

Crimes (Sentencing Procedure) Amendment Bill 2010

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes (Sentencing Procedure) Act 1999* (the **Sentencing Act**) and certain other Acts to implement recommendations of the NSW Sentencing Council in its report *Reduction in Penalties at Sentence* of August 2009, and
- (b) to amend the Sentencing Act to provide for the aggregation of sentences.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (except Schedule 1.3) on a day or days to be appointed by proclamation. Schedule 1.3 commences on assent.

Schedule 1 Amendments relating to Sentencing Council recommendations

Schedule 1 contains the amendments to the Sentencing Act and certain other Acts referred to in paragraph (a) of the Overview above.

Amendments to Crimes (Administration of Sentences) Act 1999 No 93

Section 135 of the *Crimes (Administration of Sentences) Act 1999* requires the Parole Authority to have regard to certain matters in deciding whether to make a parole order for a sentence of more than 3 years for which a non-parole period has been imposed on an offender.

Schedule 1.1 [1] implements Sentencing Council Recommendation 7 by amending section 135 to enable the Parole Authority to have regard to the nature and extent of the assistance provided by an offender after being sentenced (including the reliability and value of any information or evidence provided by the offender) and the degree to which the offender's willingness to provide such assistance reflects the offender's progress to rehabilitation in deciding whether or not it is appropriate in the public interest to release the offender on parole.

Schedule 1.1 [2] and [3] amend Schedule 5 to the *Crimes (Administration of Sentences) Act 1999* to enable the making of savings and transitional regulations and enact savings provisions consequent on the amendments to that Act described above.

Amendments to Crimes (Sentencing Procedure) Act 1999 No 92 Guilty pleas

Section 22 of the Sentencing Act requires a court to take a guilty plea into account in passing sentence for an offence and enables it to impose a lesser penalty than it would otherwise have imposed.

Schedule 1.2 [1] implements Sentencing Council Recommendation 1. It amends section 22 of the Sentencing Act to require a court to take into account the circumstances in which an offender indicated an intention to plead guilty in passing sentence. It will allow the court to take into consideration factors that may have affected the timeliness of the offender's offer or willingness to plead guilty.

Schedule 1.2 [2] implements Sentencing Council Recommendation 2. It amends section 22 of the Sentencing Act to specifically require that any lesser penalty imposed by the court under the section must not be unreasonably disproportionate to the nature and circumstances of the offence.

Power to reduce penalties for pre-trial disclosure

Section 22A of the Sentencing Act gives a court the discretion to impose a lesser penalty than it would otherwise impose on an offender, having regard to the degree to which the offender made pre-trial disclosures for the purposes of the trial.

Schedule 1.2 [3] implements Sentencing Council Recommendation 8. It enables a court to impose a lesser penalty having regard to the degree to which the administration of justice has been facilitated by the defence (whether by disclosures made pre-trial or during the trial or otherwise).

Power to reduce penalties for assistance provided to law enforcement authorities

Section 23 of the Sentencing Act empowers a court to impose a lesser penalty if an offender has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of an offence and sets out various factors to be taken into account in deciding whether to impose the lesser penalty.

Schedule 1.2 [4] and [5] implement Sentencing Council Recommendations 4 and 5 by repealing sections 23 (2) (a) and 23 (2) (j), respectively, of the Sentencing Act.

The provisions to be repealed specify as factors the effect of the offence on the victim or victims of the offence and their families and the likelihood of the offender re-offending on release. The Sentencing Council states that these factors serve no useful purpose in the context of section 23 (para 8.44–47 of the Report).

Schedule 1.2 [6] implements Sentencing Council Recommendation 6. It requires a court that imposes a lesser penalty than it would otherwise impose on an offender because the offender has assisted or undertaken to assist law enforcement authorities, to indicate to the offender, and make a record of the fact, that the lesser penalty is being imposed for that reason, to state the penalty that it would otherwise have imposed and, where the lesser penalty is being imposed for both reasons, to state the amount by which the penalty has been reduced for each reason.

Fact that offender is prohibited person to be disregarded in sentencing

Section 24A of the Sentencing Act provides that a court must not take into account, as a mitigating factor in sentencing an offender, certain matters relating to mandatory supervision of sex offenders.

Schedule 1.2 [7] implements Sentencing Council Recommendation 9 by including within section 24A the fact that an offender is prohibited from engaging in child-related employment under the *Commission for Children and Young People Act 1998* because of being convicted of a serious sex offence, the murder of a child or a child-related personal violence offence.

Confiscation of assets and forfeiture of proceeds of crime to be disregarded in sentencing

Schedule 1.2 [8] implements Sentencing Council Recommendation 10. It inserts proposed section 24B into the Sentencing Act to prevent a court from taking into account, as a mitigating factor in sentencing, the consequences for the offender of any order of a court imposed because of the offence under confiscation or forfeiture legislation (for example, forfeiture orders, pecuniary penalty orders and drug proceeds orders under the *Confiscation of Proceeds of Crime Act 1989*).

Procedural error not to invalidate sentence

Schedule 1.2 [9] implements Sentencing Council Recommendation 14. It amends section 32 of the Sentencing Act to make it clear that procedural errors made in relation to the filing of lists of additional charges to be taken into account by the court in dealing with a principal offence do not invalidate any sentence imposed by the court for the offence.

Consultation with victim during charge negotiation

Section 22 of the Sentencing Act allows a court to take into account a guilty plea in passing sentence for an offence. Section 32 of the Sentencing Act allows a prosecutor to file a list of additional charges for offences that the offender wants the court to take into account when dealing with the principal offence after an offender is found guilty of the principal offence.

Schedule 1.2 [10] implements Sentencing Council Recommendation 11. It inserts proposed section 35A into the Sentencing Act to require consultation with the victim and any police officer in charge of investigating an offence in relation to agreed statements of facts and lists of additional charges compiled as a result of charge negotiations.

Sentences for offences involving escape by inmates

Section 57 of the Sentencing Act provides that sentences for offences involving escape from lawful custody committed by inmates of correctional centres are to be served consecutively with sentences of imprisonment imposed on the offender for other offences.

Schedule 1.2 [11] and [12] implement Sentencing Council Recommendation 13. They amend section 57 to require the court to set the sentences for the non-escape offences first so that escape sentences will be served cumulatively on them.

Savings and transitional provisions

Schedule 1.2 [13] and [14] amend Schedule 2 to the Sentencing Act to enable the making of savings and transitional regulations and enact savings provisions consequent on the amendments to that Act described above.

Amendments to Crimes (Serious Sex Offenders) Act 2006 No 7

Schedule 1.3 implements Sentencing Council Recommendation 12. It amends sections 6 and 14 of the *Crimes (Serious Sex Offenders) Act 2006* to make it clear that applications for extended supervision orders and continuing detention orders may be made in respect of sex offenders who are serving sentences of imprisonment for one or more serious sex offences or offences of a sexual nature or other offences being served concurrently or consecutively (or partly concurrently and partly consecutively) with such offences, irrespective of which was imposed first.

Schedule 2 Amendments to Crimes (Sentencing Procedure) Act 1999 No 92 relating to aggregate sentencing

Schedule 2 contains the amendments to the Sentencing Act referred to in paragraph (b) of the Overview above.

The amendments enable a court, in sentencing an offender for more than one offence, to impose an aggregate sentence of imprisonment in respect of all or any 2 or more of those offences instead of imposing a separate sentence of imprisonment for each (**proposed section 53A—Schedule 2 [14]**).

The term of an aggregate sentence of imprisonment must not be more than the sum of the maximum periods of imprisonment that could have been imposed if separate sentences of imprisonment had been imposed in respect of each offence to which the sentence relates and must not be less than the shortest term of imprisonment (if any) that must be imposed for any separate offence or, if the sentence relates to more than one such offence, must not be less than the shortest term of imprisonment that must be imposed for any of the offences (**proposed section 49 (2)—Schedule 2 [13]**).

A court that imposes an aggregate sentence of imprisonment in respect of 2 or more offences on an offender may set one non-parole period for all the offences to which the sentence relates after setting the term of the sentence. The term of the sentence that will remain to be served after the non-parole period set for the aggregate sentence of imprisonment is served must not exceed one-third of the non-parole period, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision) (**proposed section 44 (2A) and (2B)—Schedule 2 [4]**). Various other associated or consequential amendments are made to the Sentencing Act by other provisions of Schedule 2 to provide for aggregate sentencing.