



Our Reference:
Your Reference:

24 September 2013

Secretary
Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	3
DATE AUTH'D FOR PUBLICATION	16.10.13

Pol.

Dear Secretary,

INQUIRY INTO ACT SENTENCING

Thank you for your invitation to make submissions to the inquiry. The DPP has a great interest in developments in this area. I should be very happy to appear before the Committee to share my experiences and views. However given that sentencing is such a controversial topic, and the policy considerations behind sentencing legislation are ultimately a matter for the Assembly, I do not propose to make detailed written submissions.

Sentencing is central to the work we do as prosecutors. As you are no doubt aware I have been very willing to appeal against what I see as manifestly inadequate sentences, and I have also raised from time to time with Government what are seen to be technical deficiencies with sentencing legislation.

There are some matters which are of perennial interest in this area which the Committee may wish to consider. I mention them without advocating a particular position.

Suspended sentences

The efficacy of suspended sentences is much discussed by criminal lawyers. Recently, Victoria has taken steps to abolish suspended sentences, initially for more serious matters.

In theory suspended sentences are high on the hierarchy of sentencing options, ranking just below sentences of actual imprisonment. This is because before a suspended sentence can be imposed a Court has to be satisfied that it is appropriate that the offender receive a custodial sentence.

ACT DIRECTOR OF PUBLIC PROSECUTIONS

However, if the sentence of imprisonment which underlies the suspended sentence is not generally activated when the offender is dealt with for a breach of the suspended sentence, this has potential to weaken public confidence in the sentencing system.

Most Australian jurisdictions (including New South Wales and Victoria) embody in legislation a presumption that where a suspended sentence is breached, then the underlying sentence will be activated. For example in New South Wales it is provided that where a suspended sentence is breached, the Court must impose the underlying sentence of imprisonment unless it is positively satisfied that the offender's failure which led to the breach was trivial or there are good reasons for excusing the failure. The ACT is one of the few Australian jurisdictions where there is no presumption of activation of the sentence on breach.

Sentencing outcomes for particular offence types

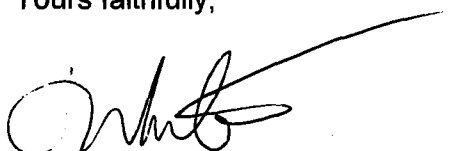
Another issue that often arises is in relation to the appropriateness of certain types of sentencing outcomes for particular offence types.

To give an example it can be argued that a sentence of periodic detention will in most cases be inappropriate to be imposed in cases of sexual offences. This is because a person serving periodic detention will be unable to access the types of rehabilitation programmes in relation to sex offences that are available to those serving full time custody.

There are similar policy issues that arise as to whether for example restorative justice should be available to all offences, and what offences are appropriate to be included within circle sentencing.

I look forward to appearing before the Committee if that were considered appropriate.

Yours faithfully,



Jon White
Director of Public Prosecutions

