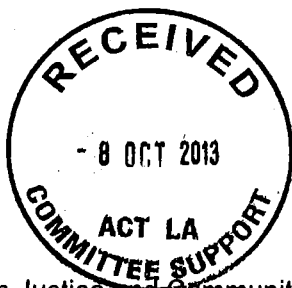


**AUSTRALIAN
LAWYERS
ALLIANCE**

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Steve Doszpot
Chair
Standing Committee on Justice and Community Safety
GPO Box 1020
Canberra ACT 2601

26 September 2013

Dear Mr Doszpot,

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	4
DATE AUTH'D FOR PUBLICATION	16.10.13

Inquiry into Sentencing in the ACT

Thank you for your letter inviting the Australian Lawyers Alliance (ALA) to comment on sentencing in the ACT as part of the Standing Committee on Justice and Community Safety's inquiry.

The ALA is a body of lawyers from all over Australia who are committed to protecting and promoting the rights of individuals and ensure that the Australian legal system provides justice.

The terms of reference you provided are broad without identifying any specific issues to be considered. In that context we make a number of comments on sentencing in the ACT generally. If the committee reaches a point where it is considering recommending significant changes to sentencing law in the Territory we would seek further input into that process.

Community values in sentencing

ALA believes that the sentencing regime in the Territory does not need any major overhaul. It believes that sentences handed down by ACT courts are generally about right, in accordance with community expectations and that there is no need to seek to change the sentencing culture of the courts. The committee will no doubt consider the reports published by the Victorian Sentencing Advisory Council. In particular we recommend the report 'Community Attitudes to Offence Seriousness' (2012) available at sentencingcouncil.vic.gov.au.

The ACT has in the past had a reputation for being a 'lenient' jurisdiction in terms of sentencing. The reality is that until March 2009 the ACT exported its prisoners to NSW at

significant cost to the ACT community and a sentence of imprisonment was a particularly onerous outcome to an ACT offender and his/her family. Since the opening of the Alexander Maconochie Centre there has been a steady increase in the number of persons sentenced to imprisonment in the Territory which in our view reflects the fact the ACT now has its own correctional facility.

It is no longer appropriate to regard the ACT as a lenient jurisdiction. Rather it should be regarded as a just and non-reactionary jurisdiction in which the Courts administer justice fairly with appropriate judicial discretion and oversight cognisant of community expectations. In contrast to many other jurisdictions, the ACT has generally resisted the knee-jerk "law and order" type auctions where heavier and heavier penalties are called for by 'community spokespersons' – usually in response to a particularly high profile case. ALA believes that where mandatory minimum sentences are imposed, judicial discretion and individualised justice is replaced with a one size fits all approach which in practice leads to injustice and other unintended consequences.

The Crimes (Sentencing) Act in our view provides appropriate direction for judicial officers in sentencing as well as providing a range of sentencing options such that sentences in the ACT, perhaps more than any other jurisdiction in Australia, can be tailored to properly meet the circumstances of the case and expectations of the community in terms of punishment, deterrence and retribution as well as rehabilitation and personal accountability.

The objects set out in section 6 of the Crimes Sentencing Act are in our view an appropriate statement of what a sentencing law should seek to achieve and should be kept at the forefront of all Committee deliberations. It is worth repeating the objects of the Crimes (Sentencing) Act:

- (a) to promote respect for the law and the maintenance of a just and safe society;
- (b) to provide a range of sentencing options;
- (c) to maximise the opportunity for imposing sentences that are constructively adapted to individual offenders;
- (d) to promote flexibility in sentencing;
- (e) to consolidate legislation relating to the imposition of sentences.

Given our position that the current system of sentencing in the ACT does not need any radical overhaul, only general comments are provided.

Mandatory minimum sentencing

ALA supports the retention of judicial discretion in the sentencing process. Mandatory sentencing as well as mandatory minimum sentences achieve little but injustice and undermine the proper administration of justice.

Mandatory sentencing is a blunt response to nuanced issues. It does not allow for the exceptional case and invariably leads to persons involved in the system (defence, judges and prosecutors) trying to massage an inflexible and unfair system to provide an appropriate and just outcome.

An example of this is the "standard non-parole period" in NSW for particular offences. An example is "recklessly inflict grievous bodily harm" which in NSW carries a standard non parole period of 4 years imprisonment. This is an offence which can be committed in a vast range of circumstances, some of which may not call out for a fulltime sentence of imprisonment let alone a minimum 4 years non-parole period.

When faced with what is effectively a mandatory and lengthy term of imprisonment, an offender will no longer have any incentive to plead guilty and will instead take their chances at trial. This is at the cost to the community in both the time and expense of a trial but also at the cost of the victim who will need to give evidence at a trial that may not have been necessary if the offence did not lead to a mandatory sentence of imprisonment irrespective of the circumstances of the case.

It is the experience of our members that such sentencing provisions do not achieve 'justice' and judges should retain a discretion to deal with each matter on its merits. The appeal system provides sufficient oversight to correct inadequate or excessive sentences. We are strongly against any such diminution of the sentencing discretion.

Discounts for early pleas

Where an accused person enters a plea of guilty, they receive a discount on sentence that is stated when they are sentenced. This discount reflects the saving to the community and the witnesses and victims of crime in not having to run a hearing or trial. Such discounts remain an appropriate 'carrot' to accused persons and assist the administration of justice in the Territory. They should be retained.

Sentencing culture generally at present

We feel there are currently appropriate levels of oversight of judicial sentencing by way of the appeal process. The existence or preponderance of sentencing appeals either to or from the Supreme Court is not indicative of a broken system – rather it demonstrates the reality that sentencing is an inexact science where judicial discretion in sentencing is balanced with judicial oversight and a capacity to review sentencing decisions when and where necessary. The current system works.

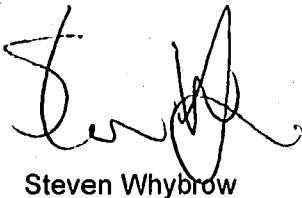
Timeliness in handing down decisions and sentences

ALA supports the appointment of a fifth judge to the ACT Supreme Court. In the last 18 months there has effectively been a de-facto additional judge in the ACT in the form of Acting Justice Nield. It is clear that without this additional judicial capacity, timeliness in completing criminal matters in the Territory would have been significantly adversely affected.

To return to a situation of only having four full-time judges will have the effect of increasing the time accused persons wait for trial and victims of crime wait in 'limbo' for matters to be completed. Consequential issues as to bail and delay will inevitably arise.

The issue of reserved decisions has been an ongoing one in the Territory for some time although it appears in recent times this has slowly begun to improve. One thing that can be said with certainty is that if the number of judges is reduced, the timeliness in the delivery of decisions will not increase.

Sincerely,



Steven Whybrow

On behalf of Australian Lawyers Alliance