

# REVIEW OF THE CRIMES (SENTENCING PROCEDURE) ACT 1967

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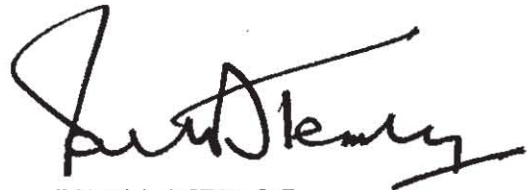
NSW LAW REFORM COMMISSION

## PRELIMINARY SUBMISSION

1. The main difficulty with current laws relating to sentencing is that they are needlessly complex. The rationale appears to be that if all relevant considerations are specified, and required to be addressed, that will lead to a high degree of predictability and uniformity. These results are incapable of achievement. The first reason is that the objective circumstances of even common crimes tend towards difference, not similarity. Secondly and more importantly, the subjective factors individual to offenders differ, and often widely. Even given the same offence, the same circumstances, and the same prior record, it will or may be appropriate to send this one to prison and give the other a chance, e.g. a community service order.
2. A particular difficulty arises from the requirement that Judges decide and declare where in a scale of seriousness a particular offence sits: medium, just above, just below, well above, well below, and so on. This takes a deal of judicial time and serves no real useful purpose. Section 21A should be done away with.
3. At the moment, as BOCSAR statistics show, the sentencing process is taking a long time in even average cases, the time taken has about doubled over the past decade, and it ought be reduced. Delay increases the work involved, and not just for the Judge - every adjournment is wasteful of resources.
4. Delay is bad for victims, and also for convicted persons. General deterrence will tend to be less effective to the extent conviction of an offence is not seen to be followed, relatively quickly in most cases, with punishment as appropriate (I should add that I do not know, as I have not seen statistics, what the delay position is before Magistrates, and whether it is getting worse, better, or about the same).

5. The aim must therefore be to simplify sentencing laws while maintaining transparency and reasonable consistency, and enabling the entire process to be hastened.
6. I have no objection to this short and preliminary submission being published.

30 September 2011



IAN TEMBY QC