

Penalties and Sentences Bill

EXPLANATORY MEMORANDUM

Clauses 1–3 deal with formal matters.

Clause 4. This clause permits a Court to take a plea of guilty into account when passing a sentence. The clause implements recommendations 55–59 of the Shorter Trials Committee Report.

Clause 5. This clause outlines the various sentencing alternatives available to a Court where it has convicted a person of an offence punishable by imprisonment.

Clause 6. This clause empowers a Court to fine an offender in addition to or instead of any other punishment to which the offender may be liable, and limits such a fine to 100 penalty units for Magistrates' Courts.

Clause 7 provides that where no maximum term of imprisonment is prescribed for an offence against any enactment a Court may impose a maximum term of imprisonment of two years.

Clause 8. This clause provides that where a fine is prescribed by a statutory enactment a person convicted of an offence can be fined up to the amount specified.

Clause 9. This clause provides the penalty where a person has been convicted of an indictable offence on summary hearing.

Clause 10. This clause enables the Court to consider other offences which the offender admits having committed, when passing a sentence for an offence for which the offender has been convicted.

Clause 11. This clause provides that imprisonment shall be used as a sentence of last resort.

Clause 12. This clause requires a Magistrates' Court to record in writing the reasons for passing a sentence of imprisonment on a person.

Clause 13 deals with offences to which sections 11 and 12 do not apply.

Clause 14. This clause determines the commencement times of sentences of imprisonment.

Clause 15. This clause provides for sentences to be served concurrently.

Clause 16. This clause provides that where a person has been held in custody in relation to an offence prior to being convicted that that period held in custody shall be counted as part of the period of imprisonment imposed by the sentence unless otherwise directed.

Clause 17. This clause requires the Court to fix a minimum term of imprisonment before an offender is eligible for parole.

Clause 18. This clause deals with procedural matters where a Court has failed to fix a minimum term.

Clause 19. This clause modifies the pre-release program and permits a Court to exclude a person from the pre-release program.

Clause 20. This clause is a definitions clause.

Clause 21. This clause empowers a Court to impose a suspended sentence.

Clause 22. This clause outlines the effect of a suspended sentence order.

Clause 23. This clause outlines the consequences for an offender who commits an offence whilst under a suspended sentence order.

Clause 24. This clause deals with various procedural matters governing suspended sentences.

Clause 25. This clause provides directions to the Court when it orders that a person be detained in a youth training centre in respect of an offence.

Clause 26. This clause excludes the provisions of clause 25 from applying to Childrens' Courts.

Clause 27. This clause is a definition clause.

Clause 28. This clause empowers a Court to impose a community based order in respect of a person whom it has convicted where the offence is punishable by a term of imprisonment.

Clause 29. This clause specifies the conditions of a community based order.

Clause 30. This clause deals with cumulative community based orders.

Clause 31. This clause requires the Court which makes a community based order to supply copies of the order to the offender and to the Director-General and to the Clerk of the supervising Court.

Clause 32. This clause empowers the Director-General to direct an offender to report at a place or to a person other than a place or person specified in a community based order in certain circumstances.

Clause 33. This clause outlines the consequences of a failure to comply with a condition of a community based order.

Clause 34. This clause empowers a Court to extend the period of a community based order.

Clause 35. This clause empowers the Court to cancel or vary a community based order.

Clause 36. This clause provides that where a Court cancels a community based order and the offender is not then before the Court the Court must issue or cause to be issued a warrant for the apprehension of the offender.

Clause 37. This clause provides that where a Magistrates' Court proposes to seek an extension of a community based order or a cancellation or variation of a community based order under section 34 or 35 and that it proposes to do so otherwise than on the application of the offender, the offender must be summoned to appear before the Court and if the offender does not appear in answer to the summons the Court may issue a warrant for the offender's arrest.

Clause 38. This clause allows the Director-General to suspend the operation of a community based order or certain conditions of the community based order in exceptional circumstances.

Clause 39. This clause provides that a community based order may be regarded as a conviction for certain purposes.

Clause 40. This clause allows a person sentenced under section 33, 34 or 35 a right of appeal against that sentence.

Clause 41. This clause makes it clear that in addition to imposing a community based order in respect of an offender a Court may make orders for costs or damages or compensation or disqualification or suspension of licence or other action which it is empowered to make or to impose a fine upon the offender.

Clause 42. This clause provides that certain provisions of the *Magistrates' (Summary Proceedings) Act 1975* and the *Community Welfare Services Act 1970* extend and apply to this Act.

Clause 43. This clause empowers the Governor in Council to make regulations with respect to certain matters.

Clause 44. This clause is a transitional provision which protects existing probation orders, community service orders or attendance centre orders in force immediately before the commencement of the Act.

Clause 45. This clause is a definition clause.

Clause 46. This clause states the object of a youth attendance order.

Clause 47. This clause empowers a Court which has convicted a young person of an offence to make a youth attendance order in respect of that person.

Clause 48. This clause places restrictions on the Court's power to make a youth attendance order under the previous section.

Clause 49. This clause specifies the conditions of a youth attendance order.

Clause 50. This clause requires a sentencing Court to impose certain requirements upon an offender when it makes a youth attendance order.

Clause 51. This clause requires a sentencing Court when making a youth attendance order to specify a superintendent or responsible officer to whom the offender shall be responsible.

Clause 52. This clause provides that youth attendance orders are to be served concurrently.

Clause 53. This clause requires a youth attendance order to be in the prescribed form and to be made available in copy to the offender and the relevant superintendent or responsible officer.

Clause 54. This clause imposes additional requirements upon an offender sentenced to a youth attendance order.

Clause 55. This clause requires an offender to report regularly at a youth attendance centre.

Clause 56. This clause provides for the suspension of a youth attendance order.

Clause 57. This clause empowers a Court to require a superintendent or responsible officer to report to it on the behaviour of an offender sentenced to a youth attendance order.

Clause 58. This clause empowers the Director-General to appoint youth attendance projects.

Clause 59. This clause outlines the objects of youth attendance projects.

Clause 60. This clause requires an offender sentenced to a youth attendance project to be subject to the control of a superintendent or responsible officer.

Clause 61. This clause requires an offender to engage in employment or other activities as directed when in attendance at a youth attendance centre.

Clause 62. This clause provides for penalties for breaches of a youth attendance order.

Clause 63. This clause empowers either the Director-General of Community Services or an offender to make an application to the sentencing Court for a variation of a youth attendance order in certain circumstances.

Clause 64. This clause empowers the Governor in Council to make regulations with a respect to a number of matters.

Clause 65. This clause requires a Court to take into consideration the financial circumstances of an offender where it intends to impose a monetary penalty in respect of an offence.

Clause 66. This clause is a definitions clause.

Clause 67. This clause requires a Court intending to impose a monetary penalty on an offender to allow a monetary penalty to be paid by instalments.

Clause 68. This clause allows a Court to allow time for payment of a monetary penalty.

Clause 69. This clause sets out the circumstances in which an offender may apply to the Court for time to pay a monetary penalty or may apply for an instalment order or for the variation of an instalment order in respect of the payment of a monetary penalty.

Clause 70. This clause requires the Court when considering an application under the previous section to consider the financial circumstances of the offender.

Clause 71. This clause provides for penalties where default is made in payment of a monetary penalty or instalments of a monetary penalty, and the procedures in enforcing such penalties.

Clause 72. This clause empowers a Court to seek warrants of distress where an offender is in default.

Clause 73. This clause empowers a Court to impose orders as to costs.

Clause 74. This clause provides that an order to pay operates subject to an instalment order.

Clause 75. This clause provides that an order is not binding against a person unless that person has been given notice of the order in the manner required.

Clause 76. This clause empowers a Court to administer an oath for the purposes of proceedings under this Division 2 of Part 7 of the Act.

Clause 77. This clause enables a person to appeal from an order that he or she be imprisoned in default of payment of a fine.

Clause 78. This clause extends the rule making power under the Supreme Court Act, the County Court Act and the Magistrates' Court Act to apply to the making of rules in respect of certain matters.

Clause 79. Excludes the operation of fine default provisions in the case of Infringement Notices.

Clause 80. This clause empowers Magistrates' Court or a justice to require a person to give an undertaking to keep the peace or to be of good behaviour and to enter into a bond.

Clause 81. This clause empowers a Court to refuse to record a conviction even though a trifling charge has been proved.

Clause 82. This clause empowers the Governor of a prison to release a person under sentence of imprisonment on parole or bond in the exercise of prerogative of mercy in certain circumstances.

Clause 83. This clause empowers the Court to grant an adjournment of a charge instead of convicting a person if it appears in the circumstances to be reasonable to do so.

Clause 84. This clause empowers a Court to dismiss a person without further proceedings where a Court is satisfied that the person has observed conditions of a bond following an adjourned charge.

Clause 85. This clause empowers a Court to call upon a person to whom an adjournment has been granted under section 83 to appear before the Court in certain circumstances.

Clause 86. This clause provides for a failure to appear by a person required to appear under section 85.

Clause 87. This clause provides for breaches of bond.

Clause 88. This clause makes it clear that the Supreme and County Courts have the power to place a convicted offender on a bond to be of good behaviour.

Clause 89. This clause makes it clear that the provisions of Part 9 of the Act do not apply to Children's Courts.

Clause 90. This clause empowers a Court to exercise certain powers requiring an offender to make restitution.

Clause 91. Provides for the recovery of penalties not otherwise provided for.

Clause 92. This clause empowers a Court to make compensation orders against a person convicted of an offence where damage is caused to another person.

Clause 93. This clause provides for a compensation order to be made against an offender where that offender is convicted of motor car theft.

Clause 94. This clause provides that where a person is summarily convicted of an offence against the provisions of Division 2 or 3 or Part 1 of the Crimes Act and it is a first conviction, the Magistrates' Court may discharge the offender from conviction where the offender makes amends to the aggrieved party.

Clause 95. This clause provides for the cancellation of a driver's licence upon conviction of certain offences.

Clause 96. This clause defines the meaning of penalty units.

Clause 97. This clause sets out the method of imposing penalties.

Clause 98. This clause empowers a judge to set time and place of sentence.

Clause 99. This clause provides for the case where a judge other than the trial judge presides for sentencing or receiving a plea.

Clause 100. This clause empowers the Supreme Court to correct sentences imposed by a sentencing Court.

Clause 101. Deals with the discharge of persons under committal for an indictable offence.

Clause 102. This clause empowers a Court to order the withdrawal of trifling or technical cases against the accused.

Clause 103. This clause provides that conviction for treason or certain indictable offences are to be a disqualification for certain offices and office holders.

Clause 104. Removes disqualifications and penalties other than those specified in the relevant provision from applying to convicted persons.

Clause 105. This clause provides for the application of penalties and fees.

Clause 106. This clause provides for the remittance of penalties for offences.

Clause 107. Deals with penalties imposed on corporations.

Clause 108. Deals with certain procedural matters on applications for compensation orders.

Clause 109. Deals with double jeopardy in summary cases.

Clause 110. Defines previous convictions in various enactments.

Clause 111. Abolishes the common law rule of forfeiture.

Clause 112. Saves the Royal Prerogative of Mercy.

Clause 113. This clause gives the Governor in Council general regulation making power for the purposes of this Act.

Clause 114. This clause provides for the repeal and amendment of other Acts as outlined in Schedule 4 to the Bill.