

The New South Wales Sentencing Council¹

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Introduction

The constitutions and functions of sentencing councils vary greatly, both overseas and in Australia. There are different understandings as to the appropriate structures and functions of sentencing councils or commissions. Much may depend on whether the body is to be given delegated rule-making power, for example the fixing of sentencing guidelines, or even whether the council is to have mixed functions including rule making functions. Different factors, not merely cultural or traditional, are also involved. Social, economic and political factors may all play a part. Further, the existence of other bodies or agencies participating in sentencing concerns may also be a relevant consideration. It is not surprising that the recent Australian Law Reform Commission's (ALRC) Report 103, *Same Crime, Same Time: Sentencing Federal Offenders* stated: "A significant number of stakeholders supported the establishment of a federal sentencing council. There was some disagreement about the tasks such a body should perform" (ALRC, 2006, para 19.29). One might also observe that there is a relationship between functions and funding as the proper discharge of the Council's functions is dependent on proper resourcing and resources depend on functions.

There is no transportable model for sentencing councils or commissions based on experiences or situations elsewhere. Thus in relation to the establishment of the New South Wales Sentencing Council in 2002, its constitution and statutory functions followed no other model. It was no mere copy or mimic of any sentencing body, council or commission that had been earlier established overseas.

As to the need for State sentencing councils, I would note the very recent observation of the ALRC (2006, para 19.33):

State sentencing councils in Australia are to be commended. Better sentencing decisions and sound evidence-based policies can be promoted by disseminating sentencing statistics, analysing sentencing trends and conducting broad community consultation.

The New South Wales Sentencing Council is constituted under Part 8B of the *Crimes (Sentencing Procedure) Act 1999* (the Act), as amended by the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002*. Its establishment came amidst a number of substantive amendments to the Act. The explanatory note to the Bill stated that the principal objects of the Act were to:

- (a) Establish a scheme of standard minimum sentencing for a number of serious offences; and

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- 5 Section 100I(2)(f)-(h) of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- 6 Included by virtue of the *Crimes and Courts Legislation Amendment Act 2006* (NSW), which came into effect on 23 February 2007.
- 7 Section 106 is confined to the review of the standard non-parole period provisions of the Act.
- 8 See s 100J(1)(d).
- 9 The Council's interim report "The Effectiveness of Fines as a Sentencing Option: Court-imposed fines and penalty notices" and a monograph "Judicial Perceptions of Fines: A Survey of NSW magistrates" were published in August 2007.
- 10 For further discussion, see an earlier paper of the author: 'The Role of Sentencing Councils' presented at the National Judicial College of Australia Conference: *Sentencing – Principles, Perspectives and Possibilities*, Canberra, February 2006, pp 12-14. This paper is available at <<http://www.lawlink.nsw.gov.au/sentencingcouncil>>.
- 11 [2004] NSWCCA 131.
- 12 The Hon Bob Debus, *Hansard*, New South Wales Legislative Assembly, Second Reading 23 October 2002.
- 13 (2005) 215 ALR 213 at 236.
- 14 *Baker v The Queen* (2004) 210 ALR 1 at 23 per Kirby J.
- 15 *Neindorf v Junkovic* (2005) 80 ALJR 341 at 345 per Gleeson CJ.

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