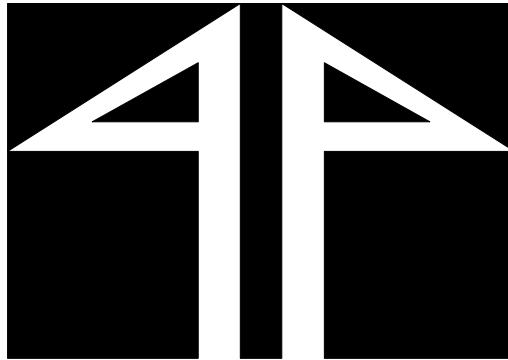


**PROBATION AND PAROLE OFFICERS'
ASSOCIATION OF NEW SOUTH WALES**



**SUBMISSION TO
THE NEW SOUTH WALES
LAW REFORM COMMISSION
ON SENTENCING**

Question 1

July 2012

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SUBMISSION ON SENTENCING

The Probation and Parole Officers' Association of NSW (referred to in this document as 'the Association') welcomes the opportunity to make a submission to the NSW Law Reform Commission's (NSWLRC) *Review of Sentencing*. The submission begins with some introductory comments before addressing the five nominated questions.

1 INTRODUCTORY COMMENTS

1.1 *The Fundamentals of Sentencing Law Reform*

It is an apt time for the review of sentencing legislation. The discipline of criminology in Australia has grown rapidly during the past two decades with the quantum of knowledge expanding considerably, particularly since the last review of sentencing legislation. Both the Australian Institute of Criminology (AIC) and the NSW Bureau of Crime Statistics and Research (BOCSAR) have developed into prolific producers of research that addresses social policy issues specifically in the Australian context. As a consequence the 'science' of criminal justice now has a body of knowledge of the Australian context to complement overseas research and experience.

The sentencing principles of the current sentencing legislation reflect long-standing common law and philosophical principles such as deterrence and responsibility which originate from nineteenth century utilitarian authors like Cesare Beccario and Jeremy Bentham.¹ These notions include the volitional nature of crime, denunciation of certain conduct, the varying objective seriousness of crimes, the use of punishment as a means of deterrence, proportional punishment according to the seriousness of the offence.

The current sentencing principles also incorporate twentieth century notions of rehabilitation and recognising the harm crime causes to victims and the community. But they do not adequately incorporate the massive amount of behavioural sciences and criminological research which has accumulated over the past 120 years.

Sentencing law is, in essence, a social response to the problem of crime. While it should reflect commonly-held views, the array of vocations and professions within the criminal justice system operate on the basis of expert knowledge rather than populist notions.

Technology and science play prominent roles in policing and corrections. Behavioural science evidence-based practice is particularly relevant to rehabilitation and recidivism. Criminology has developed positivist individual and social explanations for the causes of crime. This knowledge has been incorporated into the criminal justice system through expert testimony and other means. But in the current sentencing legislation (and thus the adjudication process), such causal (and therefore deterministic) approaches are balanced against traditional philosophical concepts of volition, responsibility and deterrence.

¹ See, for example, White, R. and Haines, F. 2009 (Fourth Edition) *Crime and Criminology*, Oxford University Press, South Melbourne, particularly Chapter 1.

There is a sense in which the sentencing law lags behind sentencing practice, still propounding Enlightenment philosophical principles, rather than a modern scientific approach which uses research and other evidence as the basis for its principles.

If sentencing law is a social response to the social problem of crime, both sentencing principles and practice should be based upon research and other evidence that reduce rather than increase crime and its social impacts. If sentencing law retains principles, those principles should facilitate effective sentencing practice.

The Association argues that, in reviewing sentencing legislation at this time, there are four general philosophical and conceptual problems:

- the ambiguity, confusion and conflict in the stated purposes of sentencing;
- the absence of useful methodological guidelines
- the stated heavy emphasis of punishment in legislation contrasted to the dominant practice of imposing sanctions with little punitive impacts;
- the continuing emphasis on punishing offenders rather than compensating, restituting and reconciling with victims; and
- the conflict between the stated purposes of punishment to deter and prevent re-offending and the research that demonstrates that punishment neither deters nor prevents offending.

1.2 Conceptual ambiguity, confusion and conflict

Section 3A of the Crimes (Sentencing Procedure) Act outlines the current purposes of sentencing. These are supplemented by the common law, appeal court judgment guidelines and Australian case law. While the stated purposes of sentencing provided a first articulation of principles, they contain conflicting statements and therefore provide an ambiguous and conflicting model for sentencers.

There is no overarching sentencing principle or framework, either for crimes generally or for specific types of crime (violent crime, property crime, sex offences etc). Nor is there formal recognition that severity of an offence may be linked to different philosophical positions on sentencing (utilitarian, retributive or consequential). Rather, there is a jumble of competing ambiguous concepts drawn from the common law as well as sentencing legislation. Our research has uncovered at least 22 such concepts relating to the either the philosophical basis or methodology of sentencing. These include 'Vengeance', 'Retribution', 'Punishment', 'Community Protection', 'Denunciation', 'Parsimony', 'Proportionality', 'Objective and Subjective factors', 'Rehabilitation', 'Restorative Justice', 'Specific and General Deterrence', 'two-tiered Sentencing', 'Sentencers Intuition', 'Instinctive Synthesis', 'Accountability of the Offender', 'Recognising harm done to the Victim', 'discounts for co-operation', 'Just deserts' and 'Remission for evidence of reform' pre sentence.

To make matters worse, the concepts are often defined in terms of each other so that, for example, some of these concepts are subsumed under the heading of 'punishment' while other times punishment is a separate component which must be given regard to in addition to other concepts.

1.3 Absence of Useful Methodological Guidelines

There are no clear guidelines, for the most part, in the common law or legislation about how a sentence should be computed. The discussion in the case law and discursive literature appears to revolve around whether sentencing is an 'Instinctive Synthesis' as outlined in the leading case of *R v Willscroft* (1975) VR 292 or whether it should be a 'two-tiered' approach² which first considers proportionality and the objective factors in outlining the parameters of sentence given the proscription of the legislature, before looking at subjective factors to adjust the sentence.

In reality, it appears that the 'Instinctive Synthesis' view, which is supported by other judicial authority about the absence of logic alone in the sentencing process (see *Veen v The Queen No 2*) (1988) 164 CLR 465, is mainly a recognition that sentencing is too complex to be reduced to a rational sequential process. On the other hand the 'two-tiered' approach appears to add little clarity and it may be argued that it turns one complex and ambiguous process into two such processes.

Some years ago the NSW Criminal Court of Appeal published guidelines for sentencing drink drivers. Initially these provided considerable structure to the sentencing decision for Magistrates, and, in some cases, produced more severe sentencing in the imposition of custodial penalties for mid-range and high-range drink driving matters, particularly for recidivists. However, the appeal Courts subsequently upheld numerous appeals against severity. As a consequence, the appeal process provided a counterbalancing message to the sentencing guidelines and negated their influence.

1.4 Punishment and penalty

If we postulate that the main purpose and emphasis of sentencing at the present time is to punish offenders in order to deter further offending, then research indicates that this present approach does not 'work'. Nor does punishment adequately address compensation, restitution and possible reconciliation with victims.

The current sentencing legislation lists 'adequate punishment for the offence' as the first purpose of sentencing and there is little doubt that punishment is the pre-eminent sentencing concept when courts adjudicate individual crimes. Indeed the concepts of crime and punishment are effectively married in popular discourse. Statute measures and states the maximum penalty for offences in terms of a period of imprisonment.³ The nexus of punishment with imprisonment is carried to the conception of such other penalty options as suspended sentences, community service, Intensive Corrections Orders (ICOs) and Home Detention in that those options are commonly referred to as alternatives to imprisonment and have some parity and coupling with imprisonment. In each case,

² See for example, Bargaric, M. 1999, 'Sentencing: The Road to Nowhere', *Sydney Law Review*, 21 (4) and Traynor, S. and Potas, I. 2002, 'Sentencing Methodology: Two-tiered or Instinctive Synthesis', *Sentencing Trends and Issues*, No. 25, December 2002, Judicial Commission of NSW, Sydney.

³ Some offences are not punishable by imprisonment eg Low Range PCA.

breach of those community-based orders can result in the imposition of a term of imprisonment.⁴

The legislation currently specifies maximum penalties for all offences, emphasizing the seriousness of crimes by periods of imprisonment and fines, yet these maxima are rarely imposed, because each offence and each offender is dealt with as an individual case, according to its merits and failings. The overwhelming feature of sentencing practice is that courts dispose of the vast majority of matters with fines and bonds, retaining custody as the disposition of last resort.⁵

Further, the penalty options of fines, bonds, probation, and suspended sentences have little or no actual punitive element. While fines bear the inconvenience or impost of diverting income away from other potential pursuits, the degree of inherent punishment varies according to income and assets. The other three listed penalty options have arguably less punishment as they are opportunities to avoid further consequence. While probation entails a small loss of liberty, it is essentially rehabilitative, supportive and restorative.

Other community-based sanctions such as community service, ICOs and Home Detention entail loss of liberty to varying degrees, they permit offenders to retain the bulk of their lifestyle and opportunities. Importantly, these options provide intermediary sanctions between the least penalties and imprisonment which is clearly incursive and punitive.

The rhetoric on punishment abounds but the penalty options, apart from imprisonment, are inherently lenient, affording opportunities and often resources to assist rehabilitation. The voice of punishment and its deterrent echo appear to drown out other purposes of sentencing, but the actual practice of sentencing in the overwhelming majority of cases silently pushes offenders out of the court doors with fines, bonds and intermediate sanctions that have quite a different emphasis. This dichotomy between rhetoric and reality should be adequately resolved through statute. While the courts should reflect the community's desire to hold the offender accountable for his/her actions and denounce particular conduct, they also rightly promote rehabilitation as the primary means to community safety and prevention of further offending.⁶

⁴ Community service can only be imposed for offences which carry a possible term of imprisonment; parole is serving a sentence under the conditions of a parole order; ICOs require the court to form the view that a term of imprisonment up to two years is the appropriate penalty; Home detention orders are sentences of imprisonment served by way of home detention.

⁵ For indicative data about the predominant use of penalty options in a given year, consult New South Wales Criminal Court Statistics published by the NSW Bureau of Crime Statistics and Research.

⁶ Corrective Services is able to claim an overall success rate for community-based penalty options in excess of 80%. See *Facts and Figures*, 10th Edition, May 2010, Department of Corrective Services. These exclude fines and measure order completion rather than re-offending. For a more detailed report on order completion, see Potas, I., Eyland, S. and Munro, J. 2005, 'Successful completion Rates for Supervised Sentencing options', *Sentencing Trends and Issues*, No 33 June 2005, Judicial Commission of New South Wales, Sydney. For a local study of re-offending rates, see Holmes, J. 2012, 'Re-offending in NSW', *Crime and Justice Statistics*, Issue paper no. 56 January 2012, NSW Bureau of Crime Statistics and Research, Sydney.

1.5 'Deterrence' and the Behavioural Sciences

There is little or no formal judicial or legislative notice taken of the insights offered by the behavioural sciences in regard to the efficacy or validity of some traditional legal concepts relating to sentencing. It is true that there has been judicial comment on issues like the effectiveness of general deterrence but this has not resulted in substantial changes to the law or given courts a firmer basis for prescribing a sentence.

A recent example of this is the judgement of Bathurst CJ in a decision by the NSW Court of Criminal appeal. *Regina v KB, JL and RJB* (2011) NSWCCA 190. Briefly the facts were that three young men who were intoxicated took sexual advantage of two underage but also drunk and consenting teenage girls. In this case, the chief justice affirmed the right of the trial judge to discount the weight to be given to general deterrence because of the circumstances of the case. Presumably he applied the common sense view that other young men in a similar situation would probably not be deterred, even if they had knowledge of penalties applied to others in the past.

However, other authority underlines that general deterrence cannot be ignored, whether it is an actual phenomenon (or not) or simply because the law requires it to be so, given that it is a long held traditional principle. King CJ in *Yardley v Betts* (1979) 1 A Crim R 329 at 33 remarked:

‘the courts must assume, although the evidence is wanting, that the sentences which they impose have the effect of deterring at least some people from committing crime.’

Further in *R v Wong* (1999) 48 NSWLR 340, Spigelman CJ offered the view that at pp 127-128:

‘(t)here are significant differences of opinion as to the deterrent effect of sentences....(n)evertheless, the fact that penalties operate as a deterrent is a **structural assumption** of our criminal justice system. Legislation would be required to change the traditional approach of the courts to this matter’ (emphasis added).

The obvious question becomes: ‘If behavioural science methods can verify with reasonable certainty that general deterrence (or any other so called sentencing principle) does not exist, then why should it form part of the law at all?’ Von Hirsch (1985) (as quoted in Bargaric 1999) is clear on this; “there is no evidence that offenders make comparisons regarding the level of punishment for various offences” and it would be surprising if either offenders or the public at large had any realistic idea of maximum or likely penalties for most offences.

The legal and conceptual notion of punishment varies considerable from the behavioural sciences' definition of punishment. Psychological 'learning theory' differentiates punishment from classical conditioning, positive reinforcement, and negative reinforcement. Punishment is a specific learning paradigm designed to reduce the frequency or delete of behaviour. But, in each case, the consequence(s) of behaviour must be contiguous (ie timeous) to reduce or eliminate recurrence of the behaviour. This principle of contiguity is relevant to arrest and penalty. The sooner an offender is arrested and punished, the more likely that they will associate offending behaviour with

adverse consequences. But arrest and penalty are protracted processes. The operation of criminal justice institutions demonstrates that offending often persists until it is reported or detected and that courts take time to process matters to penalty. Consequently, the justice system's idea of punishment fails to meet the necessary principle of contiguity to satisfy psychological learning theory.

Further, the imposition of negative consequences can either increase behaviour (negative reinforcement) or decrease behaviour (punishment). Learning occurs in dynamic and ambiguous contexts, where the intended consequences of actions are often confounded by other factors.

Once an offender is sentenced, all modern western correctional services apply an evidence-based approach to the treatment and management of offenders which includes the use of validated assessment tools to assess the risk of re-offending, amongst other things. However, the public and the judiciary remain largely uninformed and unaware of what a particular sentence will entail.

More reliable knowledge of what effects a sentence will actually have on an offender would surely be invaluable in deciding what sentence to impose in the first place. Legislation that incorporates the behavioural sciences in the sentencing process would thus seem indicated.

Question 1.1

Should there be a legislative statement of the purposes of sentencing?

The Association argues that a statement of the purposes of sentencing is essential to communicating and guiding the courts in the exercise of sentence. A statement of the purposes of sentencing provides the courts with a principled foundation for important decisions that affect the victim(s), the offender, their families and the broader community.

As the current NSW legislation does not prioritise the purposes of sentencing, it is considered that some guidance for offences at different levels of seriousness would be valuable in removing the confusion as to the basis for a sentence in a given case and would also accord with community attitudes toward offenders.

To omit such a statement would leave the courts to implement sentencing on the basis of common law principles and case law alone. Such an omission would be an abrogation of the role of statute to clarify and delineate the exercise of powers and functions, and comprise a retrograde step from the present statute.

Question 1.2**1. Should courts be required to take every purpose in the statutory list into account in determining the appropriate sentence?**

The Association argues that the courts should not be required to satisfy every purpose of sentencing. This is partly because the purposes of sentencing are not consistent and reflect different, sometimes conflicting intent.

The Court should be able to continue its existing practices whereby penalty reflects the varying nature and seriousness of the offence and the circumstances of the offender. The least serious offences committed by the least serious offenders should continue to result in minor penalties like fines and bonds and the most serious offences committed by the most serious offenders should continue to result in imprisonment.

The courts should continue to use community-based penalties for the vast majority of matters. In so doing, they exercise primary functions of judgment and discretion. The courts should determine which cases warrant an emphasis on rehabilitation and which cases warrant an emphasis on community protection.

The many penalty options in the penalty hierarchy contain varying and conflicting elements. The Court should not be required to take all the purposes into account as its role is to adjudicate which purposes best serve the interests of the community, the victim and the offender for the index offence(s).

2. Are there any circumstances where a particular purpose should not be taken into account?

The Association makes no submission relating to this question at this time.

Question 1.3**1. Should it be possible for the court to refer to purposes that are not included in the statutory list when determining an appropriate sentence?**

The Association favours anchoring the courts' determinations in a list of sentencing principles which adequately encompasses the primary purposes of determining sentence. The court could conceivably refer to some other purpose of sentence, but not one without some relationship to a listed primary purpose. Punishment, community protection, rehabilitation, restitution, and repairing harm to the victim(s) and the community, for instance, are an encompassing set of purposes.

Consequently, it seeks to limit the discretionary power of the courts to the list of primary purposes. There may be examples of other purposes (eg maintaining family relationships and community ties) that make sense, but the Association finds it difficult to conceive purposes that are unrelated to, or a clarification of, primary purposes.

2. Should the list of purposes be exclusive of any other purpose of sentencing?

As indicated in the previous answer, the Association regards favours the list of sentencing principles adequately reflecting the primary purposes of determining sentence. This would not exclude related or clarifying purposes but would exclude a purpose that bore no relation to the listed purposes being pursued. Consequently, such aberrant practice should constitute grounds for appeal.

Question 14

1. Should a single overarching or primary purpose of sentencing be identified?

The Association recognises that there are sound reasons for articulating overarching sentencing principles that translate the universal notion of 'the public interest' into the criminal sentencing domain.

In a publication designed to explain sentencing to the general public "Judge for Yourself: A Guide To Sentencing In Australia", the Judicial Conference of Australia, being the national representative body for judicial officers, with over 600 members, offer the following explanation under the sub heading 'Balancing the reasons for a sentence':

'The purposes of sentencing may differ for different crimes, depending on their seriousness. For crimes like murder or armed robbery, the major purposes are likely to be punishment and general deterrence. For less serious crimes such as graffiti or malicious damage, the judicial officers might view rehabilitation as the major consideration when imposing the sentence.'⁷

It would be possible to condense this intent to a wording for statute, such as:

'The purposes of sentencing may differ for different crimes and offenders, depending on their relative seriousness. For the least serious crimes and offenders, the courts might view restitution and rehabilitation as the major purposes when imposing the sentence. For the most serious crimes and offenders, community safety and protection are likely to be the main purposes.'

As an example, the Commonwealth of Kentucky enacted the *Public Safety and Offender Accountability Act 2011*, which established that the primary objective of sentencing is "maintaining public safety and holding offenders accountable while reducing recidivism and criminal behavior." The aim of the new law was to decrease the state's prison population, reduce incarceration costs, reduce crime and increase public safety. Section KRS 532 of the Act reads:

'It is the sentencing policy of the Commonwealth of Kentucky that:

⁷ 'Judge for yourself: A Guide to Sentencing in Australia', Judicial Conference of Australia, www.lawlink.nsw.gov.au/sentencingcouncil Accessed 18/11/2011, p 18.

- (1) The primary objective of sentencing shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced;
- (2) Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system;
- (3) Sentencing judges shall consider: ...
 - (b) The likely impact of a potential sentence on the reduction of the defendant's potential future criminal behavior.⁸

A further attempt to impose a sentencing hierarchy is found in the 1985 Canadian criminal code. The code states:

'The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just , peaceful and safe society by imposing one or more of the following objectives:'⁹

However, these efforts advance the notion of 'the public interest' only a small distance. Such possibilities as 'to promote community safety and reduce crime', while worthy attempts, remain open to charges of 'motherhood statements' or bland truisms. Because crimes vary in seriousness and consequences, and the causes of crimes are so disparate, sentencing requires varying purposes and applies a range of penalties. Consequently, it is difficult to anchor competing and conflicting purposes to a single umbrella concept other than 'to promote community safety and reduce crime'.

The medical profession, but not the health system, adopt the Hippocratic Oath.¹⁰ This is a far more expansive and complex explanatory statement of the goals and obligations of medical practice. It would be possible to construct a similar statement for sentencing practitioners but this would not easily condense to an overarching purpose in statute.

An alternative approach would be to adopt the principle of 'promoting community safety through community-based penalties that repair the harm afforded to victims and the community'. In this case, the most serious offences and offenders would require an exception to this principle (see the next question).

At this time, the Association advocates greater use of restorative and restitution options. It also retains the policy *dicta* of:

Imprisonment as *the punishment of last resort*, reserved principally for community protection reasons; and

Imprisonment as punishment, not for punishment.

⁸ Commonwealth of Kentucky *Public Safety and Offender Accountability Act 2011* Section KRS 532.

⁹ Canadian Criminal Code 1985 s 718.

¹⁰ See <http://nktiuro.tripod.com/hippocra.htm> Accessed 15/06/2012.

While it is preferable to have an overarching concept, defining and articulating such a concept is very difficult, but not perhaps not insurmountable. Options such as those outlined above could be developed and evaluated.

2. What circumstances (such as the nature of the offence or the offender) might justify a different overarching or primary purpose?

If the initial presumption is in favour of community-based penalty options, then the serious nature of the offence and/or the offender would justify that community safety be the overarching purpose.

3. Should a hierarchy of sentencing purposes be established?

The Association further submits that New South Wales formally adopt a two-tiered approach to sentencing. In the vast majority of cases before the Local Courts, Magistrates give little or no thought to imposing a custodial penalty. The vast majority of men and women are and can be dealt with using community-based options. The statutory law needs to imitate and promote this practice from the earliest possible point. Similarly, it needs to quickly identify the most heinous offences and deal with these in the manner whereby the principal issue is the length and structure of the custodial sentence, which may include home detention or parole supervision. This is not to negate the fact that many matters and offenders are neither clearly one nor the other, or to minimise the task of defining the criteria by which such decisions be made. But the Association's proposal can overcome the problem that the criminal law creates in listing a period of imprisonment for the overwhelming majority of crimes. Such listing falsely leads thinking towards custody, but a hierarchy of sentencing purposes should recognise and facilitate community-based sentencing for the vast majority of cases, without neglecting the need to incapacitate the worst offenders for the worst crimes.

The Association favours sentencing purposes list in descending priority order. Rather than addressing the most serious offences and offenders initially, it should be framed to address the vast majority of offences and offenders, which are disposed of with community-based penalties.

4. a. If so, what that hierarchy might be, and

The interest of victims and the community should be the first and predominant concerns of the justice system, followed by compensation and restitution¹¹ opportunities for offenders, with punishment as a lesser consideration. If crimes are fundamentally defined by their harm done to a victim or to the community, then repairing the harm done to victims and the community is foremost, with prevention of further offending a very near companion. The current order of purposes thus appears to be the opposite of what it should be. Re-stating the purposes of sentencing in a revised priority order would have

¹¹ Restitution includes community service work and fines. Fines can be regarded both as a financial punishment and restitution to the broader community for harm and wrong-doing.

profound effects on both pre sentence and sentence processes. The purposes of sentencing should be re-prioritised, raising the following principles and interests:

- a) the interests of victims, such as restitution, compensation, reconciliation and other possible restorative aspects;
- b) the likely social and economic impacts of the penalty upon victims and their families, offenders and their families, and the broader community;
- c) the protection and safety of the community; and
- d) the likely prospect of rehabilitation and reducing recidivism.

These principles effectively incorporate the existing principles in s 3A of the *Crimes (Sentencing Procedure) Act 1999* but delete certain principles that are embedded in the law and the criminal justice system, namely holding the offender accountable for his/her actions, denouncing the conduct of the offender, to prevent crime through deterrence, to ensure adequate punishment.

4. b. In what circumstances might it be appropriate to vary from that hierarchy?

The Association makes no submission relating to this question at this time.

5. Should guidance be provided as to the court's approach to applying the purposes of sentencing in particular circumstances?

The Association makes no submission relating to this question at this time.

6. Should it expressly state that there is no hierarchy of sentencing purposes?

No. This formalises the position of the current statute and abandons the challenge of clarification and simplification to remove ambiguity, conflict and confusion.

Question 1.5

1. Is ensuring the offender is adequately punished for the offence a valid purpose of sentencing?

The Association does not regard 'ensuring adequate punishment' as a valid purpose of sentencing. Adequate sentencing, like clear sentencing and parity of sentencing, is an attribute or property of all sentences. Further, many existing penalty options have little to do with punishment eg compensation, bonds, probation, etc. The varying nature of the sentencing options was discussed earlier in this document.

2. Does the purpose of punishment need to be qualified in any way?

The Association considers that deterrence and adequacy are not valid purposes of punishment. It comments on these aspects elsewhere in this submission. Punishment is a

likely consequence of offending and not a purpose of sentencing. The notion and punishment as a consequence of crime is widely held, as is punishment proportional to the seriousness of the offence and the offender. Punishment this has intrinsic purposes and probably does not need to be qualified in any way.

Question 1.6

1. Is preventing crime by deterring others from committing similar offences a valid purpose of sentencing?

The Association does not regard deterrence as a valid purpose of sentencing. The vast majority of citizens who never go near a courtroom are adequately deterred without being sentenced. Those who continue to appear in courtrooms have not been deterred and a different approach is warranted. The notion of deterrence is strongly sustained within the law despite empirical research which negates its effects and therefore its validity.¹²

2. Should general deterrence be a relevant consideration in relation to all offences and all offenders? How could its application be limited?

The Association does not regard general deterrence as a valid purpose of sentencing. It is strongly sustained within the law despite empirical research which negates its effects and therefore its validity.

2. TABLE OF CASES

R V Willscroft (1975) VR 292

Veen v The Queen (No 2) (1988) 164 CLR 465

Regina V KB, JL and RJB (2011) NSWCCA 190

Yardley V Betts (1979) 1 A crim R 329

R V Wong (1999) 48 NSWLR 340

3. LEGISLATION

Crimes (Sentencing Procedure) Act 1999

Canadian Criminal Code 1985

Commonwealth of Kentucky *Public Safety and Offender Accountability Act 2011*

¹² See, for example, the recent study by Wan, W.-Y., Moffatt, S., Jones, C. and Weatherburn, D. 2012, 'The effect of arrest and imprisonment on crime', *Crime and Justice Bulletin*, No 158 February 2012. The researchers found that arrest reduced recidivism, but imprisonment did not. Hence fear of detection rather than punishment is salient.

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