

Crimes Amendment Regulations 2004 (No. 1) 2004 No. 164

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 164

Issued by the authority of the Minister for Justice and Customs

Subject: *Crimes Act 1914*

Crimes Amendment Regulations 2004 (No. 1)

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

The *Crimes Regulations 1990* (the Principal Regulations) set out the various matters necessary for carrying out or giving effect to the Act.

The purpose of the Regulations is to prescribe additional sentencing alternatives for the purposes of section 20AB of the Act.

Subsection 20AB(1) of the Act enables courts of 'participating' States and Territories to impose on a federal offender a sentence or order of a specified type where that Court may, under the law of a participating State or Territory, impose such a sentence or order in respect of a State or Territory offender. In particular, subsection 20AB(1) refers to a 'sentence of periodic detention', but not specifically to 'periodic detention orders'. However, subsection 20AB(1) of the Act also provides that the Court may pass or make a 'similar sentence or order' or make a sentence or order that is prescribed for the purposes of the section. All States and Territories, including New South Wales and the Australian Capital Territory, have signed arrangements under section 3B of the Act, making them 'participating' jurisdictions for the purposes of subsection 20AB(1).

The Regulations clarify the operation of the Act by prescribing periodic detention orders under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) and Part 2 of the *Periodic Detention Act 1995* (ACT) as sentencing alternatives for the purposes of subsection 20AB(1) of the Act. The amendments clarify that periodic detention orders as described in the NSW and ACT legislation are alternative sentences for the purpose of subsection 20AB(1), reflecting the current practice of the courts. Periodic detention orders are available where a prisoner is sentenced to three years imprisonment or less in NSW or two years or less in the ACT.

The amendments operate retrospectively from the respective commencement dates of the NSW and ACT legislation. In the case of the ACT periodic detention orders, this is from 1 September 1995 and in the case of the NSW orders, this is from 3 April 2000. The proposed amendments clarify that periodic detention orders, made under subsection 20AB(1) of the Act and the NSW and ACT legislation, were available as a sentencing alternative for federal offenders. This reinforces the position taken by the courts, and clarifies the operation of periodic detention orders for federal offenders sentenced under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) and Part 2 of the *Periodic Detention Act 1995* (ACT).

The Australian Government Solicitor advises that the retrospective effect of the proposed amendments does not contravene subsection 48(2) of the *Acts Interpretation Act 1901*, because it does not disadvantage, or impose liabilities upon, any person. The amendments ensure that

offenders subject to such orders do not need to serve full-time detention under a head sentence, resulting in less time in prison.

The Regulations also make a minor technical amendment to the Principal Regulations. The subparagraphs in Principal Regulation 6 is relettered to group prescribed sentences or orders by State or Territory.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The proposed Regulations commence as follows;

- (a) 1 September 1995 - regulations 1 to 3, and Schedule 1;
- (b) 3 April 2000 - Schedule 2; and
- (c) the day of Gazettal - Schedule 3.

ATTACHMENT

Crimes Amendment Regulations 2004 (No. 1)

Regulation 1 provides that the proposed Regulations are the *Crimes Amendment Regulations 2004 (No. 1)*

Regulation 2 provides that regulations 1, 2, 3 and Schedule 1, which prescribes ACT periodic detention orders under subsection 20AB(1) of the *Crimes Act 1914* (the Act), are taken to have commenced on 1 September 1995. This is the date on which ACT periodic detention orders first came into force under the *Periodic Detention Act 1995* (ACT). Further, regulation 2 provides that regulation 4 and Schedule 2, prescribing periodic detention orders made under the *Crimes (Sentencing Procedure) Act 1999* (NSW), are taken to have commenced on 3 April 2000. This is the date on which the *Crimes (Sentencing Procedure) Act 1999 (NSW)* commenced. Regulation 2 provides that all other parts of the regulations commence on the date of their notification in the *Gazette*.

Regulation 3 provides that the Schedule 1 amends the Crimes Regulations (as the Principal Regulations were known in 1995).

Regulation 4 provides that Schedules 2 and 3 amend the *Crimes Regulations 1990* (as the Principal Regulations were known in 2000).

Schedule 1 inserts a new paragraph 6(aa) into regulation 6 of the Principal Regulations, to prescribe for the purposes of section 20AB of the Act, a periodic detention order made under Part 2 of the *Periodic Detention Act 1995* (ACT), as an additional sentencing alternative.

Schedule 2 inserts a new paragraph 6(ab) into regulation 6 of the Principal Regulations, to prescribe for the purposes of section 20AB of the Act, a periodic detention order made under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), as an additional sentencing alternative.

Schedule 3 reorders the subparagraphs of regulation 6 of the Principal Regulations. This is a technical amendment to improve the formatting of the Principal Regulations. In particular, it ensures that the newly prescribed NSW and ACT laws are grouped by State or Territory.