

CLAUSE NOTES

Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017

PART I – PRELIMINARY

Clause 1: Short title

Clause 1 cites the Act as the Sentencing Amendment (Phasing Out Of Suspended Sentences) Act 2017.

Clause 2: Commencement

Clause 2 provides for the provisions of the Act to commence on a day or days to be proclaimed.

PART 2 – SENTENCING ACT 1997 AMENDED

Clause 3: Principal Act

Clause 3 provides that in Part 2 the Principal Act to which the amendments apply is the *Sentencing Act 1997*.

Clause 4: Section 4 amended (Interpretation)

Clause 4 amends section 4 of the *Sentencing Act 1997*.

Section 4 provides a number of definitions used in the *Sentencing Act 1997*.

Clause 4 amends the existing definition of 'community service order' and inserts definitions of 'community correction order', 'community service' and 'home detention order'.

Clause 5: Section 7 amended (Sentencing orders)

Clause 5 amends section 7 of the *Sentencing Act 1997*.

Section 7 of the *Sentencing Act 1997* provides for sentencing orders that a court may impose on offenders.

Clause 5 amends section 7 of the *Sentencing Act 1997* by inserting powers to make home detention orders and community correction orders, and removing powers to make community service orders and probation orders.

Clause 6: Section 8 amended (Combined sentencing orders)

Clause 6 amends section 8 of the *Sentencing Act 1997*.

Section 8 of the *Sentencing Act 1997* provides for combined sentencing orders.

Clause 6 amends section 8 of the *Sentencing Act 1997*, including by providing for home detention orders and community correction orders to be combined with other sentencing orders.

Clause 7: Section 17 amended (Court may bar or limit eligibility for parole)

Clause 7 amends section 17 of the *Sentencing Act 1997*.

Section 17 of the *Sentencing Act 1997* permits a court to bar or limit an offender's eligibility for parole.

Clause 7 inserts subsection (2A) to limit a court's power to make an order relating to parole where the court also makes a community correction order.

Clause 8: Section 23A inserted

Clause 8 inserts section 23A into the *Sentencing Act 1997*.

Section 23A, in conjunction with Schedule 3 inserted by Clause 19 of the Bill, limits the circumstances in which a court can make an order suspending the whole or part of a sentence of imprisonment.

Clause 9: Section 24 amended (Suspended sentence to be conditional)

Clause 9 amends section 24 of the *Sentencing Act 1997*.

Section 24 of the *Sentencing Act 1997* provides that orders suspending the whole or part of a sentence of imprisonment are, and can be, subject to certain conditions. Those conditions may include requirements that the offender perform community service or be subject to the supervision of a probation officer. Presently, under section 24, certain conditions in Parts 4 and 5 of the *Sentencing Act 1997* apply with modifications to a suspended sentence that is made conditional on community service or the supervision of a probation officer.

Clause 9 inserts subsections (5A) and (5B) into section 24 of the *Sentencing Act 1997*. These subsections make suspended sentences conditional on provisions in Parts 5A and 5B of the *Sentencing Act 1997*. These amendments ensure that sentences of imprisonment suspended on conditions of community service and supervision of a probation officer will continue to operate following the eventual repeal of Parts 4 and 5 of the *Sentencing Act 1997*.

Clause 10: Section 27 amended (Breach of order suspending sentence)

Clause 10 amends section 27 of the *Sentencing Act 1997*.

Section 27 of the *Sentencing Act 1997* provides for various matters relating to breaches of suspended sentences of imprisonment.

Clause 10 amends various provisions of section 27 to limit the circumstances in which an offender may remain subject to, or be sentenced to a further, suspended sentence of imprisonment, following a breach of their suspended sentence of imprisonment.

Clause 11: Section 27Y inserted

Clause 11 inserts section 27Y into the *Sentencing Act 1997*.

Section 27Y provides that courts are not to impose a community service order on an offender after the day on which Part 5B commences.

Clause 12: Section 34 amended (Duration of community service order)

Clause 12 amends section 34 of the *Sentencing Act 1997*.

Section 34 of the *Sentencing Act 1997* provides for circumstances in which a community service order is no longer in force.

Clause 12 amends the circumstances in which a community service order is no longer in force to include where a community service order is cancelled under another provision of the *Sentencing Act 1997*.

Clause 13: Section 36B inserted

Clause 13 inserts section 36B into the *Sentencing Act 1997*.

Section 36B provides that courts are not to impose a probation order on an offender after the day on which Part 5B commences.

Clause 14: Part 5A inserted

Clause 14 inserts Part 5A into the *Sentencing Act 1997*.

Part 5A of the *Sentencing Act 1997* provides for home detention orders. Part 5A provides for a number of matters relating to home detention orders, including definitions, core and special conditions, application procedures, and procedures for breaches of conditions.

Clause 15: Part 5B inserted

Clause 15 inserts Part 5B into the *Sentencing Act 1997*.

Part 5B of the *Sentencing Act 1997* provides for community correction orders. It sets out a number of matters including conditions of community correction orders, procedures for alleged and proved breaches of community correction orders, and the powers of courts to vary and cancel community correction orders.

Clause 16: Section 83 amended (Contents of pre-sentence report)

Clause 16 amends section 83 of the *Sentencing Act 1997*.

Section 83 of the *Sentencing Act 1997* sets out certain matters that may be included in a pre-sentence report.

Clause 16 amends section 83(1) by inserting paragraph (ga) to provide for matters relating to suitability of an offender for a home detention order.

Clause 17: Section 102 amended (Regulations)

Clause 17 amends section 102 of the *Sentencing Act 1997*.

Section 102(2) of the *Sentencing Act 1997* provides for certain matters in relation to which regulations can be made.

Clause 17 amends the *Sentencing Act 1997* to allow regulations to be made in relation to the conditions, operation and control of home detention orders and community correction orders.

Clause 18: Section 104AB inserted

Clause 18 inserts section 104AB into the *Sentencing Act 1997*.

Section 104AB provides for savings and transitional provisions in relation to the Bill.

Clause 19: Schedule 3 inserted

Clause 19 inserts Schedule 3 into the *Sentencing Act 1997*.

Schedule 3 and section 23A together provide for certain circumstances in which a court cannot make an order suspending the whole or part of a sentence of imprisonment.

PART 3 – INTERSTATE TRANSFER (COMMUNITY-BASED SENTENCES) ACT 2009 AMENDED

Clause 20: Principal Act

Clause 20 provides that in Part 3 the Principal Act to which the amendments apply is the *Interstate Transfer (Community-based Sentences) Act 2009*.

Clause 21: Section 3 amended (Interpretation)

Clause 21 amends section 3(1) of the *Interstate Transfer (Community-based Sentences) Act 2009* by amending the definition of 'community-based sentence' to include a community correction order.

Clause 22: Section 17 amended (Registration of sentence)

Clause 22 amends section 17 of the *Interstate Transfer (Community-based Sentences) Act 2009* by adding paragraph (ab) to section 17(3).

Clause 23: Section 18 amended (Effect of registration under this Part)

Clause 23 amends section 18 of the *Interstate Transfer (Community-based Sentences) Act 2009* by adding community correction orders to the types of orders covered by section 18(1)(h).

Clause 24: Section 22 amended (Application to court to alter sentence to enable registration of another State or a Territory)

Clause 24 amends section 22 of the *Interstate Transfer (Community-based Sentences) Act 2009* by inserting subsection (7A).

PART 4 – CONCLUDING PROVISION

Clause 25: Repeal of Act

Clause 25 inserts a repeal provision to remove the empty shell of the Bill after all its provisions have been transferred and have come into effect in the Principal Acts.