Sentencing Amendment (Baseline Sentencing) Bill 2014

The Sentencing Amendment (Baseline Sentencing) Bill 2014 was introduced in the Parliament on 1 April 2014 and was second-read on 3 April 2014. There follows a summary of Bill.

The Bill amends the Crimes Act 1958 and the Drugs, Poisons and Controlled Substances Act 1981 to insert baseline sentences for the following offences:

- Murder: 25 years
- Incest: 10 years
- Sexual Penetration of a child under 12: 10 years
- Persistent sexual abuse of a child under 16: 10 years
- Culpable driving causing death: 9 years
- Trafficking in a large commercial quantity of a drug of dependence: 14 years

Aiding, abetting counselling or procuring one of the above offences is to be treated in the same manner as the substantive offence.

The Bill amends section 5 the Sentencing Act 1991 to insert "the baseline sentence" as the second matter to which the court must have regard in sentencing an offender.

A new section 5A is inserted in the Sentencing Act 1991:

- stating that the baseline sentence for an offence is the sentence that the Parliament intends to be the median sentence for sentences imposed for that offence in accordance with that section;
- requiring that sentencing practices give effect to that intention;
- providing that in sentencing an offender for a baseline offence the court must do so in a manner compatible with Parliament’s intention and must disregard any other provision of Part 2 of the Sentencing Act 1991 where having regard to that provision would be incompatible with that intention.

The section does not apply to offenders under 18 years or offences heard and determined summarily. The provisions do not apply to offences committed prior to commencement of the amendments.

The method by which the median is to be calculated is to be set out in the new section 5B of the Sentencing Act 1991:

- The median is to take into account both custodial and non-custodial sentences
- Sentences imposed for offences committed by persons when they were under 18 and for offences heard and determined summarily are not included
- A non-custodial sentence is treated as a term of imprisonment of 0 months
- A wholly suspended term of imprisonment is treated as a term of imprisonment of 0 months
- Only the non-suspended part of a partially suspended sentence is treated as the term of imprisonment
In order for the median sentence for an offence to be the same as the baseline sentence prescribed for that offence, half the relevant sentences imposed for that offence must be at or above the baseline figure and half must be at or below the baseline figure. Relevant sentences for these purposes are those where these provisions apply i.e. sentences for offences committed on or after the commencement of the provisions, not including sentences for offenders who were under 18 at the time of commission of the offence or sentences imposed following a summary hearing.

In sentencing an individual offender the court is therefore required to determine, having regard to all other relevant sentencing factors, where the head sentence should fall relative to other sentences for the same offence.

If it is determined that the appropriate sentence must be relatively greater than 50% of relevant sentences then the head sentence must be set at or above the baseline figure. If the appropriate sentence must be relatively less than 50% of relevant sentences then the head sentence must be set at or below the baseline figure.

The appropriate approach to that task may the subject of further judicial elucidation on the following issues
- Whether and how regard is to be had to all potential or likely future offending.
- Whether and how past medians and sentences imposed prior to the introduction of the legislation are to be considered.
- Whether and how changes in patterns of offending and the prevalence or otherwise of aggravating and mitigating factors within the overall cohort of offenders is to be taken into account.

A new section 11A is inserted into the Sentencing Act 1991 which requires that a non-parole period for a sentence that includes a baseline offence must be
- At least 30 years for a life sentence
- At least 70% of the head sentence or TES for sentences over 20 years
- At least 60% of the head sentence or TES for sentences under 20 years.

This provision does not apply to offenders who were under 18 at the time of commission of the offence or sentences imposed following a summary hearing.