



New South Wales

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The principal objects of this Bill are:

- (a) to establish a scheme of standard minimum sentencing for a number of serious offences, and
- (b) to constitute a New South Wales Sentencing Council to advise the Minister in connection with sentencing matters.

The reforms are aimed at promoting consistency and transparency in sentencing, and promoting public understanding of sentencing.

The Bill sets standard non-parole periods for a number of serious offences. (A non-parole period is the period of a sentence of imprisonment during which the offender must be detained and cannot be released on parole.) Under the Bill, the

sentencing court is to set the standard non-parole period as the non-parole period for an offence included in the proposed scheme unless the court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period.

A court that sets a non-parole period that is longer or shorter than the standard non-parole period for an offence must make a record of its reasons for doing so, and must identify in the record of its reasons each factor to which it had regard.

The Bill also specifies the purposes of sentencing, and indicates specific aggravating and mitigating factors that a court is required to take into account when determining the appropriate sentence for offences generally.

The Bill also reforms the law dealing with sexual assaults on children by:

- (a) increasing the maximum penalty for sexual intercourse with a child under 10, or attempted sexual intercourse with a child under 10, from 20 to 25 years, and
- (b) removing two redundant offences dealing with homosexual intercourse with a child under 10.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* (*the Principal Act*) and to other Acts set out in Schedules 1–3.

Purposes of sentencing

Schedule 1 [1] inserts a new section 3A which sets out the purposes for which a court may impose a sentence on an offender. These purposes are as follows:

- (a) to ensure that the offender is adequately punished for the offence,
- (b) to prevent crime by deterring the offender and other persons from committing similar offences,
- (c) to protect the community from the offender,
- (d) to promote the rehabilitation of the offender,
- (e) to make the offender accountable for his or her actions,

- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

Aggravating, mitigating and other factors in sentencing

Schedule 1 [2] replaces existing section 21A with a new section that sets out specific aggravating and mitigating circumstances that are to be taken into account by sentencing courts in determining the appropriate sentence for an offence, if those circumstances are relevant and known to the court. The court is also required to take into account any other objective or subjective factor that affects the relative seriousness of the offence.

The requirement for a court to take into account these aggravating and mitigating factors and other matters applies in sentencing for any offence, not just to the offences that are subject to a standard non-parole period under proposed Division 1A of Part 4 of the Principal Act.

Proposed section 21A (1) makes it clear that the sentencing court may take into account any other matter that it is required or permitted to take into account under any Act or rule of law.

Proposed section 21A (4) provides that a sentencing court is not to have regard to any aggravating or mitigating factor specified in the section if it would be contrary to any Act or rule of law to do so. This provision makes it clear that a rule of law such as the rule expressed in *The Queen v De Simoni* (1981) 147 CLR 383 is not affected. (The High Court in *De Simoni* held that a sentencing court may not take into account circumstances of aggravation that would have warranted a conviction for a more serious offence for which the offender was not charged.)

Proposed section 21A (5) makes it clear that the fact that a specified aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.

Setting non-parole period and balance of term of sentence

Schedule 1 [3] replaces existing section 44 with a new section that requires the sentencing court to set a non-parole period for the sentence (the period during which the offender may not be released on parole) before setting the balance of the term of the sentence (that is, the period during which the offender may be released on parole). The balance of the term of the sentence must not exceed one-third of the non-parole period for the sentence, unless the court decides that there are special circumstances for it being more. At present section 44 requires the court to set the total sentence and then fix the non-parole period.

The replacement of the existing section is a necessary consequence of the introduction of the scheme of standard non-parole periods. The effect of proposed section 44 is to maintain (by a different method of calculation) the existing presumptive ratio between the non-parole period of a sentence and the period during which the offender may be released on parole.

Schedule 3.2 [1] makes a consequential amendment.

Standard non-parole periods

Schedule 1 [4] inserts a new Division 1A (sections 54A–54D) into Part 4 of the Principal Act. The proposed Division provides for standard non-parole periods for a number of serious offences listed in the Table to the proposed Division.

Proposed section 54A provides that the standard non-parole period for an offence is the non-parole period set out opposite the offence in the Table to the proposed Division. The offences specified in that Table include murder, wounding with intent to do bodily harm or resist arrest, certain assault offences involving injury to police officers, certain sexual assault offences, sexual intercourse with a child under 10, certain robbery and break and enter offences, car-jacking, certain offences involving commercial quantities of prohibited drugs and unauthorised possession or use of a firearm.

The standard non-parole period for an offence represents the non-parole period for an offence in the middle of the range of objective seriousness for such an offence. The standard non-parole period provides a reference point or benchmark for offences that are above or below the middle of the range of objective seriousness for such an offence.

Proposed section 54B provides that a court sentencing an offender to imprisonment for an offence set out in the Table to the proposed Division is to set the standard non-parole period as the non-parole period for the offence unless the court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period. The reasons for which the court may increase or reduce the non-parole period are only matters referred to in proposed section 21A.

The court must make a record of its reasons for setting a non-parole period that is longer or shorter than the standard non-parole period, and must identify in the record of its reasons each factor to which it had regard (proposed section 54B (4)).

Under the Bill, the sentencing process remains one of synthesis of all the relevant factors in the circumstances of the case. The requirement for a court to identify each factor that it takes into account does not require the court to assign a numerical

value to such a factor. That is, proposed section 54B does not require a court to adopt a mathematical or multi-stage approach to sentencing.

Proposed section 54C requires a court that imposes a non-custodial sentence for an offence set out in the Table to the proposed Division to make a record of its reasons for doing so. The court must identify in the record of its reasons each mitigating factor that it took into account.

Proposed section 54D provides that standard non-parole periods do not apply to the sentencing of an offender to imprisonment for life or for any other indeterminate period, or to detention under the *Mental Health (Criminal Procedure) Act 1990*. Standard non-parole periods also do not apply if the offence for which the offender is sentenced is dealt with summarily.

Schedule 3.2 [5] is a consequential amendment that excludes offences that are subject to standard non-parole periods from section 45 of the Principal Act. That section enables a court sentencing an offender to imprisonment to decline to set a non-parole period (that is, the offender will serve the entire sentence in detention with no period of parole).

The proposed amendment avoids the possibility that an offender sentenced under section 45 for an offence subject to a standard non-parole period would actually be subject to a shorter total sentence than an offender who was sentenced for the same offence under proposed section 44.

New South Wales Sentencing Council

Schedule 1 [5] inserts a new Part 8B (sections 100I–100L) into the Principal Act. The proposed Part constitutes a New South Wales Sentencing Council.

The Sentencing Council is to have the following functions:

- (a) advising and consulting with the Minister in relation to offences suitable for standard non-parole periods and their proposed length,
- (b) advising and consulting with the Minister in relation to offences suitable for guideline judgments and the submissions to be made by the Minister on an application for a guideline judgment,
- (c) monitoring, and reporting annually to the Minister on, sentencing trends and practices, including the operation of standard non-parole periods and guideline judgments,
- (d) at the request of the Minister, preparing research papers or reports on particular subjects in connection with sentencing.

The Sentencing Council is to consist of 10 members appointed by the Minister, of whom:

- (a) one is to be a retired judicial officer, and
- (b) one is to have expertise or experience in law enforcement, and
- (c) three are to have expertise or experience in criminal law or sentencing (including one person who has expertise or experience in the area of prosecution and one person who has expertise or experience in the area of defence), and
- (d) one is to be a person who has expertise or experience in Aboriginal justice matters, and
- (e) four are to be persons representing the general community, of whom two are to have expertise or experience in matters associated with victims of crime.

Schedule 3.2 [2] makes a consequential amendment. **Schedule 1 [7]** inserts a new Schedule 1A into the Principal Act. Proposed Schedule 1A contains provisions relating to the membership and procedure of the Sentencing Council.

Review of proposed Act

Schedule 1 [6] inserts a new section 106 that requires the Minister to review the amendments made by the proposed Act relating to standard non-parole periods as soon as possible after 2 years, and to report the results of the review to Parliament.

Sexual assaults on children under 10 years

Schedule 2 [1] and [2] increase the maximum penalty for sexual intercourse with a child under 10, or attempted sexual intercourse with a child under 10, from 20 years to 25 years.

Schedule 2 [3] removes two redundant offences from the *Crimes Act 1900*. Section 78H of the *Crimes Act 1900* deals with homosexual intercourse with a child under 10 years, and section 78I deals with attempted homosexual intercourse with a child under 10 years. Those offences can already be dealt with under sections 66A (Sexual intercourse—child under 10) and 66B (Attempting, or assaulting with intent, to have sexual intercourse with child under 10) of the *Crimes Act 1900*.

At present, the maximum penalty for attempted sexual intercourse with a child under 10 is 20 years (under section 66B), while the maximum penalty for attempted homosexual intercourse with a child under 10 is 14 years (under section 78I). The amendments rationalise the maximum penalties for child sexual assault and

attempted child sexual assault by providing for the same maximum penalty for child sexual assault and attempted assault, regardless of whether the assault was homosexual in nature.

Effect of failure to comply with Principal Act

Schedule 3.2 [7] inserts a new section 101A that provides that a failure to comply with a provision of the Principal Act may be considered by an appeal court in any appeal against sentence even if the Act declares that the failure to comply does not invalidate the sentence. The proposed section ensures that the courts are not relieved of the obligation to comply with the Principal Act with respect to standard non-parole periods or other matters, but protects the validity of any sentence until such time as the matter is considered by an appeal court.

Suspended sentences and control orders

Schedule 3.1 [1] and [2] and 3.2 [3], [4] and [6] make amendments to provisions of the Principal Act and the *Children (Criminal Proceedings) Act 1987* dealing with the suspension of a sentence of imprisonment or, in the case of a person sentenced under the *Children (Criminal Proceedings) Act 1987*, an order committing the person to the control of the Minister administering the *Children (Detention Centres) Act 1987*.

These amendments are consequential on the substitution of section 44 of the Principal Act by the proposed Act. As noted above, proposed section 44 requires a court to set a non-parole period before setting the balance of a term of imprisonment. At present, a court that makes an order suspending a sentence of imprisonment or a control order is required to set the term of the sentence that is suspended, but is not required to set a non-parole period for that sentence. The proposed amendments will make it clear that a court is to set a non-parole period for a sentence or control order that is to be suspended.

Savings and transitional matters

Schedule 3.2 [8] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act. **Schedule 3.1 [3] and 3.2 [9]** make provision with respect to the application of the amendments made by the proposed Act to offences committed before the commencement of those amendments, and the application of guideline judgments made before the commencement of any such amendment.



New South Wales

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92 and other Acts	2
Schedules	
1 Principal amendments to Crimes (Sentencing Procedure) Act 1999	3
2 Amendment of Crimes Act 1900 No 40 relating to child sexual assault	17
3 Consequential amendments	18



New South Wales

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to provide for standard minimum sentencing and to constitute a New South Wales Sentencing Council; to amend the *Crimes Act 1900* with respect to sexual assaults on children; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92 and other Acts	8 9
The <i>Crimes (Sentencing Procedure) Act 1999</i> and other Acts specified in Schedules 1–3 are amended as set out in those Schedules.	10 11

Schedule 1	Principal amendments to Crimes (Sentencing Procedure) Act 1999	1
		2
	(Section 3)	3
[1]	Section 3A	4
	Insert after section 3:	5
	3A Purposes of sentencing	6
	The purposes for which a court may impose a sentence on an offender are as follows:	7
		8
	(a) to ensure that the offender is adequately punished for the offence,	9
		10
	(b) to prevent crime by deterring the offender and other persons from committing similar offences,	11
		12
	(c) to protect the community from the offender,	13
	(d) to promote the rehabilitation of the offender,	14
	(e) to make the offender accountable for his or her actions,	15
	(f) to denounce the conduct of the offender,	16
	(g) to recognise the harm done to the victim of the crime and the community.	17
		18
[2]	Section 21A	19
	Omit the section. Insert instead:	20
	21A Aggravating, mitigating and other factors in sentencing	21
	(1) General	22
	In determining the appropriate sentence for an offence, the court is to take into account the following matters:	23
		24
	(a) the aggravating factors referred to in subsection (2) that are relevant and known to the court,	25
		26
	(b) the mitigating factors referred to in subsection (3) that are relevant and known to the court,	27
		28

- (c) any other objective or subjective factor that affects the relative seriousness of the offence. 1
2

The matters referred to in this subsection are in addition to any other matters that are required or permitted to be taken into account by the court under any Act or rule of law. 3
4
5

(2) **Aggravating factors** 6

The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows: 7
8

- (a) the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation, 9
10
11
12
13
- (b) the offence involved the actual or threatened use of violence, 14
15
- (c) the offence involved the actual or threatened use of a weapon, 16
17
- (d) the offender has a record of previous convictions, 18
- (e) the offence was committed in company, 19
- (f) the offence involved gratuitous cruelty, 20
- (g) the injury, emotional harm, loss or damage caused by the offence was substantial, 21
22
- (h) the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability), 23
24
25
26
27
28
- (i) the offence was committed without regard for public safety, 29
30
- (j) the offence was committed while the offender was on conditional liberty in relation to an offence or alleged offence, 31
32
33
- (k) the offender abused a position of trust or authority in relation to the victim, 34
35

-
- (l) the victim was vulnerable, for example, because the victim was very young or very old or had a disability, or because of the victim's occupation (such as a taxi driver, bank teller or service station attendant), 1
2
3
4
- (m) the offence involved multiple victims or a series of criminal acts, 5
6
- (n) the offence was part of a planned or organised criminal activity. 7
8

The court is not to have additional regard to any such aggravating factor in sentencing if it is an element of the offence. 9
10
11

(3) **Mitigating factors** 12

The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows: 13
14

- (a) the injury, emotional harm, loss or damage caused by the offence was not substantial, 15
16
- (b) the offence was not part of a planned or organised criminal activity, 17
18
- (c) the offender was provoked by the victim, 19
- (d) the offender was acting under duress, 20
- (e) the offender does not have any record (or any significant record) of previous convictions, 21
22
- (f) the offender was a person of good character, 23
- (g) the offender is unlikely to re-offend, 24
- (h) the offender has good prospects of rehabilitation, whether by reason of the offender's age or otherwise, 25
26
- (i) the offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner, 27
28
29
- (j) the offender was not fully aware of the consequences of his or her actions because of the offender's age or any disability, 30
31
32
- (k) a plea of guilty by the offender (as provided by section 22), 33
34

(l)	the degree of pre-trial disclosure by the defence (as provided by section 22A),	1 2
(m)	assistance by the offender to law enforcement authorities (as provided by section 23).	3 4
(4)	The court is not to have regard to any such aggravating or mitigating factor in sentencing if it would be contrary to any Act or rule of law to do so.	5 6 7
(5)	The fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.	8 9 10
[3]	Section 44	11
	Omit the section. Insert instead:	12
	44 Court to set non-parole period	13
(1)	When sentencing an offender to imprisonment for an offence, the court is first required to set a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).	14 15 16 17
(2)	The balance of the term of the sentence must not exceed one-third of the non-parole period for the sentence, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision).	18 19 20 21 22
(3)	The failure of a court to comply with subsection (2) does not invalidate the sentence.	23 24
(4)	Schedule 1 has effect in relation to existing life sentences referred to in that Schedule.	25 26

[4] Part 4, Division 1A	1
Insert after Division 1:	2
Division 1A Standard non-parole periods	3
54A What is the standard non-parole period?	4
(1) For the purposes of this Division, the standard non-parole period for an offence is the non-parole period set out opposite the offence in the Table to this Division.	5 6 7
(2) For the purposes of sentencing an offender, the standard non-parole period represents the non-parole period for an offence in the middle of the range of objective seriousness for offences in the Table to this Division.	8 9 10 11
54B Sentencing procedure	12
(1) This section applies when a court imposes a sentence of imprisonment for an offence set out in the Table to this Division.	13 14 15
(2) When determining the sentence for the offence, the court is to set the standard non-parole period as the non-parole period for the offence unless the court determines that there are reasons for setting a non-parole period that is longer or shorter than the standard non-parole period.	16 17 18 19 20
(3) The reasons for which the court may set a non-parole period that is longer or shorter than the standard non-parole period are only those referred to in section 21A.	21 22 23
(4) The court must make a record of its reasons for increasing or reducing the standard non-parole period. The court must identify in the record of its reasons each factor that it took into account.	24 25 26 27
(5) The failure of a court to comply with this section does not invalidate the sentence.	28 29

- 54C Court to give reasons if non-custodial sentence imposed** 1
- (1) If the court imposes a non-custodial sentence for an offence set out in the Table to this Division, the court must make a record of its reasons for doing so. The court must identify in the record of its reasons each mitigating factor that it took into account. 2
3
4
5
- (2) The failure of a court to comply with this section does not invalidate the sentence. 6
7
- (3) In this section: 8
- non-custodial sentence* means a sentence referred to in Division 3 of Part 2 or a fine. 9
10
- 54D Exclusions from Division** 11
- (1) This Division does not apply to the sentencing of an offender: 12
- (a) to imprisonment for life or for any other indeterminate period, or 13
14
- (b) to detention under the *Mental Health (Criminal Procedure) Act 1990*. 15
16
- (2) This Division does not apply if the offence for which the offender is sentenced is dealt with summarily. 17
18

Table Standard non-parole periods 19

Item No	Offence	Standard non-parole period
1A	Murder—where the victim was a police officer, emergency services worker, correctional officer, judicial officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim’s occupation	25 years
1	Murder—in other cases	20 years
2	Section 26 of the <i>Crimes Act 1900</i> (conspiracy to murder)	10 years

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Principal amendments to Crimes (Sentencing Procedure) Act 1999

Schedule 1

Item No	Offence	Standard non-parole period	
3	Sections 27, 28, 29 or 30 of the <i>Crimes Act 1900</i> (attempt to murder)	10 years	1 2
4	Section 33 of the <i>Crimes Act 1900</i> (wounding etc with intent to do bodily harm or resist arrest)	7 years	3 4
5	Section 60 (2) of the <i>Crimes Act 1900</i> (assault of police officer occasioning bodily harm)	3 years	5 6
6	Section 60 (3) of the <i>Crimes Act 1900</i> (wounding or inflicting grievous bodily harm on police officer)	5 years	7 8
7	Section 61I of the <i>Crimes Act 1900</i> (sexual assault)	7 years	9
8	Section 61J of the <i>Crimes Act 1900</i> (aggravated sexual assault)	10 years	10 11
9	Section 61JA of the <i>Crimes Act 1900</i> (aggravated sexual assault in company)	15 years	12 13
10	Section 66A of the <i>Crimes Act 1900</i> (sexual intercourse—child under 10)	15 years	14 15
11	Section 98 of the <i>Crimes Act 1900</i> (robbery with arms etc and wounding)	7 years	16 17
12	Section 112 (2) of the <i>Crimes Act 1900</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of aggravation)	5 years	18 19 20
13	Section 112 (3) of the <i>Crimes Act 1900</i> (breaking etc into any house etc and committing serious indictable offence in circumstances of special aggravation)	7 years	21 22 23
14	Section 154C (1) of the <i>Crimes Act 1900</i> (car-jacking)	3 years	24
15	Section 154C (2) of the <i>Crimes Act 1900</i> (car-jacking in circumstances of aggravation)	5 years	25 26

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Schedule 1 Principal amendments to Crimes (Sentencing Procedure) Act 1999

Item No	Offence	Standard non-parole period	
16	Section 24 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10 years	1 2 3 4 5 6 7 8
17	Section 24 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (manufacture or production of commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15 years	9 10 11 12 13 14 15 16
18	Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves less than the large commercial quantity of that prohibited drug	10 years	17 18 19 20 21 22 23 24
19	Section 25 (2) of the <i>Drug Misuse and Trafficking Act 1985</i> (supplying commercial quantity of prohibited drug), being an offence that: (a) does not relate to cannabis leaf, and (b) if a large commercial quantity is specified for the prohibited drug concerned under that Act, involves not less than the large commercial quantity of that prohibited drug	15 years	25 26 27 28 29 30 31 32
20	Section 7 of the <i>Firearms Act 1996</i> (unauthorised possession or use of firearms)	3 years	33 34

[5] Part 8B	1
Insert after Part 8A:	2
Part 8B New South Wales Sentencing Council	3
100I Constitution of New South Wales Sentencing Council	4
(1) There is constituted by this Act a New South Wales Sentencing Council.	5 6
(2) The Sentencing Council is to consist of 10 members appointed by the Minister, of whom:	7 8
(a) one is to be a retired judicial officer, and	9
(b) one is to have expertise or experience in law enforcement, and	10 11
(c) three are to have expertise or experience in criminal law or sentencing (of whom one is to have expertise or experience in the area of prosecution and one is to have expertise or experience in the area of defence), and	12 13 14 15
(d) one is to be a person who has expertise or experience in Aboriginal justice matters, and	16 17
(e) four are to be persons representing the general community, of whom two are to have expertise or experience in matters associated with victims of crime.	18 19 20
(3) Schedule 1A has effect with respect to the members and procedure of the Sentencing Council.	21 22
100J Functions of Sentencing Council	23
(1) The Sentencing Council has the following functions:	24
(a) to advise and consult with the Minister in relation to offences suitable for standard non-parole periods and their proposed length,	25 26 27
(b) to advise and consult with the Minister in relation to offences suitable for guideline judgments and the submissions to be made by the Minister on an application for a guideline judgment,	28 29 30 31

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Schedule 1

Principal amendments to Crimes (Sentencing Procedure) Act 1999

(c)	to monitor, and to report annually to the Minister on, sentencing trends and practices, including the operation of standard non-parole periods and guideline judgments,	1 2 3
(d)	at the request of the Minister, to prepare research papers or reports on particular subjects in connection with sentencing.	4 5 6
(2)	Any advice given to the Minister by the Sentencing Council may be given either at the request of the Minister or without any such request.	7 8 9
(3)	The Sentencing Council has such other functions as are conferred or imposed on it by or under this or any other Act.	10 11
100K	Committees of Sentencing Council	12
(1)	The Sentencing Council may, with the approval of the Minister, establish committees to assist it in connection with the exercise of any of its functions.	13 14 15
(2)	It does not matter that any or all of the members of a committee are not members of the Sentencing Council.	16 17
(3)	The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Sentencing Council or (subject to any determination of the Council) by the committee.	18 19 20 21
100L	Staff of Sentencing Council	22
	The Sentencing Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department or a public or local authority.	23 24 25

[6] Section 106	1
Insert after section 105:	2
106 Review of Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002	3
(1) In this section:	5
<i>standard non-parole provisions</i> means the provisions of Division 1A of Part 4, as inserted by the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> .	6
(2) The Minister is to review the operation of the standard non-parole provisions to determine the effect of those provisions.	7
(3) The review required by this section is to be undertaken as soon as possible after the period of 2 years from the commencement of the standard non-parole provisions.	8
(4) A report on the outcome of the review required by this section is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.	9
[7] Schedule 1A	10
Insert after Schedule 1:	11
Schedule 1A Provisions relating to membership and procedure of New South Wales Sentencing Council	12
(Section 100I)	13
1 Definition	14
In this Schedule:	15
<i>member</i> means any member of the Sentencing Council.	16

2 Chairperson and Deputy Chairperson	1
(1) The member appointed under section 100I (2) (a) is to be the Chairperson of the Sentencing Council.	2 3
(2) The Minister may, from time to time, appoint another member of the Sentencing Council as the Deputy Chairperson of the Council.	4 5 6
3 Terms of office of members	7
Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment but is eligible (if otherwise qualified) for re-appointment.	8 9 10 11
4 Remuneration	12
A member (other than a member who is employed in the public sector) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	13 14 15 16
5 Deputies of members	17
(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.	18 19 20
(2) In the absence of a member, the member's deputy may, if available, act in the place of the member.	21 22
(3) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.	23 24
6 Vacancy in office of member	25
(1) The office of a member becomes vacant if the member:	26
(a) dies, or	27
(b) completes a term of office and is not re-appointed, or	28
(c) resigns the office by instrument in writing addressed to the Minister, or	29 30
(d) is removed from office by the Minister under this clause, or	31 32

(e)	is absent from 4 consecutive meetings of the Sentencing Council of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or	1 2 3 4 5 6
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	7 8 9 10 11
(g)	becomes a mentally incapacitated person, or	12
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	13 14 15 16 17
(2)	The Minister may at any time remove a member from office.	18
7	Filling of vacancy in office of member	19
	If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	20 21
8	Effect of certain other Acts	22
(1)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of a member.	23 24 25
(2)	If by or under any Act provision is made:	26
(a)	requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	27 28 29
(b)	prohibiting the person from engaging in employment outside the duties of that office,	30 31
	the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.	32 33 34 35

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002

Schedule 1 Principal amendments to Crimes (Sentencing Procedure) Act 1999

9	General procedure	1
	The procedure for the calling of meetings of the Sentencing Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Sentencing Council.	2 3 4 5
10	Quorum	6
	The quorum for a meeting of the Sentencing Council is 6 members.	7 8
11	Presiding member	9
	(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or, in the absence of both, a member elected to chair the meeting by the members present) is to preside at a meeting of the Sentencing Council.	10 11 12 13
	(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	14 15
12	Voting	16
	A decision supported by a majority of the votes cast at a meeting of the Sentencing Council at which a quorum is present is the decision of the Sentencing Council.	17 18 19
13	First meeting	20
	The Minister may call the first meeting of the Sentencing Council in such manner as the Minister thinks fit.	21 22

Schedule 2	Amendment of Crimes Act 1900 No 40	1
	relating to child sexual assault	2
	(Section 3)	3
[1]	Section 66A Sexual intercourse—child under 10	4
	Omit “imprisonment for 20 years” from the section.	5
	Insert instead “imprisonment for 25 years”.	6
[2]	Section 66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10	7
	Omit “imprisonment for 20 years” from the section.	8
	Insert instead “imprisonment for 25 years”.	9
[3]	Sections 78H and 78I	10
	Omit the sections.	11
		12

Schedule 3	Consequential amendments	1
	(Section 3)	2
3.1	Children (Criminal Proceedings) Act 1987 No 55	3
[1]	Section 33 Penalties	4
	Insert “the non-parole period and the balance of” after “the extent to which it deals with setting” in section 33 (1B).	5 6
[2]	Section 41A Provisions applicable where control order suspended subject to good behaviour bond	7 8
	Insert “the non-parole period and the balance of” after “in relation to setting” in section 41A (3) (b).	9 10
[3]	Schedule 2 Savings and transitional provisions	11
	Insert after clause 11:	12
Part 9	Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002	13 14 15
12	Offences to which amending Act applies	16
	(1) The amendments made to this Act by the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> do not apply to offences committed before the commencement of the amendments.	17 18 19 20
	(2) The amendments made to the <i>Crimes (Sentencing Procedure) Act 1999</i> by the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> do not apply to offences dealt with under Division 4 of Part 3 of this Act committed before the commencement of the amendments.	21 22 23 24 25

3.2 Crimes (Sentencing Procedure) Act 1999 No 92	1
[1] Section 3 Interpretation	2
Omit “section 44 (1) (b)” from the definition of <i>non-parole period</i> in section 3 (1).	3
Insert instead “section 44 (1)”.	4
[2] Section 3 (1)	5
Insert in alphabetical order:	6
<i>Sentencing Council</i> means the New South Wales Sentencing Council constituted under Part 8B.	7
[3] Section 12 Suspended sentences	8
Insert “the non-parole period and the balance of” after “the extent to which it deals with setting” in section 12 (3).	9
[4] Section 12 (4)	10
Omit “In that case, any non-parole period set for the sentence ceases to have effect when the order under this section is made.”.	11
[5] Section 45 Court may decline to set non-parole period	12
Insert “(other than an offence set out in the Table to Division 1A of this Part)” after “imprisonment for an offence” in section 45 (1).	13
[6] Section 99 Consequences of revocation of good behaviour bond	14
Insert “the non-parole period and the balance of” after “in relation to setting” in section 99 (1) (c) (ii).	15
	16
	17
	18
	19
	20
	21

[7] Section 101A	1
Insert after section 101:	2
101A Effect of failure to comply with Act	3
A failure to comply with a provision of this Act may be considered by an appeal court in any appeal against sentence even if this Act declares that the failure to comply does not invalidate the sentence.	4 5 6 7
[8] Schedule 2 Savings, transitional and other provisions	8
Insert at the end of clause 1 (1):	9
<i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i>	10 11
[9] Schedule 2, Part 7	12
Insert after Part 6:	13
Part 7 Provisions consequent on enactment of Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002	14 15 16
45 Offences to which amending Act applies	17
The amendments made to this Act by the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> do not apply to offences committed before the commencement of the amendments.	18 19 20 21

46	Application of existing guideline judgments	1
	A guideline judgment made before the commencement of any amendment to this Act made by the <i>Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002</i> continues to have effect, except to the extent to which it is inconsistent with this Act, as so amended.	2 3 4 5 6