Question Paper 5 – Full-time imprisonment

The ratio of the non-parole period and balance of term

Question 5.1

1. **Should the "special circumstances" test under s 44 of the *Crimes (Sentencing Procedure) Act 1999 (NSW)* be abolished or amended in any way? If so, how?**

   The Committee is of the view that consideration should be given to abolishing the presumptive ratio. Abolishing the presumptive ratio would increase the court's discretion and remove the need for 'special circumstances'.

2. **Should a single presumptive ratio be retained under s 44 or should a different ratio apply for different types of offences or different types of offender; and, if so, what ratio should apply to different offences or different offenders?**

   If a presumptive ratio is retained, it should be a single presumptive ratio of 50% of the head sentence. The Committee does not support a different ratio for different types of offences or different types of offenders.

Top-down and bottom-up approaches

Question 5.2

1. **Should the order of sentencing under s 44 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) return to a 'top down' approach?**

   The court should have the discretion to use a 'top down' approach. The Committee supports a return to the instinctive synthesis approach to sentencing.

2. **Could a 'top down' approach work in the context of standard minimum non-parole periods?**

   A 'top down' approach could work in relation to standard minimum non-parole periods post *Muldrock*.

Short sentences of imprisonment

Question 5.3

1. **Should sentences of six months or less in duration be abolished? Why?**

   The Committee does not support the abolition of prison sentences of six months or less in duration.

Abolishing sentences of six months or less pre-supposes that such prison sentences would be replaced by alternatives to full-time custody. Alternatives to full-time custody are not available uniformly throughout NSW.[1]

The Committee is concerned that if short prison sentences were abolished, offenders would be inappropriately sentenced to a longer period of imprisonment.

Abolishing sentences of six months or less would remove a sentencing option that may be appropriate in certain circumstances and would constitute an unnecessary fetter on judicial discretion.

2. **Should sentences of three months or less in duration be abolished? Why?**

   No. See response to Question 1.

3. **How should any such abolition be implemented and should any exceptions be permitted?**

   Not applicable.

4. **Should sentences of imprisonment of six months or less continue to be available as fixed terms only or are there reasons for allowing non-parole periods to be set in relation to these sentences?**

   The court should have the discretion to set non-parole periods in relation to sentences of six months or less, with a presumption that there is no need for supervision in the community after release.

Aggregate head sentences and non-parole periods

Question 5.4

1. **How is the aggregate sentencing model under s 53A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working in practice and should it be amended in any way?**

   Section 53A has only been in force since 2011, however, during the short period of time it has been in place it appears to be working well.

2. **Should a court be required to state the individual sentences that would have been imposed if an aggregate sentence had not been imposed by the court?**

   Yes, a court should be required to state the individual sentences that would have been imposed if an aggregate sentence had not been imposed in order to promote transparency and consistency.

[1] Legislative Council Standing Committee on Law and Justice, '*Community based sentencing options for rural and remote areas and disadvantaged populations*', 2006, pxii.

Accumulation of sentences and special circumstances

Question 5.5

1. **Should a court be required to state reasons if the effective sentence does not reflect the special circumstances finding on the individual sentences?**

   The Committee is of the view that consideration should be given to abolishing the presumptive ratio. If the presumptive ratio is retained, the special circumstances should apply to the overall sentence as opposed to the individual sentences.

2. **Are there any other options to deal with these cases?**

   Sentencing errors should be dealt with under the current law; legislative amendment is not required.

Directing release on parole

Question 5.6

What limit should be applied to the automatic release of offenders to parole on expiry of a non-parole period?

The Committee agrees with the suggestion by Legal Aid NSW that the three year limit in section 50 should be extended to five years.

Question 5.7

1. **Should back end home detention be introduced in NSW?**

   The Committee is of the view that any proposal to increase sentencing options should be considered, but requires considerably more analysis and consultation.

2. **If so, how should a person's eligibility and suitability for back end home detention be determined and by whom?**

   The Committee agrees with the Law Reform Commission that it is difficult to identify who should determine the eligibility and suitability of a person for back end home detention. A number of difficulties arise with either the court or the Parole Authority making a determination. Again, this issue requires further analysis.

Local Court's sentencing powers

Question 5.8

1. **Should the sentencing jurisdictional limits in the Local Court be increased and, if so, by how much?**

   The Committee does not support an increase to the sentencing jurisdictional limits in the Local Court.

In its 2010 report '*An examination of the sentencing powers of the Local Court in NSW*' the Sentencing Council recommended that the jurisdictional limit of the Local Court, in respect of imposing sentences of imprisonment, should not be enlarged.

The Sentencing Council found that the sentencing statistics do not support the need for a general increase in the Local Court's jurisdiction. The Sentencing Council accepted the policy reasons identified in the submissions to the review as supporting the preservation of the status quo.

The Committee supports the policy reasons in support of maintaining the status quo as summarised by the Sentencing Council as follows:

- Any significant increase in the Local Court jurisdiction would have a real impact on the courts, increasing the workload of the Local Court and decreasing the workload of the District Court, with a consequent risk of delay in the Local Court and an inability to use the resources of the District Court to their full extent;

- While the Local Court has an advantage in that proceedings in that Court are likely to be quicker, more cost effective and less intimidating, any increase in its summary sentencing jurisdiction, risks reducing the incidence of trial by jury - a factor that could be of some significance in relation to Table 2 offences where the defendant is unable to elect for jury trial;

- A significant consequence of any such increase would be a likely increase in appeals to the District Court with adverse consequences for its trial lists and for the costs of those involved in such cases; as well as a potential reduction in the opportunity for appellate review by the Court of Criminal Appeal whose decisions provide clear and published direction on sentencing issues;

- Any such increase would increase the workload of Police Prosecutors, requiring the provision of additional training and resources, or alternatively an increase in deployment of solicitor advocates attached to the ODPP to handle more serious cases;

- There is a possibility of an increase resulting in sentence creep, in which event there would be consequences for Corrective Services NSW and the NSW State Parole Authority;

- Additional pressure would be imposed on Legal Aid when determining whether election for jury trial would be required in cases likely to attract higher sentences in the Local Court, or in providing adequate representation if those cases remain in the Local Court;

- A greater proportion of cases would be conducted by police prosecutors who although subject to a number of ethical or service requirements, are not subject to the same provisions and obligations attaching to legal practitioners.[2]

2. Should a magistrate be able to refer a sentencing matter to the District Court if satisfied that any sentence imposed in the Local Court would not be commensurate with the seriousness of the offence?

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[2] '*An examination of the sentencing powers of the Local Court in NSW*', A Report of the NSW Sentencing Council, December 2010, pp39-40

No. The Committee is of the view that if a matter is of such a serious nature that it should attract a sentence that exceeds the statutory sentencing jurisdiction of the Local Court it can be referred by the prosecution to a superior court to be heard on indictment.

The Committee is not aware of instances of cases that have been resolved in the Local Court were the defendant should have received a longer sentence but did not because the magistrate was not empowered to impose it. If such cases have occurred, it may be that the problem is not in fact the jurisdictional limit of the Local Court, but a failure to elect.

Question Paper 6: Intermediate custodial sentencing options

Compulsory drug treatment detention

Question 6.1

1. **Is the compulsory drug treatment order sentence well targeted?**

   The compulsory drug treatment detention program should be made available to female offenders.

2. **Are there any improvements that could be made to the operation of compulsory drug treatment orders?**

   The Committee is not in a position to comment on any improvements to the operation of the compulsory drug treatment orders.

Home detention

Question 6.2

1. **Is home detention operating as an effective alternative to imprisonment?**

   Home detention is a cost-effective alternative to full-time imprisonment that is rarely used. There is a need to expand the availability of home detention.

   The net operating expenditure per prisoner per day on home detention is approximately $47 compared to approximately $187 per day for an offender in minimum/medium security imprisonment.[3]

2. **Are there cases where it could be used, but is not? If so what are the barriers?**

   Home detention is not available throughout New South Wales. As a consequence of the unavailability of this sentencing option certain classes of offenders who might otherwise have been assessed as suitable, find themselves being

[3] Auditor General's Report, Performance Audit, '*Home detention: Corrective Services NSW*', September 2010, p3.

sentenced to full time custody. In May 2012 there were only 84 offenders on home detention.[4]

In the performance report on home detention, the Auditor General identified a number of barriers to accessing home detention, including the following:

- home detention is not offered in many locations;
- referrals from Local Courts fluctuate;
- home detention assessment outcomes vary between Corrective Services NSW Community Compliance Group offices, and
- limitations of electronic monitoring capabilities.[5]

A home detention order is limited to a maximum duration of 18 months. There would be greater flexibility if the maximum duration was three years (two years in the Local Court consistent with its jurisdictional limit).

3. **Are there any improvements that could be made to the operation of home detention?**

Home detention should be made available across New South Wales. The program and its availability should be promoted to Local Court magistrates. Home detention should be available for a maximum duration of three years (two years in the Local Court consistent with its jurisdictional limit).

Intensive correction orders

Question 6.3

1. **Are intensive correction orders operating as an effective alternative to imprisonment?**

ICOs share many of the advantages of periodic detention as a sentencing option in that they enable the offender to maintain contact with family, friends and employment; avoid the contaminating effects of imprisonment; are cheaper than full-time imprisonment, and benefit the community by the performance of community work while retaining a strong element of punishment. Intensive case management with a rehabilitative focus would be beneficial for many offenders.

However, it is concerning that ICOs are not available across New South Wales especially in rural and remote areas. ICOs require the availability of rehabilitative programs and appropriate community service options that do not currently exist in many rural and remote areas.[6] The lack of availability of suitable programs reduces the value of ICOs as a sentencing option.

2. **Are there cases where they could be used, but are not? If so what are the barriers?**

In addition to the lack of availability of suitable programs discussed above, another barrier is the suitability assessments.

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[4] Offender Population Report, Corrective Services NSW, Corporate Research, Evaluation and Statistics, week ending 24 June 2012, p3.
[5] Auditor General's Report, Performance Audit, '*Home detention: Corrective Services NSW*', September 2010, p18.
[6] Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p71

The court may only order a suitably assessed offender to serve the sentence by way of an ICO. This differs from periodic detention where the court could make a periodic detention order whether or not the offender had been assessed as suitable to serve the sentence by way of periodic detention. Assessments involve a level of subjectivity, and it is not appropriate for a Corrective Services officer to have a greater level of discretion in the sentencing outcome for an offender than a Magistrate. Magistrates should have the discretion to order an ICO whether or not the offender has been assessed as suitable.

People who would benefit most from an ICO appear to be the least likely to be assessed as suitable. Offenders with mental illness, drug and alcohol problems, and unstable housing are often assessed as unsuitable, despite that fact that ICOs were 'designed to reduce an offender's risk of re-offending through the provision of intensive rehabilitation and supervision in the community.'[7] Offenders have been required to fund and organise their own psychological reports before Corrective Services would assess them as eligible.

In *R v Boughen; R v Cameron* [2012] NSWCCA 1 Her Honour Justice Simpson stated that where rehabilitation is an irrelevant consideration that in itself renders the use of ICOs as inappropriate (see paragraph 110). If the decision is followed it will lead to a decrease in the use of ICOs and an increase in the number of offenders in custody. In light of this decision it is even more important that further consideration be given to reintroducing periodic detention as discussed below at Question 6.8.

3. **Are there any improvements that could be made to the operation of intensive correction orders?**

ICOs are only available for terms of imprisonment of not more than two years. It is the Committee's view that ICOs should be available for a maximum term of three years (two years in the Local Court consistent with its jurisdictional limit). This would make the sentence more widely available and permit orders to be of sufficient duration to enable effective rehabilitative or educational program delivery.

The Committee suggests that the legislation should be reviewed to allow the court to set a non-parole period when making an ICO. As an alternative to increasing the maximum period of an ICO to three years, eligibility for an ICO could be based on a non-parole period of two years or less.

As discussed above, the availability of suitable programs and work and the suitability assessments are areas that require immediate reform.

Suspended sentences

Question 6.4

1. **Are suspended sentences operating as an effective alternative to imprisonment?**

The Committee supports the retention of suspended sentences agrees with the view that suspended sentences are a 'very useful sentencing option in situations

[7] The Hon J Hatzistergos MLC, Attorney General, Second Reading, *Crimes (Sentencing Legislation) Amendment (Intensive Correction* Orders) *Bill 2010*, 22/6/10.

where the seriousness of an offence requires the imposition of a custodial sentence, but where there are strong mitigating circumstances to justify the offender's conditional release'.[8]

The NSW Bureau of Crime Statistics and Research (BOCSAR) conducted research to examine the relative efficacy of suspended sentences and full-time imprisonment in reducing the risk of further offending. BOCSAR concluded as follows:

> 'Our results provide no evidence to support the contention that offenders given imprisonment are less likely to re-offend than those given a suspended sentence. Indeed, on the face of it, the findings in relation to offenders who have previously been in prison are inconsistent with the deterrence hypothesis. After the prison and suspended sentence samples in this group were matched on key sentencing variables, there was a significant tendency for the prison group to re-offend more quickly on release than the suspended sentence group.'[9]

BOCSAR also commented that full-time imprisonment is a far more expensive sentencing option than suspended sentences, and therefore from a specific deterrence perspective, suspended sentences are more cost-effective than full-time imprisonment.[10]

2. **Are there cases where suspended sentences could be used, but are not? If so what are the barriers?**

   No.

3. **Are there any improvements that could be made to the operation of suspended sentences?**

   The term of imprisonment that may be suspended should remain at two years in the Local Court (consistent with its jurisdictional limit) and should be increased to three years for District Court matters. This would allow the District Court a greater flexibility for young and limited record offenders who commit serious offences but may not pose a risk to the community in terms of recidivism.

4. **Should greater flexibility be introduced in relation to:**

   a. **the length of the bond associated with the suspended sentence?**

   The operational period should correspond to the maximum sentence that may be suspended; two years in the Local Court and, if the Committee's suggestion is adopted, three years in the District Court.

   b. **partial suspension of the sentence?**

   The reintroduction of partially suspended sentences could lead to an increase in their use in place of community-based options. Parole provides sufficient supervision of offenders in the community. For these reasons, the Committee does not support the reintroduction of partially suspended sentences.

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[8] NSWLRC Report 79 (1996), '*Sentencing*', para 4.22.
[9] NSW Bureau of Crime Statistics and Research, '*The recidivism of offenders given suspended sentences: A comparison with full-time imprisonment*', Crime and Justice Bulletin 136 (2009),10.

[10] Ibid, 12.

c. options available to a court if the bond is breached?

The current lack of flexibility following a breach of a suspended sentence needs to be addressed. Amendments are required to give the court wider discretion when addressing a breach.

Currently the court must revoke a suspended sentence if the bond is breached unless the breach was trivial in nature or there are good reasons to excuse the breach (sections 98, 99 *Crimes (Sentencing Procedure) Act 1999*).

The Committee suggests that the reference to 'trivial in nature' is unhelpful in practice and should be deleted.

The Committee submits that 'good reasons for excusing the breach' should be expanded to allow the court to consider:

- matters that go to the nature of the breach;
- consequences of the breach;
- matters preceding and post-dating the breach;
- the circumstances of the offender, and
- any other subjective matters.

The Committee is of the view that there should be a broad distinction between a breach for non-compliance with a condition of the bond and a breach caused by further offending. A different test should be applied to distinguish between 'condition' and 'offence' breaches.

The court should have the power to deal with a breach of a condition that does not involve further offending by varying, removing or imposing conditions in addition to the option of revocation.

Although a breach caused by the commission of a further offence is more serious than a "condition" breach, revocation should not be mandatory. The court should consider the seriousness of the offence, and have the discretion to vary or impose conditions in addition to the option of revocation.

Rising of the court

Question 6.5

1. **Should the "rising of the court" continue to be available as a sentencing option?**

   No, the 'rising of the court' is an anachronism and should be abolished.

2. **If so, should the penalty be given a statutory base?**

   Not applicable.

3. **Should the "rising of the court" retain its link to imprisonment?**

   Not applicable.

Maximum terms of imprisonment that may be served by way of custodial alternatives

Question 6.6

1. **Should any of the maximum terms for the different custodial sentencing options in the *Crimes (Sentencing Procedure) Act 1999* (NSW) be changed?**

   Yes. Home detention, ICOs and suspended sentences should be available for a maximum term of imprisonment of three years (two years in the Local Court consistent with its jurisdictional limit).

2. **Should there be a uniform maximum term for all of the custodial alternatives to full-time imprisonment?**

   Yes.

3. **Should the terms of custodial alternatives to full-time imprisonment continue to be tied to the sentence of imprisonment that the court initially determined to be appropriate?**

   Yes.

4. **Should the Local Court's jurisdictional limit be increased for custodial alternatives to full-time imprisonment?**

   No.

Other options

Question 6.7

What other intermediate custodial sentences should be considered?

The Committee supports the reintroduction of periodic detention as discussed at Question 6.8.

Question 6.8

Should further consideration be given to the reintroduction of periodic detention?

Yes, periodic detention should be reintroduced and modified in a manner that addresses the acknowledged shortcomings of the previous framework.

The abolition of periodic detention has removed an important component of the sentencing spectrum and will inevitably lead to the use of full-time imprisonment in circumstances where it is not necessarily the most appropriate approach. The Committee's strong preference is for periodic detention to be reintroduced, with ICOs retained as an additional sentencing option sitting between periodic detention and community service orders.

While periodic detention as a sentencing option was an alternative to full-time detention it was still a custodial sentence. By its nature it had a very strong

element of leniency already built into it and was outwardly less severe in its denunciation of the crime than full-time imprisonment: *R v Hallocoglu* (1992) 29 NSWLR 67 per Hunt CJ at CL at 73. Even so, the continuous obligation of complying with a periodic detention order week in and week out over a lengthy period of time was, in itself, a salutary punishment: *R v Burnett* (1996) 85 A Crim R 76 per Sheller JA at 82. It was a sentencing option that was recognised by the community and victims as involving an actual custodial component.

The option of sentencing an offender to periodic detention enabled the court to punish an offender without the negative effects of full-time imprisonment. The offender could maintain community and family ties by retaining employment and living with his or her family.

Periodic detention was also less costly than full-time imprisonment and benefitted the community through the work performed by the periodic detainees.

If so:

a) what should be the maximum term of a periodic detention order or accumulated periodic detention orders;

Three years (two years in the Local Court consistent with its jurisdictional limit).

b) what eligibility criteria should apply;

The eligibility criteria contained in former section 66 of the *Crimes (Sentencing Procedure) Act 1999* provided that the court must be satisfied that:

- the offender is at least 18;
- the offender is a suitable person to serve the sentence by way of periodic;
- periodic detention is appropriate in all the circumstances;
- accommodation is available at a periodic detention centre;
- travel arrangements are available, so as to avoid undue inconvenience, strain or hardship on the offender;
- the offender has signed an undertaking to comply with the obligations of the order.

These eligibility criteria are appropriate.

Former section 65A provided that a periodic detention order could not be made when an offender has previously served a sentence of imprisonment for more than six months by way of full-time detention. The Committee is strongly of the view this restriction should not be reintroduced. .

Former section 65A inappropriately fettered judicial discretion. Past imprisonment and criminal history are issues relevant to assessing the suitability of offenders for periodic detention. However, suitability cannot, and should not, be arbitrarily determined merely having regard to the fact that a person has previously served a period of full-time imprisonment.

The restriction operated to prevent an assessment being made of an offender's suitability to serve a fresh sentence by the most appropriate means, and failed to acknowledge what could be long periods of rehabilitation in between offences.

c) how could the problems with the previous system be overcome and its operation improved; and

The option of periodic detention in rural and remote NSW was greatly restricted due to the limited number of periodic detention facilities. Many offenders do not have a personal means of transport, and the limited availability and regularity of public transport meant that they were assessed as unsuitable for periodic detention.

If periodic detention is to be reintroduced, then additional facilities would be required to cater for more offenders living in rural and remote communities, and for Aboriginal and female offenders.

d) could a rehabilitative element be introduced?

A court should have the discretion to order offenders serving periodic detention to attend rehabilitation and vocational programs designed to address offending behaviour. The addition of this rehabilitative element would make periodic detention a more useful sentencing option.

Question Paper 7: Non-custodial sentencing options

Community service orders

Question 7.1

1. Are community service orders working well as a sentencing option and should they be retained?

Community service orders (CSOs) are working well as a sentencing option and should be retained.

2. What changes, if any, should be made to the provisions governing community service orders or to their operational arrangements?

Weekend work needs to be made available state-wide.

Section 9 bonds

Question 7.2

1. Is the imposition of a good behaviour bond under s 9 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should s 9 be retained?

Yes. Bonds recognise the seriousness of the offence while providing the offender with the opportunity, by good behaviour, to avoid the consequences. The flexibility of a bond allows the court to order a range of conditions to address offending behaviour. Bonds meet the deterrent and rehabilitative purposes of sentencing while allowing the offender to remain in the community.

2. What changes, if any, should be made to the provisions governing the imposition of good behaviour bonds under s 9?

The Committee is of the view that the provisions governing the imposition of good behaviour bonds under section 9 do not require amendment.

Good behaviour bonds

Question 7.3

1. **Are the general provisions governing good behaviour bonds working well, and should they be retained?**

   Yes. The flexibility of bonds allows the court to order a range of conditions to address offending behaviour by providing supervision, and conditions such as counselling and treatment programs.

2. **What changes, if any, should be made to the general provisions governing good behaviour bonds or to their operational arrangements?**

   The Committee is of the view that the general provisions governing good behaviour bonds and their operational arrangements do not require amendment.

Fines

Question 7.4

1. **Are the provisions relating to fines in the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well, and should they be retained?**

   The Committee acknowledges that fines are an appropriate sentence for the majority of minor offences in the Local Court. However, the Committee is concerned about excessive fines imposed as a matter of course in the Local Court and would like a review of fines policies.

   While section 6 of the *Fines Act 1996* provides that the Court should consider the capacity of a person to pay when fixing the amount of a fine, Committee members report that this is rarely observed.

   The most significant problem with the fine enforcement system is the link between non-payment of fines and suspension/refusal of driver licences. Where the unpaid fines are traffic fines, this makes some sense and is perhaps justifiable; however, to impose licence sanctions for non-traffic fines is illogical and may result in injustice.

   Nearly one quarter of all Indigenous appearances in the NSW Local Court are for road traffic and motor vehicle regulatory offences.[11] Many of these offences are committed by people who have been caught driving a motor vehicle after having had their driving license suspended for non-payment of a fine.[12]

   The Committee submits that licence sanctions for non-traffic fines should be abolished.

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[11] Bureau of Crime Statistics and Research, '*Reducing Indigenous Contact with the Court System*', Issue Paper No. 54, December 2010, p3.
[12] Ibid.

2. **Should the provisions relating to fines in the *Crimes (Sentencing Procedure) Act 1999* (NSW) be added to or altered in any way?**

   No. The Committee's comments about fine provisions relate to the *Fines Act 1996* not the *Crimes (Sentencing Procedure) Act 1999*.

3. **Where a particular offence specifies a term of imprisonment but does not specify a maximum fine, how should the maximum fine be calculated?**

   The Committee does not have a view on this matter.

Conviction with no other penalty

Question 7.5

1. **Is the recording of no other penalty under s 10A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should it be retained?**

   Section 10A is working well as a sentencing option and should be retained.

2. **What changes, if any, should be made to the provisions governing the recording of no other penalty or to its operational arrangements?**

   The 'rising of the court' should be abolished as a sentencing option.

Non-conviction orders

Question 7.6

1. **Are non-conviction orders under s 10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working well as a sentencing option and should they be retained?**

   It is vital that magistrates have the discretion to dismiss a charge or impose a bond without proceeding to conviction. This discretion allows the court to have regard to the offender's subjective circumstances and ensure a just result in each case.

   The Committee notes that non-conviction orders are very useful sentencing options for young people, disadvantaged people, people with an intellectual disability and people with mental health problems.

   The Committee is strongly of the view that the court's use of non-conviction orders is appropriate. The number of appeals compared to the number of section 10 orders imposed suggests that they are utilised appropriately.

2. **What changes, if any, should be made to the provisions governing s 10 non-conviction orders or to their operational arrangements?**

The Committee supports the findings of the Sentencing Council that the provisions governing section 10 do not require legislative reform.[13]

Question 7.7

Should it be possible to impose other sentencing options in conjunction with a non-conviction order? If so, which ones?

It should be possible to impose fines and CSOs and in doing so the Court should have the option of being able to do this without the recording of a conviction as presently can occur in other states. This would be separate and apart from those matters dealt with pursuant to section 10. This approach would increase judicial discretion.

Other options

Question 7.8

Should any other non-custodial sentencing options be adopted?

Alternative non-custodial sentencing options should be given further consideration.

Question 7.9

Should a fine held in trust be introduced as a sentencing option?

A fine held in trust should be introduced as a sentencing option.

Question 7.10

1. **Should work and development orders be adopted as a sentencing option?**

   No, the Committee does not support adopting work and development orders (WDOs) as a sentencing option.

2. **Alternatively, should the community service order scheme be adapted to incorporate the aspects of the work and development order scheme that assist members of vulnerable groups to address their offending behaviour?**

   The Committee supports the proposal to adapt the CSO program to incorporate aspects of the WDO program to ensure that the particular needs of members of vulnerable groups are adequately met.

[13] NSW Sentencing Council, Good behaviour Bonds and Non-Conviction Orders, September 2011, pp60-78.