



# Sentencing Council Act 2007

Public Act 2007 No 25  
Date of assent 31 July 2007  
Commencement see section 2

## Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Act binds the Crown	3
<i>Establishment of Council</i>	
5 Sentencing Council established	3
6 Status of Council	3
7 Role of Council	3
8 Purposes of Council	4
9 Functions of Council	4
<i>Membership of Council</i>	
10 Membership of Council	5
11 Administrative provisions relating to Sentencing Council	6
12 Other enactments amended	6
<i>Public notification of draft guidelines</i>	
13 Public notification of draft guidelines	6
14 Statement to accompany draft guideline or group of guidelines	7
15 Consultation	7
16 Council finalises guidelines and presents to Minister	7
<i>Parliamentary scrutiny of guidelines</i>	
17 Presenting guidelines	8
18 Inaugural guidelines may be disapplied	8
19 Guideline may be disapplied	8
20 Periods of sitting days	8
21 Guidelines come into force if not disapplied	8
22 Council must reconsider guidelines if guidelines disapplied	8

	<i>Publication of guidelines</i>	
23	Council must publish guidelines	9
	<i>Requests for consideration of issues, and giving of advice</i>	
24	Consideration of issues relating to sentencing or parole guidelines	9
25	Council may advise Minister	10
	<b>Schedule 1</b>	11
	<b>Provisions relating to Sentencing Council</b>	
	<b>Schedule 2</b>	17
	<b>Amendments to other enactments</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Sentencing Council Act 2007.

**2 Commencement**

This Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

**3 Interpretation**

In this Act, unless the context otherwise requires,—

**Council** means the Sentencing Council established by section 5

**fees framework** has the same meaning as in section 10(1) of the Crown Entities Act 2004

**group of guidelines** means a group of sentencing guidelines or a group of parole guidelines, or both, that are publicly notified together under section 13 or that are presented, or are intended to be presented, to the House of Representatives under section 17 on the same date; and, unless otherwise specified, includes the inaugural guidelines

**group of parole guidelines** means any 2 or more parole guidelines that are publicly notified together under section 13 or that are presented, or are intended to be presented, to the House of Representatives under section 17 on the same date

**group of sentencing guidelines** means any 2 or more sentencing guidelines that are publicly notified together under section 13 or that are presented, or are intended to be presented, to the House of Representatives under section 17 on the same date

**inaugural guidelines** means the group of sentencing guidelines or group of parole guidelines, or both, that are the first group, or groups, of guidelines to be laid before the House of Representatives after this Act comes into force

**Minister** means the Minister of Justice

**Parole Board** means the New Zealand Parole Board established under section 108 of the Parole Act 2002

**working day** has the meaning set out in section 2(1) of the Public Finance Act 1989.

#### **4 Act binds the Crown**

This Act binds the Crown.

### *Establishment of Council*

#### **5 Sentencing Council established**

The Sentencing Council is established as an independent statutory body.

#### **6 Status of Council**

(1) The Council—

- (a) is a body corporate; and
- (b) is accordingly a legal entity separate from its members, employees, and the Crown; and
- (c) continues in existence until it is dissolved by an Act.

(2) The Council may do anything that a natural person of full age and capacity may do for the purposes of performing its functions or powers under this Act.

(3) The Council may do anything authorised by this Act, subject to this Act or any other Act or any rule of law.

#### **7 Role of Council**

(1) The members of the Council are its governing body, with the authority, in the name of the Council, to exercise its powers and perform its functions.

- (2) All decisions relating to the operation of the Council must be made by, or under the authority of, its governing body in accordance with this Act.

## **8 Purposes of Council**

The purposes of the Council are,—

- (a) by producing guidelines about sentencing and parole, to—
- (i) promote consistency in sentencing practice between different courts and Judges:
  - (ii) ensure transparency in sentencing policy:
  - (iii) promote consistency and transparency in Parole Board practice:
  - (iv) facilitate the provision of reliable information to enable penal resources to be effectively managed:
- (b) to enable the development of sentencing and parole policy to be based on a broad range of experience and expertise:
- (c) to inform members of Parliament and policymakers about sentencing and parole practice and reform options:
- (d) to inform and educate the public about sentencing and parole policies and decision making, with a view to promoting public confidence in the criminal justice system.

## **9 Functions of Council**

(1) The functions of the Council are—

- (a) to produce guidelines that are consistent with the Sentencing Act 2002 relating to—
- (i) sentencing principles:
  - (ii) sentencing levels:
  - (iii) particular types of sentences:
  - (iv) other matters relating to sentencing practice:
  - (v) grounds for departure from the sentencing guidelines:
- (b) to produce guidelines that are consistent with the Parole Act 2002 about the granting of parole:
- (c) to assess and take account of the overall costs and benefits of the guidelines:

- (d) to provide, in relation to both draft and final guidelines, a statement of the guidelines' likely effect on the prison population:
  - (e) to give advice on, and consider issues about, sentencing and parole as set out in this Act:
  - (f) to collate information on sentencing practice, and on adherence to and departures from the sentencing guidelines, and provide this information to the judiciary:
  - (g) to collate information on parole decisions, and on adherence to and departures from the parole guidelines, and provide this information to the Parole Board:
  - (h) to provide information to the public about sentencing and parole:
  - (i) any functions that are incidental and related to, or consequential on, its functions set out in paragraphs (a) to (h).
- (2) Except as expressly provided in this Act or any other Act, the Council must carry out its functions and powers independently.

### *Membership of Council*

#### **10 Membership of Council**

- (1) The Council consists of—
- (a) 1 Judge of the Court of Appeal appointed by the President of the Court of Appeal in consultation with the Chief Justice:
  - (b) 1 Judge of the High Court appointed by the Chief High Court Judge in consultation with the Chief Justice:
  - (c) 2 District Court Judges appointed by the Chief District Court Judge in consultation with the Chief Justice:
  - (d) the chairperson of the Parole Board:
  - (e) 5 members who are not Judges, appointed by the Governor-General on the recommendation of the House of Representatives.
- (2) The Chief Justice must appoint one of the Judges appointed under subsection (1)(a), (b), or (c) as the chairperson of the Council.
- (3) The Governor-General must, on the recommendation of the House of Representatives, appoint one of the members appointed under subsection (1)(e) as the deputy chairperson of the Council.

- (4) The Chairperson may delegate any of his or her functions, either generally or specifically, to the deputy chairperson.
- (5) Appointments under subsections (1), (2), and (3) must be made by written notice by the appointing authority to the person appointed (with a copy sent to the Council and the Minister).
- (6) The notice must—
  - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) state the term of the appointment; and
  - (c) be published by the Minister in the *Gazette* as soon as practicable after being given.

**11 Administrative provisions relating to Sentencing Council**  
The provisions set out in Schedule 1 apply to the Sentencing Council.

**12 Other enactments amended**  
The Acts set out in Schedule 2 are amended in the manner set out in that schedule.

*Public notification of draft guidelines*

**13 Public notification of draft guidelines**

- (1) The Council must publicly notify each draft guideline or group of guidelines by—
  - (a) publishing a notice complying with subsection (2) in 1 or more daily newspapers circulating in the cities of Whangarei, Auckland, Hamilton, Rotorua, Napier, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin, Invercargill, and any other place the chairperson may direct; and
  - (b) publishing a notice complying with subsection (2) on the Internet in an electronic form that is publicly accessible at all reasonable times for inspection and downloading free of charge; and
  - (c) giving any further notice that the Council considers appropriate, having regard to the persons likely to have an interest in the draft guidelines.

- (2) A notice published or given under subsection (1), in respect of a draft guideline or group of guidelines, must—
- (a) except as provided in subsection (3), contain the title, or other short description of the subject matter, of the guideline or each guideline in the group, as the case may be; and
  - (b) state that submissions on the draft guideline or guidelines may be made in writing by any person or in any other way the Council may direct; and
  - (c) specify how a copy of the draft guideline or group of guidelines may be obtained, which may include, but must not be limited to, obtaining the draft guidelines from an Internet website; and
  - (d) specify the closing date for the receipt by the Council of submissions on the draft guideline or group of guidelines, which may be a date no earlier than 6 weeks after the date on which the notice is first published in a daily newspaper under subsection (1)(a); and
  - (e) specify the address of the place to which submissions on the draft guideline or group of guidelines may be delivered or sent.
- (3) If the notice published or given under subsection (1) is for the inaugural guidelines, the notice is not required to contain the matters described in subsection (2)(a).

#### **14 Statement to accompany draft guideline or group of guidelines**

A draft guideline or group of guidelines that is available for inspection must be accompanied by a statement of the guidelines' likely effect on the prison population.

#### **15 Consultation**

The Council may consult on the draft guideline or group of guidelines as it sees fit, with any person or body, by any appropriate means.

#### **16 Council finalises guidelines and presents to Minister**

The Council may, at any time after the time for submissions has expired, finalise the guideline or group of guidelines and present them to the Minister, together with a statement of the guidelines' likely effect on the prison population.

*Parliamentary scrutiny of guidelines*

**17 Presenting guidelines**

The Minister must present each guideline or group of guidelines, together with the statement of the guidelines' likely effect on the prison population referred to in section 16, to the House of Representatives not later than the 16th sitting day of the House of Representatives after the day on which the guidelines are provided to the Minister by the Council.

**18 Inaugural guidelines may be disapplied**

The inaugural guidelines may be disapplied as a whole by resolution of the House of Representatives passed within 30 sitting days after those guidelines were presented to the House.

**19 Guideline may be disapplied**

Any guideline (not being an inaugural guideline) may be disapplied by resolution of the House of Representatives passed within 15 sitting days after that guideline was presented to the House.

**20 Periods of sitting days**

The periods of sitting days within which the inaugural guidelines or a guideline may be disapplied under section 18 or 19 must elapse within the term of a single Parliament.

**21 Guidelines come into force if not disapplied**

Every guideline comes into force on the date that is 20 working days after the last date on which the guideline could have been disapplied under section 18 or 19 unless that guideline is disapplied under one of those sections.

**22 Council must reconsider guidelines if guidelines disapplied**

- (1) If a guideline or group of guidelines is disapplied under section 18 or 19, the Council must—
- (a) reconsider the guideline or group of guidelines; and
  - (b) if the Council considers it appropriate, provide a varied guideline or group of guidelines to the Minister, together with a statement of the guidelines' likely effect on the prison population.

- (2) Sections 17 to 21 apply to the varied guidelines provided to the Minister under subsection (1).
- (3) If the inaugural guidelines are disapplied, the varied group of guidelines provided to the Minister under subsection (1) is treated as being the inaugural guidelines for the purposes of sections 17 to 21 and subsections (1) and (2) of this section.

### *Publication of guidelines*

#### **23 Council must publish guidelines**

- (1) The Council must comply with subsection (2) if—
  - (a) the last date on which a guideline or group of guidelines could have been disapplied under section 18 or 19 has passed; and
  - (b) the guideline or guidelines were not disapplied.
- (2) The Council must, as soon as practicable after the date referred to in subsection (1)(a) and before the guidelines come into force under section 21,—
  - (a) arrange for the publication in the *Gazette* of a notice showing the titles of the guidelines, the date on which the guidelines were produced by the Council, the date on which they will come into force, and where copies of the guidelines are available for inspection and purchase; and
  - (b) make copies of the guidelines available on the Internet in an electronic form that is publicly accessible at all reasonable times for inspection and downloading free of charge; and
  - (c) make copies of the guidelines available for purchase at a reasonable price.

### *Requests for consideration of issues, and giving of advice*

#### **24 Consideration of issues relating to sentencing or parole guidelines**

- (1) A request may be made by the following persons to the Council to consider any issue relating to guidelines:
  - (a) in the case of sentencing guidelines, by the Minister, the Chief Justice, the President of the Court of Appeal, the Chief High Court Judge, the Chief District Court Judge,

the Solicitor-General, or the President of the New Zealand Law Society:

- (b) in the case of parole guidelines, by the Minister, the chairperson of the Parole Board, the Solicitor-General, or the President of the New Zealand Law Society.
- (2) A request must set out the reasons for the request.
- (3) If a request is made, the Council must, when revising or drafting sentencing guidelines or parole guidelines, consider the issue and the reasons given.

## **25 Council may advise Minister**

- (1) The Minister may request the Council to provide advice to the Minister on any sentencing or parole issue that relates to the development and use of sentencing guidelines or parole guidelines.
  - (2) The Council may, on its own initiative, provide advice to the Minister on any sentencing or parole issue that relates to the development and use of sentencing guidelines or parole guidelines.
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## Schedule 1

s 11

### Provisions relating to Sentencing Council

#### 1 Criteria for recommendation by House of Representatives

It is considered desirable that any person put forward for appointment under section 10(1)(e) should have the appropriate knowledge, skills, and experience to assist the Council to achieve its purposes and perform its functions, including expertise in 1 or more of the following areas:

- (a) criminal justice matters:
- (b) policing:
- (c) the assessment of risk of reoffending:
- (d) the reintegration of offenders into society:
- (e) the promotion of the rights and welfare of victims of crime:
- (f) the effect of the criminal justice system on Māori and people from minority cultures:
- (g) community issues affecting the courts and the corrections system:
- (h) public policy.

#### 2 Matters relating to appointment of Judges

- (1) A Judge's appointment as a member does not affect his or her tenure of judicial office or his or her rank, title, status, precedence, salary, annual or other allowances, or other rights and privileges as a Judge (including those in relation to superannuation), and, for all purposes, his or her service as a member must be taken to be service as a Judge.
- (2) A judicial member may, at any time, decline to participate in, or withdraw from participation in, any particular function or activity of the Council if the Judge considers it incompatible with his or her judicial office.

#### 3 Term of office of members

- (1) Except as otherwise provided in this Act, a member of the Council holds office for a term of up to 5 years as specified in the notice of appointment.
- (2) A member may be reappointed for 1 further term, but the total of the further term together with the initial term must not exceed 7 years.

- (3) A member continues in office despite the expiry of his or her term of office until—
  - (a) the member is reappointed; or
  - (b) the member's successor is appointed.
- (4) This clause does not apply to a member who is the chairperson of the Parole Board.

#### **4 Validity of appointments**

- (1) The appointment of a person as a member, chairperson, or deputy chairperson is not invalid only because a defect existed in the appointment of the person.
- (2) This clause does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson.

#### **5 Removal or suspension of non-judicial members**

- (1) A non-judicial member of the Council may at any time be removed or suspended from office by the Governor-General, on address from the House of Representatives, for inability to perform the functions of office, neglect of duty, or misconduct.
- (2) At any time when Parliament is not in session, any non-judicial member of the Council may be suspended from office by the Governor-General in Council for inability to perform the functions of the office, neglect of duty, or misconduct proved to the satisfaction of the Governor-General in Council; but any such suspension must not continue in force beyond 2 months after the beginning of the next session of Parliament.

#### **6 Removal of judicial members**

A judicial member may be removed as a member at any time under the general law that applies to removal from office as a judge.

#### **7 Replacement of judicial members**

- (1) A member appointed under section 10(1)(a), (b), or (c) may be replaced as a member before the expiry of his or her term,—
  - (a) in the case of a member appointed under section 10(1)(a), by the President of the Court of Appeal in consultation with the Chief Justice; and

- (b) in the case of a member appointed under section 10(1)(b), by the Chief High Court Judge in consultation with the Chief Justice; and
  - (c) in the case of a member appointed under section 10(1)(c), by the Chief District Court Judge in consultation with the Chief Justice.
- (2) The replacement must be made by written notice to the member (with a copy to the Council).
  - (3) The notice must state the date on which the replacement takes effect, which must not be earlier than the date on which the notice is received.

## **8 Replacement of non-judicial members**

- (1) If a non-judicial member of the Council dies or resigns or is, or becomes, disqualified or is removed from office before the expiry of his or her term, the vacancy created is to be treated as an extraordinary vacancy.
- (2) An extraordinary vacancy must be filled in the manner in which the appointment was originally made.
- (3) Clause 3 (which relates to the term of office of a member) applies to an appointment under this clause.

## **9 No compensation for loss of office**

A member of the Council is not entitled to compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member.

## **10 Resignation of members**

- (1) A member of the Council may resign from office by written notice to—
  - (a) in the case of a member appointed under section 10(1)(a), the President of the Court of Appeal; and
  - (b) in the case of a member appointed under section 10(1)(b), the Chief High Court Judge; and
  - (c) in the case of a member appointed under section 10(1)(c), the Chief District Court Judge; and
  - (d) in the case of a member appointed under section 10(1)(e), the Minister.
- (2) The notice under subclause (1) must be signed by the member and the member must provide a copy of it to the Council.

- (3) The resignation is effective on receipt, by the appropriate person as provided by subclause (1), of the notice or at any later time specified in the notice.
- (4) In relation to a resignation under subclause (1)(d), the Minister must table a copy of the notice of resignation in the House of Representatives.

## **11 Members ceasing to hold office**

- (1) A member of the Council ceases to hold office if he or she—
  - (a) resigns in accordance with clause 10; or
  - (b) is removed from office in accordance with clause 5 or any other enactment; or
  - (c) otherwise ceases to hold office in accordance with any enactment.
- (2) The Minister must notify in the *Gazette* the fact that a person has ceased to hold office.

### *Remuneration and expenses*

## **12 Remuneration of members**

- (1) Except as provided in subclause (2), a member of the Council is entitled to receive, from the funds of the Sentencing Council, remuneration for services as a member at such rate as the Remuneration Authority from time to time determines.
- (2) An office holder of the following kind is not entitled to any remuneration for services as a member of the Council in addition to his or her remuneration in respect of that office:
  - (a) a Judge;
  - (b) an employee (including a chief executive) within any part of the State services.
- (3) A member of the Council is entitled, in accordance with the fees framework, to be reimbursed out of the funds of the Council for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

### *Delegation*

## **13 Ability to delegate**

- (1) The governing body of the Council may delegate any of its functions or powers, either generally or specifically, to any of

the following persons by resolution and written notice to the person or persons:

- (a) a member of the Council;
  - (b) an employee of the Council;
  - (c) any other person or persons approved by its governing body.
- (2) The Council's governing body must not delegate—
- (a) the power to produce sentencing and parole guidelines under section 9(1)(a) and (b);
  - (b) the general power of delegation.

### *Procedure for meetings of Council*

#### **14 Procedure generally**

Except as otherwise provided in this Act, the Council may regulate its own procedures.

#### **15 Procedure at meetings**

- (1) A quorum for a meeting of the Council is the number that is half the number of members.
- (2) No business may be transacted at a meeting of the Council if a quorum is not present.

#### **16 Voting at meetings**

- (1) Each member has 1 vote.
- (2) In addition to his or her general vote, the chairperson has, in the case of an equality of votes, a casting vote.
- (3) All decisions of the Council are decided by a majority of the votes cast by the members present.

### *Protection of members from liability*

#### **17 Protection from liability**

- (1) This clause applies to—
  - (a) each member of the Council; and
  - (b) every person employed by the Council.
- (2) No person to whom this section applies is personally liable for any act done or omitted to be done by the Council in good faith in the performance or intended performance of the functions or powers of the Council.

*Application of State Sector Act 1988***18 Application of sections 84 to 84B of State Sector Act 1988**

- (1) The governing body of the Council is an employer in the State services for the purposes of sections 84 to 84B of the State Sector Act 1988.
- (2) Sections 84 to 84B of the State Sector Act 1988 apply to the officers and employees of the Council.

*Official observers on Council***19 Official observers**

The chief executives of the Ministry of Justice and the Department of Corrections may, if either chief executive thinks fit or at the request of the Council, appoint an employee each as an official observer to the Council.

*Application of Crown Entities Act 2004***20 Application of certain provisions of Crown Entities Act 2004**

- (1) For the purposes of the application of the provisions of the Crown Entities Act 2004 listed in sections 45M and 45N and Schedule 4 of the Public Finance Act 1989, the responsible Minister is the Minister of Justice.
  - (2) A request for information under section 133 of the Crown Entities Act 2004 may not be refused under section 134(1)(b) of that Act (which relates to the refusal to supply information relating to the carrying out of statutorily independent functions) if the request for information by the responsible Minister relates to the operations and performance of the Council.
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## Schedule 2

### Amendments to other enactments

s 12

**Official Information Act 1982 (1982 No 156)**

Schedule 1: insert “Sentencing Council” after “Securities Commission”.

**Public Finance Act 1989 (1989 No 44)**

Schedule 4: insert in the first column, in its appropriate alphabetical order, the item “Sentencing Council” and insert alongside that item, ticks in the third, fourth, fifth, sixth, seventh, eighth, and ninth columns.

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#### Legislative history

19 July 2007	Divided from the Criminal Justice Reform Bill (Bill 93–2) by the committee of the whole House (Bill 93–3A)
24 July 2007	Third reading
31 July 2007	Royal assent

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This Act is administered by the Ministry of Justice and the Department of Corrections.

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