

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AMENDMENT BILL 1997

TABLE OF PROVISIONS

Clause

1. Short title
 2. Commencement
 3. Principal Act
 4. Interpretation
 5. Cumulative orders of imprisonment
 6. Aggregate sentences of imprisonment
 7. Fixing of non-parole period by sentencing court
 8. Minimum non-parole period
 9. Court to take abolition of remissions into account
 10. Imprisonment for property offenders
 11. Additional orders for property offenders
 12. Heading to Division 6 of Part 3
 13. Heading to Subdivision 1 of Division 6 of Part 3
 14. Heading to Subdivision 2 of Division 6 of Part 3
 15. Punitive work order
 16. Circumstances in which punitive work order may be made
 17. Duties of offender in carrying out punitive work order
 18. Review of punitive work order
 19. Breach of punitive work order
 20. Hospital orders
 21. Schedule 1
-



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Sentencing Act*

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 1997*.

2. COMMENCEMENT

This Act comes 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 by inserting after the definition of "instalment order" in subsection (1) the following:

"'mandatory period', in relation to an offender found guilty of a property offence, means so much of a term of imprisonment as is required

Sentencing Amendment

to be imposed on the offender under section 78A;".

5. CUMULATIVE ORDERS OF IMPRISONMENT

Section 51 of the Principal Act is amended by omitting from subsection (1) "Where" and substituting "Subject to section 78A, where".

6. AGGREGATE SENTENCES OF IMPRISONMENT

Section 52 of the Principal Act is amended by adding at the end the following:

"(3) Subject to section 78A, a court must not impose one term of imprisonment under subsection (1) where one of the offences in respect of which the term of imprisonment would be imposed is a property offence.".

7. FIXING OF NON-PAROLE PERIOD BY SENTENCING COURT

Section 53 of the Principal Act is amended —

(a) by inserting after subsection (1) the following:

"(1A) A court must not, as part of a sentence for a property offence, fix as any part of a period during which the offender is not eligible to be released on parole any part of the mandatory period of the sentence."; and

(b) by inserting after subsection (2) the following:

"(2A) For the purposes of subsection (2), where one of the offences is a property offence, the aggregate period of imprisonment that the offender is liable to serve is not to be taken to include the mandatory period of the sentence for the property offence.".

8. MINIMUM NON-PAROLE PERIOD

Section 54 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) For the purposes of subsection (1), the period of imprisonment that an offender is to serve under a sentence imposed for a property offence is not to be taken to include the mandatory period of the sentence.".

9. COURT TO TAKE ABOLITION OF REMISSIONS INTO ACCOUNT

Section 58 of the Principal Act is amended by omitting from subsection (1) "When" and substituting "Subject to section 78A, when".

Sentencing Amendment

10. IMPRISONMENT FOR PROPERTY OFFENDERS

Section 78A of the Principal Act is amended —

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

"(3A) Despite sections 50 and 51, the mandatory period of a term of imprisonment imposed in pursuance of subsection (1), (2) or (3) is not to be served concurrently with the term of imprisonment for another offence.";

- (b) by omitting from subsection (5) "property offences are together a single property offence" and substituting "findings of guilt are together a single finding of guilt"; and

- (c) by adding at the end the following:

"(7) Nothing in this section is to be taken to affect the requirement under section 5(2) that a court must have regard to the matters specified in that section before —

- (a) ordering an offender to serve a term of imprisonment that exceeds the mandatory period; or
- (b) making any additional order in pursuance of section 78B in respect of an offender."

11. ADDITIONAL ORDERS FOR PROPERTY OFFENDERS

Section 78B of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) An order referred to in subsection (1) cannot be made if its effect could be to release (whether conditionally or unconditionally) the offender from the requirement to serve the mandatory period as a term of actual imprisonment."

12. HEADING TO DIVISION 6 OF PART 3

The heading to Division 6 of Part 3 of the Principal Act is amended by omitting "*Custodial Orders*" and substituting "*Minimum Mandatory Imprisonment*".

13. HEADING TO SUBDIVISION 1 OF DIVISION 6 OF PART 3

The heading to Subdivision 1 of Division 6 of Part 3 of the Principal Act is omitted.

Sentencing Amendment

14. HEADING TO SUBDIVISION 2 OF DIVISION 6 OF PART 3

The heading to Subdivision 2 of Division 6 of Part 3 of the Principal Act is amended by omitting "Subdivision 2" and substituting "Division 7".

15. PUNITIVE WORK ORDER

Section 78C of the Principal Act is amended —

- (a) by omitting from subsection (2) "a property offence" and substituting "an offence"; and
- (b) by adding at the end the following:

"(7) Despite section 69 of the *Prisons (Correctional Services) Act*, a prisoner is not entitled to be paid for any work performed in compliance with a punitive work order."

16. CIRCUMSTANCES IN WHICH PUNITIVE WORK ORDER MAY BE MADE

Section 78D of the Principal Act is amended by omitting paragraph (b) and substituting the following:

"(b) is satisfied, after —

- (i) considering a report from a probation officer about the offender and his or her circumstances;
- (ii) taking into account the offender's physical and mental capacity; and
- (iii) if the court thinks necessary — hearing a probation officer,

that —

- (iv) the offender is a suitable person to participate in the approved project; and
- (v) the project is approved and can be provided under the arrangements referred to in paragraph (a)."

17. DUTIES OF OFFENDER IN CARRYING OUT PUNITIVE WORK ORDER

Section 78E of the Principal Act is amended by omitting from subsection (1)(d) "inform" and substituting "in the case of an offender who is not serving a term of actual imprisonment — inform".

Sentencing Amendment

18. REVIEW OF PUNITIVE WORK ORDER

Section 78F of the Principal Act is amended -

- (a) by omitting from subsection (1) "A court" and substituting "The court that made a punitive work order"; and
- (b) by omitting from subsection (1)(a) "a punitive work order" and substituting "the punitive work order".

19. BREACH OF PUNITIVE WORK ORDER

Section 78G of the Principal Act is amended -

- (a) by omitting subsection (1)(d), (e) and (f) and substituting the following:

"(d) assaults, threatens, insults or uses abusive language to -

- (i) a probation officer;
- (ii) a supervising officer; or
- (iii) a prison officer responsible for supervising the order,

at any time during the period that the order is in force;

- (e) in the case of an offender who is not serving a term of actual imprisonment - changes his or her address for the purposes of evading execution of this Act;
- (f) commits an offence against a law in force in the Territory, the Commonwealth or a State or another Territory of the Commonwealth at any time during the period that the order is in force; or
- (g) commits a breach of the Regulations.";
- (b) by omitting from subsection (4) "Where a court is satisfied that an offender is in breach of a punitive work order," and substituting "Where the court that made a punitive work order is satisfied that the offender is in breach of the order,";
- (c) by omitting subsection (5)(a)(i) and (ii) and substituting the following:

"(i) if that offence is a property offence -

Sentencing Amendment

- (A) varying the order made in pursuance of section 78A in respect of the offence by extending the mandatory period; or
 - (B) making any other order it may make under this Act, other than an order the effect of which would be that the offender would not serve the whole of the mandatory period or any extension of that period under paragraph (A) as a term of actual imprisonment; or
- (ii) if that offence is not a property offence — making any other order it may make under this Act; and"; and
- (d) by omitting from subsection (6) "a court" and substituting "the court that made the order".

20. HOSPITAL ORDERS

Section 80 of the Principal Act is amended —

- (a) by omitting from subsection (1)(d) "instead" and substituting "if the finding of guilt is in respect of an offence other than a property offence — instead";
- (b) by omitting from subsection (5) "the period specified in an order under subsection (1)(e)" and substituting the following:
"the period —
 - (a) determined by the Chief Officer for the purposes of an order under subsection (1)(c); or
 - (b) specified in an order under subsection (1)(e),"; and
 - (c) by adding at the end the following:

"(8) Despite anything in this section, for the purposes of sections 78A and 78B, an offender who is detained in a hospital in pursuance of an order under this section is deemed to be actually serving a term of imprisonment.".

21. SCHEDULE 1

Schedule 1 to the Principal Act is amended —

- (a) by omitting from clause 1(b) "and";
- (b) by omitting from clause 1(c) "offence." and substituting "offence; and";

Sentencing Amendment

- (c) by adding at the end of clause 1 the following:
 - "(d) the offender was not employed at the premises or place at the time of the offence.";
 - (d) by omitting from clause 2 "230,"; and
 - (e) by adding at the end the following:
 - "3. An offence against section 61 of the *Summary Offences Act*."
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