

Penalties and Sentences Regulation 2015

Explanatory notes for SL 2015 No. 77

made under the

Penalties and Sentences Act 1992

General Outline

Short title

Penalties and Sentences Regulation 2015

Authorising law

Sections 5, 5A, 9(2)(p), 15B, 15D, 179C and 196 of the *Penalties and Sentences Act 1992*.

Policy objectives and the reasons for them

The *Penalties and Sentences Regulation 2005* (PSR 2005) will automatically expire on 1 September 2015 pursuant to section 54 of the *Statutory Instruments Act 1992*. In order to support the operation of the courts in sentencing offenders and the supervision of sentenced offenders in the community it is necessary that the PSR 2005 be remade before this date.

The principle objective of the *Penalties and Sentences Regulation 2015* (PSR 2015) is to remake the PSR 2005 in substantially the same form prior to its expiry on 1 September 2015.

The *Penalties and Sentences Act 1992* (PSA) provides the framework for courts when sentencing adults in Queensland. The purpose of the PSA includes: providing a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders; promoting consistency of approach in the sentencing of offenders; providing sentencing principles that are to be applied by courts; and providing for the imposition of an offender levy.

The PSR 2005 prescribes administrative matters that support the sentencing regime of the PSA. The PSR 2005 prescribes:

- the value of a penalty unit pursuant to sections 5 and 5A of the PSA and particular local governments to which a lower value penalty unit applies;
- the value of the offender levy that section 179C of the PSA provides a sentenced offender is liable to pay to the State;

- additional principles to those listed in section 9 of the PSA that the court must have regard to when sentencing an offender, namely that an offender's disability, sex, educational level or religious belief should not be a basis for refusing to make a fine option order or a community based order;
- administrative matters regarding the chief executive of corrective services' supervision of sentenced offenders in the community in relation to offenders' applications for permission to leave Queensland, the recording of community service hours performed and courts informing the chief executive of corrective services when offenders have paid fines; and
- drug diversion courts pursuant to section 15B of the PSA, and the type and quantities of dangerous drugs for the purpose of enabling a court to exercise the power in section 19 of the PSA to release a drug offender without conviction subject to the offender entering into a recognisance on conditions, which include a condition that the offender attend a drug assessment and education session.

The PSR 2015 will remake the PSR 2005 in substantially the same form with technical amendments to:

- provide that an application for permission to travel outside Queensland by an offender subject to a graffiti removal order must be made by or for an offender to an authorised corrective services officer. A reference to graffiti removal orders had inadvertently been omitted from the PSR 2005; and
- clarify that the obligation on the proper officer of the court to provide information to the chief executive of corrective services about the payment or part payment of a fine is in relation to a payment or part payment of a fine after a fine option order is made under the PSA.

Achievement of policy objectives

The policy objectives of the PSR 2015 are achieved by remaking the PSR 2005 in substantially the same form. The objectives can only be achieved by remaking the regulation.

Consistency with policy objectives of authorising law

The PSA establishes the framework for courts when sentencing adults in Queensland. The PSR 2015 is consistent with the main objectives of the PSA in that it prescribes administrative matters that support the sentencing regime established by the PSA.

Inconsistency with policy objectives of other legislation

The PSR 2015 is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The PSR 2015 will ensure that regulations remain in place which are essential to support the effective operation of the PSA.

There are no anticipated costs with the implementation of the PSR 2015.

Consistency with fundamental legislative principles

The PSR 2015 does not breach fundamental legislative principles.

Consultation

The Office of Best Practice Regulation was consulted and has advised that a Regulatory Impact Statement is not required.

The Bar Association of Queensland (BAQ) and the Queensland Law Society (QLS) were consulted on the proposal to remake the PSR 2005 in substantially the same form. The views of the BAQ and QLS were taken into account in remaking the PSR 2005.

The BAQ submitted that a number of matters in the PSR 2005 should be in the PSA. This issue is beyond the scope of the remake of the regulation and can be considered in a future review of the PSA.

The BAQ and QLS do not support the continued operation of the offender levy. The QLS also submitted that the value of a penalty unit should be reduced and fixed. The underpinning legislative basis for the offender levy and the penalty unit is contained in the PSA, with the regulation prescribing their respective values. These issues raised by the BAQ and QLS are policy matters beyond the scope of the remake of the regulation.