

5/9/13 Christopher Ryan [REDACTED]
Secretary
Committee Hearing on Sentencing
Dear Sir/Madam

 A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	2
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Firstly, Magistrates Court power should be lifted to 5 years imprisonment. Magistrates more accurately reflect the community expectations on punishment to be imposed. They are not bogged down by the academic exercise that Judges embark on (one acting judge being the exception).

A senior NSW judge has recently remarked that sentencing ought not be removed from reality of crime, the effect it has on the victims and the community. He said too many judges live in safe, leafy suburbs, removed from most areas where crime is an ever present threat and reality. Crime is more than statistics.

Most judges in this jurisdiction don't appreciate that. Visiting judges (from the Federal Court Bench) have very little criminal law experience, and see criminal work as an amusing distraction from the relatively dry jurisdiction of the Federal Court. The community has to live with their decisions (they back in Brisbane or Sydney or Melbourne, leafy and privileged).

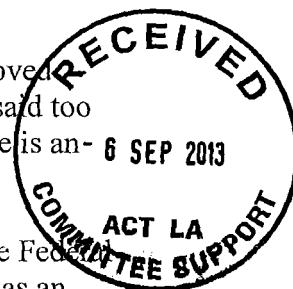
Magistrates have the courage to sentence appropriately. Some judges have spent the past 20 years undermining the gravity, the authority, the significance, the importance of the Magistrates Court by routinely overturning sentencing. The Magistrate Court became a provisional sentencing Court..

Yet, when sitting on appeal from sentence of single judge, the judges adopt the settled law on sentencing – that a sentence is a discretionary matter, not to be set aside unless manifestly wrong for reasons of failure to consider a relevant matter, or failing to understand the evidence. Double standards.

Thus, secondly, legislate to specify that a sentence imposed by a magistrate is not to be more readily quashed than that imposed by a judge.

Thirdly. Pre sentence reports are too routinely sought in the most obvious of matters (where gaol is inevitable). Legislate to ensure that such reports are for the discretion of the sentencer. The Magistrates Court ought be able to sentence on the day for shorter periods of time (say up to 3 mths) without a public servant writing a sentencing report. The lawyer calls what evidence is required on sentence, as does the DPP; submissions made; sentence imposed.

It was my experience over many years of criminal law practice in the Magistrates Court in the 80s and 90s that sentence imposition on the day of finding of guilt (or shortly thereafter) worked well. Seldom appealed because of the relative short period imposed (the effectiveness of the short sharp shock). Prisoners in the NSW system at Goulburn were not classified into medium and low security prisons whilst the appeal process was engaged. It was a real disincentive to appeal a sound sentence. Bail was not given pending appeal. Appeals came on in a couple of months (on the filing of appeal, and oral argument from lawyers). No choking paper work. Transcript of Magistrates Court proceedings rarely required.



Few appeals were successful. The traditional judge, respectful of the magistrate, was very very hard to persuade.

Thus, fourthly, implement a "low document" appeal stream. Appeal lodged, matter listed for oral argument. Lawyers who practised in the real world of criminal law (some 20 years ago) when the criminal justice system was in harmony with the community (unlike today when it has become a perverse exercise that causes the community despair at its cost for result – criminals back out too soon) are capable of working in such a system.

With any luck, we will have a majority of judges who are likewise capable. Acting judges from State District Courts, and the County Court (Victoria), those who can make decisions without mounds of paper and cases and argument and months of deliberation. These judges do it by the hundreds of appeals on sentencing in such Courts daily around Australia.

Fifthly, remove the case management hearing process in the Magistrates Court for minor offences. It delays sentencing (by allowing the charged person to further prolong the process).

Six. Controversely. Appoint laypersons to sit on sentencing with a magistrate for the offences most likely to approach the 5 year mark. This would reinforce the sentence validity; the sentence having the input (non binding, the magistrate having the final and sole duty to impose sentence) directly from the community. Making it harder for judges to overturn.

Seven. The non parole period is in the range $\frac{2}{3}$ rd to $\frac{3}{4}$ of head sentence. Should be no lower than $\frac{2}{3}$.

I realise that some (? most?) on the Committee will be hoping for trendy progressive libertarian opinions on sentencing. Turn the bashers, rapists, murderers, car drivers cause death or injury, housebreakers, armed robbers, back out into the community. For courses in basket weaving/art (cultural awareness), anger management, drug education, psychological counselling, wellness, niceness, cooking, community work.

"Middle Australia" Canberrans (those who work, pay taxes/rates, bring up kids, struggle to pay the mortgage/rent/power bills, keep relationships together, participate in the community, try and do the right thing, pay our parking and speeding fines, pay out kids' education costs), the "squares" who keep society going, are fed up with the "bleeding hearts".

People who go to gaol get a hard lesson. Some eventually may reform. They don't reform if indulged, pampered, kept free of appropriately harsh sentencing for (often) appalling crimes (or pattern of lesser crimes). They continue to expect no consequences for ongoing said behaviour.

Give them courses in AMC. Give them post release support.

Don't allow a coterie of politicians and public servants, and publically propped up (if

not fully salaried) lawyers, to hijack the sentencing process with their agenda based variously on cost cutting , on naïvety and idealism.

If “low or no sentence to prison” adherents want to feel good about themselves, they can do what the rest of we “mug middle Australians” do. Charity or community work. Or they can do good work visiting the AMC. In their own time (not on ours).

Don't assume that certain bodies represent the opinion of all lawyers in Canberra. The Legal Aid Office is most unlikely to represent any other view than the most extreme liberal – no gaol for anyone other than a token very few years for murder, a token few months for rape. Convicted criminals are the real victims of society failing them. It is not their fault, it is our fault.

The ACT Law Society (if it makes a submission) will be dominated by the criminal law practitioners (who rely in the main on legal aid funding to survive in practice). Criminal law practitioners are a very small percentage of the local private practice profession (the LAO directs funding to a select small group). Thus the Law Society submission may not be much (if at all) different from that of the LAO submission.

I make my contribution to the Committee as a private citizen. Canberran (since 1973), former policeman, union official, current lawyer (private practice), family man, crime victim (property and person). “Middle Australia”. No one of any importance or influence.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Christopher Allen".