

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 40

Issued by the authority of the Minister for Justice

Crimes Amendment Regulation 2013 (No. 1)

Section 91 of the *Crimes Act 1914* (the Crimes Act) provides that the Governor-General may make regulations, not inconsistent with the Crimes Act, prescribing all matters required or permitted by the Crimes Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Crimes Act.

A federal offender is a person convicted of an offence against a law of the Commonwealth. State and territory courts exercise jurisdiction in relation to persons charged with offences against the laws of the Commonwealth under the *Judiciary Act 1903*.

Part 1B of the Crimes Act provides for the sentencing, imprisonment and release of federal offenders. Part 1B sets out sentencing options for federal offenders, including custodial sentences, conditional release and suspended sentences.

However, section 20AB of the Crimes Act provides a mechanism for courts, when sentencing federal offenders in their jurisdiction, to access a number of sentencing options that are available under the relevant state or territory law in their jurisdiction. Some of these options are specifically identified in subsection 20AB(1) of the Crimes Act and further sentencing options are prescribed for the purposes of this subsection in regulation 6 of the *Crimes Regulations 1990* (the Principal Regulations).

The Northern Territory has introduced amendments to its sentencing regime. The purpose of this Regulation is to amend regulation 6 to refer to current sentencing legislation in the Northern Territory. This ensures that federal offenders who are convicted in the Northern Territory are eligible to access the sentencing options now available in that jurisdiction.

The amendments insert references to community work orders, community based orders and community custody orders as prescribed sentencing options in the Northern Territory in regulation 6 of the Principal Regulations. Community work orders, community based orders and community custody orders are all available as sentencing options in the Northern Territory under the *Sentencing Act (NT)*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Crimes Amendment Regulation 2013 (No. 1)

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Federal offenders are prosecuted and sentenced in state and territory courts and, if sentenced to imprisonment, are imprisoned in state and territory prisons. The Crimes Act provides for the sentencing of federal offenders, including custodial sentences, conditional release and suspended sentences. However, the Crimes Act also provides a mechanism for courts to consider alternative sentencing orders that are available in the relevant state or territory when sentencing federal offenders.

Some of these alternative sentencing options are specifically identified in the Crimes Act, while others are prescribed in the Principal Regulations. Alternative sentencing options are intended to cover sentencing options other than imprisonment—such as community service orders, work orders, sentences of periodic detention, attendance centre orders, weekend detention and similar orders. The policy rationale is that options available to state or territory offenders should also be available to federal offenders sentenced in that state or territory, apart from those orders specifically provided at federal level or options that the Commonwealth wants to exclude.

Regulation 6 of the Principal Regulations prescribes sentencing options that are available to federal offenders in the states and territories. In relation to Northern Territory sentencing options, regulation 6 currently prescribes a home detention order made under Subdivision 2 of Division 5 of Part 3 of the *Sentencing Act* (NT).

This Regulation amends regulation 6 of the Principal Regulations to reflect changes to sentencing options available in the Northern Territory as a result of amendments made to sentencing legislation in the Northern Territory.

The amendments insert references to community work orders, community based orders and community custody orders as prescribed sentencing options in the Northern Territory in regulation 6 of the Principal Regulations. This is because community work orders, community based orders and community custody orders are now available as sentencing options in the Northern Territory under the *Sentencing Act* (NT).

The legislative instrument does not make any substantive amendments to Commonwealth law or policy in relation to federal offenders. It reflects amendments to Northern Territory sentencing legislation and ensures that federal offenders are eligible to access a range of sentencing options in accordance with Northern Territory sentencing legislation.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

[The Hon Jason Clare MP, Minister for Justice]

Other Issues

The Commonwealth Director of Public Prosecution and the Northern Territory Department of Correctional Services and Department of Attorney-General and Justice have been consulted on the amendments.

The Regulation is not likely to impact on business or restrict competition.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Details of the Regulation are set out in the Attachment.

ATTACHMENT

Details of the Crimes Amendment Regulation 2013 (No. 1)

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Crimes Amendment Regulation 2013 (No. 1)*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section provides that the Regulation is made under the *Crimes Act 1914* (Cth).

Section 4 – Schedule(s)

This section provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – Regulation 6 (table item 10)

Existing regulation 6 of the Principal Regulations prescribes a range of State and Territory sentencing alternatives as prescribed orders for the purposes of the enabling provision - that is, section 20AB of the Crimes Act.

There is only one reference to sentencing alternatives in the Northern Territory in the table in existing regulation 6. This is a reference in item 10 to a home detention order, made under Subdivision 2 of Division 5 of Part 3 of the *Sentencing Act* (NT) (the Sentencing Act).

Item 1 effectively retains the reference to a home detention order but also inserts references to three further types of orders available in the Northern Territory under the Sentencing Act.

The Sentencing Act was recently amended by the *Justice (Corrections) and Other Legislation Amendment Act 2011* (NT). Relevantly, the amendments introduced community based orders (new Division 4A of Part 3) and community custody orders (new Subdivision 2A of Division 5 of Part 3). In addition, the sentencing option for community work orders (Division 4 of Part 3) is not currently prescribed for the purposes of regulation 6 of the Crimes Regulations.

New item 10 in the table in regulation 6 of the Principal Regulations prescribes a community based order made under Division 4A of Part 3 of the Sentencing Act as a sentencing option for the purposes of section 20AB of the Crimes Act. This will allow courts to sentence federal offenders prosecuted in the Northern Territory to community based orders.

New item 11 in the table in regulation 6 of the Principal Regulations prescribes a community custody order made under Subdivision 2A of Division 5 of Part 3 of the Sentencing Act as a sentencing option for the purposes of section 20AB of the Crimes Act. This will allow courts to sentence federal offenders prosecuted in the Northern Territory to community custody orders.

New item 12 in the table in regulation 6 of the Principal Regulations prescribes a community work order made under Division 4 of Part 3 of the Sentencing Act as a sentencing option for the purposes of section 20AB of the Crimes Act. This will allow courts to sentence federal offenders prosecuted in the Northern Territory to community work orders.

New item 13 in the table in regulation 6 of the Principal Regulations prescribes a home detention order made under Subdivision 2 of Division 5 of Part 3 of the Sentencing Act as a sentencing option for the purposes of section 20AB of the Crimes Act. This will continue to allow courts to sentence federal offenders prosecuted in the Northern Territory to home detention orders.

These amendments ensure that current relevant Northern Territory sentencing orders are prescribed in the Principal Regulations.