SUBMISSION TO THE LAW REFORM COMMISSION OF NEW SOUTH WALES ON BEHALF OF THE HOMICIDE VICTI MS' SUPPORT GROUP (AUST) INC.

SENTENCING PAPERS 5, 6 AND 7

17 AUGUST 2012

SUBMISSIONS TO LAW REFORM COMMISSION OF NSW.

1 BACKGROUND – The Homicide Victims' Support Group (Aust) Inc (HVSG)

The Homicide Victims' Support Group (Aust) Inc. was founded in June 1993, at the Institute of Forensic Medicine at Glebe.

The group was established when the parents of Anita Cobby and the parents of Ebony Simpson were introduced to each other and they, with the staff at the Institute, recognised the very real need for an organisation which could offer counselling, support and information to families and friends of homicide victims throughout NSW.

The aims of HVSG are threefold:

- offering support, counselling and advice to families and;
- educating the general public and professional bodies and Government agencies about the needs of homicide affected families; and
- reform of various laws that impact on family members.

HVSG has a working partnership agreement with Victims Services within the Attorney General's Department and the NSW Police Force that enables them to receive a notification form of every homicide in NSW within 48 hours of the homicide occurring. This then enables HVSG, the police and other services to put into place a comprehensive plan around supporting the surviving family members.

2 SCOPE OF THESE SUBMISSIONS

HVSG is grateful for the opportunity to provide comment to the Law Reform Commission (**LRC**) on Sentencing Question Papers 5, 6 and 7. The scope of these submissions is limited to matters in issue raised by HVSG and the families of victims of homicide. The submissions relate only to the sentencing of offenders who have been charged with murder and manslaughter.

GENERAL COMMENT ON SENTENCING IN HOMICIDE CASES

As noted in HVSG's previous Sentencing Submission to the LRC dated 4 June 2012 the primary purpose of sentencing in homicide cases is the recognition of harm, adequate punishment, accountability, protection of the community and denunciation. However, HVSG understands that flexibility is required to ensure that the competing purposes of punishment and rehabilitation are appropriately acknowledged. HVSG note *Veen v R (No.2)* (1988) 164 CLR where the majority of the High Court observed:

> *"…sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from the unavoidable difficulty in giving weight to each of the purposes of punishment. The purpose of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guidelines to the appropriate sentence but sometimes they point in different directions."*

HVSG understand that establishing a balance between punishment, rehabilitation and reform is particularly difficult in homicide cases. However, it must be kept at the forefront of the minds of judiciary that the families and loved ones of the victims of homicide will never escape the irreversible and catastrophic impact of the crime. **HVSG submit that in homicide cases priority must be given to sentencing the offender to an appropriate period of incarceration.**

3 SPECIAL CIRCUMSTANCES

The frequent use of 'Special Circumstances'

Under Section 44 of the *Crimes (Sentencing Procedure) Act* 1999 (NSW) (***Sentencing Act***), a court is required to determine the non-parole period and then set the head sentence. The balance of the sentence must not exceed one-third of the non-parole period unless special circumstances are found. Once a 'special circumstance' is established the judiciary can depart from the presumptive ratio and reduce the non-parole period.

The frequency of findings of special circumstances by the judiciary is widely acknowledged. HVSG notes that the Judicial Commission of NSW studied the impact of standard non-parole periods on sentencing patterns and found that special circumstances were found in 84.4% of cases. [1] HVSG acknowledges that this is a universal figure and not isolated to homicide cases.

Indeed, Spigelman CJ noted in *R v Fidow* [2004] NSWCCA 172 [20] that "there is evidence that findings of special circumstances **have become so common that it appears likely that there can be nothing special about many cases in which the findings is made**."

Spigelman CJ also referred to the findings of the "Common Offences and the Use of Imprisonment in the District and Supreme Courts in 2002 report" [2] that noted "the open nature of special circumstances … indicate that the special circumstances provision is perhaps being utilised far more than was anticipated by Parliament."

HVSG also notes *R v Simpson* (2001) 53 NSWLR 704 where the Court of Criminal Appeal (**CCA**) found that "simply because there is present in a case a circumstance which is capable of constituting a special circumstance does not mean that a sentencing judge is obliged to vary the statutory proportion." Despite this, HVSG note that when special circumstances are found in homicide cases the non-parole period is nearly always reduced.

HVSG is troubled by the trend of applying 'special circumstances' in homicide cases that reduce the non-parole period to an unsatisfactory low level. The family members and loved ones of victims of homicide often express their concern about the inappropriateness of the heavy use of special circumstances in sentencing homicide offenders.

HVSG considers that the frequent application and wide interpretation of special circumstances in homicide cases has far reaching consequences that go beyond the individual cases which include:

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[1] Judicial commission of NSW, *The Impact of the Standard Non-parole Period Sentencing Scheme on Sentencing Patterns in New South Wales*, Monograph 33 (2010) 55.
[2] Sentencing Trends and Issues No 30 March 2004

- the community perceptio n that the s entencing o bjectives of retributio n, denunciation and the safety of the co mmunity can at times ap pear to be overridden by considerations of the subjective circumstances of the offender; and

- the wide va riation and application of special circumstances that ha s resulted in inconsistencies in sentencing and an increase in appeals.

The importance of general deterrence and denunciation

HVSG feels strongly that special ci rcumstances should not ove rride the importance of gene ral d eterrence an d de nunciation w hen cal culating non -parole periods in h omicide cases. HVSG n otes the appeal of *R v West* [2011] NSWCC A 91 whe re th e non-parole period impo sed fell below the minimum term as a result of the sentencing ju dge's emphasis on an offen der's sub jective case. The CCA allowed th e appeal as the non- parole period was considered ma nifestly inadequate. The CCA no ted t hat "general deter rence wa s an important fa ctor o n sentence an d the abse nce of any r eference to it in the re marks on sentence fortifies a conclusion that the Respon dent's subje ctive circumstances dominated the calculation of the non-parole period in an impermissible way."[3]

Transparency in sentencing

The importa nce of transpare ncy in sentencing is heightene d when ther e is a reduction in the non- parole periods in hom icide cases. HVSG and the sur viving families would be grateful for more consistent commitment to articulating the justification for findings of special circumstances. This would a llow the lo ved one s of homicide victims to be clear ab out t he reaso ns for the r eduction in the no n-parole period.

HVSG also notes that w hen sp ecial circumstances are f ound an d impo sed on individual se ntences (ma king the n on-parole period less than three qu arters of head senten ce) the effect of finding s pecial circumstances ca n be lost wh en th e sentences are accumulated together. This results in appeals by the defence to the CCA.

4 AMENDMENTS TO SPECIAL CIRCUMSTANCES AND PRESUMPTIVE RATIOS

Concerning use "special circumstances" in homicide cases

The finding of a special ci rcumstance is a discretionary finding of fact and wh at may amount to special circumstance is the subject of significant debate.[4]

Indeed, In *Pearce v The Queen* (1998) 194 CLR 610, Justice Hunt noted that:

> "*What constitutes special circumstanc es is so mething mo re than tho se matters whic h may b e ta ken into account by way of mitigatio n of the total sentence. If it were othe rwise, there would b e no need for th e adjective 'special'… Someti mes the combinati on of those circ umstances may be sufficient. But what must be shown ar e circumstances which demo nstrate the need or desirability for the offen der to be subjected to an extended period of conditional release subject to supervision on parole."*

[3] R v West [2011] NSWCCA 91 at p52.
[4] Sentencing Question Paper 5 at 6.

HVSG submits that not all circumstances should be considered sufficiently special to result in departure from the presumptive ratio in homicide offences.

HVSG notes in *R v Andrew Terr ance Whiting* [2002] NSWSC 827 that special circumstances such as non-association pr otection in custody, alcohol problem s and psychiat ric disorders resulted in an inadequate non-p arole period of 3 years for a domestic-related manslaughter.

There is a wi de variety of circumstances that are considered to be special and are taken into consideration when d eparting fr om the presumptive ratios of homicid e cases. HVSG is particularly concer ned with the commonly referred to special circumstances of early plea, first time in custody, physical and mental health of the offender and drug rehabilitation.

Early Plea.

HSVG acknowledges that the aim of guilty pleas is to assist in the facilitation of the course of ju stice and th at the strength of the Cro wn case has no bea ring on th e assessment of the utilit arian aspect of the plea. [5] Howe ver, H VSG would like to take the opportunity to re cognise how difficu lt it is for family members to accept that early guilty pleas are valid r easons for r educing the non- parole perio d significantly in very strong Crown homicide cases.

HVSG note:

- the matter of *R v Mark Anthony Coll on* [200 8] N SWSC 174 where, after stabbing the victim, the defend ant not ified eme rgency and said "I just stabbed a guy, man", "I … killed him" . The defendant received a discount of 15% for a guilty plea that was made "fairly late in the day"[6]; and

- the matter of *R v Jam es Dean-Willcocks* [2012] NSWSC 10 7 wher e th e defendant in flicted grie vous bodily ha rm causing death in br oad d aylight. The d efendant recei ved a discount of 2 5% for an ea rly guilty ple a to manslaughter.

HVSG woul d feel mor e comfortable if **only very modest discounts o n sentencing for earl y guilty pleas in strong Cro wn homicide cases were allowed.**

First time in custody.

HVSG is concerned ab out the e xtent to which t he accused' s lack of a criminal history' is considere d in sentencing homicide cases. This factor, as well as whether the accused has previously been incarcerated, should not signi ficantly discount the non-p arole period set for an offende r who has committed homicide. Domestic-related murder s make up to 60% of homicide case s and are therefo re committed by offende rs who a re likely to ha ve little to no criminal history. HVS G notes the matter of *R v Jay William Cook* [2012] NSWSC where the fin ding of special circu mstances re sulted in a non- parole period of 4 years for a youn g defendant convicted of st abbing to death a you ng man engaged in an affray. During sentencing Garling J noted that:

[5] Cameron v R (2002) 209 CLR 339.
[6] R v Mark Anthony Collon [2008] NSWSC 174 at 25.

"the special circumstances which I find are the facts that he is still a young and relatively immature man, the fact that this is his first period of incarceration and he will require a lengthy period of supervision in the community in order to ensure that his rehabilitation has good prospects of success."

Physical and mental health of the offender.

HVSG notes that offenders who commit homicide are often citing the special circumstance of physical and/or mental illness or disability. HSVG understands that the loved ones of homicide victims find it very difficult to accept that offenders ability to cope with his/her mental or physical condition during incarceration should bear any relevance during sentencing for a crime that has resulted in the death of another. HVSG notes:

- the matter of *R v Mahmoud Houri* [2007] NSWSC 615 where the defendant's physical disabilities and mental state was given significant weight during sentencing resulting in a non-parole period of 12 years and 6 months. Indeed, Buddin J stated:

  "As both parties acknowledged, this is an extremely difficult sentencing exercise. On the one hand, the offender has quite needlessly taken the life of another human being in circumstances revealing a high degree of objective criminality. On the other hand, he is a young man, with no prior criminal convictions who has pleaded guilty, and who has suffered a very serious physical disability which will significantly compromise his enjoyment of life. That disability, and the depressive condition which accompanies it, will also make his time in gaol particularly arduous."

- the matter of *R v Ali Khalouf* [2002] NSWSC 19 where the defendant's age combined with his medical condition (diabetes, stomach ulcers and heart disorder) was considered a special circumstance during sentencing as the medical conditions would result in a particularity arduous time in prison. The special circumstances resulted in a non-parole period of 13 years (which was a departure form the imprisonment sentence of 20 years);

- the matter of *R v James Stuart Monroe* [2003] NSWSC 271 where the defendant's familial disease and depression was considered a special circumstance during sentencing resulting in a non-parole period of 4 years. The defendant had been convicted of manslaughter for the death of his 3 month old as a result of the baby being shaken rapidly, strongly and excessively; and

- the matter of *R v Michael Alan Heatley* [2006] NSWSC 1199 where the defendants mental illness was considered special circumstances during sentencing resulting in a non-parole period of 8 years. The defendant had been convicted of manslaughter for beating and kicking to death a fellow inmate at Long Bay Prison Hospital.

Rehabilitation and drug abuse.

HVSG is also concerned about the commonly used special circumstance of 'good prospects for rehabilitation' for drug and alcohol dependant offenders. HVSG note that is difficult for the surviving families to accept that an offender has qualified for a

lower non-parole period on the basis of 'good prospects of rehabilitation' despite the fact that the offender has been unsuccessful at community based rehabilitation prior to the offence.

5 PRESUMPTIVE RATIOS

HVSG advocates for a higher ratio of 80% non-parole period of the total sentence as the standard for homicide offenders. A higher ratio for homicide offences would work towards emphasising deterrence, denunciation, retribution and a greater emphasis on the length of non-parole periods in these offences.

This raised ratio would provide a sufficiently higher anchoring point for the judiciary to focus on when considering exceptional circumstances. HVSG notes other jurisdictions that have higher presumptive ratios for serious offences, in particular, Queensland[7] and South Australia[8].

HVSG recognises that offenders who have committed less serious crimes can be seen to be more suited to lower non-parole period and a higher community supervision period. However, **non-parole periods that are significantly lower than the presumptive ratio are not suitable for homicide offenders.**

6 AGGREGATE HEAD SENTENCES AND NON-PAROLE PERIODS

Section 53A of the *Sentencing Act* has been in operation for less than 18 months. It was introduced by amending legislation in 2010 and only comes into effect for offenders pleading guilty or being convicted after 14 March 2011.[9] HVSG therefore agrees with the LRC that it may be too early to properly assess the effectiveness of the framework or the need for further amendments at this stage. Indeed, there have yet to be any sentences imposed for murder or manslaughter convictions under the s 53A framework.

However, it should be noted that the aggregate sentencing model does not intend to substantively alter either the way offenders are sentenced or the overall length of sentences.[10] The framework aims to reduce the complexity of multiple offence sentencing and provide for a simple and clear imposition of one overall sentence and non-parole period. This is in contrast to the traditional requirement that sentencing decisions contain complex multiple commencement and expiry dates of sentences and non-parole periods served partially concurrently or consecutively.

HVSG recognises the numerous practical benefits provided by the s53A framework. In reducing the risk of errors in calculating and aligning multiple commencement and expiry dates the likelihood of an appeal is reduced. Additionally, imposing a single date for parole eligibility for multiple offences makes the impact of the total sentence immediately clear.

Articulating individual offences in aggregate sentence

HVSG submits that it is essential for the requirements under s 53A(2) (b) to be retained, reflecting both the expectations of the community and a core legislative intention of the model.

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[7] In Queensland the ratio for serious violence offences is 80% of the head sentence.
[8] In South Australia the presumptive ratio for serious offences against the person is 80% of the head sentence.
[9] Crimes (Sentencing Procedure) Act 1999, sch 2 cl 62.
[10] Second Reaching Speech, Crimes (Sentencing Procedure) Amendment Bill, 2010, *NSW Legislative Council Hansard*, 23 November 2010, at page 27866.

The aggregate framework was introduced in order to identify the respective sentences imposed for each individual offence in an aggregated sentence.[11] It is therefore important to retain the requirements under s 53A(2)(b) to ensure sentencing transparency and to reduce the likelihood of any actual and perceived error.

If a transparent and justified rationale for the ultimate aggregated sentence is not provided under s 53A(2)(b) the risk of a defence appeal is increased. Any sentencing appeal places further strain on the families and loved ones of homicide victims and will deny the finality of a sentencing decision after the trial process.

Indeed, the common law recognises the need to first consider and impose an apt and just sentence for each offence in a multiple offence sentencing decision before accounting for principles such as totality.[12] We note that the aggregate sentencing model introduced under s53A sought to remove the complexity, but not the goals, of this process.

HVSG further contends that individual sentence information provides comfort to victims and persons affected by each of the specific offences committed and accords an explicit recognition of the criminality it involved.

7 ACCUMULATION OF HEAD SENTENCES AND SPECIAL CIRCUMSTANCES

Articulating special circumstances in individual sentences

HVSG submits that a court should be required to state reasons why an effective sentence does not reflect the special circumstances found on the individual sentences. If reasons are provided, then any possible ambiguity is eliminated and the risk of a defence appeal is reduced.

The potential for confusion regarding the effective sentence and effective non-parole period increases when multiple sentences are accumulated and served partially concurrently. In many cases this can provide avenues for offenders to appeal to the CCA because their effective non-parole period is not 75% of their effective sentence, as is the statutory standard.[13] As the High Court has recognised in *Mill v R* [1998] 166 CLR 59, citing Thomas, Principles of Sentencing (1979, 2nd ed):

> *"when a number of offences are being dealt with and specific punishments in respect of them are being added up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong"; "when … cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences".*

This principle is especially pronounced where the court has found special circumstances should apply to individual sentences. As noted previously, finding of special circumstances will usually result in a reduction from the statutory standard

[11] Second Reaching Speech, Crimes (Sentencing Procedure) Amendment Bill, 2010, *NSW Legislative Council Hansard*, 23 November 2010, at page 27866.
[12] *Pearce v R* (1998) 194 CLR 610; *Mill v R* (1988) 166 CLR 59; *AB v The Queen* (1999) 198 CLR 111 per Hayne J at [121]-[122].
[13] *Crimes (Sentencing Procedure) Act 1999* s44.

of the non-parole period. However, if the court fails to recognise the effect of accumulation and instead imposes a non-parole period at or above 75% questions will arise as to whether the court took proper account of the effective sentence. This issue has arisen in many cases. For example in the matter of *Maglis v R* [2010] NSWCCA 247, Howie AJ stated [at 24]:

> *"The overall non-parole period imposed by … was, on my calculation, 77 per cent of the overall head sentence. For my part I do not understand why a judge would find special circumstances on each separate offence, yet impose a sentence on overall basis where the non-parole period is more than 75 per cent of the total sentence. This Court has on more than one occasion been troubled by applications for leave to appeal in similar situations. Sometimes the Court has upheld the appeal and sometimes it has been dismissed. The individual decisions depend upon what can be gleaned of the Judge's intention from the sentencing remarks."*

As can be seen from his Honours statement, much hinges upon an interpretation of the Judge 's intention when delivering sentencing remarks. There is nothing to prevent non-parole period being increased, however, it is generally recognised that a Judge should give reasons for doing so.[14] In the absence of reasons, it might be inferred that the Judge overlooked those issues and thus erred in the sentencing procedure. This belief was emphasised in *Wakefield v R* [2010] NSWCCA 12, at [26]:

> *"It is true that, whilst the statute requires reasons to be stated for reducing the non-parole period against the stated formulation, no such requirement has been legislated if it is increased. However it has been stated in this court more than once that it is expected that in circumstances where there is such an increase some reasons should be provided if only to forestall a conclusion that the specification was the result of error or oversight. In* R v Dunn *[2007] NSWCCA 312 it was said that this was especially the case where accumulation had taken place."*

Given this common law support, there is much weight to suggest that courts should be required to explain their findings where an effective sentence does not seemingly take account of special circumstances found in the individual sentences.

Most importantly, HVSG would want to limit the occurrence of appeals on this point of law. In a recent case of *Jose Lues Rios v R* [2012] NSWCCA 8, the CCA could not interpret the sentencing judge's intention when delivering a non-parole period in excess of 75% and thus found that the non-parole period should be reduced by 3 months.

A different result was found in *O'Neill v R* [2012] NSWCCA 22 where the CCA successfully read into the sentencing judge's remarks, finding that there was an intention to not reduce the non-parole period on the effective term *despite* the finding of special circumstances on the *individual* sentences.

However these appeals eventuate, it is HVSG's submission that they are detrimental to the families who are involved in the proceedings. The occurrence of appeals is a traumatising experience for victims and their relatives as they are forced to relive both the offence and the drawn-out court proceedings. In ordinary

[14] *O'Neill v R* [2012] NSWCCA 22, [17].

circumstances, a sentencing decision should provide a sense of finality to families of homicide victims.

Furthermore, these kind of appeals can often be over small reductions in time (for example the 3 months in the matter of *Jose Lues Rios v R*). These time periods do not warrant the intervention of the court's resources[15] and the prolonged exposure to the court processes to the families of victims. Given that their occurrence can be avoided by a clear statement from the judge regarding the composition of non-parole periods in relation to the effective sentence, HVSG submits that a court should avoid ambiguity and simply state that it has taken full account of all considerations in its sentencing of the offender. This is a simple, yet effective measure to take and would reduce court time and defence appeals.

The introduction of s53A in the *Sentencing Act* allowed for aggregate sentences to be imposed instead of delicately organising concurrent or consecutive sentences to be served. The court always has the option to utilise this provision, which allows for an aggregate non-parole period and head sentence to be delivered. The use of this option is more simplified, leaving less room for confusion and error when dealing with multiple offences.

HVSG would submit that an integral part of this provision is to retain transparency by outlining the proportional contributions that individual sentences have made to the aggregate sentence. This ensures that aggregate sentences are accurate, reflective of the total criminality involved and are accountable to scrutiny. It is also an express recognition of the crimes committed and upholds the critical aspects of sentencing in homicide cases which HVSG believe are retribution, deterrence and accountability.

8 DIRECTING RELEASE ON PAROLE

Limits on automatic release

HVSG submits that the limit of 3 years is an appropriate time period for the granting of an automatic release to parole. Any extension to this limit could make the process of determining the offenders suitability for parole even more difficult; and reduce the deterrence factor for more serious crimes.

HVSG also submit that The State Parole Authority is better placed to assess the suitability of an offender for parole. The State Parole Authority is able to appropriately examine the offenders current circumstances and their progress towards rehabilitation.

9 GOOD BEHAVIOUR BONDS AND SUSPENDED SENTENCES

In considering the appropriateness of bonds and suspended sentences in homicide cases HVSG would like to acknowledge the comments of Street CJ in the matter of *Regina v Georgina Marie Hill* (1981) 3 A Crim R 397 at 402 :

> *"The circumstances leading to the felonious taking of a human life being regarded as manslaughter rather than murder can vary infinitely, and it is not always easy to determine in any given case what should be done in the matter of sentence. At the start it should be recognised that the felonious taking of a human life is recognised in the Crimes Act 1900 and in the community at large as one of the most dreadful crimes in the criminal*

[15] *Jose Lues Rios v R* [2012] NSWCCA 8. [37].

calendar. The courts have, however, over the decades gradually manifested a willingness to recognise factual contexts which provide some basis for understanding the human tragedies that can lead to the taking of a life. The manifestation of this humanitarian tendency is necessarily attended by the utmost caution. It can be seen to be constantly written in the decisions of the courts and in the enactments of the legislature that the taking of a human life is a grave action calling for a correspondingly grave measure of criminal justice being meted out to the guilty party."

Good Behaviour Bonds

HVSG submit that good behaviour bonds under section 9 of the *Sentencing Act* should be retained but narrowed in relation to serious offences of murder and manslaughter.

HVSG notes that only in rare and exceptional circumstances are good behaviour bonds under section 9 of the Act considered in homicide cases. These are usually infanticide cases that involve the prosecution and family members of the victims not seeking a custodial sentence such as in *R v Cooper* [2001] NSWSC 769 and *R v Pope* [2002] NSWSC 397. **HVSG would like to reinforce that in these cases neither the prosecution nor the family members of the victims were seeking a custodial sentence** and we submit that these opinions should be a relevant factor in considering the use of a good behaviour bond.

Suspended Sentences

HVSG submit that whether or not suspended sentences operate as an effective alternative to imprisonment must be considered on a case by case basis in relation to more minor offences. However, **HVSG submit that suspended sentences should not be available in homicide cases.**

HVSG would recommend that the legislation dealing with suspended sentences should specifically exclude its availability for homicide offences. HVSG notes that the legislation should mirror the position taken in Victoria as a suspended sentence is not appropriate where a human life has been taken.

HVSG has spent considerable time counselling the families and loved ones of homicide victims through the sentencing process. HVSG note that it is particularly difficult for families to understand the validity of a suspended sentence in homicide cases.

HVSG acknowledge that the judiciary only allow suspended sentences in rare and exceptional circumstances in homicide cases. However, even then, families of the victims are often left with a strong sense that suspended sentences are not appropriate for pursuing justice in homicide cases. HVSG note:

- the matter of *R v Sette* [2000] NSWSC 648 where the defendant was sentenced to a two year suspended sentence as a result of the strong subjective features of the case 'favour(ing) the offender.' The defendant who suffered a 'significant psychological disturbance' had stabbed her child to death in a moment of 'fugues'. The adoptive parents of the deceased child struggled to cope with the sentencing outcome;

- the matter of *Penetito Mika Siniue Sagato* [2000] NSWSC 582 where the defendant was sentenced to a two year suspended sentence on the

grounds of mental illness. The def endant was charge d with manslaughte r for drowning her son in an unlawful and dangerous act of exorcism; and

- the matter *Susan Maria Hall Colin G eorge Ha nslow* [199 9] NSWSC 73 8 where the defendant was sentenced to a two year suspended sentence o n the grou nds of intellectu al functioni ng. The defe ndant was charg ed wit h manslaughter by omission for failing to obtain medical assistance.

10 SUMMATION

This completes the submission prepared on behalf of the HVSG.

HVSG would like to thank you for the opportunity to contribute to this inquiry.

Henry Davis York (**HDY**) have prepared these submissions on behalf of HVSG and the family members and loved ones of per sons who have been k illed. HDY is very proud of this uniqu e and longstanding pro bono partnership and is very grateful for the opportunity to provide pro bono legal services to HVSG.

Should you have any further questions, please contac t Martha Jabour or Jillia n Mitford-Burgess on the numbers below.

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