

Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Bill 2016.

Policy objectives and the reasons for them

The Queensland Government is committed to promoting public confidence in the criminal justice system and in particular, confidence in sentencing practices. The Bill supports this and delivers on the Queensland Government commitment to re-establish a sentencing advisory council in Queensland. The establishment of the sentencing advisory council is also an important part of the process to improve the effectiveness of sentencing practices to support the principles of sentencing, namely punishment, deterrence, rehabilitation, community protection and denunciation.

Queensland's previous sentencing advisory council was established under the *Penalties and Sentences (Sentencing Advisory Council) Amendment Act 2010* and commenced operation in December 2010. The Council was dissolved in 2012 by the *Criminal Law Amendment Act 2012*.

Through its functions, the Queensland Sentencing Advisory Council (QSAC) will promote consistency in sentencing, stimulate balanced public debate on sentencing issues, including reforms, and strengthen public confidence in the justice system by educating and incorporating informed public opinion in the process.

The re-establishment of a sentencing advisory council will provide the government, the judiciary and the community with a valuable resource that has a unique and dedicated focus on sentencing reform, has a committed community education and engagement focus, and a distinctive sentencing statistical and analytical capability.

Achievement of policy objectives

The Bill amends the *Penalties and Sentences Act 1992* to establish the QSAC.

The Bill sets out the QSAC's functions, structure, membership arrangements and reporting requirements to ensure transparency, accountability and clarity in its role.

The functions of the QSAC are to:

- if requested by the Court of Appeal, state in writing to the Court, the QSAC's views on the giving or reviewing of a guideline judgment;
- if requested by the Attorney-General, provide advice to the Attorney-General on matters relating to sentencing;
- provide information to the community on matters relating to sentencing to enhance community knowledge and understanding of sentencing matters;
- publish information relating to sentencing;
- research matters relating to sentencing and publish the results of the research; and
- obtain the community's views on sentencing and matters relating to sentencing.

The QSAC will comprise of up to 12 statutory appointed members. The membership composition of the QSAC ensures broad based community representations from a range of persons with expertise or experience in areas relevant to the functions of the QSAC and the Bill provides a non-exhaustive list of such areas.

To support an understanding of the issues facing Aboriginal and Torres Strait Islander people that contribute to their overrepresentation in the criminal justice system, the Bill provides that at least one member of the QSAC must be an Aboriginal person or Torres Strait Islander.

The QSAC will have an annual reporting requirement on the performance of its functions. This report is to be provided to the Attorney-General who must table the report in the Legislative Assembly.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objective.

Estimated cost for government implementation

Funding has been allocated for the costs for establishing the QSAC.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

The Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the District Court, the Chief Magistrate, the State Coroner, Legal Aid Queensland, the Bar Association of Queensland, the Queensland Law Society, the Director of Public Prosecutions, Prisoners' Legal Service Inc., Catholic Prison Ministry, Queensland Public Interest Law Clearing House Inc. (QPILCH), Amnesty International Australia, Women's Legal Service, Queensland Council for Civil Liberties, and the Aboriginal and Torres Strait Islander Legal Services were invited to comment on the proposed model for the QSAC.

Feedback was received from: the Chief Justice of the Supreme Court; the President of the Court of Appeal; the Chief Judge of the District Court; the Chief Magistrate; the State Coroner; Legal Aid Queensland; the Bar Association of Queensland; the Queensland Law Society; the Director of Public Prosecutions; Queensland Public Interest Law Clearing House Inc. (QPILCH); Amnesty International Australia; Women's Legal Service and Prisoners' Legal Service Inc.

Where comments were made about the legislative framework for the QSAC, such comments were considered in the development of the Bill. There was general support for the re-establishment of the QSAC.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

There are two legislatively established sentencing advisory bodies in Australia; the New South Wales Sentencing Advisory Council and the Victorian Sentencing Advisory Council. The broad objectives of these bodies are consistent with the QSAC.

Notes on provisions

Part 1 Preliminary

Clause 1 establishes the short title as the *Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Act 2016*.

Part 2 Amendment of the Penalties and Sentences Act 1992

Clause 2 provides this part amends the *Penalties and Sentences Act 1992*.

Clause 3 amends section 4 (Definitions) to include the definition of *council*.

'*council*' is a reference to the Queensland Sentencing Advisory Council.

Clause 4 amends section 15AK (Use of evidence in giving or reviewing guideline judgments) to insert an example of a matter the Court may take into consideration in giving or reviewing a guideline judgment, namely any written views of the QSAC about giving or reviewing a guideline judgment.

Clause 5 inserts a new part 12, which provides the legislative framework for the establishment and functions of the QSAC.

Section 198 (Establishment) establishes the QSAC.

Section 199 (Functions of council) sets out the functions of the QSAC.

Subsection (1) lists the functions of the QSAC, namely to:

- a) if asked by the Court of Appeal, provide its views to the Court on the giving or reviewing of a guideline judgment;
- b) advise the Attorney-General, if requested, on matters relating to sentencing;
- c) provide information to the community to enhance knowledge and understanding of sentencing matters;
- d) publish information about sentencing;
- e) undertake research and publish research findings relating to sentencing;
and
- f) obtain the community's view on sentencing and matters relating to sentencing.

To help in performing its functions, subsection (2) provides the QSAC may consult with, and ask for information from the judiciary, government departments, or any other entities, for example, statistical information about crime held by a government department may be requested.

Section 200 (Powers of council) provides the QSAC has the powers necessary or convenient to perform its functions.

Section 201 (Appointment of members) provides the QSAC consists of not more than 12 members appointed by the Governor in Council, on recommendation of the Attorney-General. There is no minimum member number requirement.

At least one member of the QSAC must be an Aboriginal person or a Torres Strait Islander.

The Attorney-General is to recommend persons who have expertise or experience relevant to the functions of the QSAC. Subsection (3)(a) to (n) lists examples of areas of expertise or experience that are relevant. The list is not exhaustive.

Section 202 (Chairperson and deputy chairperson) provides for the appointment of a chairperson and deputy chairperson of the QSAC.

The deputy chairperson is to act as the chairperson during a vacancy in the office of the chairperson and during all periods when the chairperson is absent from duty or for another reason cannot perform the duties of the office.

Section 203 (Term of appointment) provides the term of a QSAC member's appointment is not longer than three years.

A member is eligible for reappointment at the end of the term.

Section 203A (Conditions of appointment) provides for the conditions of a member's appointment.

Subsection (1) provides a QSAC member is entitled to remuneration and allowances as decided by the Governor in Council.

A QSAC member holds office under the terms decided by the Governor in Council.

Section 203B (Vacancy in office) provides a QSAC member vacates their office if the member resigns or the member's appointment is terminated by the Governor in Council.

Resignation is to be given by signed notice given to the Attorney-General.

A member's appointment may be terminated by the Governor in Council on recommendation from the Attorney-General. Subsection (4) provides the matters to be considered by the Attorney-General in considering whether to terminate a member's appointment. The Attorney-General must be satisfied of one of the following grounds:

- a) that the member is incapable of performing the member's duties; or
- b) that the member has been convicted, including by summary conviction, of an indictable offence; or
- c) that the member has neglected their duty or performed them incompetently or inefficiently.

Section 203C (Council decision not invalidated by defect in appointment or vacancy) ensures a decision of the QSAC is not invalidated by a defect in the appointment of a QSAC member or a vacancy in the membership of the QSAC.

Section 203D (Conduct of business) provides subject to sections 203D to 203H, the QSAC may conduct its business, including its meetings, in the way it considers appropriate.

Section 203E (Quorum) provides a quorum for a meeting of the QSAC is a majority of the QSAC for the time being.

Section 203F (Presiding at meetings) provides the chairperson is to preside at all QSAC meetings at which the chairperson is present but, if absent, the deputy

chairperson is to preside. If neither the chairperson nor deputy chairperson is present, a member of the QSAC is to be chosen by the members to preside.

Section 203G (Conduct of meetings) provides a decision of the QSAC is by a majority vote of the members present. If the votes are equal, the member presiding has the casting vote. A member present at the meeting may abstain from voting.

Subsection (5) and (6) provide the QSAC may hold meetings, and permit members to take part in meetings, by using any technology that allows for reasonably contemporaneous and continuous communication between the members. Where a member takes part in the meeting through the use of such technology, the member is taken to be present at the meeting.

Section 203H (Minutes) provides the QSAC must keep minutes of its meetings.

Section 203I (Council may engage persons to help in performing functions) enables the QSAC, subject to the chief executive officer's approval, to engage persons with suitable qualifications and experience to assist the QSAC in performing its functions. Subsection (2) provides the engagement may be in an honorary capacity or for remuneration.

Section 203J (Reports) provides the QSAC must give the Attorney-General a written report each financial year by the date requested by the Attorney-General. The report must include information about: the performance of the QSAC's functions, in particular, about the provision of information to the community to enhance knowledge and understanding of matters relating to sentencing; and the work proposed to be carried out by the QSAC in the future. The Attorney-General must table the annual report in the Legislative Assembly within 14 sittings days after receiving the report.

The QSAC must also report in writing on other occasions as requested in writing by the Attorney-General.

Clause 6 omits section 222 (Dissolution of Sentencing Advisory Council) which dissolved the previous sentencing advisory council that was established in 2010 and dissolved in 2012.

Clause 7 refers to Schedule 1 which provides for minor drafting amendments.

The Schedule makes minor drafting amendments.