

PENALTIES AND SENTENCES AND OTHER ACTS AMENDMENT BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

To amend the *Penalties and Sentences Act 1992*, the *Juvenile Justice Act 1992* and the *Childrens Court Act 1992* to provide for the input of community justice groups when adult and juvenile Aboriginal and Torres Strait Islander offenders are sentenced.

Reasons for the objectives and how they will be achieved

This amendment will provide that “community justice groups” from the offender’s community will be able to make submissions to the court when Aboriginal and Torres Strait Islander offenders are sentenced. The definition has been framed to facilitate provision of submissions from community justice groups which are funded by the Department of Aboriginal and Torres Strait Islander Policy and Development (“DATSIPD”), groups of Elders and respected persons.

Since 1993, community justice groups have been established in more than thirty Aboriginal and Torres Strait Islander communities across Queensland, ranging from remote communities such as Thursday Island and Kowanyama to major regional centres such as Cairns, Mackay and Townsville. They are comprised of Elders and respected persons who volunteer their time to develop and implement local strategies for addressing crime and justice issues in Aboriginal and Torres Strait Islander communities. They conduct a wide range of activities such as mediation, counselling, crime prevention, working with police, addressing causes of offending behaviour such as truancy, alcohol abuse and domestic violence, supervising community-based orders, and assisting courts.

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One of the factors which has led to this amendment is the current over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, particularly in custody. Members and especially Elders of Aboriginal and Torres Strait Islander communities have expressed concern that the custodial system has not broken the cycle of offending behaviour exhibited by Aboriginal and Torres Strait Islander people. They have called for greater use of alternative sentencing options, including community based orders which enable the community to take a greater role in addressing the offender's behaviour in a culturally appropriate way.

There is a belief in some Aboriginal and Torres Strait Islander communities that prison is not a deterrent to offending for their people and can contribute to offending behaviour.

Elders and community justice groups have expressed their desire to participate in matters involving Aboriginal and Torres Strait Islander offenders before the courts. They believe that their input would lead to sentences which are more likely to lead to effective rehabilitation of offenders because:

- they are able to provide advice and assistance to the court in relation to relevant cultural and historical issues, the particular circumstances in their community, and the background to the offender and his or her offending behaviour;
- they can make the court aware of appropriate local sentencing options for rehabilitating the offender.

The input of community justice groups, Elders and respected persons is considered particularly important in remote communities where courts visit on circuit and cannot be expected to understand the local circumstances and cultural background for each community they visit. In some locations, magistrates already regularly seek the advice of a local community justice group and have found this beneficial to the sentencing process.

The amendment gives examples of the kinds of matters about which the groups will be able to make submissions to the court. These matters include the offenders's relationship to the offender's Aboriginal or Torres Strait Islander community, cultural considerations which are relevant to the offender and the offence, and considerations relating to programs and services established for offenders in which the community justice group participates.

Administrative cost to Government of implementation

It is expected that community justice groups, Elders and respected persons will need specialised training on the preparation of submissions to court. However this figure is not quantifiable as it will be absorbed within the general budget allocation of DATSIPD.

There is potential for additional court resources to be required because of additional court time needed for these submissions to be made. This also is not quantifiable and not considered necessary to do, as such submissions become part of the general *corpus* of evidence put before courts in the determination of matters.

Fundamental legislative principles

The amendment is consistent with the fundamental legislative principle that legislation have sufficient regard to Aboriginal tradition and Island custom.

Consultation

The Department of Justice and Attorney-General has worked closely with Legal Aid Queensland in the development of the amendment. The Department of Justice and Attorney-General has also held discussions with the Chief Stipendiary Magistrate and magistrates working in and from Cairns. The Cairns magistrates conduct circuit courts to Thursday Island and Cape communities.

Consultations were undertaken with community justice groups, Elders, police officers and community corrections officers at Thursday Island, Coen, Bamaga, Lockhart River and Kowanyama. Officers of Legal Aid Queensland consulted with Cherbourg community Elders.

Copies of the draft legislation were forwarded to the Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the District Court, the President of the Childrens Court, the Chief Stipendiary Magistrate, the Director of Public Prosecutions, Legal Aid Queensland, the Queensland Law Society, the Bar Association, the Aboriginal and Torres Strait Islander Advisory Board, the Island Co-ordinating Council, the Aboriginal Co-ordinating Council, the Queensland Police Service and the Department of Corrective Services.

PART 1—PRELIMINARY

Clause 1—This clause states the short title of the amending Act.

Clause 2—This is the commencement clause. The amendment will commence on proclamation.

PART 2—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Clause 3—States that this part amends the *Penalties and Sentences Act 1992*.

Clause 4—This clause amends section 9(2) of the *Penalties and Sentences Act 1992* and provides that in sentencing an Aboriginal or Torres Strait Islander offender the court must have regard to any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender. Community justice groups will be entitled to make submissions on such matters as the offender's relationship to the offender's Aboriginal or Torres Strait Islander community, any cultural considerations or any considerations relating to programs and services established for offenders in which the community justice group participates.

The clause provides that the court may require the representative of the group to advise whether any member of the community justice group that is responsible for the submission is related to the offender or victim, or whether there are any circumstances that give rise to a conflict of interest between any member of the community justice group that is responsible for the submission and the offender or victim.

The clause defines 'community justice group'. It means a group of persons which is made up of an entity within the offender's Aboriginal or Torres Strait Islander community, other than a department of government, which is involved with provision of any of the following:—

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1. information to a court about Aboriginal and Torres Strait Islander offenders;
2. diversionary, interventionist or rehabilitation activities relating to Aboriginal and Torres Strait Islander offenders;
3. other activities relating to local justice issues.

The definition also includes groups of Elders or respected persons of the offender's Aboriginal or Torres Strait Islander community.

The clause defines 'offender's community' to mean the offender's Aboriginal or Torres Strait Islander community, whether it is an urban or rural community or a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

PART 3—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Clause 5—States that this part amends the *Juvenile Justice Act 1992*.

Clause 6—This clause amends section 109(1) of the *Juvenile Justice Act 1992* and provides that in sentencing an Aboriginal or Torres Strait Islander child the court must have regard to any submissions made by a representative of the community justice group in the child's community that are relevant to sentencing the child. The submissions may include, for example, such matters as the child's relationship to the child's Aboriginal or Torres Strait Islander community, any cultural considerations or any considerations relating to programs and services established for offenders in which the community justice group participates.

The clause provides that if required by the court, the representative must advise the court whether any member of the community justice group that is responsible for the submission is related to the offender or the victim, or whether there are any circumstances that give rise to a conflict of interest between the offender or victim and any member of the community justice group that is responsible for the submission.

The clause defines 'community justice group'. It means a group of persons which is made up of an entity within the offender's Aboriginal or Torres Strait Islander community, other than a department of government, which is involved with provision of any of the following:—

1. information to a court about Aboriginal or Torres Strait Islander offenders;
2. diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
3. other activities relating to local justice issues.

The definition also includes groups of Elders or respected persons of the child's Aboriginal or Torres Strait Islander community.

The clause defines "child community" to mean the child's Aboriginal or Torres Strait Islander community whether it is an urban or rural community or a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

PART 4—AMENDMENT OF CHILDRENS COURT ACT 1992

Clause 7—states that this part amends the *Childrens Court Act 1992*.

Clause 8—provides that if a child is an Aboriginal or Torres Strait Islander person, a representative of the community justice group of the child's community who is to make submissions which are relevant to sentence, may be present at the proceeding.

The clause also defines the term "community justice group" and "child's community".