

Crimes (Sentencing Procedure) Amendment Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* as follows:

- (a) to provide for a number of new aggravating factors that may be taken into account by a court in sentencing a person for an offence,
- (b) to change the circumstances in which the remorse of an offender may be taken into account as a mitigating factor in sentencing,
- (c) to establish standard non-parole periods for a number of offences,
- (d) to increase the standard non-parole period for the offence of aggravated indecent assault of a child under 10 years of age,
- (e) for statute law revision purposes.

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 that gives effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* (the **Principal Act**) set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Aggravating and mitigating factors in sentencing

Section 21A of the Principal Act requires a court, in determining the appropriate sentence for an offence, to take into account certain aggravating factors and mitigating factors that are listed in the section, to the extent relevant to the offence.

Schedule 1 [1] and [3]–[5] provide for a number of new matters that are to be treated as aggravating factors by a court when sentencing. The new aggravating factors are as follows:

- (a) the offence involved the actual or threatened use of explosives, or a chemical or biological agent,
- (b) the offence involved the offender causing the victim to take, inhale or be affected by a narcotic drug, alcohol or any other intoxicating substance,
- (c) the offence was committed in the presence of a child,
- (d) the offence was committed in the home of the victim or any other person,
- (e) the actions of the offender were a risk to national security,
- (f) the offence involved a grave risk of death to another person,
- (g) the offence was committed for financial gain.

Schedule 1 [2] provides that if an offender is being sentenced for a serious personal violence offence, it is to be regarded as a particular aggravating factor in sentencing if the offender has a record of previous convictions for serious personal violence offences. This is an addition to the general principle that a record of previous convictions is to be regarded as an aggravating factor, as currently provided for by

section 21A of the Principal Act. **Schedule 1 [7]** defines **serious personal violence offence** to mean certain offences under or mentioned in the *Crimes Act 1900* that carry a maximum penalty of imprisonment for life or imprisonment for a term of 5 years or more.

Schedule 1 [6] changes the circumstances in which the remorse of an offender may be taken into account as a mitigating factor in sentencing. At present, it is a mitigating factor in sentencing if the offender has shown remorse by making reparation for any injury, loss or damage, or in any other manner. As a result of the amendment, remorse shown by the offender will be a mitigating factor only if:

- (a) the offender has provided evidence that he or she has accepted responsibility for his or her actions, and
- (b) the offender has acknowledged any injury, loss or damage caused by his or her actions or made reparation for such injury, loss or damage (or both).

Standard non-parole periods

At present, the Principal Act sets a standard non-parole period for a number of offences. When determining a sentence for an offence, a court is required to set the standard non-parole period as the non-parole period for the offence unless the court determines that there are reasons for setting a longer or shorter non-parole period. Aggravating or mitigating factors may result in the court setting a longer or shorter non-parole period.

Schedule 1 [8], [9] and [12]–[14] introduce a standard non-parole period for several offences, as indicated as follows:

- (a) murder of a child—25 years,
- (b) reckless causing of grievous bodily harm in company—5 years,
- (c) reckless causing of grievous bodily harm—4 years,
- (d) reckless wounding in company—4 years,
- (e) reckless wounding—3 years,
- (f) organised car or boat rebirthing activities—4 years,
- (g) cultivation, supply or possession of a large commercial quantity of a prohibited plant—10 years,
- (h) unauthorised sale of a prohibited firearm or pistol—10 years,
- (i) unauthorised sale of firearms on an ongoing basis—10 years,
- (j) unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol—10 years,
- (k) unauthorised possession or use of a prohibited weapon (where prosecuted on indictment)—3 years.

Schedule 1 [10] increases, from 5 to 8 years, the standard non-parole period for the offence of aggravated indecent assault of a child under 10 years of age.

Other amendments

Schedule 1 [11] is a statute law revision amendment. The amendment changes a cross-reference to a provision of the *Crimes Act 1900* as a consequence of the extension (by the *Crimes Amendment (Organised Car and Boat Theft) Act 2006*) of car-jacking offences to include vessels.

Schedule 1 [15] enables the making of savings and transitional regulations as a consequence of the proposed amendments.

Schedule 1 [16] provides for the application of the amendments to the determination of a sentence for an offence whenever committed, except where the court has convicted the offender, or accepted a guilty plea, before the amendments commence.