

Serial 254
Sentencing Amendment (Aboriginal Customary Law) Bill 2004
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Sentencing Act*

NORTHERN TERRITORY OF AUSTRALIA
SENTENCING AMENDMENT (ABORIGINAL CUSTOMARY LAW)
ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Sentencing Act*

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Sentencing Amendment (Aboriginal Customary Law) Act 2004*.

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. New section 104A

The Principal Act is amended by inserting after section 104 the following:

"104A. Information on Aboriginal customary law and community views

"(1) This section applies in relation to the receipt of information about any of the following matters by a court before it passes a sentence on an offender:

Sentencing Amendment (Aboriginal Customary Law) Act 2004

- (a) an aspect of Aboriginal customary law (including any punishment or restitution under that law) that may be relevant to the offender or the offence concerned;
- (b) views expressed by members of an Aboriginal community about the offender or the offence concerned.

"(2) The court may only receive the information –

- (a) from a party to the proceedings; and
- (b) for the purposes of enabling the court to impose a proper sentence or to make a proper order for restitution or compensation (as mentioned in section 104(1) and (2)).

"(3) In addition, and despite any other provisions, the court may only receive the information if it is presented to the court as follows:

- (a) the party to the proceedings that wishes to present the information ('the first party') gives notice about the presentation to each of the other parties to the proceedings;
- (b) the notice outlines the substance of the information;
- (c) the notice is given before the first party makes any submission about sentencing the offender;
- (d) each of the other parties has a reasonable opportunity to respond to the information;
- (e) the information is presented to the court in the form of evidence on oath, an affidavit or a statutory declaration.

"(4) In this section –

'Aboriginal community' includes a community of Torres Strait Islanders;

'Aboriginal customary law' includes a customary law of the Torres Strait Islanders."

5. New Part heading

The Principal Act is amended by inserting before section 129 the following:

**"PART 12 – REPEAL AND TRANSITIONAL MATTERS FOR
SENTENCING ACT 1995".**

6. New Part 13

The Principal Act is amended by inserting after section 130 the following:

**"PART 13 – TRANSITIONAL MATTERS FOR *SENTENCING
AMENDMENT (ABORIGINAL CUSTOMARY LAW) ACT 2004***

"131. Application of section 104A

"Section 104A applies in relation to information presented to a court after the commencement of the *Sentencing Amendment (Aboriginal Customary Law) Act 2004*".
