

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, May 2016*



Queensland

**No.
A BILL for**

An Act to amend the Penalties and Sentences Act 1992 to establish a Queensland Sentencing Advisory Council and to amend the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013 and the Acts mentioned in schedule 1 for particular purposes



Queensland

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

Contents

		Page
Part 1	Preliminary	
1	Short title	4
Part 2	Amendment of Penalties and Sentences Act 1992	
2	Act amended	4
3	Amendment of s 4 (Definitions)	4
4	Amendment of s 15AK (Use of evidence in giving or reviewing guideline judgments)	4
5	Insertion of new pt 12	5
	Part 12 Queensland Sentencing Advisory Council	
	Division 1 Establishment and functions	
198	Establishment	5
199	Functions of council	5
200	Powers of council	6
	Division 2 Membership	
201	Appointment of members	6
202	Chairperson and deputy chairperson	8
203	Term of appointment	8
203A	Conditions of appointment	8
203B	Vacancy in office	9
203C	Council decision not invalidated by defect in appointment or vacancy	10
	Division 3 Proceedings	
203D	Conduct of business	10
203E	Quorum	10
203F	Presiding at meetings	10

Contents

	203G	Conduct of meetings	11
	203H	Minutes	11
	Division 4	Other matters	
	203I	Council may engage persons to help in performing functions 11	
	203J	Reports	12
6		Omission of s 222 (Dissolution of Sentencing Advisory Council)	12
Part 2A		Amendment of Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013	
6A		Act amended	13
6B		Amendment of s 2 (Commencement)	13
Part 3		Other amendments	
7		Acts amended	13
Schedule 1		Acts amended	14
		Appeal Costs Fund Act 1973	14
		Penalties and Sentences Act 1992	14

2016

A Bill

for

An Act to amend the *Penalties and Sentences Act 1992* to establish a Queensland Sentencing Advisory Council and to amend the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* and the Acts mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Penalties and Sentences (Queensland Sentencing Advisory Council) Amendment Act 2016*.

Part 2 Amendment of Penalties and Sentences Act 1992

2 Act amended

This part amends the *Penalties and Sentences Act 1992*.

Note—

See also the amendments in schedule 1.

3 Amendment of s 4 (Definitions)

Section 4—

insert—

council means the Queensland Sentencing Advisory Council established under section 198.

4 Amendment of s 15AK (Use of evidence in giving or reviewing guideline judgments)

Section 15AK—

insert—

Example of matter court may consider—

any written views of the council about giving or reviewing a guideline judgment

5 Insertion of new pt 12

After part 11—

insert—

Part 12 Queensland Sentencing Advisory Council

Division 1 Establishment and functions

198 Establishment

The Queensland Sentencing Advisory Council is established.

199 Functions of council

- (1) The functions of the council are—
 - (a) if asked by the Court of Appeal, to give the court the council's views, in writing, about the giving or reviewing of a guideline judgment; and
 - (b) if asked by the Attorney-General, to advise the Attorney-General on matters relating to sentencing; and
 - (c) to give information to the community to enhance knowledge and understanding of matters relating to sentencing; and

[s 5]

- (d) to publish information about sentencing;
and
 - (e) to research matters about sentencing and
publish the outcomes of the research; and
 - (f) to obtain the community's views on
sentencing and matters about sentencing.
- (2) To help in performing its functions, the council
may consult with, and ask for information from,
the judiciary, government departments and other
entities.

Example of information that may be requested—

statistical information about crime held by a government
department

- (3) In this section—
publish includes give information to the judiciary,
government departments and other entities.

200 Powers of council

The council has the power to do anything
necessary or convenient to be done in the
performance of its functions.

Division 2 Membership

201 Appointment of members

- (1) The council consists of not more than 12 members
appointed by the Governor in Council, by gazette
notice, on the recommendation of the
Attorney-General.
- (2) At least 1 member of the council must be an
Aboriginal person or Torres Strait Islander.
- (3) In recommending a person to the Governor in
Council, the Attorney-General must be satisfied

the person has expertise or experience relevant to the functions of the council, including, for example, in relation to the following—

- (a) victims of crime;
- (b) justice matters relating to Aboriginal people or Torres Strait Islanders;
- (c) justice matters relating to domestic and family violence;
- (d) vulnerable persons facing the criminal justice system;

Examples of vulnerable persons—

- persons who have a mental illness
- persons who have an intellectual or other disability
- persons who have a substance abuse problem
- homeless persons

- (e) law enforcement;
 - (f) crime prevention;
 - (g) criminal prosecutions;
 - (h) criminal defence representation;
 - (i) civil liberties;
 - (j) corrective services, including offender rehabilitation;
 - (k) juvenile justice matters;
 - (l) criminal justice policy;
 - (m) criminal law, including sentencing;
 - (n) criminology.
- (4) In this section—

corrective services see the *Corrective Services Act 2006*, schedule 4.

[s 5]

202 Chairperson and deputy chairperson

- (1) The Governor in Council may, on the recommendation of the Attorney-General, appoint—
 - (a) a member of the council to be the chairperson of the council; and
 - (b) another member of the council to be the deputy chairperson of the council.
- (2) A member may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a member.
- (3) The chairperson or deputy chairperson holds office for the term, ending not later than the person's term of appointment as a member, stated in the person's appointment as chairperson or deputy chairperson.
- (4) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or for another reason can not perform the duties of the office.

203 Term of appointment

- (1) A member of the council holds office for the term, not longer than 3 years, stated in the member's instrument of appointment.
- (2) Subsection (1) does not prevent a member from being reappointed.

203A Conditions of appointment

- (1) A member is entitled to be paid the remuneration and allowances decided by the Governor in

Council.

- (2) A member holds office on the terms, not provided for by this Act, decided by the Governor in Council.
- (3) The members are appointed under this Act and not the *Public Service Act 2008*.

203B Vacancy in office

- (1) A member's office becomes vacant if—
 - (a) the member resigns office by signed notice given to the Attorney-General; or
 - (b) the member's appointment is terminated by the Governor in Council under subsection (3).
- (2) A notice given by a member under subsection (1)(a)—
 - (a) must—
 - (i) state the day the member's resignation takes effect; and
 - (ii) be given to the Attorney-General at least 30 days before the stated day; and
 - (b) takes effect on the stated day or another day agreed between the member and the Attorney-General.
- (3) The Governor in Council may terminate the appointment of a member if the Attorney-General recommends that the member's appointment be terminated.
- (4) The Attorney-General may recommend that a member's appointment be terminated only if satisfied that the member—
 - (a) is incapable of performing the member's duties; or

[s 5]

- (b) has been convicted, including by summary conviction, of an indictable offence; or
- (c) has neglected the member's duties or performed them incompetently or inefficiently.

203C Council decision not invalidated by defect in appointment or vacancy

A decision of the council is not invalidated by—

- (a) a defect or irregularity in the appointment of a member of the council, including in the appointment of the chairperson or deputy chairperson; or
- (b) a vacancy in the membership of the council.

Division 3 Proceedings

203D Conduct of business

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

203E Quorum

A quorum for a meeting of the council is a majority of the council's members for the time being.

203F Presiding at meetings

- (1) The chairperson presides at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, the deputy chairperson presides.

- (3) If neither the chairperson nor deputy chairperson is present at a meeting, a member of the council chosen by the members present is to preside.

203G Conduct of meetings

- (1) A question at a council meeting is decided by a majority of the votes of the members present at the meeting.
- (2) Each member present at a meeting has a vote on each question to be decided.
- (3) If there is an equality of votes at a meeting, the member presiding at the meeting also has a casting vote.
- (4) A member present at a meeting may abstain from voting.
- (5) A meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between members.

Example of use of technology—

teleconferencing

- (6) A member who takes part in a meeting under subsection (5) is taken to be present at the meeting.

203H Minutes

The council must keep minutes of its meetings.

Division 4 Other matters

203I Council may engage persons to help in performing functions

- (1) The council may, with the chief executive's

[s 6]

approval, engage persons with suitable qualifications and experience to help the council in performing its functions.

- (2) The engagement may be in an honorary capacity or for remuneration.

203J Reports

- (1) The council must give the Attorney-General a written report—
- (a) each financial year, by the date requested in writing by the Attorney-General; and
 - (b) otherwise, as requested in writing by the Attorney-General.
- (2) A report under subsection (1)(a)—
- (a) must include information about—
 - (i) performance of the council’s functions, in particular about the provision of information to the community to enhance knowledge and understanding of matters about sentencing; and
 - (ii) the work to be carried out by the council in the future in performing the council’s functions; and
 - (b) must be tabled in the Legislative Assembly by the Attorney-General within 14 sitting days after the Attorney-General receives the report.

6 Omission of s 222 (Dissolution of Sentencing Advisory Council)

Section 222—

omit.

Part 2A **Amendment of Criminal Law
(Criminal Organisations
Disruption) and Other
Legislation Amendment Act
2013**

6A **Act amended**

This part amends the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

6B **Amendment of s 2 (Commencement)**

Section 2(3), ‘1 July 2016’—

omit, insert—

1 July 2017

Part 3 **Other amendments**

7 **Acts amended**

Schedule 1 amends the Acts it mentions.

Schedule 1 Acts amended

section 7

Appeal Costs Fund Act 1973

1 Section 20A, definition *guideline judgment*, ‘section 15AA’—

omit, insert—

section 4

Penalties and Sentences Act 1992

1 Section 4, definitions *guideline judgment* and *sentence*—

omit.

2 Section 4—

insert—

Attorney-General, for part 2A, see section 15AA.

chief executive officer of Legal Aid Queensland, for part 2A, see section 15AA.

current parole eligibility date, for part 9, division 3, see section 160.

current parole release date, for part 9, division 3, see section 160.

director of public prosecutions, for part 2A, see section 15AA.

fine, for part 4, division 2, see section 52.

guideline judgment means a judgment that—

- (a) is declared to be a guideline judgment by the Court of Appeal; and
- (b) contains guidelines to be taken into account by courts in sentencing offenders, being guidelines applying—
 - (i) generally; or
 - (ii) to a particular court or class of court; or
 - (iii) to a particular offence, or class of offence, including under a Commonwealth Act; or
 - (iv) to a particular penalty or class of penalty; or
 - (v) to a particular class of offender.

guideline judgment for an offence under a Commonwealth Act, for part 2A, see section 15AA.

guideline proceeding, for part 2A, see section 15AA.

impose, a term of imprisonment on an offender for an offence, for part 9, division 3, see section 160.

licence, for part 3B, see section 43G.

original order, for part 4, division 2, see section 52.

parole eligibility date, for an offender, for part 9, division 3, see section 160.

parole release date, for an offender, for part 9, division 3, see section 160.

police banning notice, for part 3B, see section 43G.

proper officer of the court, for an offender levy,

for part 10A, see section 179B.

review, a guideline judgment, for part 2A, see section 15AA.

sentence—

- (a) means a penalty or imprisonment ordered to be paid or served, or another order made, by a court after an offender is convicted, whether or not a conviction is recorded; and
- (b) for part 10A—includes an order made by a court to deal with the offender for an offence instead of passing sentence.

sexual offence, for part 9, division 3, see section 160.

SPE Act means the *State Penalties Enforcement Act 1999*.

3 Section 4, definition *SPER*, ‘State Penalties Enforcement Act 1999’—

omit, insert—

SPE Act

4 Section 5, ‘State Penalties Enforcement Act 1999’—

omit, insert—

SPE Act

5 Section 15AA, definition *guideline judgment*—

omit.

6 Sections 33B(1)(b), 36(1)(c), 39A(c), 50(b), 51(b) and 74(7)(c), ‘State Penalties Enforcement Act 1999’—

omit, insert—

SPE Act

7 Section 179B—

omit, insert—

179B Definition for part

In this part—

proper officer of the court, for an offender levy, means the proper officer of the court that imposed the sentence for which the offender is liable to pay the levy.

8 Sections 182A(1)(b) and 185A(1)(b), ‘State Penalties Enforcement Act 1999’—

omit, insert—

SPE Act

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