

A federal sentencing council for Australia

Australian Law Reform Commission

Introduction

In June 2006, the Australian Law Reform Commission (ALRC) released a report on the sentencing of federal offenders. As part of its examination of measures that might promote better and more consistent sentencing, the ALRC considered the potential benefits and disadvantages of establishing a federal sentencing council.

In its report, the ALRC concludes that three of the primary functions of sentencing councils – research, advice and rule-making – are currently performed by other Australian agencies, will be performed by other agencies if the recommendations in the Report are implemented, or (in the case of rule-making) are not appropriate in the federal criminal justice system.

This chapter reproduces the extracts of the ALRC's report *Same Crime, Same Time: Sentencing of Federal Offenders* (ALRC, 2006) that examine the viability of a federal sentencing council for Australia.

Establishment of a federal sentencing council

Background

A third measure that may promote better sentencing decisions is the establishment of a sentencing commission or council to advise on matters related to sentencing. In recent years, governments have established a number of such bodies. The objectives of these bodies usually include the promotion of consistency in sentencing, but their constitutions and functions vary greatly.

At present, there is no sentencing commission or advisory council at the federal level in Australia; however, both New South Wales and Victoria have established sentencing councils at the State level.¹ Broadly speaking, these councils are constituted by persons with experience in community issues affecting courts, senior academics, members of support or advocacy groups for victims of crime (or persons who have expertise in matters associated with victims of crime), at least one prosecution lawyer and one defence lawyer, and others with experience in the operation of the criminal justice system.²

The functions of the State sentencing councils include advising the government – or stating their views to the courts – on guideline judgments; advising and consulting with the government in relation to offences suitable for standard non-parole periods and their proposed length; conducting research and disseminating information on sentencing matters to the government, the judiciary and other

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