

**2005**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (SENTENCING) BILL 2005  
GOVERNMENT AMENDMENTS  
EXPLANATORY STATEMENT**

**Circulated by the authority of  
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## **Crimes (Sentencing) Bill 2005**

### **Government Amendments — Explanatory Statement**

#### **Outline**

The Crimes (Sentencing) Bill 2005 consolidates existing sentencing laws set out in a number of different statutes. The Bill also introduces a number of new options for sentencing courts and modernises the law.

The Government amendments include provisions that would require a sentencing court to consider any harm against a woman's pregnancy during the sentencing process.

The Crimes (Sentencing) Bill 2005 retains a sentencing court's authority to make ancillary orders, such as compensation for damage or costs as a consequence of an offence etc. However, the Bill does not provide clear direction on what should happen if on appeal an ancillary order is overturned as part of a sentence. The ambiguity has the potential to result in a victim having to repay the compensation.

The Government amendment defers the execution of ancillary orders until after any relevant, standard appeal period against convictions.

## **Government Amendments — Crimes (Sentencing) Bill 2005**

### **Clauses**

#### **1: Amendment to clause 18(4)**

##### **Page 17, line 23.**

The Crimes (Sentencing) Bill 2005 retains a sentencing court's authority to make ancillary orders, such as compensation for damage for example. The Bill currently would lapse these orders if a conviction or finding of guilt is reversed or set aside.

Rather than place victims in a situation where ancillary orders are made, enforced and then changed, the Government amendments will defer the execution of the orders until the normal appeal periods expire. Clause 133A — discussed below — provides for this deferral.

The amendment to clause 18(4) ensures that clause 18 would be subject to clause 133A.

#### **2: Amendment to clause 19(4)**

##### **Page 19, line 7.**

Clause 19 of the Bill allows a reparation order to be made if a person is found guilty of an offence and a victim of the crime suffers a loss or incurs an expense as a direct consequence of the offence.

Rather than place victims in a situation where reparation orders are made, enforced and then changed, the Government amendments will defer the execution of the orders until the normal appeal periods expire. Clause 133A — discussed below — provides for this deferral.

The amendment to clause 19(4) ensures that clause 19 would also be subject to clause 133A.

#### **3: Amendment to clause 20(5)**

##### **Page 20, line 11.**

If an offender is convicted or found guilty of an offence that involves stealing property, clause 20 of the Bill enables a reparation order to be made.

Rather than place victims in a situation where reparation orders are made, enforced and then changed, the Government amendments will defer the execution of the orders until the normal appeal periods expire. Clause 133A — discussed below — provides for this deferral.

The amendment to clause 20(5) ensures that clause 20 would also be subject to clause 133A.

#### **4: Proposed new clause 33(1)(fa)**

##### **Page 33, line 14.**

The task of a judge or magistrate sentencing an offender is to impose a sentence in a manner that applies sentencing principles and considerations to all cases equally. The sentencing court must balance the needs of the victim, the community and the offender; determine the factual basis upon which the sentence should be imposed; and consider the circumstances of the offence. These issues are set out in clause 33 of the Bill.

This clause inserts additional matters that a court must have regard to when determining a sentence for an offence when it is known to a court that a victim of the offence was a pregnant woman. The court shall have regard to the loss or harm to the pregnancy or to the child born alive as a result of the pregnancy, whether the person knew, or ought reasonably to have known, that the woman was pregnant, and whether the person intended to cause, or was reckless about causing, loss of or harm to the pregnancy or to the child born alive as a result of the pregnancy.

The inclusion of a consideration in sentencing will be an important balance to the Government's foreshadowed Bill on offences against pregnant women, which will create an aggravated feature of an offence if the offence causes loss of the pregnancy, serious harm to the pregnancy, or death or serious harm to a child of the pregnancy that is born alive.

If a person is found guilty of an offence against a pregnant woman it would not be necessary to prove a fault element in relation to a factor of aggravation, effectively this enables a person to be found guilty of an aggravated offence although the person was not aware of the factor of aggravation. The person's knowledge and state of mind when committing the simple offence would be taken into account by a court on sentencing through new clause 33(1)(fa).

The clause is not limited to sentencing offenders convicted of the aggravated feature of pregnancy offences. It would also apply to the sentencing of offenders for any offence. When it is known to a court that a victim was a pregnant woman, a court may consider any harm caused to the pregnancy or child born alive as a result of the pregnancy, and the knowledge of the offender in relation to the pregnancy and the offenders' state of mind when determining a sentence for any offence, whether or not the offence has an aggravated offence: and when the offence has an aggravated offence, whether or not the aggravated factor was proven.

For example, in a matter where a person is convicted of assaulting a woman who is pregnant and it is established that the person knew the victim was pregnant and intended to cause serious harm to the pregnancy, but the aggravated factor was not proven because the commission of the offence did not actually cause any serious harm to the pregnancy, the court would have regard to the fact that the offender knew the woman was pregnant and intended to harm her pregnancy in determining a sentence for a simple offence.

## **5: Amendment to Clause 58(5)**

### **Page 56, line 23.**

In conjunction with clause 18 of the Bill, clause 58 enables the Court to impose ancillary orders of: restitution; compensation; costs; forfeiture; destruction; or licence disqualification or suspension. The Bill currently would lapse these orders if a conviction or finding of guilt is reversed or set aside.

Rather than place victims in a situation where ancillary orders are made, enforced and then changed, the Government amendments will defer the execution of the orders until the normal appeal periods expire. Clause 133A — discussed below — provides for this deferral.

The amendment to clause 58(5) ensures that clause 58 would be subject to clause 133A.

## **6: New clause 133A**

### **Page 109, line 2.**

The Crimes (Sentencing) Bill 2005 retains a sentencing court's authority to make ancillary orders, such as compensation for damage for example. The Bill currently would lapse these orders if a conviction or finding of guilt is reversed or set aside. The Bill also enables reparation orders to be made for expenses incurred as a consequence of an offence or losses caused by theft of property.

Rather than place victims in a situation where these orders are made, enforced and then changed, the intention of the Government amendments is to defer the execution of the orders until the normal appeal periods expire.

Clause 133A(1) provides a definition of a 'finalised' proceeding. The definition contemplates the different means by which an appeal process may finish.

Clause 133A(1) also labels the provisions for ancillary orders and reparation orders as 'relevant orders'.

Clause 133A(2) is the crux of the clause, as it defers the effect of ancillary orders and reparation orders until the end of appeal proceedings.

Clause 133A(3) provides the appellate court with the power to give effect to an ancillary order or a reparation order before the appeal proceedings are complete if justice would be served.

Clause 133A(4) enables a court to make decisions about relevant property or to provide security for an amount subject to an ancillary order or reparation order.

Clause 133A(5) provides for the automatic lapse of ancillary orders and reparation orders if the conviction is set aside or overturned.

Clause 133A(6) ensures that relevant parties may make applications in relation to clause 133A.

Clause 133A(7) ensures that any errors made in exercising clause 133A can be corrected by the relevant court.