offender is an individual.
2. An offence against section 128 of the Criminal Code, where the circumstance of aggravation specified in section 128(2) exists.
3. An offence against section 129, 130, 131, 131A, 132, 134, 135 or 138 of the Criminal Code.
4. An offence against section 188 of the Criminal Code, where the circumstance of aggravation specified in section 188(2)(k) exists.
5. An offence against section 192 or 192B of the Criminal Code."

26. Schedule 2

Schedule 2 to the Principal Act is amended by omitting "SCHEDULE 2" and substituting "SCHEDULE 4".

27. Application

(1) The amendments effected by section 16 apply in relation to an offender who is before a court at any time after the commencement of that section to be sentenced in respect of a property offence committed on or after 8 March 1997.

(2) The amendments effected by section 17 apply in relation to an offender who is before a court to be sentenced in respect of a violent offence or a sexual offence committed at any time after the commencement of that section.

