

First print



New South Wales

Criminal Procedure Amendment (Sentencing Guidelines) Bill 1998

Explanatory note

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

Overview of Bill

In the recent case of *R v Jurisic* Matter No 60131/98 [1998] NSWSC 423 (12 October 1998) the Court of Criminal Appeal adopted the practice of the English Court of Appeal of giving a guideline judgment in the context of a particular case. A guideline judgment sets out guidelines for the sentencing of offenders. Such guidelines are intended to be indicative only and are not intended to be applied in every case as if they were rules binding on judges but help to ensure consistency in sentencing decisions. The object of this Bill is to amend the *Criminal Procedure Act 1986* to enable the Attorney General to apply to the Court at any time (rather than in the context of a particular case) to ask it to exercise its power and jurisdiction to give a guideline judgment in respect of a specified offence or category of offences.

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 to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Schedule 1 contains the amendments described in the above Overview.

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Criminal Procedure Amendment (Sentencing Guidelines) Bill 1998

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New South Wales

Criminal Procedure Amendment (Sentencing Guidelines) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Criminal Procedure Act 1986* with respect to guidelines for the sentencing of offenders.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Procedure Amendment (Sentencing Guidelines) Act 1998*.

2 Commencement

5

This Act commences on a day to be appointed by proclamation.

3 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Section 3)

Part 8

Insert after Part 7:

Part 8 Applications for sentencing guidelines 5

25 Definitions

In this Part:

Court means the Court of Criminal Appeal.

guideline judgment means a judgment containing guidelines to be taken into account by courts sentencing offenders. 10

26 Guideline judgments on application of Attorney General

- (1) The Court may give a guideline judgment on application of the Attorney General.
- (2) An application may be made with respect to sentencing of persons found guilty of a particular specified indictable offence or category of indictable offences. 15
- (3) An application may be made whether or not there are any pending proceedings before the Court with respect to an offence, or offence of the category, specified in the application. 20
- (4) The powers and jurisdiction of the Court to give a guideline judgment in proceedings under this section are the same as the powers and jurisdiction that it has to give a guideline judgment in a pending proceeding apart from this section. 25
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the Court that it considers appropriate.
- (6) The Senior Public Defender may be represented in proceedings under this section and may, if the Senior Public Defender considers it appropriate, make submissions with respect to the application (including submissions opposing the application). In exercising the 30

function conferred on the Senior Public Defender under this subsection, the Senior Public Defender is not, despite section 4 (3) of the *Public Defenders Act 1995*, responsible to the Attorney General.

27 Alteration of guideline judgments 5

A guideline judgment given on application under section 26 may be reviewed, varied or revoked in a subsequent guideline judgment of the Court whether made under that section or apart from it.

28 Discretion of Court preserved 10

Nothing in this Part:

- (a) limits any power or jurisdiction of the Court to give a guideline judgment that the Court has apart from section 26, or
- (b) requires the Court to give any guideline judgment under section 26 if it considers it inappropriate to do so. 15

29 Rules of court

Rules of court may be made under the *Supreme Court Act 1970* with respect to applications, and proceedings to determine applications, under section 26. 20

CRIMINAL PROCEDURE AMENDMENT (SENTENCING GUIDELINES) BILL

Schedule of the amendments referred to in the Legislative Council's Message of 1 December 1998.

No. 1 Page 3, Schedule 1, line 5. Omit "Applications for sentencing". Insert instead "Sentencing".

No. 2 Page 3, Schedule 1. Insert after line 5:

Division 1 Interpretation

No. 3 Page 3, Schedule 1. Insert after line 11:

Division 2 Applications for sentencing guidelines

No. 4 Page 3, Schedule 1, proposed section 26 (2), line 17. Insert "and may include submissions with respect to the framing of the guidelines" after "offences".

No. 5 Page 3, Schedule 1, proposed section 26 (3), lines 18-21. Omit all words on those lines. Insert instead:

(3) An application is not to be made in any proceedings before the Court with respect to a particular offender.

No. 6 Pages 3 and 4, Schedule 1, proposed section 26 (6), line 30 on page 3 to line 4 on page 4. Omit all words on those lines. Insert instead:

(6) The Senior Public Defender, or a nominee of the Senior Public Defender who is a legal practitioner, may appear in proceedings under this section.

(7) The Senior Public Defender or his or her nominee may do any one or more of the following:

- (a) oppose or support the giving of the guideline judgment by the Court,
- (b) make submissions with respect to the framing of the guidelines,
- (c) assist the Court by advising it on any matter relevant to the application.

(8) Nothing in the *Public Defenders Act 1995* or any other Act or law prevents, or in any way limits, the exercise of any function conferred on the Senior Public Defender or any nominee of the Senior Public Defender who is a Public Defender under this section.

(9) Without limiting subsection (8), in exercising any function conferred on the Senior Public Defender under this section, the Senior Public Defender is not, despite section 4 (3) of the *Public Defenders Act 1995*, responsible to the Attorney General.

No. 7 Page 4, Schedule 1. Insert after line 21:

Division 3 Miscellaneous

29A Use of evidence in giving guideline judgments

- (1) Nothing in section 12 of the *Criminal Appeal Act 1912* limits the evidence or other matters that the Court may take into consideration in giving a guideline judgment (whether or not on application under section 26) and the Court may inform itself as it sees fit.
 - (2) The Court must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Court in giving a guideline judgment in the appeal and that was not given at the trial.
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