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The Hon James Wood AO QC
President
NSW Law Reform Commission
Level 13, Swire House
10 Spring Street
Sydney NSW 2000

Attention: Ms Sallie McLean
E-mail: sallie_mclean@agd.nsw.gov.au

Dear Commissioner,

Encouraging Early Pleas of Guilty
New South Wales Law Reform Commission
Preliminary Submission

The Aboriginal Legal Service (NSW/ACT) Limited ('ALS') offers the following preliminary observations on on this issue, provided from the point of view of a court-based legal aid service, providing legal advice and representation to Aboriginal people in metropolitan centres, as well as both regional and remote areas across New South Wales.

Jurisdictional issues

While the Commission's inquiry, under its current reference, addresses, specifically, the encouraging of early pleas of guilty in indictable criminal matters, the issue could also refer to charges before the Local Court that are dealt with summarily. The ALS suggests that consideration also be given to this jurisdiction.

If examining summary matters, the ALS would propose the abolition of the practice note setting a maximum six week adjournment to allow a defendant to make representations regarding the charges and/or facts which has had a

direct impact on pleas being made late, quite often on the date of hearing. The ALS could elaborate on this point further if the Commission were to explore this jurisdiction.

Definitional issues

The ALS would recommend that further details be provided to a definition of a 'late guilty plea'. For example, does the Commission intend by the term any plea after Committal or is it to be restricted to a plea on the day the trial is scheduled to start?

Other factors, of especial concern to the ALS, include:

1. The abolition of the Sentence Indication Hearing Pilot before a District Court Judge. There has been some critical comment relating to this system, often due to the practice in cases in which the Judge presiding was perceived as being 'too tough', the accused would opt to defend the charge(s).

2. Perhaps the most significant problem is the lack of Crown Prosecutors to review their brief and consider any representations made by Defence Counsel/solicitor more than a couple of weeks before commencement of trial. For this reason, negotiations often take place shortly before, or on the eve of, the commencement of the trial.

Accused are generally anxious to achieve the maximum discount on sentence by an early plea. However, this is frustrated if either the charges or the facts are ill conceived and the solicitor from the Office of the Director of Public Prosecutions with the carriage of the matter lacks experience or adopts a particular 'mindset' about it. The matter will invariably then be suspended until a Crown becomes involved in the case.

3. The practice of late service of statements after committal by the Prosecution is another aspect of the issue that requires careful consideration and review.

4. A change in the arraignment practice in the District Court should also be considered (at least in country areas). Previously, following committal for trial, an accused was arraigned weeks, if not months, before a sitting for trial. By that time, a Crown would have been able to examine the matter and the accused (and his or her solicitor or counsel) had their attention focused on the issues and penalties. As a result, the relevant charges and facts were then often negotiated at the arraignment.
However, current practice is for arraignment to take place at the time of commencement of the trial, so preventing this negotiation.

If you wish to discuss the above views further, please do not hesitate to contact me at your convenience at the above address or at john.mckenzie@alsnswact.org.au.

We would ask that the ALS continues to be consulted as the Review progresses and look forward to making a further, and more detailed, submission.

Yours sincerely

John McKenzie
Chief Legal Officer
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