



New South Wales

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.

First print



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New South Wales

Crimes (Sentencing Procedure) Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to make further provision with respect to aggravating and mitigating factors in sentencing and standard non-parole periods.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	6
The <i>Crimes (Sentencing Procedure) Act 1999</i> is amended as set out in Schedule 1.	7 8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 21A Aggravating, mitigating and other factors in sentencing	3
	Insert after section 21A (2) (c):	4
	(ca) the offence involved the actual or threatened use of explosives or a chemical or biological agent,	5 6
	(cb) the offence involved the offender causing the victim to take, inhale or be affected by a narcotic drug, alcohol or any other intoxicating substance,	7 8 9
[2]	Section 21A (2) (d)	10
	Insert “(particularly if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences)” after “previous convictions”.	11 12 13
[3]	Section 21A (2) (ea) and (eb)	14
	Insert after section 21A (2) (e):	15
	(ea) the offence was committed in the presence of a child under 18 years of age,	16 17
	(eb) the offence was committed in the home of the victim or any other person,	18 19
[4]	Section 21A (2) (ia) and (ib)	20
	Insert after section 21A (2) (i):	21
	(ia) the actions of the offender were a risk to national security (within the meaning of the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> of the Commonwealth),	22 23 24 25
	(ib) the offence involved a grave risk of death to another person or persons,	26 27
[5]	Section 21A (2) (o)	28
	Insert after section 21A (2) (n):	29
	(o) the offence was committed for financial gain.	30

[6] Section 21A (3) (i)	1
Omit the paragraph. Insert instead:	2
(i) the remorse shown by the offender for the offence, but only if:	3
(i) the offender has provided evidence that he or she has accepted responsibility for his or her actions, and	4
(ii) 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),	5
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[7] Section 21A (6)	11
Insert after section 21A (5):	12
(6) In this section:	13
<i>serious personal violence offence</i> means a personal violence offence (within the meaning of section 562A of the <i>Crimes Act 1900</i>) that is punishable by imprisonment for life or for a term of 5 years or more.	14
	15
	16
	17
[8] Part 4, Division 1A, Table	18
Insert after item 1A:	19
1B Murder—where the victim was a child under 18 years of age	25 years
[9] Part 4, Division 1A, Table	20
Insert after item 4:	21
4A Section 35 (1) of the <i>Crimes Act 1900</i> (reckless causing of grievous bodily harm in company)	5 years
4B Section 35 (2) of the <i>Crimes Act 1900</i> (reckless causing of grievous bodily harm)	4 years
4C Section 35 (3) of the <i>Crimes Act 1900</i> (reckless wounding in company)	4 years
4D Section 35 (4) of the <i>Crimes Act 1900</i> (reckless wounding)	3 years

[10] Part 4, Division 1A, Table	1
Omit “5 years” from item 9B (the matter relating to section 61M (2) of the <i>Crimes Act 1900</i>).	2
	3
Insert instead “8 years”.	4
[11] Part 4, Division 1A, Table	5
Omit “car-jacking” wherever occurring in items 14 and 15.	6
Insert instead “taking motor vehicle or vessel with assault or with occupant on board”.	7
	8
[12] Part 4, Division 1A, Table	9
Renumber item 15A as item 15B. Insert before that renumbered item:	10
15A Section 154G of the <i>Crimes Act 1900</i> (organised car or boat rebirthing activities)	4 years
[13] Part 4, Division 1A, Table	11
Insert before item 16:	12
15C Section 23 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (cultivation, supply or possession of prohibited plants), being an offence that involves not less than the large commercial quantity (if any) specified for the prohibited plant concerned under that Act	10 years
[14] Part 4, Division 1A, Table	13
Insert after item 20:	14
21 Section 51 (1A) or (2A) of the <i>Firearms Act 1996</i> (unauthorised sale of prohibited firearm or pistol)	10 years
22 Section 51B of the <i>Firearms Act 1996</i> (unauthorised sale of firearms on an ongoing basis)	10 years
23 Section 51D (2) of the <i>Firearms Act 1996</i> (unauthorised possession of more than 3 firearms any one of which is a prohibited firearm or pistol)	10 years

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Schedule 1 Amendments

24 Section 7 of the *Weapons Prohibition Act 1998* 3 years
(unauthorised possession or use of prohibited
weapon)—where the offence is prosecuted on
indictment

[15] Schedule 2 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Crimes (Sentencing Procedure) Amendment Act 2007</i>	3
[16] Schedule 2, Part 17	4
Insert after Part 16:	5
Part 17 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment Act 2007	6 7 8
57 Existing offences and proceedings	9
The amendments made to this Act by the <i>Crimes (Sentencing Procedure) Amendment Act 2007</i> apply to the determination of a sentence for an offence whenever committed, unless:	10 11 12
(a) the court has convicted the person being sentenced of the offence, or	13 14
(b) a court has accepted a plea of guilty and the plea has not been withdrawn,	15 16
before the commencement of the amendments.	17