

# CLAUSE NOTES

## *Sentencing Amendment Bill 2016*

### **Clause 1: Short title**

Clause 1 cites the Bill as the *Sentencing Amendment Act 2016*.

### **Clause 2: Commencement**

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

### **Clause 3: Principal Act**

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

### **Clause 4: Section 4 amended**

Clause 4 inserts into section 4 of the *Sentencing Act 1997* a definition of 'pre-sentence program' for the purposes of a deferred sentence under Part 8, Division 1 of the *Sentencing Act 1997*.

### **Clause 5: Section 7 amended**

Clause 5 amends paragraph 7(ab) and inserts new paragraph 7(eb) into the *Sentencing Act 1997*.

The objective of amending paragraph 7(ab) is to allow the Supreme Court and the Court of Criminal Appeal to make a drug treatment order under Part 3A of the *Sentencing Act 1997*.

The objective of inserting new paragraph 7(eb) is to allow a court to adjourn proceedings, grant bail, and defer sentencing an offender until a specified date. New paragraph 7(eb) should be read in conjunction with Part 8, Division 1 of the *Sentencing Act 1997*.

### **Clause 6: Section 7A inserted**

Clause 6 inserts new section 7A into the *Sentencing Act 1997*.

The objective of new subsection 7A(1) is to limit the time which sentencing can be adjourned under new paragraph 7(eb). New section 7A(1) provides that proceedings may not be adjourned for a period of more than 2 years. However, the 2 year period is subject to new section 57C, which allows a court to defer sentencing, in certain circumstances, for up to 30 months.

New subsection 7A(2) provides that new paragraph 7(eb) does not limit any existing powers of a court to adjourn proceedings, grant bail in relation to a period of adjournment, or defer sentencing an offender.

**Clause 7: Section 27A amended**

Clause 7 amends the definition of court in section 27A of the *Sentencing Act 1997*.

Section 27A provides definitions for Part 3A of the *Sentencing Act 1997*. Part 3A of the Act provides for drug treatment orders.

The objective of clause 7 is to include the Supreme Court and the Court of Criminal Appeal as courts that can make drug treatment orders and exercise certain powers under Part 3A.

**Clause 8: Section 27AB inserted**

Clause 8 inserts new section 27AB into the *Sentencing Act 1997*.

The objective of new section 27AB is to allow a different magistrate than the magistrate who finds an offender guilty, to sentence an offender. This will allow a magistrate who is of the opinion that a drug treatment order may be an appropriate sentence to refer an offender to another magistrate for consideration as to whether to make the order.

**Clause 9: Section 27B amended**

Clause 9 amends section 27B of the *Sentencing Act 1997*.

Subclause 9(a) removes the requirement that in order to make a drug treatment order, the offender not be subject to a sentencing order of the Supreme Court.

Subclause 9(b) inserts new paragraph 27B(3)(ba) into the *Sentencing Act 1997*. This new paragraph will require a court to be satisfied, before making a drug treatment order, as to the sufficiency of staffing and resources for the treatment and supervision of an offender.

**Clause 10: Section 27G amended**

Clause 10 amends section 27G by replacing 'the court' with 'a court' in paragraphs (b), (d), (g), (h) and subsection (5), and inserts a new subsection (6) into the *Sentencing Act 1997*.

The amendments to paragraphs (b), (d), (g), (h) and subsection (5) aim to ensure that the Supreme Court and the Court of Criminal Appeal can exercise powers under section 27G.

The objective of new subsection 27G(6) is to provide a power for a justice or a court to remand an offender who has been arrested on a warrant issued under subsection 27G(5) of the *Sentencing Act 1997*.

**Clause 11: Section 27I amended**

Clause 11 amends subsection 27I(1) of the *Sentencing Act 1997*.

Section 27I allows a magistrate to convene a case conference to assess the progress of an offender who is subject to a drug treatment order.

The objective of clause 11 is to permit a magistrate to conduct a case conference with an offender even where an offender is subject to a drug treatment order made by the Supreme Court or the Court of Criminal Appeal.

**Clause 12: Section 27J amended**

Clause 12 amends section 27J of the *Sentencing Act 1997*.

The objective of clause 12 is to allow a magistrate to vary certain conditions of an offender's drug treatment order even where the order was made in the Supreme Court or the Court of Criminal Appeal.

**Clause 13: Section 27K amended**

Clause 13 amends subsection 27K(1) of the *Sentencing Act 1997*.

The objective of clause 13 is to permit a magistrate to confer a compliance reward on an offender who is subject to a drug treatment order made by the Supreme Court or the Court of Criminal Appeal.

Compliance rewards allow a court to confer a reward on an offender on a drug treatment order who is fully or substantially complying with the conditions of the order. The rewards that can be conferred include varying conditions of an order, cancelling a requirement to perform community work, and de-activating imprisonment.

**Clause 14: Section 27L amended**

Clause 14 amends subsection 27L(1) of the *Sentencing Act 1997*.

The objective of this clause is to permit a magistrate to confer a cancellation reward on an offender who is subject to a drug treatment order made by the Supreme Court or the Court of Criminal Appeal.

A court may cancel a drug treatment order as a reward where an offender has been fully or substantially complying with conditions of an order, the continuation of the order is no longer necessary to meet the purposes for which it was made, and the period of imprisonment that the offender would have had to serve has expired.

**Clause 15: Section 27M amended**

Clause 15 amends subsection 27M(1) and paragraph 27M(2)(b) of the *Sentencing Act 1997* and inserts new subsection 27M(3A).

This clause allows a magistrate to deal with contraventions of drug treatment orders even where those orders are made by the Supreme Court or the Court of Criminal Appeal.

These amendments also change the order in which sanctions can be applied where an offender has contravened a condition of a drug treatment order.

A further objective of these amendments is to change the standard of proof required for the activation of the custodial part of a drug treatment order.

**Clause 16: Section 27O amended**

Clause 16 amends subsection 27O(1) and subparagraph 27O(1)(b)(ii) of the *Sentencing Act 1997* and inserts new subsection 27O(2A).

The objective of this clause is to provide guidance on what is to occur where an offender on a drug treatment order breaches the order by committing an offence punishable by imprisonment for a period exceeding 12 months' imprisonment.

This clause amends the principal Act to provide that a magistrate can take certain actions in relation to a drug treatment order made by the Supreme Court or Court of Criminal Appeal. However, a magistrate will not be able to cancel an order made by another court and resentence the offender under section 7 of the *Sentencing Act 1997*.

**Clause 17: Section 27P amended**

Clause 17 inserts subsection 27P(4) into the *Sentencing Act 1997*.

The objective of clause 17 is to prevent a magistrate from cancelling a drug treatment order and resentencing an offender where the Supreme Court or the Court of Criminal Appeal made the drug treatment order.

**Clause 18: Section 27Q amended**

Clause 18 amends section subsection 27Q(1) of the *Sentencing Act 1997*.

The objective of this clause is to ensure that the cancellation of a drug treatment order under section 27 can only be done by the court that made the order.

A court may fix a non-parole period for a sentence of imprisonment under section 27. As a non-parole period can be fixed, generally the most appropriate court to set the non-parole period will be the court that made the drug treatment order.

**Clause 19: Section 27QA inserted**

Clause 19 inserts new section 27QA into the *Sentencing Act 1997*.

The new section 27QA provides a power for a court to refer an offender to another court for the purposes of a drug treatment order. If an offender is before a court and it is appropriate for the offender to be dealt with by another court, the offender can be transferred between courts.

**Clause 20: Section 27R amended**

Clause 20 amends section 27R of the *Sentencing Act 1997*.

The objective of this clause is to set out a court's powers if an offender has been on a drug treatment order for two years and the order has not been cancelled.

Where a magistrate made the drug treatment order, a magistrate can review the order, cancel the treatment and supervision part of the order, and either activate some or all of the custodial part of the order, or otherwise sentence the offender.

Where the drug treatment order is made in the Supreme Court or the Court of Criminal Appeal, a magistrate will still review the order. On completion of the review, the magistrate will then provide the court that made the order with a report in relation to the review. The court that made the order will then cancel the treatment and supervision part of the order and either activate some or all of the custodial part of the order, or otherwise sentence the offender.

**Clause 21: Section 27S amended**

Clause 21 amends section 27S of the *Sentencing Act 1997*.

Section 27S deals with motions to review a drug treatment order.

A motion to review allows a person aggrieved by a decision made by a magistrate to request the Supreme Court to review the decision.

The objective of this clause is to permit the Supreme Court to make a drug treatment order following a motion to review. At present, the *Sentencing Act 1997* does not allow the Supreme Court to make a drug treatment order following a motion to review.

**Clause 22: Section 27W amended**

Clause 22 amends subsection 27W(1) of the *Sentencing Act 1997*.

Section 27W provides protection to people who disclose compliance information relating to an offender on a drug treatment order. A person involved in the offender's treatment or supervision can be asked to disclose information about the offender's compliance with a drug treatment order.

The objective of this clause is to ensure that where a judge asks for compliance information, existing protections will apply to the person disclosing the compliance information.

**Clause 23: Part 8: Heading amended**

Clause 23 amends the heading in Part 8 of the *Sentencing Act 1997*.

**Clause 24: Part 8, Division 1 inserted**

Clause 24 inserts a new Division 1 of Part 8 into the *Sentencing Act 1997*.

The aim of this clause is to allow courts to defer sentencing under the *Sentencing Act 1997*.

New section 57A sets out the circumstances in which a court can defer sentencing.

New subsection 57A(5) requires a court to give reasons for deferring sentencing.

New section 57B provides a power for a court to grant bail during the period of deferral of sentencing. It will allow a court to require an offender to appear back before the court prior to the date of sentence to check the offender's compliance with bail conditions.

New section 57B will also allow a court to amend any bail conditions when an offender appears before a court. In determining whether to amend any conditions of bail the court may take into account a report on the offender in relation to their participation in a pre-sentence program, and the extent and manner of the offender's compliance with conditions of bail.

New section 57C will allow a court to alter the date to which the sentencing is deferred. A court will be able to alter the date to which sentencing is deferred on an application from either the offender or the prosecution, or on its own motion.

New section 57C further provides that sentencing can be deferred to a later date than the date specified in the order for various reasons. The section provides that an order cannot be extended beyond 30 months.

New section 57C provides that if an offender does not attend court for a hearing of an application to alter the date of sentence, a warrant for the offender's arrest can be issued.

New section 57C provides that a court may remand an offender on bail or in custody to appear before another court.

New section 57D allows a court to revoke an order deferring sentencing. A court can revoke the order deferring sentencing and proceed to sentence either on the court's own motion, or on an application from either the offender or prosecutor.

New section 57D provides that if an offender does not attend court for a hearing of an application to alter the date of sentencing, a warrant for the offender's arrest can be issued.

New section 57E provides for the referral of offenders subject to a deferred sentencing order of the Supreme Court and the Court of Criminal Appeal from the Magistrates Court to the Supreme Court. The offender can be remanded on bail or in custody. Once the offender is before the Supreme Court, the Supreme Court can decide whether to deal with the offender under sections 57C or 57D, or the Supreme Court can refer the offender back to the Magistrates Court.

**Clause 25:**                    **Part 8, Division 2: Heading inserted**

Clause 25 inserts a new heading before section 58.

**Clause 26:**                    **Repeal of Act**

Clause 26 inserts a standard 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 Act.