



**New South Wales
Law Reform Commission**

Sentencing Question Papers 8-12

Consolidated questions

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

Make a submission

We seek your responses to Question Papers 8-12 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 8 to 12 is Monday, 3 September 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 8-12.

Question Paper 8 – The structure and hierarchy of sentencing options

Hierarchy of sentences

Question 8.1

Should the *Crimes (Sentencing Procedure) Act 1999* (NSW) set out a hierarchy of sentences to guide the courts? What form should such a hierarchy take?

Sentencing question papers

The need for flexibility

Question 8.2

Should the structure of sentences be made more flexible by:

- a. creating a single omnibus community-based sentence with flexible components;
- b. creating a sentencing hierarchy but with more flexibility as to components;
- c. allowing the combination of sentences; or
- d. adopting any other approach?

Particular sentencing combinations

Question 8.3

1. What sentence or sentence component combinations should be available?
2. Should there be limits on combinations with:
 - a. fines;
 - b. imprisonment; or
 - c. good behaviour requirements?

Question Paper 9 – Alternative approaches to criminal offending

Early diversion

Question 9.1

Should an early diversion program be established in NSW? If so, how should it operate?

Program-based diversion

Question 9.2

Is the Court Referral of Eligible Defendants into Treatment program operating effectively? Should any changes be made?

Question 9.3

Is the Magistrates Early Referral into Treatment program operating effectively? What changes, if any, should be made?

Question 9.4

1. Is the Drug Court operating effectively? Should any changes be made?
2. Should the eligibility criteria be expanded, or refined in relation to the “violent conduct” exclusion?

Section 11 adjournment

Question 9.5

Is deferral of sentencing under s 11 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) working effectively? Should any changes be made?

Intervention programs under the *Criminal Procedure Act 1986* (NSW)

Question 9.6

1. Is the current scheme of prescribing specific intervention programs operating effectively? Should any changes be made?
2. Is there scope for extending or improving any of the programs specified under the scheme?
3. Are there any other programs that should be prescribed as intervention programs?

Approaches to criminal offending

Question 9.7

1. Should restorative justice programs be more widely used?
2. Are there any particular restorative justice programs in other jurisdictions that we should be considering?

Question 9.8

1. Should problem-solving approaches to justice be expanded?
2. Should any of the models in other jurisdictions, or any other model, be adopted?

Any other approaches?

Question 9.9

Are there any other diversion, intervention or deferral options that should be considered in this review?

Question Paper 10 – Ancillary orders

Compensation orders

Questions 10.1

Are compensation orders working effectively and should any changes be made to the current arrangements?

Driver licence disqualification

Question 10.2

1. What changes, if any, should be made to the provisions governing driver licence disqualification or to its operational arrangements?
2. Should driver licence disqualification be made available in relation to offences that do not arise under road transport legislation?

Non-association and place restriction orders

Question 10.3

1. Should non-association and place restriction orders be retained?
2. Should any changes be made to the regulation and operation of non-association and place restriction orders?

Question paper 11 – Special categories of offenders

Indigenous offenders

Question 11.1

1. How can the current sentencing regime be improved in order to reduce:
 - a. the incarceration rate of Indigenous people; and
 - b. the recidivism rate of Indigenous offenders?
2. Are there any forms of sentence other than those currently available that might more appropriately address the circumstances of Indigenous people?
3. Should the Fernando principles be incorporated in legislation and if so, how should this be achieved and what form should they take?

Offenders with cognitive and mental health impairments

Question 11.2

1. Should the *Crimes (Sentencing Procedure) Act 1999* (NSW) contain a more general statement directing the court's attention to the special circumstances that arise when sentencing an offender with cognitive or mental health impairments? If yes, what form should these principles take?
2. In what circumstances, if any, should the courts be required to order a pre-sentence report when considering sentencing offenders with cognitive and mental health impairments to prison?
3. Should courts have the power to order that offenders with cognitive and mental health impairments be detained in facilities other than prison? If so, how should such a power be framed?
4. Do existing sentencing options present problems for people with cognitive and mental health impairments? If so, how should this be addressed?
5. Should any new sentencing options be introduced for people with cognitive and mental health impairments? If yes, what types of sentencing options should be introduced?

Women

Question 11.3

1. Are existing sentencing and diversionary options appropriate for female offenders?
2. If not, how can the existing options be adapted to better cater for female offenders?
3. What additional options should be developed?

Corporations

Question 11.4

Are additional sentencing options required in order to achieve the purposes of sentencing in relation to corporations? If yes, what should these options be?

Any other categories

Question 11.5

Are there any other categories of offenders that should be considered as part of this review?

Question Paper 12 – Procedural and jurisdictional aspects

Accessibility of sentencing law

Question 12.1

How can information technology be used to improve the accessibility of sentencing law while maintaining judicial independence?

Question 12.2

Could publicity orders and databases be a useful tool in corporate or other sentencing cases?

Procedural reforms

Question 12.3

What procedural changes should be made to make sentencing more efficient?

Question 12.4

How can the process of obtaining pre-sentence reports covering all sentencing options be made more efficient?

Question 12.5

Should oral sentencing remarks be encouraged by legislation with appropriate legislative protections to limit the scope of appeals?

Question 12.6

1. Should any change be made in sentence appeals to the test for appellate intervention (from either the Local Court or a higher court)?
2. Should greater emphasis be given to the existing provision in s 43 of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*, which allows sentencing courts to correct errors on their own motion or at the request of one of the parties without the need for an appeal?
3. Should appellate courts be able to determine appeals ‘on the papers’ if the parties agree?

Question 12.7

What bottlenecks exist that prevent committal for sentence proceeding as swiftly as possible and how can they be addressed?

Jurisdictional reforms

Question 12.8

Should specialisation be introduced to the criminal justice system in any of the following ways:

- a. having specialist criminal law judicial officers who are only allocated to criminal matters;
- b. establishing a Criminal Division of the District Court;
- c. establishing a single specialist Criminal Court incorporating both the District Court and Supreme Court's criminal jurisdictions, modelled on the Crown Court;
- d. amending the selection criteria for the appointment of judicial officers;
- e. in any other way?

Question 12.9

1. Should the comprehensive guideline judgment system in England and Wales be adopted in NSW?
2. Should the current guideline judgment system be expanded by:
 - a. allowing specialist research bodies such as the NSW Sentencing Council to have a greater role to play in the formulation of guideline judgments, and if so, how should they be involved?
 - b. allowing parties other than the Attorney General to make an application for a guideline judgment, and if so, which parties, and on what basis should they be able to apply for a guideline judgment?
3. Should the Chief Magistrate have the power to issue guideline judgments for the Local Court? If so, what procedures should apply?

Question 12.10

1. Should a sentence indication scheme be reintroduced in NSW?
2. If so, should it apply in all criminal courts or should it be limited to the Local Court or the higher courts?
3. Should a guideline judgment be sought from the Court of Criminal Appeal to guide the operation of the scheme?
4. How could the problems identified with the previous sentence indication pilot scheme in NSW in the 1990s, including overly lenient sentence indications and 'judge shopping', be overcome?

The role of victims in sentencing proceedings

Question 12.11

1. Should a court be permitted to give weight to the contents of a family victim impact statement when fixing the sentence for an offence in which the victim was killed?
2. Should any changes be made to the types of offences for which a victim impact statement can be tendered?
3. Are there any other ways in which victims should be able to take part in the sentencing process which are presently unavailable?

Other options

Question 12.12

Should any other options be considered for the possible reform of the sentencing system?



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