



New South Wales

Crimes (Sentencing Procedure) Amendment Act 2010 No 136

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Crimes (Sentencing Procedure) Amendment Act 2010 No 136

Act No 136, 2010

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* and various other Acts to implement certain recommendations of the Sentencing Council; to amend the *Crimes (Sentencing Procedure) Act 1999* to provide for the aggregation of sentences; and for other purposes. [Assented to 7 December 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Sentencing Procedure) Amendment Act 2010*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1.3 commences on the date of assent to this Act.

Schedule 1 Amendments relating to Sentencing Council recommendations

1.1 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 135 General duty of Parole Authority

Insert after section 135 (2):

(2A) Without limiting subsection (2) (k), if the offender has provided post-sentence assistance, the Parole Authority may have regard to the nature and extent of the assistance (including the reliability and value of any information or evidence provided by the offender) and the degree to which the offender's willingness to provide such assistance reflects the offender's progress to rehabilitation.

(2B) In subsection (2A):

post-sentence assistance means assistance in the prevention, detection or investigation of, or in proceedings relating to, any offence, provided by an offender to law enforcement authorities after the offender was sentenced and that was not taken into account or considered by the sentencing court.

[2] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Procedure) Amendment Act 2010 (but only to the extent that it amends this Act)

[3] Schedule 5, Part 18

Insert after Part 17:

Part 18 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment Act 2010

109 Proceedings pending before Parole Authority

Any matter pending before the Parole Authority before the commencement of the amendment made to section 135 by the *Crimes (Sentencing Procedure) Amendment Act 2010* is to be continued and completed as if that section had not been amended.

1.2 Crimes (Sentencing Procedure) Act 1999 No 92

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

Insert at the end of section 22 (1) (b):

and

- (c) the circumstances in which the offender indicated an intention to plead guilty,

[2] Section 22 (1A)

Insert after section 22 (1):

- (1A) A lesser penalty imposed under this section must not be unreasonably disproportionate to the nature and circumstances of the offence.

[3] Section 22A Power to reduce penalties for facilitating the administration of justice

Omit section 22A (1). Insert instead:

- (1) A court may impose a lesser penalty than it would otherwise impose on an offender who was tried on indictment having regard to the degree to which the administration of justice has been facilitated by the defence (whether by disclosures made pre-trial or during the trial or otherwise).

[4] Section 23 Power to reduce penalties for assistance provided to law enforcement authorities

Omit section 23 (2) (a).

[5] Section 23 (2) (j)

Omit the paragraph.

[6] Section 23 (4)–(6)

Insert after section 23 (3):

- (4) A court that imposes a lesser penalty under this section on an offender because the offender has assisted, or undertaken to assist, law enforcement authorities must:
 - (a) indicate to the offender, and make a record of the fact, that the lesser penalty is being imposed for either or both of those reasons, and
 - (b) state the penalty that it would otherwise have imposed, and

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- (c) where the lesser penalty is being imposed for both reasons—state the amount by which the penalty has been reduced for each reason.
 - (5) Subsection (4) does not limit any requirement that a court has, apart from that subsection, to record the reasons for its decisions.
 - (6) The failure of a court to comply with the requirements of subsection (4) with respect to any sentence does not invalidate the sentence.

[7] Section 24A Mandatory requirements for supervision of sex offenders and prohibitions against child-related employment to be disregarded in sentencing

Insert at the end of section 24A (1) (b):

, or

- (c) as a consequence of being convicted of the offence, is prohibited under the *Commission for Children and Young People Act 1998* from applying for or attempting to obtain child-related employment or from undertaking or remaining in child-related employment.

[8] Section 24B

Insert after section 24A:

24B Confiscation of assets and forfeiture of proceeds of crime to be disregarded in sentencing

- (1) In sentencing an offender, the court must not take into account, as a mitigating factor in sentencing, the consequences for the offender of any order of a court imposed because of the offence under confiscation or forfeiture legislation.
- (2) In this section:
confiscation or forfeiture legislation means the following:
 - (a) the *Confiscation of Proceeds of Crime Act 1989*,
 - (b) the *Criminal Assets Recovery Act 1990*,
 - (c) the *Proceeds of Crime Act 2002* of the Commonwealth,
 - (d) any other law prescribed by the regulations for the purposes of this definition.

[9] Section 32 Prosecutor may file list of additional charges

Insert after section 32 (5):

- (6) A failure to comply with the requirements of this section does not invalidate any sentence imposed by the court for the principal offence.

[10] Section 35A

Insert after section 35:

35A Consultation with victim and police in relation to charge negotiations

- (1) In this section:
- charge negotiations* means negotiations between the prosecution and an offender with respect to a plea of guilty in relation to an offence other than the offence or offences with which the offender has been charged or committed for trial.
- prosecution guidelines* means prosecution guidelines in relation to charge negotiations issued by the Director of Public Prosecutions.
- requisite consultation* means consultation with the victim and the police officer in charge of investigating an offence that complies with the applicable prosecution guidelines.
- victim* has the same meaning as it has in section 26.
- (2) A court must not take into account offences specified in a list of additional charges under section 32 in relation to an offence, or any statement of agreed facts, that was the subject of charge negotiations unless the prosecutor has filed a certificate with the court verifying that:
- (a) the requisite consultation has taken place or, if consultation has not taken place, the reasons why it has not occurred, and
- (b) any statement of agreed facts arising from the negotiations tendered to the court constitutes a fair and accurate account of the objective criminality of the offender having regard to the relevant and provable facts or has otherwise been settled in accordance with the applicable prosecution guidelines.
- (3) The certificate must be signed by or on behalf of the Director of Public Prosecutions.

- (4) A certificate is taken to be signed on behalf of the Director of Public Prosecutions if it is signed by a person:
 - (a) who is authorised to do so by means of a written order signed by the Director of Public Prosecutions or who belongs to a class of persons so authorised, or
 - (b) who is prescribed by the regulations or who belongs to a class of persons so prescribed.
- (5) The court may require the prosecution to explain the reason for a failure to file a certificate when it is required by this section to do so.

[11] Section 57 Sentences for offences involving escape by inmates

Insert after section 57 (1):

- (1A) A sentence of imprisonment to which this section applies must be imposed after any other sentence of imprisonment that is imposed in the same proceedings.

[12] Section 57 (2)

Insert “to which this section applies” after “imprisonment” where firstly occurring.

[13] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Procedure) Amendment Act 2010 (but only to the extent that it amends this Act)

[14] Schedule 2, Part 21

Insert after Part 20:

Part 21 Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment Act 2010

62 Application of amendments

- (1) In this Part:
amending Act means the *Crimes (Sentencing Procedure) Amendment Act 2010*.

- (2) An amendment made by the amending Act applies to the determination of a sentence for an offence whenever committed, unless:
- (a) a court has convicted the person being sentenced of the offence, or
 - (b) a court has accepted a plea of guilty and the plea has not been withdrawn,
- before the commencement of the amendment concerned.

1.3 Crimes (Serious Sex Offenders) Act 2006 No 7

[1] Section 6 Application for extended supervision order

Omit section 6 (1) (a). Insert instead:

- (a) while serving a sentence of imprisonment:
 - (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature, or
 - (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii),whether the sentence is being served by way of full-time detention, intensive correction in the community or home detention and whether the offender is in custody or on release on parole, or

[2] Section 14 Application for continuing detention order

Omit section 14 (1) (a). Insert instead:

- (a) while serving a sentence of imprisonment by way of full-time detention:
 - (i) for a serious sex offence, or
 - (ii) for an offence of a sexual nature, or
 - (iii) for another offence which is being served concurrently or consecutively, or partly concurrently and partly consecutively, with one or more sentences of imprisonment referred to in subparagraph (i) or (ii), or

Schedule 2 Amendments to Crimes (Sentencing Procedure) Act 1999 No 92 relating to aggregate sentencing

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

aggregate sentence of imprisonment—see section 53A.

[2] Section 17A Non-association and place restriction orders

Insert “or to an aggregate sentence of imprisonment in respect of 2 or more offences any one of which is an offence to which this section applies” after “fine” in section 17A (1).

[3] Section 44 Court to set non-parole period

Omit “When” from section 44 (1).

Insert instead “Unless imposing an aggregate sentence of imprisonment, when”.

[4] Section 44 (2A)–(2C)

Insert after section 44 (2):

(2A) Without affecting the requirement to set a non-parole period for a sentence, a court imposing an aggregate sentence of imprisonment in respect of 2 or more offences on an offender may set one non-parole period for all the offences to which the sentence relates after setting the term of the sentence.

(2B) The term of the sentence that will remain to be served after the non-parole period set for the aggregate sentence of imprisonment is served must not exceed one-third of the non-parole period, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision).

(2C) The court need not indicate the non-parole period that would have been imposed for each offence had separate sentences been imposed instead of an aggregate sentence unless it is required to do so by section 54B (4A).

[5] Section 44 (3)

Omit “subsection (2)”. Insert instead “subsection (2), (2B) or (2C)”.

[6] Section 45 Court may decline to set non-parole period

Omit section 45 (1). Insert instead:

- (1) When sentencing an offender to imprisonment for an offence or, in the case of an aggregate sentence of imprisonment, for offences (other than an offence or offences set out in the Table to Division 1A of this Part), a court may decline to set a non-parole period for the offence or offences if it appears to the court that it is appropriate to do so:
 - (a) because of the nature of the offence to which the sentence, or of each of the offences to which an aggregate sentence relates, or the antecedent character of the offender, or
 - (b) because of any other penalty previously imposed on the offender, or
 - (c) for any other reason that the court considers sufficient.

[7] Section 45 (2)

Insert “or an aggregate sentence of imprisonment” after “imprisonment”.

[8] Section 47 Commencement of sentence

Insert “or, in the case of an aggregate sentence of imprisonment, any of the offences” after “offence” in section 47 (3).

[9] Section 47 (5)

Insert “(or an aggregate sentence of imprisonment)” after “imprisonment” where firstly occurring.

[10] Section 47 (6)

Insert “(or an aggregate sentence of imprisonment)” after “imprisonment”.

[11] Section 48 Information about release date

Insert “, or to an aggregate sentence of imprisonment for 2 or more offences” after “for an offence” in section 48 (1).

[12] Section 49 Restriction on term of sentence

Insert “(other than an aggregate sentence of imprisonment)” after “sentence of imprisonment”.

[13] Section 49 (2)

Insert at the end of section 49:

- (2) The term of an aggregate sentence of imprisonment:
 - (a) must not be more than the sum of the maximum periods of imprisonment that could have been imposed if separate sentences of imprisonment had been imposed in respect of each offence to which the sentence relates, and
 - (b) must not be less than the shortest term of imprisonment (if any) that must be imposed for any separate offence or, if the sentence relates to more than one such offence, must not be less than the shortest term of imprisonment that must be imposed for any of the offences.

[14] Sections 53 and 53A

Omit section 53. Insert instead:

53 Multiple sentences of imprisonment

- (1) When a court imposes a sentence of imprisonment on an offender in relation to more than one offence, the court must (unless imposing an aggregate sentence of imprisonment in accordance with section 53A) comply with the requirements of this Division by imposing a separate sentence in relation to each offence.
- (2) The term, and any non-parole period, set under this Division in relation to a sentence of imprisonment is not revoked or varied by a later sentence of imprisonment that the same or some other court subsequently imposes in relation to another offence.

53A Aggregate sentences of imprisonment

- (1) A court may, in sentencing an offender for more than one offence, impose an aggregate sentence of imprisonment with respect to all or any 2 or more of those offences instead of imposing a separate sentence of imprisonment for each.
- (2) A court that imposes an aggregate sentence of imprisonment under this section on an offender must indicate to the offender, and make a record of, the following:
 - (a) the fact that an aggregate sentence is being imposed,
 - (b) the sentence that would have been imposed for each offence (after taking into account such matters as are relevant under Part 3 or any other provision of this Act) had separate sentences been imposed instead of an aggregate sentence.

- (3) Subsection (2) does not limit any requirement that a court has, apart from that subsection, to record the reasons for its decisions.
- (4) The term, and any non-parole period, set under this Division in relation to an aggregate sentence of imprisonment is not revoked or varied by a later sentence of imprisonment that the same or some other court subsequently imposes in relation to another offence.
- (5) An aggregate sentence of imprisonment is not invalidated by a failure to comply with this section.

[15] Section 54B Sentencing procedure

Insert “, or an aggregate sentence of imprisonment with respect to one or more offences,” after “offence” in section 54B (1).

[16] Section 54B (2)

Insert “(not being an aggregate sentence)” after “offence” where firstly occurring.

[17] Section 54B (4A) and (4B)

Insert after section 54B (4):

- (4A) When determining an aggregate sentence of imprisonment for one or more offences, the court is to indicate, for those offences to which a standard non-parole period applies, the standard non-parole period (or a longer or shorter non-parole period) that it would have set in accordance with subsections (2) and (3) for each such offence to which the aggregate sentence relates had it set a separate sentence of imprisonment for that offence.
- (4B) If the court indicates that it would have set a longer or shorter non-parole period for an offence under subsection (4A), it must make a record of the reasons why it would have increased or reduced the standard non-parole period. The court must identify in the record each factor that it would have taken into account.

[18] Section 66 Intensive correction not available for certain sexual offences

Insert “or with respect to an aggregate sentence of imprisonment with respect to 2 or more offences, any one of which is a prescribed sexual offence” after “offence” in section 66 (1).

Crimes (Sentencing Procedure) Amendment Act 2010 No 136

Amendments to Crimes (Sentencing Procedure) Act 1999 No 92 relating to Schedule 2
aggregate sentencing

[19] Section 76 Home detention not available for certain offences

Insert “or with respect to an aggregate sentence of imprisonment with respect to 2 or more offences, any one of which is one of the following offences” after “offences” where firstly occurring.

[Second reading speech made in Legislative Council on 23 November 2010
Agreement in principle speech made in Legislative Assembly on 2 December 2010]

BY AUTHORITY