

1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CRIMES ACT AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY AUTHORITY OF THE ATTORNEY-GENERAL)

OUTLINE

The purpose of this legislation is to revise and update a number of provisions of the Crimes Act 1914. The amendments will require courts to consider whether some form of non-custodial punishment may be imposed instead of imprisonment on offenders against Commonwealth and Australian Capital Territory laws and the laws of prescribed external Territories. The amendments will also make available to the courts when dealing with Commonwealth offenders sentencing options now available to them in relation to State and Territory offenders.

The legislation also revises and updates pecuniary penalties in the Crimes Act and those provisions of the Act dealing with the conditional release of Commonwealth offenders and provides a scheme under which Commonwealth offenders, on whom a fine has been imposed, may apply either for time to pay the fine or for payment of the fine by instalments.

The Bill also inserts a provision into the Crimes Act under which a court, when sentencing a Commonwealth offender, will be empowered to take into account for the purpose of imposing sentence other offences in relation to which the defendant has admitted his guilt.

The legislation also effects amendments to the bribery provisions of the Crimes Act as recommended in the Report of the Committee of Inquiry concerning Public Duty and Private Interest.

NOTES ON CLAUSES

Clause 1 - Short Title:

This is formal.

Clause 2 - Commencement:

Sections 1, 2 and 15 come into operation upon the Act receiving Royal Assent. The remaining provisions of the Act may be brought into operation by Proclamation either on the same date or on different days to enable the necessary arrangements with the States to be completed.

Clause 3 - Arrangements with States, Northern Territory and Norfolk Island:

A new section 3B is to be inserted in the Crimes Act 1914 to allow arrangements to be made with the States, the Northern Territory and Norfolk Island for the use of their officials and facilities in relation to the new orders and sentences that courts will be empowered to order and impose on federal offenders under the amendments to be effected to the Crimes Act by the legislation.

Clause 4 - Maximum penalties:

Section 16 of the Crimes Act is amended by this clause to upgrade the alternative pecuniary penalties available to a court when dealing with offences under the Crimes Act punishable by imprisonment. As well as upgrading pecuniary penalties this clause also provides a scale of appropriate pecuniary penalties for corporate bodies found guilty of offences against the Crimes Act.

This clause also updates the maximum fines that may be imposed upon an offender (whether a natural person

or a body corporate) by a court of summary jurisdiction under the Crimes Act.

Sub-clause (2) provides that the new penalties are not to have retrospective effect.

Clause 5 - Restriction on imposing sentences of imprisonment:

This clause inserts a new section 17A in the Crimes Act. It provides that subject to sub-sections 17A(4) and (5), a court shall not impose a sentence of imprisonment on a person who has been convicted of an offence against a Commonwealth or Australian Capital Territory law or a law of a prescribed external Territory unless the court has considered all other available alternative sentences and has decided that no other sentence is appropriate. The section requires the court to give its reasons for coming to such a decision and to enter those reasons in the court's records. However, failure by the court to comply with these provisions is not to vitiate the sentence.

Sub-sections 17A(4) and (5) provide that the section does not apply to a court dealing with offences against the Crimes Act punishable by imprisonment for 7 years or more or to offences against other Commonwealth or Territory laws that are punishable only by imprisonment. The new section will apply to a person convicted of an offence after the commencement of clause 5 or to a person convicted of an offence before such commencement who has not, by that time, been sentenced.

Clause 6 - Enforcement and recovery of fines:

This clause extends section 18A of the Crimes Act to ensure that the full range of sentences and orders (including orders such as community service orders) available under State and Territory law for the enforcement and recovery of fines are available to deal with Commonwealth offenders.

Clause 7 - ~~Application for time, or further time, to pay fines:~~

This clause inserts a new section 18B in the Crimes Act. The new section establishes a procedure under which a Commonwealth offender who has been fined may apply at any time after the imposition of the fine for time, or further time, to pay the fine. The procedure will also be available to a person who has been imprisoned in default of payment of the fine. To ensure that State procedures will apply in a case where such an order is breached, the legislation will provide that any order varying the original order relating to the payment of the fine will be deemed to be part of the original order. Where a person makes an application at a time after he has served some term of imprisonment in default, the court is to reduce the amount of the fine by an amount it regards as appropriate to reflect the period spent in prison. The procedure established in relation to Commonwealth offenders is to operate in addition to, and is not to derogate from, other procedures dealing with the payment of fines under Commonwealth, State or Territory laws.

Clause 8 - Cumulative sentences of imprisonment:

This clause inserts a new section 19 in the Crimes Act. New sub-section 19(1) will provide that where a person

is convicted of a Commonwealth offence and at the time of his conviction is either already serving a term of imprisonment for another Commonwealth, Territory or State offence or has been convicted for another such offence and sentenced to a term of imprisonment (otherwise than in default of the payment of a fine) but has not commenced to serve such sentence, the court may order that any term of imprisonment in relation to the first mentioned conviction be served cumulatively upon the latter mentioned terms. New sub-sections 19(2), (4) and (5) empower a court, when sentencing a Commonwealth offender, to order that any terms of imprisonment imposed in relation to Commonwealth offences may be ordered to be served cumulatively upon either terms of imprisonment imposed for other Commonwealth offences or terms of imprisonment imposed in respect of State or Territory offences. New sub-section (4) ensures that the foregoing provisions do not derogate from any power a State or Territory court may have to order that terms of imprisonment imposed in relation to State or Territory offences may be served cumulatively upon terms of imprisonment for Commonwealth offences. Sub-clause 8(2) of the Bill provides that the provisions of new sub-section 19(1) are not to have retrospective effect.

The new section will not affect current powers of courts to direct that sentences be served concurrently.

Clause 9 - Conditional discharges and other sentencing alternatives:

This clause replaces the existing sections 19B,

20 and 20A of the Crimes Act with new sections 19B, 20, 20A, 20AA, 20AB and 20AC.

- New section 19B: Discharge of offenders without proceeding to conviction:

This new section will empower a court, in the circumstances there outlined, to deal with a person found guilty of an offence under Commonwealth law, without proceeding to conviction, by either dismissing the charge or discharging the person upon his giving security by recognizance or otherwise that he will comply with the following conditions:

- (1) be of good behaviour for such period of up to three years as the court orders;
- (2) make such reparation or restitution or pay such compensation or costs as the court is empowered to order; and
- (3) any other condition the court considers should be ordered including a condition subjecting the person to the supervision of a probation officer.

Where a court decides to act under this section it must explain what it is proposing to do and the consequences of its action to the person concerned.

The new section will also provide the person with rights of appeal against both the finding of guilt and the manner in which he has been dealt with.

- New section 20: Conditional release of offenders after conviction:

This section provides that, where a person is convicted of an offence against a law of the Commonwealth, the court may either:

- (a) release him without passing sentence, upon his giving security by recognizance or otherwise that he will comply with the following conditions:
 - (1) be of good behaviour for such period, of up to five years, as the court orders;
 - (2) make such reparation or restitution or pay such compensation or costs as the court is empowered to order;
 - (3) pay to the Commonwealth a pecuniary penalty, the maximum amount of which is specified in sub-section 20(5);
 - (4) comply with such other orders as the court specifies including an order that he be subject to the supervision of a probation officer; or
- (b) sentence the person to a term of imprisonment but order that he be released either forthwith or after serving a certain portion of his sentence upon giving security in the same manner as outlined in (a) above.

The court is to explain to the person the order it is going to make and the consequences for him of that

order. The new section also provides that where a person is released without sentence being imposed on him he has such rights of appeal as he would have had if the order had been a sentence on conviction.

- New section 20A: Failure to comply with a condition of discharge or release:

This new section empowers a court to deal with persons who breach a condition of an order made under new sub-sections 19B(1) or 20(1). Where a person has failed to comply with a condition, information may be laid before a magistrate who may issue a summons directing the person to appear before the court by which the order was made, or if the information was laid on oath and the magistrate is of the opinion that to proceed by summons would be ineffective, he may issue a warrant for the apprehension of the person. Where a person is apprehended under a warrant and the appropriate court is not sitting, a magistrate may release that person on bail subject to certain conditions.

Where a person is brought before the court that made the original order and that court determines that the order has been breached without reasonable cause or excuse, the court may:

- (a) if the order was made under section 19B(1),
revoke the order, convict the person of the original offence and deal with him in any manner in which he could have been dealt with for that offence if the order had not been

made: alternatively the court may take no action in respect of the breach; or

(b) if the order was made under sub-section 20(1), either impose a penalty of up to \$1000 for breaching the order or revoke the order and deal with the person as though sentencing him for the original offence for the first time: alternatively the court may take no action in relation to the breach.

Section 20A also provides that in deciding what to do with a person who has breached an order made under either sub-section 19B(1) or 20(1), the court shall take certain specified matters into account.

The section also sets out the rights of appeal of persons dealt with under the section.

- New section 20AA: Power to discharge or vary conditions of recognizances:

This new section allows a person entering into a recognizance made pursuant to sub-section 19B(1) or 20(1), his surety under the recognizance, or an authorised person (defined as the Attorney-General or someone appointed by him under the Judiciary Act to prosecute indictable offences against laws of the Commonwealth) to apply to the court that made the order for the discharge of the recognizance or for a variation of its terms.

When an application is made to vary the terms of a recognizance, the Court may, if it thinks fit, extend or

reduce the duration of the recognizance, alter its conditions, insert additional conditions, or reduce the amount of, or alter the method of paying, any restitution, reparation, costs or penalty ordered to be paid as a condition of the recognizance.

This section provides for various notices to be served when such applications are made and sets out the effect on a surety of a variation of a recognizance.

- New section 20AB: Additional sentencing alternatives:

New section 20AB provides that where a court, under State or Territory law, is empowered in particular cases to pass a sentence or make an order known as a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention, or an attendance order or pass or make a similar sentence or order or a sentence or order prescribed for the purposes of this section, that court may pass or make a similar sentence or order on a Commonwealth offender in corresponding cases. Where a court decides to so deal with a Commonwealth offender it shall explain to him the purpose and effect of the order and the consequences of a breach by him of any requirement of the order. The State or Territory laws on such orders or sentences, except in relation to the breach of the sentence or order itself, are deemed to apply to an order or sentence made under this provision.

In addition to making an order or sentence under this provision, a court may make any other order it is empowered to make.

- New section 20AC: Failure to comply with a sentence passed, or order made under section 20AB:

New section 20AC provides that where a person breaches a sentence or order passed or made under sub-section 20AB(1), information may be laid before a magistrate who may issue a summons to the person to appear before the court that passed the sentence or made the order or, if the information was laid on oath and he is of the opinion that to proceed by summons would be ineffective, he may issue a warrant for the apprehension of the person. If arrested under a warrant of apprehension the person may, if the appropriate court is not sitting, be brought before a magistrate and may be admitted to bail under certain conditions.

When a person is brought before the court for a breach of the sentence or order and the court is satisfied that the breach occurred without reasonable cause or excuse, the court may impose a pecuniary penalty of up to \$1000 upon the person for the breach, revoke the sentence or order and deal with the person as though he were then before the court for sentence on the original offence for the first time, or take no action. In deciding what action to take the court shall take into account certain specified matters. The clause also sets out the appeal rights of an offender who has been dealt with for a breach.

State laws relating to the variation or revocation of orders or sentences made or passed under sub-section 20AB(1) will apply to a Commonwealth offender except where there has been a breach of the order or sentence.

The new sections 19B to 20AC are only to apply to

a person convicted of an offence after the commencement of the sections or to a person convicted before the date of commencement but not then sentenced. Orders made under existing sections 19B and 20 continue to be governed by the provisions of existing sections 19B, 20 and 20A.

Clause 10 - Offenders found to be insane:

This clause provides for the repeal of sub-section 20B(10) of the Crimes Act 1914.

Clause 11 - Taking other offences into account:

This clause inserts new section 21AA into the Crimes Act under which a court, before which a person has been convicted of a Commonwealth offence, may take into account in sentencing the person for that offence other offences against Commonwealth or Territory law in respect of which the person has been charged, presented for trial or committed for sentence, and in respect of which he admits his guilt.

The new section sets out the various consequences that are to flow when a court takes into account offences under the section.

Clause 12 - Corruption and bribery of Commonwealth officers and members of parliament:

This clause replaces section 73 of the Crimes Act with new sections 73 and 73A.

- New section 73: Corruption and bribery of Commonwealth officers:

New section 73 makes it an offence for a Commonwealth officer to ask for, or receive or obtain or to

offer or agree to ask for, receive or obtain any property or benefit of any kind for himself or for any other person on an understanding that the exercise by him of his duty or authority as a Commonwealth officer will in any manner be influenced or affected. Similarly it will be an offence for a person who, in order to influence or affect a Commonwealth officer in the exercise of his duty or authority as a Commonwealth officer, gives or confers or promises or offers to give or confer, any property or benefit of any kind to or on the Commonwealth officer or any other person.

Both offences will carry a maximum penalty of 2 years imprisonment.

- New section 73A: Corruption and bribery of members of parliament:

The new section makes it an offence for a member of either House of Parliament to ask for or receive or obtain, or to offer or agree to ask for or to receive or obtain, any property or benefit of any kind for himself or any other person, upon an understanding that the exercise by him of his duty or authority as such a member will, in any manner, be influenced or affected.

Similarly it will be an offence for a person, in order to influence a member of either House of the Parliament in the exercise of his duty or authority as such a member or to induce him to absent himself from the House, of which he is a member, or any committee of the House or from any

committee of both Houses of the Parliament, to give or confer, or promise or offer to give or confer any property or benefit of any kind to or on the member or any other person.

Both offences carry a maximum penalty of 2 years imprisonment.

Clause 13 - Regulations:

This clause inserts in the Crimes Act a new section, section 91, which provides that the Governor-General may make regulations, that are not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Clause 14 - Schedule 1: Additional amendments relating to monetary amounts:

This clause provides for the Crimes Act to be amended in the manner detailed in Schedule 1. Apart from sub-section 12A(2), the amendments effect increases in the levels of penalties for the offences contained in the sections referred to. In respect of sub-section 12A(2), the Schedule increases from \$100 to \$500 the property limit prescribed under that sub-section which deals with the power of courts of summary jurisdiction to summarily determine proceedings under the Act for offences declared to be indictable. The amendments in Schedule 1 do not apply to or in relation to offences committed before the commencement of clause 14.

Clause 15 - Schedule 2: Formal and other minor amendments

This schedule makes formal and other minor drafting amendments to the Crimes Act 1914.

