



**New South Wales
Law Reform Commission**

Sentencing Question Papers 5-7

Consolidated questions

June 2012
www.lawlink.nsw.gov.au/lrc

Make a submission

We seek your responses to Question Papers 5-7 in the Commission's reference on sentencing. To tell us your views you can send your submission by:

Post: GPO Box 5199, Sydney NSW 2001

DX: DX 1227 Sydney

Email: nsw_lrc@agd.nsw.gov.au

It would assist us if you could provide an electronic version of your submission.

If you have questions about the process please email or call (02) 8061 9270.

The closing date for submissions on Question Papers 5 to 7 is Friday, 17 August 2012.

We intend to release further question papers in **July 2012**.

Use of submissions and confidentiality

We generally publish submissions on our website and refer to them in our publications.

Please let us know if you do not want us to publish your submission, or if you want us to treat all or part of it as confidential.

We will endeavour to respect your request, but the law provides some cases where we are required or authorised to disclose information. In particular we may be required to disclose your information under the *Government Information (Public Access) Act 2009* (NSW).

In other words, we will do our best to keep your information confidential if you ask us to do so, but we cannot promise to do so, and sometimes the law or the public interest says we must disclose your information to someone else.

About the NSW Law Reform Commission

The Law Reform Commission is an independent statutory body that provides advice to the NSW Government on law reform in response to terms of reference given to us by the Attorney General. We undertake research, consult broadly, and report to the Attorney General with recommendations.

For more information about us, and our processes, see our website:
<http://www.lawlink.nsw.gov.au/lrc>

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This consolidated list of questions is extracted, for the convenience of stakeholders, from the NSW Law Reform Commission's sentencing reference's Question Papers 5-7.

Question Paper 5 – Full-time imprisonment

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

Question 5.1

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

Top-down and bottom-up approaches

Question 5.2

1. Should the order of sentencing under s 44 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) return to a 'top down' approach?
2. Could a 'top down' approach work in the context of standard minimum non-parole periods?

Short sentences of imprisonment

Question 5.3

1. Should sentences of six months or less in duration be abolished? Why?
2. Should sentences of three months or less in duration be abolished? Why?
3. How should any such abolition be implemented and should any exceptions be permitted?
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?

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?
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?

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

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?

Question 5.7

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

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?
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?

Question Paper 6: Intermediate custodial sentencing options

Compulsory drug treatment detention

Question 6.1

1. Is the compulsory drug treatment order sentence well targeted?
2. Are there any improvements that could be made to the operation of compulsory drug treatment orders?

Home detention

Question 6.2

1. Is home detention operating as an effective alternative to imprisonment?
2. Are there cases where it could be used, but is not? If so what are the barriers?
3. Are there any improvements that could be made to the operation of home detention?

Intensive correction orders

Question 6.3

1. Are intensive correction orders operating as an effective alternative to imprisonment?
2. Are there cases where they could be used, but are not? If so what are the barriers?
3. Are there any improvements that could be made to the operation of intensive correction orders?

Suspended sentences

Question 6.4

1. Are suspended sentences operating as an effective alternative to imprisonment?
2. Are there cases where suspended sentences could be used, but are not? If so what are the barriers?
3. Are there any improvements that could be made to the operation of suspended sentences?
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?

Rising of the court

Question 6.5

1. Should the “rising of the court” continue to be available as a sentencing option?
2. If so, should the penalty be given a statutory base?
3. Should the “rising of the court” retain its link to imprisonment?

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?
2. Should there be a uniform maximum term for all of the custodial alternatives to full-time imprisonment?
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?
4. Should the Local Court's jurisdictional limit be increased for custodial alternatives to full-time imprisonment?

Other options

Question 6.7

What other intermediate custodial sentences should be considered?

Question 6.8

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

- a. what should be the maximum term of a periodic detention order or accumulated periodic detention orders;
- b. what eligibility criteria should apply;
- c. how could the problems with the previous system be overcome and its operation improved; and
- d. could a rehabilitative element be introduced?

Question Paper 7: Non-custodial sentencing options

Community service orders

Question 7.1

1. Are community service orders working well as a sentencing option and should they be retained?
2. What changes, if any, should be made to the provisions governing community service orders or to their operational arrangements?

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

Good behaviour bonds

Question 7.3

1. Are the general provisions governing good behaviour bonds working well, and should they be retained?
2. What changes, if any, should be made to the general provisions governing good behaviour bonds or to their operational arrangements?

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?
2. Should the provisions relating to fines in the *Crimes (Sentencing Procedure) Act 1999* (NSW) be added to or altered in any way?
3. Where a particular offence specifies a term of imprisonment but does not specify a maximum fine, how should the maximum fine be calculated?

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

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

Question 7.7

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

Other options

Question 7.8

Should any other non-custodial sentencing options be adopted?

Question 7.9

Should a fine held in trust be introduced as a sentencing option? If so, how should it be implemented?

Question 7.10

1. Should work and development orders be adopted as a sentencing option?
2. Alternatively, should the community service order scheme be adapted to incorporate the aspects of the work and development order scheme that assist members of vulnerable groups to address their offending behaviour?



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