THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Criminal Law Committee

Response to Consultation Paper 15

Encouraging appropriate early guilty pleas: Models for discussion

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Introduction

The NSW Young Lawyers Criminal Law Committee ("the Committee") refers to the terms of reference given to the NSW Law Reform Commission (“the Commission”) on 30 July 2013 on encouraging early appropriate guilty pleas in all criminal matters in NSW. The Committee has structured its submission by reference to the Commission’s Consultation Paper 15.

NSW Young Lawyers, a division of the Law Society of NSW, is made up of legal practitioners and law students, who are under the age of 36 or in their first five years of practice. Our membership is made up of some 13,000 persons.

The Committee provides education to the legal profession and wider community on current and future developments in the criminal law, and identifies and submits on issues in need of law reform.

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Pre-charge bail and statutory charging in England and Wales

Question 3.1

1. Should a pre-charge bail regime be introduced in NSW?

No.

The Committee is opposed to a pre-charge bail regime being introduced. Allowing police and courts to limit the liberty of citizens, without a requirement to demonstrate any likelihood that the person has committed an offence, is a seismic shift in our criminal justice system without sufficient utilitarian value.

The Consultation Paper at 3.22 notes a submission that 'Australia is one of the only common law jurisdictions that does not have a pre charge bail scheme'.[1] If this is so, any evaluations of those existing systems should be carefully scrutinised before introducing such a scheme in New South Wales. On the evaluation of the Committee there would be no significant value to major stakeholders in introducing the scheme: particularly for police, lower courts and suspects (see our responses below).

To the extent that the system is said to aid statutory charging by enabling appropriate charges to be laid in a timely manner, statutory charging could be utilised without introducing a pre-charge bail scheme. If the system is designed to benefit suspects by ensuring the offences they are charged with are appropriate at an earlier stage, where the price of this benefit is the risk of overuse and misuse, that price is too high.

2. What are your views on the advantages and disadvantages of introducing a pre-charge bail regime?

The Committee endorses the points raised in the Consultation Paper at 3.14 to 3.18.

In addition, the Committee considers further disadvantages in introducing a pre-charge bail regime to be:

1. The system might create the illusion of an guilty pleas being entered earlier, but the length of the process, insofar as police and accused persons are concerned, is unlikely to shorten, for these reasons:
    - The commencement of the criminal justice process is from the moment at which a person's liberty is first curtailed, not when the matter first comes before a court.
    - Without there being the impetus of answering to a court about failures to fully comply with brief service orders, it is probable that the time taken by police for compiling a brief of evidence may lengthen.
    - A pre-charge bail regime would not make investigative processes any faster.
2. A pre-charge bail regime would not save costs by reducing court pressures:
    - A necessary safeguard for a pre-charge bail regime would be the ability of a person subject to the regime to have his or her bail conditions or detention reviewed by a court. Such a review mechanism would also require new bail considerations to be formulated, as under the current and incoming *Bail Act 1978* (NSW) a significant consideration in a bail application is the strength of the Crown case.
    - As noted in the Consultation Paper, the Law Society of England and Wales has recently advocated for a maximum length of pre-charge bail of 28 days, with any extension to be granted by a Magistrate. This recommendation has

[1] The Office of the Director of Public Prosecutions, Preliminary Submission EAGP06, 5.

been borne out of a concern that suspects subjected to pre-charge bail are 'out of sight, out of mind'.

- The proposed 28-day limitation would mean that the requirement for court appearances for matters at the pre-charge stage would be approximately equal to our current system, whereby a charge is laid while the initial brief of evidence is being prepared, meaning no court time would in fact be saved.

3. Any savings in court time would likely be shifted to increased administrative costs for police:
    - Significant safeguards would be required to implement a pre-charge bail regime because of the potential for its misuse. For example, some jurisdictions that use the regime allow a maximum period of four weeks of pre-charge bail. At the conclusion of this period, the accused presents to a police station and police update the accused on the progress of the investigation. If the matter is not ready to proceed, the defendant is bailed again.[2] Each time a defendant is bailed (i.e. every four weeks), an officer of increasingly higher rank must approve it.[3]
4. The potential for misuse of a pre-charge bail regime is significant:
    - The Committee notes the points made in the Consultation Paper at 3.16, and is particularly concerned by the research referred to therein found that one in five people arrested by the police were given pre-charge bail, and that statistics about the use of pre-charge bail were poorly kept, limiting the potential for proper oversight to evaluate the fairness of the scheme.[4]
    - A further concerning aspect of research in the UK is that people who were given pre-charge bail were far more likely to have no further action taken against them than those who were not subject to the regime.[5] This seems to indicate that a significant number of people were arrested in circumstances where they could not be said to be guilty of any crime.
5. A regime of pre-charge bail would disproportionately disadvantage vulnerable persons:
    - Young people, Aboriginal people, people who are homeless and people who with mental health issues sometimes, for a variety of reasons, find it very difficult to comply with bail orders imposed upon them.
    - Conditions that often pose particular difficulties for compliance are those that the police most often deem appropriate, such as curfew and residence requirements.
    - Long periods of bail can set people up to fail and put them at risk of breaching bail. A practical reality for such people is that when charged with minor offences, they often plead guilty to avoid potentially spending time on remand for offences they will not be sentenced to prison for.
    - If they do not have the opportunity to plead guilty because there is no charge, there is real potential for vulnerable people to spend unnecessary time in custody. This has negative implications for the individual, their community and the prison population.

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[2] J Hillier and J Kodz, "The Police Use of Pre-Charge Bail: An Exploratory Study" (2012) National Policing Improvement Agency, p 28.

[3] Ibid, p 36.

4 Ibid, p 12.

5 Phillips, C. & Brown, D. (1998), *Entry into the criminal justice system: a survey of police arrests and their outcomes,* Home Office Research Study 185, Home Office, referred to in J Hillier and J Kodz, "*The Police Use of Pre-Charge Bail: An Exploratory Study*" (2012) National Policing Improvement Agency, p 20-21.

3. If a pre-charge bail regime were introduced, should it aim to facilitate:

a. ongoing police investigations and the finalisation of the police brief of evidence, and/or

b. ODPP early charge advice?

A pre-charge bail regime, if introduced, should facilitate early charge advice by the ODPP.

4. What limits should be applied to any pre-charge bail regime?

See response to 3.1.1 and 3.1.2.

However, if a pre-charge bail scheme were to be introduced, significant safeguards should be put into place to protect citizens from its overuse and misuse. These safeguards should include:

- An avenue for review of bail conditions by a court. The Committee supports a similar opportunity for review to that which exists for accused persons who are on bail following charge.
- As in the UK system, the requirement that applications to detain suspects (rather than grant pre-charge bail) be approved by a court in the same way that accused persons who are refused bail by the police must be taken to a court for the court to consider bail.
- The Law Society of England and Wales' proposal that each extension of pre-charge bail beyond four weeks be approved by a Magistrate.

The limitation that pre-charge bail is only available for strictly indictable matters, being matters for which it is proposed that the ODPP would assume responsibility if statutory charging was implemented. This would reduce the potential for vulnerable people to be disadvantaged in the manner outlined at our response to 3.1.2.

Question 3.2

1. Should a more extensive scheme of early charge advice between the police and the ODPP be introduced in NSW?

The present protocol between the ODPP and NSW Police is significantly underused. The Committee would encourage more consideration to be given to an early charge advice scheme for all serious offences. This has the potential to encourage appropriate charges, and thereby encourage appropriate early guilty pleas.

The existing scheme might benefit from the establishment of a dedicated network of prosecutors, similar to the *CPS Direct* service operating in the UK, who are able to provide charge advice upon request. The present turnaround time for the receipt of advice is reasonable, however it is noted that the number of referrals is appreciably low.[6] It is submitted that pre-charge advice should be encouraged, though without the support of a dedicated advice service an increase in advice sought may not be viable.

2. If such a scheme were introduced:

a. What features should be adopted?

A scheme of pre-charge advice must facilitate co-operation, whilst minimising any associated delays. As indicated above, a dedicated network of prosecutors would allow the best prospect of providing timely and considered advice. Alternatively,

[6] The Office of the Director of Public Prosecutions, *Annual Report 2011/12* (2012) 42.

the ODPP could implement a scheme premised upon the NSW Police Practice Management Model (PMM), whereby prosecutors would be attached to active police investigations concerning indictable offences. Under such a scheme, prosecutors could continue to advise on the sufficiency of evidence, appropriateness of charges and legal implications of alternative or proposed courses of action. Further benefits would be derived from the familiarity of the prosecutor with the case if charges were to be laid and the surety provided as to the appropriateness of those charges.

It ought be noted that the close co-operation of an informant and prosecutor, and the ostensible integration of their respective investigatory and prosecutorial functions, may give rise to concern that the ODPP would lose its impartiality by virtue of its being involved in the investigation. To ameliorate this concern, the Committee submits that if the existing scheme were to be extended, all charge advice (especially positive decisions) should be supported by written reasons.

b. How could it interact with a pre-charge bail regime?

See generally the Committee's answer to 3.1.

A successful statutory charging scheme is not dependent on the existence of a pre-charge bail regime. Charge advice holds an important role in the effective and focused investigation of a suspect. Further, successful models of pre-charge advice have been cited which do not rely upon pre-charge bail.[7]

c. What offences should it relate to?

Pre-charge advice would be most effective when targeted towards the most serious and complex indictable offences, and those that involve voluminous or technical evidence. Therefore, the Committee submits that such a scheme should relate only to strictly indictable offences.

3. How could such a regime encourage early guilty pleas?

The attraction of a pre-charge advice regime lies primarily in its two anticipated outcomes:

1. The ensured appropriateness of charges.
2. The bolstered strength of the prosecution case. Faced with an appropriate charge, supported by admissible, credible and compelling evidence, an accused is more likely to accept the Crown case.

If the strength of the charge can be ascertained prior to its being laid, an early guilty plea is more likely to result.

The appropriateness of the charge also weighs upon the timing of the plea. Where the primary charge faces obvious evidentiary obstacles, a guilty plea to a more appropriate, lesser, charge may be delayed so representations can be made and the evidence analysed by counsel.

[7] For instance, the pre-charge assessment programs in British Columbia, Quebec and New Brunswick and the NSW Police Practice Management Model.

Plea negotiations

Question 4.1

1. How could charge negotiations in NSW be more transparent?

See answer at 4.1.2 (below).

2. If charge negotiations are made more transparent, what impact would this have upon the likelihood that defendants will seek out a plea agreement?

There are a number of ways charge negotiations could be more transparent in NSW. Options might include:

- Requirements for plea agreements to be in writing, signed by both parties and filed in court.
- Case management or oversight of charge negotiation by courts.
- Review of charge negotiation by courts.
- Introducing statutory rules regarding charge negotiation.

The Committee supports increased transparency in charge negotiation to the extent that it accords with principles of open justice. Increased transparency in charge negotiation should generate more consistent outcomes.

However, the answer as to what effect, if any, increased transparency will have on guilty pleas is difficult to know. Essentially, while some of these options have already been implemented and evaluated in other jurisdictions, there is no clear evidentiary basis on which to conclude that options to increase transparency will result in a greater or lesser likelihood that defendants will seek out a plea agreement.

Question 4.2

1. Should NSW Crown prosecutors be able to incorporate sentencing outcomes into plea agreements?

Yes.

Question 4.3

Should the courts supervise/scrutinise plea agreements?

Yes.

Potential benefits of court oversight of plea agreements might include:

- Facilitation of timely communication between prosecution and defence;
- Narrowing factual disputes and other issues preventing plea agreements from being reached; and
- Encouraging timely service of briefs to enable charge negotiation.

Whether these objectives can be met is largely contingent upon at least the following two factors:

- Adequate / sufficient funding being provided to NSW Police, the ODPP and Legal Aid NSW to ensure evidence is served in a timely manner and accused persons are properly advised as to whether a plea of guilty is advisable in the circumstances.

- Ensuring that court-supervised procedures do not place undue pressure on the accused to plead guilty.[8]

Court supervision during pre-trial disclosure and plea negotiation

In its preliminary submission, the Committee expressed its reservations about the *Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Act 2013* (NSW), and the extra pressure that it might place upon on accused persons charged with indictable offences to plead guilty.

Sentence indications

The Committee supports the removal of sentence indications.

Holistic approach

The Committee concurs with the ODPP, Legal Aid NSW, Mr Paul Shaw and the Sentencing Advisory Council in considering that individual measures, such as the *Criminal Procedure Amendment*, are not enough on their own to encourage appropriate early guilty pleas.[9] For example accused persons need to be adequately represented so that the implications of a judge's finding in respect of a plea agreement or likely sentence can be properly explained. This is to combat the criticism that an accused is coerced into pleading guilty after a judge, as an authoritative figure, indicates a higher sentence will be received otherwise.[10]

The Committee encourages the Commission to explore the proposition put forward by Mr Shaw as to there being no reason why courts cannot take on a case managerial capacity in a similar vein to that taken in a civil context.[11] While, as raised by the ODPP, it is noted that the prosecution and defence cannot ultimately reach an agreement in the same manner that parties can in a civil dispute (due to greater uncertainty regarding, inter alia, evidence provided by the police),[12] there is room in the criminal context for courts to act according to devised overriding principles of justice and fairness when identifying those matters in dispute and encouraging negotiations.[13]

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[8] NSW Young Lawyers Committee, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, 5 July 2013, 10.

[9] Office of the Director of Public Prosecutions, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, June 2013, 3–9; Legal Aid NSW, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, June 2013, 3–5, 10–12 ; Paul Shaw, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, 2013, 1–4; Sentencing Advisory Council, *Sentence Indication: a Report on the Pilot Scheme* (2010) 82.

[10] For suggested improvements to the Scheme to counter criticisms and injustices, see generally, Dr Asher Flynn, 'Jeopardising Justice for What? Keeping Sentence Indications in Victoria' (Paper presented at The Australian and New Zealand Critical Criminology Conference 2010); see also Sentencing Advisory Council, *Sentence Indication: a Report on the Pilot Scheme* (2010) 69–82.

[11] Paul Shaw, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, 2013, 1–4.

[12] Office of the Director of Public Prosecutions, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, June 2013, 7.

[13] The Committee draws upon: Paul Shaw, Preliminary Submission to NSW Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas*, 2013, 1–4.

Case conferencing

Question 5.1

1. Should NSW reintroduce criminal case conferencing? If so should case conferencing be voluntary or compulsory?

The Committee supports conferencing in principle. It is the experience of practitioners that charge negotiation, while often fruitful, depends largely on the individual willingness of the allocated prosecutor to negotiate. That might be ameliorated by an element of compulsion.

However, the current trends and developments in the NSW criminal justice system, particularly the funding landscape, the rise of self-represented persons, recent Legal Aid NSW policy changes and the unknown impact of the right-to-silence and trial efficiency legislation, raise a real question as to whether any such scheme is practically appropriate. The Committee is open to schemes that grapple with these issues.

2. What are your views on the advantages and disadvantages of reintroducing criminal case conferencing?

See above at 5.1.1.

3. If criminal case conferencing were reintroduced, how could it be structured to improve efficiency?

The Committee agrees with the Law Society that formality is not a necessary component of a conference scheme.

Fast tracking

Question 6.1

1. Should NSW adopt a fast-track scheme for cases likely to be resolved by a guilty plea?

No.

The Committee is of the view that a fast-track scheme based on the UK or WA models is not appropriate for implementation in NSW. As previously noted, a lack of funding means that Legal Aid NSW, the ODPP, police and other community legal services are ill equipped to adequately advise accused persons within strict timetables. As a consequence the introduction of such a scheme would likely prejudice the most marginalised in society.

A fast-tracking scheme may also diminish the opportunity for offenders to demonstrate remorse and behavioural change pre-sentence.

2. If a fast-track system were to be introduced in NSW, how would it operate?

See response to 6.1.1.

3. How would sentence discounts apply to a fast-track scheme?

See response to 6.1.1.

Question 6.2

1. Should NSW adopt a program of differential case management?

Yes.

The Committee agrees that NSW should adopt a differential case management program. This will provide courts, practitioners, and self-represented defendants a system where the amounts of discounts are set for guilty pleas entered at different stages. The differential case management program should also provide a guideline for special circumstances where courts may deviate from the general discount for a particular stage.

However, a differential case management program may not be feasible in country courts where there are less court sittings.

2. If a program of differential case management were introduced

a. What categories should be created?

b. How should each of these categories be managed?

Different categories should be created to reflect the amounts of discounts for different stages. This should reflect the statutory rates suggested in the Committee's response to the Commission's preliminary consultation (also see response to 9.11 below).

In addition, NSW may consider adopting the UK approach where the prosecutor can recommend early plea to the defence. If defence accepts the prosecution's recommendation or offer, then the maximum 30 percent discount should be available to the defence even if the plea of guilty was entered at a later stage.

This is sometimes done in the present NSW system but the approach is not consistent.

The differential case management program should be managed by a separate list where it will deal with sentence of pleas of guilty only. Cases should be referred to this list once a plea of guilty has been entered.

Abolishing committals

Question 7.1

1. Should NSW maintain, abolish or change the present system of committals?

The present system should be changed.

It is the Committee's position that there should be some form of pre-trial process, independent of the ODPP, which evaluates the strength of the evidence against an accused. In light of the overall drive to economise and streamline the criminal process, the current committal system could be strengthened to ensure appropriate charges and guilty pleas could be identified as early as possible.

The Committee recommends a shift in focus of resources to the 'pre-committal' stage, particularly at the ODPP. This may be facilitated by the ODPP's pre-trial unit becoming a 'pre-committal unit'. A recurrent theme in the comments of Committee members has been the availability of evidence. This makes it difficult for either side to conduct negotiations and for an accused to be adequately appraised of their position. While recognising the resource constraints of the Police, a shift in emphasis to the pre-committal stage by prosecuting (and investigating) authorities would undoubtedly lead to the both sides being more fully apprised of the case earlier in the process leading to earlier appropriate guilty pleas.

The Committee also submits that if an effective case management system is introduced, it may be appropriate to limit committal hearings to special (enumerated) circumstances or eliminate them altogether. There are obvious efficiencies in conducting committals 'on the papers' as opposed to holding a hearing. These hearings also place additional stress on witnesses. However, where the particulars of a charge are unclear (which is often true of historical sex assault trials), or where a witness has been ambiguous, they do serve a real purpose. It has also been suggested that the opportunity to test evidence before trial may clarify the hopelessness of an accused's position. Nonetheless, within the framework of a case management system, these objectives could be equally achieved by giving the defence be given the ability to apply for the matter to be dismissed in a manner similar to civil jurisdictions.

Another alternative could be to widen the circumstances in which a *Basha* inquiry can be conducted. While this would shift responsibility to the accused, the threat of summary dismissal would incentivise adequate productions of the evidence in the Crown's case.

2. If a case management system were introduced, what would it look like?

The Committee submits that an active case management system, which includes an independent pre-trial evaluation of the adequacy of the Crown case, could improve efficiencies and remove obstacles to appropriate guilty pleas. This should be supported by a shifting of focus to this preliminary stage. A case management system should be conducted predominantly on the papers, provide oversight and incentive for early disclosure and facilitate negotiation by both sides.

Any case management system that is implemented should encourage timely disclosure of prosecution briefs. Defence practitioners have also reported that in some instances, the ODPP has failed to provide appropriate "backup charges" to which an accused might be willing to plead guilty. This could be addressed by giving a committing magistrate or registrar the ability, upon reviewing the papers, to suggest lesser charges or express a view on charges that the defence has suggested the accused may be willing to plead to.

A case management system could assist in identifying what factual issues are in dispute, the nature and extent of that dispute and the evidence that is proposed to be led by either side to resolve this dispute. Such an approach could help resolve an issue that the

Committee has previously noted, namely the unwillingness of an accused who would otherwise plead guilty to accept certain facts in the Crown Case Statement.

The Committee reiterates its earlier submission that providing adequate legal advice early in the process is essential to achieving appropriate guilty pleas. This kind of early investment has the potential to achieve the resource-saving outcomes envisaged by encouraging early appropriate guilty pleas.

Question 7.2

When in criminal proceedings should full prosecution and defence disclosure occur?

The following comments are caveated by the Committee's opposition to a regime of defence disclosure.

The current regime with regard to timing of prosecution and defence disclosure presents some practical difficulties. This Committee has identified the late service of material by the prosecution as a significant impediment to early guilty pleas. Ideally, the prosecution would serve the brief, in its entirety, on the defence prior to the committal date. This would ensure that the defendant has an opportunity to consider the brief against them and can decide how to proceed accordingly. This would also allow them to be entitled to any discount that an early plea would provide[14]. In practice, this is not always possible. Further additional statements, expert reports and drug analysis can take significant time to obtain and can delay full disclosure.

It is the view of this Committee that that the current *legislative* regime in relation to the timing of disclosure is adequate. But the problems that arise in relation to late service of material from the prosecution are practical ones may be difficult to solve. An increase in funding to the prosecution and scientific departments may result in the brief being completed sooner and served prior to committal or arraignment.

[14] *R v Borkowski* (2009) 195 A Crim R 1; *R v Thomson & Houlton* [2000] NSWCCA 309

Sentence indication

Question 8.1

1. Should NSW reintroduce a sentence indication scheme?

No.

The Committee is of the view that the reintroduction of a sentence indication scheme is not an efficient use of the limited resources available to Legal Aid NSW and the ODPP at this time. A meaningful sentence indication requires subjective material about a defendant to be prepared and presented to the judicial officer making the indication, as the objective circumstances of the offence are only one part of the sentencing exercise. Preparing this material take significant time and resources, particularly on the part of Legal Aid NSW, and particularly where medical reports are required. In the Committee's view it would not be efficient to expend these resources in the hope that plea of guilty may be forthcoming and, as with other suggestions canvassed in the Consultation Paper, the financial resources required to implement the scheme would be better directed elsewhere.

2. If a sentence indication scheme were introduced, what form should it take?

If a sentencing indication scheme were introduced, the Committee is of the view that it should have the follow features:

Scope

- A sentence indication should only be available for indictable offences.

Availability

- It should be available to the defendant after an indictment has been filed, the prosecution must agree.
- A defendant should be afforded a reasonable opportunity to enter a guilty plea after a sentence has been indicated.
- A judge should have the discretion to determine whether a sentence should or should not be indicated. This would allow flexibility in circumstances where; the facts as presented are deficient; it would be appropriate to call more evidence; where the sentencing considerations or the circumstances create significant difficulty or undue delay.

Type of sentence indicated

- A judge should indicate whether a custodial or non-custodial sentence is likely to be imposed.
- If a custodial sentence is indicated, a judge may give a specific maximum length.

Operation of the Sentence Indication Scheme

- If a guilty plea is made in response to a sentence being indicated, a judge may not impose a sentence that exceeds that as indicated.

If, despite a sentence being indicated, an accused elects to have his matter proceed to trial, the indicated sentence has no legal effect and does not form a basis for appeal.

Question 8.2

Once a defendant accepts a sentence indication, in what circumstances should it be possible to change it?

See response to 8.1.

Sentence discounts for early guilty pleas

Question 9.1

1. Should NSW introduce a statutory regime of sentence discounts

Yes.

2. If a statutory regime of sentence discounts were introduced:

a. what form could it take, and

b. to what extent should it be a sliding scale regime?

The Committee adheres to the guideline proposed in its preliminary submission, as reflected by the Consultation Paper at Table 9.3.

The statutory regime should also provide for an overriding discretion for discounts to be given within the guidelines, because what is to be regarded as an early plea will vary depending on the circumstances. Such circumstances may include the following:

- Plea of guilty but factual issue in dispute.
- Plea of not guilty in what would be a lengthy and complex trial, but issues significantly narrowed by defence at trial.
- Evidence outstanding which is determinative of charge or jurisdiction (eg DAL certificate).
- Process of negotiation where a plea of guilty is entered to a lesser or backup charge.
- Incorrect charges originally laid.
- Extensive delay.
- Case where no discount is appropriate.

The Committee is of the view that the guidelines should be accompanied by a requirement for the specific discount for the plea of guilty to be identified during sentencing. This should involve an indication of what the sentence would have been if there was no discount. This is necessary to ensure that a discount for a plea of guilty is not merely a theoretical consideration in the sentencing process.

Summary case conferencing

Question 10.1

1. Should the Local Court of NSW introduce case conferencing as part of its case management processes?

The Committee endorses the position of the Law Society of NSW in response to this question.

2. Should the Local Court of NSW incorporate a summary sentence indication scheme?

No.

As stated at 8.1.2., if an indication scheme were introduced it should only apply to indictable matters.

The Local Court raises a particular concern in this respect. It is well known that the number of unrepresented parties in the Local Court is increasing. In unrepresented matters, difficulties arise when it is considered how such advice may be accepted by an unrepresented person, the potential for a sentence indication to coerce a guilty plea from an unrepresented person, and difficulties that may arise when actual sentences deviate from those indicated.

The Committee thanks you for the opportunity to comment.

If you have any questions in relation to the matters raised in this submission, please contact:

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OR

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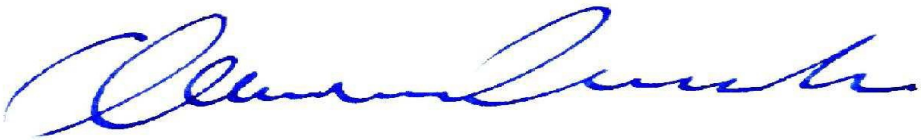
Yours faithfully,



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