



New South Wales

Crimes (Sentencing Procedure) Amendment (Victims' Rights and Plea Bargaining) Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide that any reduction of sentence for a guilty plea can be of no more than 10 per cent of the sentence that would otherwise have been imposed, and
- (b) to create a right for victims of crimes to make a statement concerning any plea bargaining negotiations, and
- (c) to ensure that plea bargaining negotiations are made public by courts.

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 1.

Schedule 1 Amendments

Reduction of sentences for guilty plea

Section 22 of the *Crimes (Sentencing Procedure) Act 1999* requires a court to take into account the fact that the offender has pleaded guilty, and when the offender pleaded guilty or indicated an intention to plead guilty, when passing sentence for an offence. The court may accordingly impose a lesser penalty than it would otherwise have imposed.

Schedule 1 [1] limits the extent to which a sentence can be reduced because an offender has pleaded guilty at a particular time to 10 per cent of the penalty that would otherwise have been imposed.

Plea bargaining

Schedule 1 [2] inserts provisions that apply to any decision of the prosecutor to modify or not to proceed with charges laid against the offender, including any decision for the offender to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges. A victim of a crime must be informed of the decision and must be given an opportunity to tell the prosecutor whether or not he or she approves of the decision.

The provisions also require a judge, in sentencing an offender who has pleaded guilty, to publicly disclose details of any plea bargaining.



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New South Wales

Crimes (Sentencing Procedure) Amendment (Victims' Rights and Plea Bargaining) Bill 2002

No , 2002

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* in relation to plea bargaining and sentencing.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Victims' Rights and Plea Bargaining) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	8
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

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(Section 3)

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[1] Section 22 Guilty plea to be taken into account

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Insert after section 22 (1):

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(1A) If the court would have imposed a penalty for an offence of a term of imprisonment, any reduced penalty of imprisonment imposed under this section cannot be more than 10 per cent less than the term that the court would otherwise have imposed for the offence.

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(1B) If the court would have imposed a suspended sentence for an offence, any reduced suspended sentence imposed under this section cannot be more than 10 per cent less than the term that the court would otherwise have imposed for the offence.

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(1C) If the court would have imposed a pecuniary penalty for an offence, any reduced pecuniary penalty imposed under this section cannot be more than 10 per cent less than the penalty that the court would otherwise have imposed for the offence.

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[2] Section 22 (5)–(14)

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Insert after section 22 (4):

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(5) If an offender has pleaded guilty to an offence, the prosecutor must, before the offender is sentenced:

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(a) make reasonable efforts to contact each victim of the offence, and

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(b) provide each victim of the offence who can be contacted with the information that is required by the regulations concerning any decision of the prosecutor to modify or not to proceed with charges laid against the offender, including any decision for the offender to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges as a result of a plea bargain, and

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Crimes (Sentencing Procedure) Amendment (Victims' Rights and Plea Bargaining) Bill 2002

Schedule 1

Amendments

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| (c) | if such a decision is made, give any victim of the offence an opportunity to make a statement to the prosecutor, personally, in writing or through a representative, as to whether or not he or she approves of the decision, and | 1
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| (d) | give each victim of the offence the opportunity to consult a legal practitioner, parent or other support person before deciding whether or not to make such a statement. | 6
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| (6) | If an offender has pleaded guilty to an offence, the prosecutor must file in the court, before the offender is sentenced: | 10
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| (a) | details of any decision made by the prosecutor to modify or not to proceed with charges laid against the offender, including any decision for the offender to accept a plea of guilty to a less serious charge in return for a full discharge with respect to the other charges as a result of a plea bargain, and | 12
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| (b) | if such a decision was made, a statement that every victim of the offence was given an opportunity to make a statement referred to in subsection (5) (c), and | 18
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| (c) | details of any statement made by or on behalf of any victim under subsection (5) (c). | 21
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| (7) | Before a court passes sentence on an offender who has pleaded guilty to an offence after any decision made by the prosecutor to modify or not to proceed with charges laid against the offender as a result of a plea bargain, the court must be satisfied that: | 23
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| (a) | every victim of the offence has been provided with the information concerning the decision that is required by subsection (5) (b), and | 28
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| (b) | every victim of the offence has been given an opportunity to make a statement referred to in subsection (5) (c), and | 31
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| (c) | the court has been made aware of any such statement made by or on behalf of any victim. | 34
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| (8) | A judge, in sentencing an offender who has pleaded guilty to an offence, must disclose in open court details of any decision of the prosecutor to modify or not to proceed with charges laid against the offender filed with the court under subsection (6). | 1
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| (9) | A judge is not required to disclose such details if the judge considers that it is not in the interests of justice to do so. | 5
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| (10) | Subsections (5)–(8) do not apply to a decision of the prosecutor made before the commencement of those subsections. | 7
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| (11) | Nothing in this section limits the operation of the <i>Victims Rights Act 1996</i> . | 10
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| (12) | A judge dealing with an offender may impose a time limit on when any of the requirements of this section must be fulfilled. Such a time limit may be extended by the judge. | 12
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| (13) | A sentence cannot be set aside merely on the ground of a failure by any person to comply with any of the requirements of this section. | 15
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| (14) | In this section: | 18 |
| | <i>plea bargain</i> means negotiations carried out between a person, or the person's legal representative, and a law enforcement authority or a prosecutor in relation to the person pleading guilty to an offence in return for any concession or benefit in relation to which charges are to be proceeded with against the person and which charges are not to be proceeded with. | 19
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| | <i>victim</i> of an offence means a person who has suffered actual physical bodily harm, mental illness or mental shock as a direct result of the act or omission involved in the offence. | 25
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