The New South Wales Bar Association

12/101

24 August 2012

The Hon J Wood AO QC
Chairperson
New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

Dear Judge Wood

Review of Crimes (Sentencing Procedure) Act 1999 (NSW): Sentencing - Question Papers 5-7

The New South Wales Bar Association is grateful for the opportunity to comment on Question Papers 5-7 released by the New South Wales Law Reform Commission ("NSWLRC").

Question Paper 5 – Full-time imprisonment

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 Association agrees with the Law Society of New South Wales that the presumptive ratio should be abolished.

Sentencing for Commonwealth offences does not require the application of such a presumption. Other State and Territory jurisdictions do not impose such a general presumptive ratio. Consistency in general sentencing principle across Australia is desirable.

Under general sentencing principles, the non-parole period is the minimum period of imprisonment the offender must serve. There is no appropriate ratio, or "usual" ratio, between the non-parole period and the term of the sentence. The factors which must be taken into account when fixing the non-parole period are the same as those applicable to the setting of the term of the sentence. Accordingly, it would be wrong to approach the task of fixing the non-parole period on the basis that the sole or primary concern is the offender's prospects of rehabilitation. However, the purposes of the term of the sentence and the non-parole period are different. An important purpose of the former is to impose a sentence that reflects the principle of "proportionality". The non-parole period, in contrast, represents a portion of the term of the sentence during which the offender cannot be considered for parole. The

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gravity of the offence will not have as much importance and, generally speaking, the prospects of rehabilitation will make a significant difference. Those principles apply to setting the non-parole period for a "standard non-parole period" offence, although the standard non-parole period, like the maximum penalty, is a "legislative guidepost".

There is no apparent need for a statutory modification of these principles. It is important to keep separate two goals – "truth in sentencing" and determination of an appropriate non-parole period. The former goal is met by recognition that the non-parole period, whatever it is, will be the minimum period of imprisonment. The second goal would best be served by application of general sentencing principle.

Such a change would have limited impact. While a non-parole period that is less than 75% of the term of the sentence for an individual offence may not be imposed "unless the court decides that there are special circumstances" for it being less, "special" does not mean unusual and most facts bearing on the appropriate sentence will be capable, either alone or in combination, of constituting "special circumstances". A conclusion that a longer period on parole is desirable for the offender would satisfy the statutory test but is not essential. If "special circumstances" are present, no assumption need be made regarding a "usual" proportion between the non-parole period and the term of the sentence.

However, notwithstanding this, the presumptive ratio has tended to focus attention on the need or desirability of a longer period of eligibility for parole, rather than the circumstances that justify a shorter non-parole period. That sometimes creates the impression that an offender with limited prospects of rehabilitation (which might be improved by a longer period of parole) is in a better position that an offender who is already rehabilitated.

For all these reasons, it would be desirable for non-parole periods to be determined in accordance with general sentencing principles.

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 the same for all offences.

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 reference in s 44(1) to "a court is first required to set a non-parole period" demands only that, when passing sentence, the sentencing court must first impose the non-parole period and then the term of the sentence. That does not mean that the sentencing court must determine the non-parole period before determining the term of the sentence. In fact, it would be an error to first determine the non-parole period before determining the head sentence because of the inherent danger that the head sentence would have to be impermissibly increased in order to provide an extended period of eligibility for parole. However, the fact that some judicial officers occasionally make this error does suggest that s 44(1) should be amended to explicitly require the sentencing court to first determine the term of the sentence.

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

Yes.

Short sentences of imprisonment

Question 5.3

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

The Association agrees with the Law Society that sentences of six months or less in duration should not be abolished. The primary reason is a concern that abolition would tend to result in the imposition of longer sentences of imprisonment rather than adoption of alternatives to full-time custody.

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

No. Apart from the general desirability of a wide range of sentencing options (including a short period of imprisonment), it should be noted that a sentence of imprisonment of less than 3 months will not adversely impact on retention of public housing entitlements.

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 Association agrees with the Law Society that a sentencing 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?**

The Association agrees with the Law Society that s 53A 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?**

The Association agrees with the Law Society that, in order to promote transparency and consistency, a sentencing court should be required to state the individual sentences that would have been imposed if an aggregate sentence had not been imposed.

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?**

Yes. If the presumptive ratio is not abolished, and there is a finding of "special circumstances" in respect of individual sentences (that is, an "aggregate" sentence is not imposed), the sentencing court should be required to state reasons if the effective sentence does not reflect the finding of special circumstances in respect of individual sentences. There may be good reasons for that outcome but the possibility that the sentencing court has failed to take into account the effect of cumulation of sentence supports the court being required to explicitly address this issue in the remarks on sentence.

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

No other options are apparent.

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 Association agrees with the Law Society and Legal Aid NSW that the three year limit in s 50 should be extended to five years. However, the Association considers that, for sentences between 3 and 5 years, the sentencing judge should have a discretion whether or not to make an order releasing the offender to parole at the end of the non-parole period (if the sentencing judge does not exercise that discretion, it will be a matter for the Parole Authority). The Association notes that, even if the sentencing judge orders release to parole, the legislation currently permits the Parole Authority to revoke that order. This is not an entirely satisfactory situation and the NSWLRC should review it.

Question 5.7

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

The Association agrees with the Law Society 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?**

See above.

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?**

No. Attached is the Association's 2010 submission to the Sentencing Council on this issue.

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?**

No. The Association agrees with the Law Society 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 Director of Public Prosecutions to a superior court to be determined on indictment.

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 Association agrees with the Law Society that the compulsory drug treatment detention program should be made available to female offenders and suggests that some changes be made to ensure that offenders who would otherwise be suitable are not excluded by reason solely of the structure of their sentences or the timing of their sentencing proceedings.

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

Yes.

Firstly, the Association recommends that the definition of "eligible convicted offender" in s 5A(1)(b) of the *Drug Court Act 1998* be amended so that it is the length of the overall effective non parole period which is taken into account and not the non parole period of any individual sentence. Currently, an offender may be ineligible simply because of the manner in which a sentencing judge has structured his or her sentences including whether or not an aggregate sentence is imposed. Such an amendment might also overcome a problem encountered when a short sentence is later imposed, for an old offence, on someone who is already on the program. At present this would apparently cause the participant to become ineligible and be liable for revocation under s106W of the *Crimes (Administration of Sentences) Act 1999*. The suggested improvement would allow referral of, and continued participation by, appropriate offenders regardless of the structure of their sentences.

Secondly, the referral mechanism should be amended to allow sentencing judges to refer an

offender for assessment by the Drug Court on a future date when the offender will then have at least 18 months, but less than 3 years, of his or her non-parole period still to serve. Currently, as a result of the definition of "eligible convicted offender" in s 5A of the *Drug Court Act 1998*, the only offenders who are realistically able to seek referral are those who, on the day of sentence, both have no less than 18 months to serve on their NPP and are likely to have no more than 3 years by the time the Drug Court assesses them. For good reasons the program is provided to offenders who are serving the last portion of their sentence. However, the current mechanism creates an extremely narrow window of opportunity. This will often mean that someone who has entered a late plea, gone to trial or otherwise delayed their sentencing will be eligible when, had they pleaded and been sentenced early, they would have been ineligible. There should never be any such disincentive to enter an early plea or to seek just, cheap and quick resolution of a matter. The suggested improvement would allow sentencing judges to identify and "tag" suitable offenders for referral at a future time when they could appropriately participate in the last stage of their non-parole period, regardless of the timing of their sentencing proceedings.

Home detention

Question 6.2

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

The Association agrees with the Law Society that there is a need to expand the availability of home detention.

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

See above.

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

See above.

Intensive correction orders Question 6.3

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

The Association agrees with the Law Society that there is a need to expand the availability of intensive correction orders.

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

The Association agrees with the answer of the Law Society to this question. In particular, the NSWLRC should consider what can be done to ensure that offenders for whom this sentencing option is desirable are not precluded from taking advantage of it by inappropriately narrow assessment criteria.

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

The Association agrees with the Law Society that ICOs should be available for a head sentence of up to and including three years.

Suspended sentences

Question 6.4

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

The Bar Association supports the retention of the option of suspended sentences.

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

It is curious that, while the NSW Sentencing Act explicitly recognises that imprisonment should be regarded as a sentence of last resort, a sentencing court is precluded from giving consideration to the sentencing option of a suspended sentence (and the options of home detention and an intensive corrections order) until the court has sentenced the offender to "imprisonment". It is even more curious that the term of the sentence of imprisonment has to be determined before it is decided how it is to be served. In *Amato v R* [2011] NSWCCA 197, Basten J discussed this incongruity at [5]:

> "There is, of course, a perfectly sound abstract logic to the proposition that a person may be sentenced to imprisonment, without ever having to go to prison. On the other hand, what mental exercise is the Court required to undertake in deciding that imprisonment is the only available option? If, at the first step ... the Court decides that imprisonment is appropriate, that, in a practical sense, would involve the conclusion that the offender should spend a period in custody. Step two in this process involves the specification of the relevant period of imprisonment including, it must at that point be assumed, the specification of a non-parole period, being the minimum term for which the offender must be kept in detention. ... If, after earnestly making the determinations required at steps one and two, the Court, as step three, then suspends the execution of the sentence, so the person is under no immediate liability to serve the specified period in custody, the result appears incongruous. Even such an appearance tends to undermine the purposes of sentencing set out in s 3A of the *Sentencing Procedure Act*. The incongruity, however, is not merely an appearance, but a reality. Furthermore, it is unrealistic to suppose that the Court actually reaches its conclusion by proceeding mechanically from step one to step three".

There is much force in these observations. While it is said that the conventional approach is required as a matter of statutory interpretation on the basis that alternatives available in respect of a sentence of imprisonment can only be considered once the sentence has been "imposed", it is not self-evident that a sentencing court is prohibited as a matter of statutory construction from such consideration prior to imposition. One purpose of the prevailing approach is perhaps to discourage sentencing courts from adopting sentencing options such as instead of such non-custodial options as community service orders (that is, to prevent "net widening"), and another purpose may be to limit the period of time for which such alternative sentencing options may be imposed. It is difficult to see how the first purpose justifies the incongruity of requiring a finding that a sentence of imprisonment is required but then

permitting imposition of a sentence that does not involve actual imprisonment. The second purpose, if it were regarded as persuasive, would be served by statutory provisions which provide that these alternatives are available only for specified limited periods of time. If could be provided that the term of the alternative sentencing option actually imposed should be no longer than the term of any period of actual imprisonment that would have been imposed if the alternative option were not available (see *Stevens v Giersch* (1976) 14 SASR 81 at 82).

In respect of federal offences, the Commonwealth *Crimes Act* does not explicitly create an option of a suspended sentence. However, a recognizance release order is defined in s 16 as an order made under s 20(1)(b). Section 20(1)(b) enables a court, before which a person is convicted of one or more federal offences, to sentence the person to imprisonment in respect of the offence, or each offence, "but direct, by order, that the person be released, upon giving security of the kind referred to in s 20(1)(a) either forthwith or after he or she has served a specified period of imprisonment in respect of that offence or those offences ...". It follows that the provision permits a sentencing court to make a recognizance release order that will take effect at the time at which the sentence is imposed – in effect, a suspended sentence. Indeed, the possibility of directing release "after he or she has served a specified period of imprisonment" involves, in effect, partial suspension of the sentence of imprisonment (an option not available in respect of a NSW offence). The option of *partial* suspension of sentence, effectively available in respect of federal offences, and in a number of other Australian jurisdictions, should be made available in respect of NSW offences. Further, as with the Commonwealth approach, it should be possible to impose a longer operational period for the suspended sentence than the period of imprisonment that might be imposed in the event that the suspension is revoked.

It should be noted that these comments apply equally to sentences of home detention and ICOs.

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

See above.

4. **Should greater flexibility be introduced in relation to:**
   a. **the length of the bond associated with the suspended sentence?**
   b. **partial suspension of the sentence?**
   c. **options available to a court if the bond is breached?**

See above. The Association agrees with the Law Society that the current lack of flexibility following a breach of a suspended sentence needs to be addressed.

Rising of the court

Question 6.5

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

The Association agrees with the Law Society that 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?**

If no change is made to the current approach that a sentencing court is precluded from giving consideration to the sentencing option of a suspended sentence, home detention or an ICO until the court has sentenced the offender to a term of "imprisonment", the Association agrees with the Law Society that these sentencing options should be available for a head sentence of up to and including three years.

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

See above.

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?**

See above.

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?

See the answer to Question 6.8.

Question 6.8

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

Yes. The Association agrees with the Law Society that periodic detention should be reintroduced and modified in a manner that addresses the acknowledged shortcomings of the previous regime. Many persons who would have been be suitable for a sentence of periodic detention are not appropriate for other sentencing options other than immediate full-time imprisonment. In particular, the observations of Simpson J (Hislop J and Latham J agreeing) in *R v Boughen; R v Cameron* [2012] NSWCCA 17, Simpson J at [110] support a conclusion that persons who would be suitable for a sentence of periodic detention would not be appropriate for the imposition of an ICO. If appropriate resources were put into ensuring that periodic detention carried with it an appropriate degree of retribution, whilst not endangering prospects of rehabilitation, it would be a valuable sentencing option in a significant number of cases.

If so:

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

Three years.

b) what eligibility criteria should apply;

The Association agrees with the Law Society as to appropriate eligibility criteria.

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

The Association agrees with the Law Society regarding possible improvements of the previous system.

d) could a rehabilitative element be introduced?

The Association agrees with the Law Society that a court should have the discretion to order offenders serving periodic detention to attend rehabilitation and vocational programs designed to address offending behaviour.

<u>Question Paper 7: Non-custodial sentencing options</u>

Community service orders

Question 7.1

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

Yes and yes.

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

The Association agrees with the Law Society that 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 and yes.

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

None.

Good behaviour bonds

Question 7.3

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

Yes and yes.

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

None.

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 Association agrees with the observations of the Law Society.

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

No.

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 Association 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?**

Yes and yes.

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

See answer to Question 6.5.

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?**

Yes and yes.

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

None.

Question 7.7

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

The Association agrees with the Law Society that it should be possible to impose a fine in conjunction with a non-conviction order (but would not support the possible imposition of a CSO).

Other options

Question 7.8

Should any other non-custodial sentencing options be adopted?

The Association does not have a view on this matter.

Question 7.9

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

The Association does not have a view on this matter.

Question 7.10

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

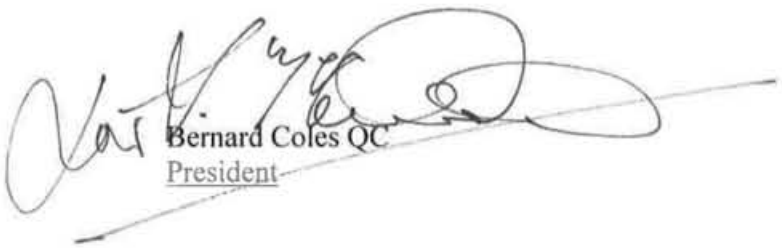
The Association agrees with the Law Society that work and development orders (WDOs) should not be introduced as a discrete sentencing option but that the CSO program should be modified to incorporate aspects of the WDO program to ensure that the particular needs of members of vulnerable groups are adequately met.

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?**

See above.

The Association is grateful for the opportunity to comment on these issues.

Yours sincerely



Bernard Coles QC
President

The New South Wales Bar Association

10/220

17 August 2010

Mr Jerrold Cripps QC
Chairperson
NSW Sentencing Council
GPO Box 6
SYDNEY NSW 2001

Dear Mr Cripps,

Submission regarding the proposed increase of the sentencing powers of the Local Court.

I refer to your letter of 30 July 2010 seeking The Bar Association of New South Wales' views regarding the proposal to increase the sentencing powers of the Local Court.

The Sentencing Council is considering a proposal to increase the maximum penalty that may be imposed in the Local Court in respect of a single offence from two to five years imprisonment.

The Bar Association opposes, in the strongest possible terms, any increase at all in the applicable maximum penalty.

An increase in the applicable maximum penalty will increase the number of cases heard in the Local Court and decrease the number of cases heard in the District Court. In particular, it is likely to have the following consequences:

- an increase in the number of cases where the DPP will agree that a prosecution may be heard and determined in the Local Court rather than in the District Court;
- an increase in the number of offences where it will be prescribed that the case can, with the agreement of the parties, be heard and determined in the Local Court;
- an increase in the number of offences where it will be prescribed that the case must be heard and determined in the Local Court.

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None of these changes would be desirable, bearing in mind the significant differences between the Local Court and the District Court:

(a) The prosecution. Most prosecutions in the District Court are brought by Crown Prosecutors, who are independent of the executive and subject to substantial ethical responsibilities. Prosecutions in the Local Court are, in general, conducted by members of the police force. They are sometimes legally trained, but are neither independent lawyers nor members of an independent office of public prosecutions.

(b) The defence. The High Court has held that inability to obtain legal representation for a trial of a "serious offence" would, "in the absence of exceptional circumstances", render such a trial inevitably unfair, requiring it to be stayed until legal representation is available.[1] Legal aid is available for all criminal trials in the District Court. However, that is not the case in the Local Court. Many accused people in the Local Court are not legally represented. There is no general right to legal aid. In a 2007 study by the New South Wales Bureau of Crime Statistics and Research it was found that 44% of defendants in the New South Wales Local Court were unrepresented.[2] There can be no doubt that a criminal accused lacking legal representation in our adversarial system of criminal justice is usually at a substantial disadvantage. The effective conduct of a criminal defence calls for knowledge not only of the criminal law but also of the rules of procedure and evidence. Both examination-in-chief and cross-examination of witnesses require skill and experience, and some degree of objectivity, as do many tactical decisions to be made during a criminal trial.

(c) The tribunal of fact. In a District Court trial, the accused has the right to trial by jury. There is no such right in the Local Court – the case will be determined by a magistrate. The value of the institution of jury trial is well recognised. The fact that a jury comes from the general community, on a transient basis, means that it is likely to be some guarantee against the arbitrary exercise of power by the state. It encourages the trial to be conducted in a way comprehensible to the public and seen to be fair. Further, the jury is significant in terms of popular democratic participation in the criminal justice system. It is a method of infusing community values into the operation of the criminal law, particularly where the law requires the making of fine moral judgments.

While it is too late to reverse the expansion of the criminal jurisdiction of the Local Court that has occurred in recent years, there must not be any further expansion in the number of cases heard there as a result of this proposal to increase the maximum penalty that may be imposed.

Finally, it may be observed that an increase in the applicable maximum penalty that may be imposed in the Local Court is likely, over time, to result in an increase in the maximum penalty of offences where the case must be heard and determined in the Local Court. There is no reason to increase the maximum penalty for an offence beyond two years if the offence

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1 *Dietrich v The Queen* (1992) 177 CLR 292. Deane J observed at 335 that, without legal representation, "the adversarial process is unbalanced and inappropriate and the likelihood is that, regardless of the efforts of the trial judge, the forms and formalities of legal procedures will conceal the substance of oppression".

2 NSW Bureau of Crime Statistics and Research, New South Wales Criminal Court Statistics 2007, Table 1.5.

had to be heard and determined in the Local Court and such a maximum penalty could not be imposed. That situation would change if the Local Court could impose a sentence higher than two years. Increasing the maximum penalty for an existing offence could occur without the need to make it indictable. In addition, creation of new offences intended to be dealt with summarily in the Local Court could proceed with maximum penalties higher than two years. An increase in the applicable maximum penalty that may be imposed in the Local Court will have an insidious effect on both rates of imprisonment and the average length of terms of imprisonment.

Should you have any enquiries about this submission, please contact Alastair McConnachie, Deputy Executive Director, by email [redacted] or on [redacted].

Yours sincerely,

Tom Bathurst QC
President