

SENTENCING (AMENDMENT) BILL 2012

EXPLANATORY MEMORANDUM

The purpose of this Bill is to make provision for dealing with young offenders who come before the Courts of Norfolk Island. The Bill specifically deals with persons who were under the age of 18 years at the time of committing an offence and provides directions for the courts in dealing with them.

Clauses 1-3 set out the short title of the Act, its commencement and the name of the Act being amended.

Clause 4 provides that the amendments in the Schedule have effect.

The Schedule

Item 1 amends section 3 and defines a young offender and provides that in the Act a reference to an offender includes a young offender. Specifically a young offender is one who has been convicted or found guilty of an offence and was under 18 years when the offence was committed.

Item 2 removes section 4 from the Act being a provision that excluded application of the Act to the Court of Petty Sessions, or any other court sitting as a Childrens Court, it having been the intent of the legislature at the time that other provisions would be made.

Item 3 amends section 5.

Item 3(a) includes, in the provision of the Act that sets out the purposes for imposing sentences on offenders, new provisions applicable to young offenders requiring the courts to consider the purpose of promoting rehabilitation of the offender and permitting the court to give that purpose greater weight than other matters. Additionally the courts are to have particular regard to the principle that punishment should be tailored to the individual rather than being tailored to the offence. It is noted that these principles are guidelines and are subject to any specific provisions of the law and in particular the provisions of subsection 5(2) of the Act setting out matters to be considered as relevant in sentencing.

Item 3(b) includes provisions that require the court to consider certain special matters in relation to sentencing young persons: these are the degree of culpability having regard to the offender's maturity, the offender's state of maturity, and the past and present family circumstances. Additionally the amendment sets out some sentencing limitations where the court considers imprisonment is required: these are that a sentence of imprisonment must be a last resort and for the shortest appropriate term and that a combined sentence must be considered – that of combining imprisonment with an order for good behaviour and supervision. Additionally the Act prohibits a sentence of life imprisonment on a young offender.

Item 4 inserts a new section 6A requiring that if a young offender is sentenced under the Act then a copy of the notice of sentence must be served upon a parent of the offender and anyone else with parental responsibility under the *Child Welfare Act 2009*.

Item 5 amends section 23.

Item 5(a) removes the limitation on the making of community service orders so that these orders may be made in respect of young offenders.

Item 5(b) corrects an error in a section reference.

Item 5(c) provides a limitation of the hours that can be imposed by a community service order: by prescribing that they be not less than 20 nor more than 200 hours and that they must not interfere with the young offender's access to appropriate education or training.

Item 5(d) corrects an error in a section reference.

Item 5(e) clarifies that where a new order for community service is made in respect of a person already serving an order, that the total hours remaining under the existing order and the new order must not exceed 400 for an adult and 200 for a young offender.

29 March 2012