

Corrections Reform Amendment Bill 2003

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EXPLANATORY STATEMENT

Overview

The main purpose of this Bill is to establish a more advanced basis for the courts to craft sentences and to direct (if they wish) possibly changes to the penalties imposed during the life of the sentence.

The Bill also establishes a system by which the penalty options provided by the courts are considered, granted or refused on the basis of performance against rehabilitation programs which offenders undertake.

To support these functions, the Bill also provides for a clear statement of the overall objectives of the corrections law. This is appropriate because the objectives provided in the existing law vary considerably, reflecting the different circumstances in which several pieces of legislation were enacted.

Finally, the sentencing decisions of the courts are assisted by adopting two additional non-custodial penalty options currently in force in NSW.

Part 1 – Preliminary

Clause 1 – Name of Act

This amending Act would be called the Corrections Reform Amendment Act 2003. It would amend two current Acts dealing with sentencing and corrections - the *Crimes Act 1900* and the *Rehabilitation of Offenders (Interim) Act 2001*.

In accordance with the *Legislation Act 2001* (section 89), this amending Act would be automatically repealed the day after all of its provisions have commenced.

Clause 2 – Commencement

The Bill contains a commencement date of 1 July 2004. This date is just over twelve months from the date of introduction, signifying that there is an intention to allow an adequate period of time for the judicial and corrections authorities and other relevant stakeholders to prepare for the changes made by this Bill.

Part 2 – Amendments to the *Crimes Act 1900*

Introduction

Part 15 of the *Crimes Act* deals with the procedures for sentencing. This Bill extends that procedure in two important ways.

Firstly, the Bill clearly states for the first time that the courts have immediate access to all the penalty options established under ACT law. This is important because at present some of these options currently require an initial decision to impose imprisonment, followed by further hearings about whether to employ an alternative sentence. This Bill would simplify and streamline the capacity of the courts to craft innovative sentences using all the available options.

The Bill would not change the requirements currently stated for some sentences – for example, community service orders and home detention – for an assessment of the offender and of other issues prior to applying that penalty option.

Secondly, the Bill establishes a system by which the courts can allow for changes to the penalties being served during the term of the sentence. A decision to implement any changes the court has made possible would be made by the Sentence Administration Board, building on the current role of the Board in considering parole decisions.

Court-directed changes to penalties under this system could result in either more lenient or more serious penalties, depending on what the court allows for and what the Board decides.

The courts will have the power to state the conditions on which any change in penalty can take place. This will allow the performance of the offender in achieving rehabilitation to influence their treatment.

The courts may provide for any changes in penalty, using all the existing penalties available under ACT law.

Clause 3 – Which Act is amended by this Part of the Bill?

This clause indicates that the Act being amended by this Part of the Bill is the *Crimes Act 1900*.

Clause 4 – The objects of the corrections legislation

This clause inserts a new division 15.1A, consisting of three new sections 337, 338 and 339. Between them these new sections define the various acts which constitute the Territory’s “corrections legislation” and state the overall objectives of these various pieces of law.

The new **section 337** states, at a very broad level, two overall objects of the corrections law.

The new **section 338** gives more significance to the objectives by outlining how the objectives are to be achieved.

The first group of matters covered are the empowerment of the courts to create detailed sentences, the use of case management of offenders, a general statutory recognition of rehabilitation programs - see paragraphs (a) to (c).

The second group of matters - covered in paragraphs (d) to (f) - deal with the administration of the corrections system. These paragraphs state at a general level the arrangements and approaches expected to be provided by the agencies of the Territory Executive.

The new **section 339** is a list of the laws which make up the corrections law of the Territory.

Clause 5 – Imposition of sentences

This clause inserts a new Division 15.3 consisting of 4 sections 366A, 366B, 366C and 366D.

The new section **366A** acts as a reminder of existing laws, drawing attention to the possibility of using one of the options in the current law that avoid a formal ‘sentence’ being imposed. These options include a reparation order for the benefit of a victim of the crime, and conditional release of offenders.

The new **section 366B** states that when choosing a sentence the court may use any of the several penalty options created by ACT law. Importantly, the section indicates that more than one of the options may be utilised in the sentence. Examples at the end of the section illustrate how different penalties at different times may make up the sentence.

Examples of sentences and case histories

The following are examples of hypothetical sentences that may be imposed on an offender by a court:

- 1) 18-months sentence, comprising a 12-months home detention order and 6 months community service order
- 2) 10-year sentence, comprising 7-years imprisonment with a non-parole period of 4 years followed by a 3-year place restriction order

The new **section 366C** builds on the current process for managing parole decisions. On the basis of orders made by the court, the Sentence Administration Board (known as the Parole Board until 2001) may conduct ‘reviews’ to consider whether the penalties applying to the offender may be changed to other penalties as provided for in the court order.

During the course of a review, the Board must seek and consider the advice of the offender’s case manager (see clause 15). However, if there is no case manager appointed the review process can still go ahead.

The section states two important matters – the overall length of the sentence and the length of a non-parole period – which may not be referred to the Board for alteration. To protect the integrity of sentences these matters are reserved for the courts alone.

The courts have an implied capacity (based on the *Legislation Act 2001*) to amend or withdraw these orders, but the new section includes a specific statement that they may make such amendments if the offender is in breach of any conditions of sentence orders.

The new **section 366D** provides that the Sentence Administration Board must make quarterly reports to the courts. The purpose of this reporting is to ensure that the courts have confidence in the operation of their orders under the new system.

Clause 6 – (Consequential amendment)

This amendment renumbers two existing Division headings as a consequence of the new divisions inserted by this Bill.

Clause 7 – Definition

Clause 7 creates a new definition of *corrections legislation* - see section 339 in clause 4.

Part 3 – Amendments to the *Rehabilitation of Offenders (Interim) Act 2001*

Introduction

This part of the Bill deals with three issues: the creation of two new penalty options, the creation of a statutory position of ‘case manager’, and the allocation of additional functions to the sentence administration board.

New penalties

The Bill creates two new penalties called ‘Place Restriction Orders’ and ‘Non-Association Orders’.

These two new orders, which are modelled on existing NSW legislation, will give courts more streamlined tools for crafting sentences other than imprisonment. These outcomes can to some extent be achieved under current

law through the court releasing offenders on specified conditions (see *Crimes Act*, section 403).

Case Managers

Case manager roles already exist in regard to some of the current activities of the ACT Corrections Service.

To implement the intention of this Bill that all offenders will be case managed and that the role of the case manager will support the decision-making processes of the Sentence Administration Board, the Bill gives statutory recognition to the role of case manager.

The specific and detailed functions of case managers will vary over time and for different classes of offenders, and need to be developed from their current status. For this reason, the functions of case managers are not prescribed in this Bill. Instead, the Bill specifies that case managers may be given specific roles by the director of corrective services, by regulations or by future legislation.

Another part of the Bill – the new section 366C – states that whenever an offender has a case manager, and the Board is conducting a review, the Board must seek advice from the case manager and take that advice into consideration.

Note that the Bill does not require that every case manager have an offender appointed. This is because the administrative and staffing resources for case management may take time to develop. In addition, it is not intended that where for any reason there is no case manager, the processes for conducting court-ordered reviews is prevented from taking place.

Functions for the Sentence Administration Board

This Bill specifies some new functions for the Sentence Administration Board as a consequence of the expanded role given to it (see section 366C in clause 5).

Clause 8 – Which Act is amended by this Part of the Bill?

This clause indicates that the Act being amended by this Part of the Bill is the *Rehabilitation of Offenders (Interim) Act 2001*.

Clause 9 — Application of the Criminal Code

This clause inserts a new section 4A which provides that other legislation applies in regard to the offences in the *Rehabilitation of Offenders (Interim) Act 2001*. For example chapter 2 of the Criminal Code applies to offences in that Act.

This amendment is convenient particularly as one new offence is created by this Bill (see section 28E, in clause 11).

The insertion of this section increases awareness of the Criminal Code and alerts readers to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to other legislation.

Clause 10 – Meaning of subject to imprisonment, etc

Section 5 of the Act helps to define when an offender is ‘subject to’ the various penalty orders available under ACT law. This clause adds a new provision to this set to cover the new penalties created by Clause 11 of the Bill.

Clauses 11 and 17 – New penalty options

New Chapter 2A

Clause 11 inserts a new Chapter 2A, consisting of eight sections numbered 28A to 28H. The new chapter makes provision for the use of two new penalties, ‘Place Restriction Orders’ and ‘Non-Association Orders’.

These provisions have been closely modelled on the provisions for identical penalties in the NSW corrections legislation, which was extensively modernised in 1999.

Section 28A establishes the penalty options at a general level.

Section 28B sets limits on the use of these orders by the courts, to protect certain civil liberties of the offender. These prevent the orders being used in certain ways related to the offenders close family or their home or places of work, education or religious activity.

Section 28C makes sure that when one of these orders is imposed it is fully explained to the offender.

Section 28D works to suspend the operation of the order while an offender is actually in custody. This is included to avoid any conflict between penalties while managing the offender.

The section clarifies that it does *not* ‘stop the clock’ on the period of the order.

Section 28E provides that it is an offence to breach one of these orders, punishable by 10 penalty units or 6 months imprisonment. However, ‘reasonable excuse’ provisions are also included.

Section 28F provides that the court may change or revoke one of these orders if the offender comes to court charged with a new offence.

Section 28G provides a that the offender may apply to the court for a change of one of these penalty orders. The court can control the number of applications it hears through a ‘giving of leave’ procedure.

Section 28H ensures that the privacy of other people involved in the terms of one of these orders is protected.

For example, where an order is made that an offender is not to associate with a victim of the crime, the identity of the victim is protected by this privacy law.

Definitions

Clause 17 creates a new definitions for:

- *non-association order* - see section 28A in clause 11, and
- *place restriction order* - see section 28A in clause 11.

Clauses 12, 13 and 14 – Functions of the Board

These three clauses between them revise the stated functions of the Board to match the roles created by this Bill (see clause 5).

Clause 13 omits a Board function in the current Act, which deals with the Board deciding on whether parole orders should be granted. This function is replaced by the two new functions created by **clause 12**, which deal with the Board considering all kinds of court orders (including parole orders).

Clause 14 directs that the paragraphs are automatically renumbered.

Clauses 15 and 16 – Case managers

Clause 15 creates a new section 97A which gives legal status to the office of case manager.

The specific functions of case managers will be prescribed by other laws, by regulations and by the director of corrective services.

In addition to the primary functions that will be given to case managers, they would have statutory significance during any review which the Sentence Administration Board conducts under the new section 366C (see clause 5). When a review is conducted for an offender, the Board must ask that offender's case manager to provide a report relevant to the issues considered in the review.

Clause 16 creates a new definition for the term *case manager*.

Financial consequences

This Bill does not require any direct new appropriation.

However, to fully develop the intentions of this Bill the Territory would need to provide:

- additional support, possibly including additional members, for the Sentence Administration Board; and
- new funding for case managers for some or all offenders.

Each of these items would be at the budgetary discretion of the Executive.