



**Sentencing  
Council**  
Justice & Attorney General

30 July 2010

Ms Helen Campbell  
Executive Officer  
Redfern Legal Centre  
73 Pitt St  
REDFERN NSW 2016

Dear Ms Campbell,

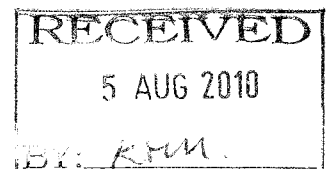
The Attorney General has requested that the NSW Sentencing Council examine the relative merits of increasing the sentencing powers of the Local Court in respect of:

- (a) the maximum penalty that may be imposed in respect of a single offence (from two to five years imprisonment); and
- (b) the maximum property value in relation to indictable 'break and enter' offences that may be dealt with summarily under Chapter 5 of the Criminal Procedure Act 1986 (from \$15,000 to \$60,000).

In examining these proposals, the Council has been asked to specifically consider the following matters:

- An analysis of any cases currently heard in the Local Court in which there is an identifiable concern that the jurisdictional limit is leading to sentences that do not reflect the objective criminality of the offences;
- The impact of the proposals on the workloads of affected agencies including the Local and District Courts, police prosecutors, the Office of the Director of Public Prosecutions, Legal Aid Commission, Aboriginal Legal Service, Corrective Services NSW and the State Parole Authority and their capacity to accommodate the change in jurisdiction;
- Whether existing avenues of appeal are adequate;
- The potential impact of the proposals on the incidence of guilty pleas and jury trials;
- The likely effect on rural, remote and Aboriginal communities; and
- Any other relevant matter.

I note that the Council has already provided an advice to the Attorney General in relation to the maximum property value issue, indicating its support for the increase from \$15,000 to \$60,000.



In order to assist the Council in its task, I invite you to make a written submission by **27 August 2010** addressing the issues set out above. Submissions should be sent to:

NSW Sentencing Council  
GPO Box 6  
SYDNEY NSW 2001

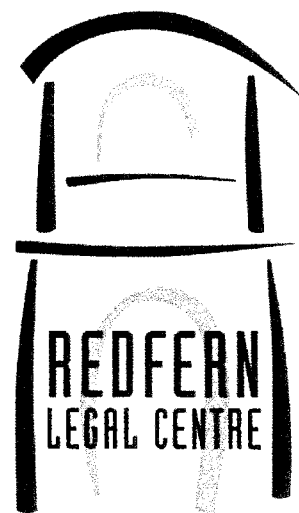
Or by email to: [sentencingcouncil@agd.nsw.gov.au](mailto:sentencingcouncil@agd.nsw.gov.au)

Yours sincerely,



Jerrold Cripps QC  
Chairperson

# Redfern Legal Centre



6 September 2010

Mr Jerrold Cripps QC  
Chairperson  
NSW Sentencing Council  
GPO Box 6  
SYDNEY NSW 2001

Dear Mr Cripps

## **Submission on review of Local Court sentencing powers**

### **About Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent non-profit community-based organisation with a prominent profile in the Redfern area of over 25 years' standing. We provide free legal advice and assistance, community education and advocacy on law and policy reform issues. We have a focus on human rights and social justice. We prioritise the needs of Aboriginal and Torres Strait Islanders, people from CALD backgrounds, people with disabilities (especially people with mental health issues and drug and alcohol problems), and young people.

Redfern Legal Centre provides representation to people in court who have been charged with criminal offences in selected matters only and generally refers clients on to the Aboriginal Legal Service, the Legal Aid Commission or private legal practitioners. However many people in our local area attend the Centre for preliminary advice about criminal matters and we do assist people in relation to victims' compensation, domestic violence and complaints about police. RLC deals daily with people who have contact with the Local Court but with little understanding of the process.

RLC staff attend the Downing Centre, Balmain, Newtown and Waverly Local Courts.

### **Our view in summary**

The RLC opposes any increase in the sentencing jurisdiction of the Local Court.

---

73 Pitt Street Redfern NSW 2016 ACN: 31 001 442 039 ph: (02) 9698 7277 fax: (02) 9310 3586 web: [www.rlc.org.au](http://www.rlc.org.au)

*General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm*

*Interviews by appointment: Monday to Thursday 6.30pm – 8pm*

We are concerned that increasing the maximum penalty that may be imposed in the Local Court will result in an increase in sentences awarded. While overtime the dollar amount of the jurisdiction in the Civil Division has been increased to recognise monetary inflation, the same indexation process cannot be transferred to the critical issue of loss of liberty. Two years of incarceration does not become the equivalent of 5 years of incarceration by some process of devaluation of years of being in prison.

Increasing the maximum custodial sentence in the Local Court will also increase the demands on the legal agencies working in local court work, including community legal centres, the Legal Aid Commission, the Aboriginal Legal Service and police prosecutors. This cannot occur without a significant increase in resources and training of these agencies.

## **Submissions on matters for specific consideration**

### **1. Analysis of current cases of identifiable concern that the Local Court jurisdiction leads to sentences that do not reflect the objective criminality of the offences.**

We draw your attention to two assumptions in the proposed analysis. The first is that the Local Court jurisdiction is the source of insufficient sentences. In prosecuting a case, the Crown always formulates its own view of the objective criminality of the offence. If the Police Force and the DPP choose to pursue matters in the Local Court, knowing its jurisdictional limits, this is not a shortcoming of the Local Court. Electing not to attempt a prosecution in the District Court is not a reason to expand the jurisdiction of the Local Court.

The second assumption is that Local Court processes are sufficiently thorough to safely arrive at a decision that a person should lose 5 years of their life to a custodial sentence. Historically the expectation has been that the strength of the legal process is exercised in proportion to the length of the possible sentence; if a person is to be deprived of their liberty for a period of more than two years then the case against them should be given the full weight of the law and judicial process.

The Local Court is seen as the Court for resolving less serious matters where the risk that a wrong decision is made is more acceptable. No matter how able the Magistrate, the volume of matters proceeding through the Local Courts make it difficult for them to approach each matter with the level of judicial freshness and scrutiny a person facing five years imprisonment would expect.

There would need to be considerable change to the number of courts, the number of Magistrates and the Court processes themselves to bring them into line with the District Court if the community was to have confidence in the Local Courts having jurisdiction to sentence a person to 5 years imprisonment. In this case, any cost advantage in using the Local Courts is lost.

### **2. The impact of the proposals on the workloads of affected agencies**

The proposals are likely to increase the workload on numerous agencies, including our own. We consider that the current proposals should be rejected on the basis of the workload consequences alone. Police prosecutors, Legal Aid, Community Legal Centres and the Department of Corrective Services, to name a few, are all likely to experience

increased demand without a corresponding increase in funding or training. The net effect on the administration of justice in NSW would be disastrous.

Duty solicitors will be faced with cases of increased complexity and no additional time to devote to them. As these solicitors are often the source of the first legal advice received by a defendant, errors caused by resource constraints at this initial stage have consequences throughout the court process. We consider that all Local Court participants will be less able to cope with the workloads that can reasonably be expected under the proposal.

### **3. Whether existing avenues of appeal are adequate**

The current proposal poses a real risk of a significant increase in the complexity and seriousness of Local Court cases. We do not consider that the Local Court, District Court or the interests of justice would be properly protected by an assumption that the current appeal processes are sufficient to handle a likely increase in appeals.

An expansion of the sentencing jurisdiction of the Local Court is unlikely to be accompanied by a thorough revision of the Local Court's case management practices. Much of this case management is not appropriate for the more serious offences falling within the proposal. The pace with which Local Court matters proceed will likely give rise to an increase in appeals.

The District Court already handles nearly 6,000 sentence appeals from the Local Court each year.<sup>1</sup> The timeframe of an initial hearing in the Local Court plus the appeals process does not compare well to the relatively swift disposal of matters in the District Court.

In effect it will render the Legal Aid Commission the judge of appeal as most of our clients are unable to effectively proceed to an appeal without representation. The Legal Aid Commission merits test will function as a de facto appeal in an unsatisfactory number of cases. The purpose and constitutional role of the court system is for it, and not Legal Aid, to be the arbiter.

### **4. The potential impact on guilty pleas and jury trials**

The proposals would remove the need for certain offences to be tried before a jury in order to pursue the maximum sentence. The offences in question can be found in Schedule 1, Table 2 of the *Criminal Procedure Act 1986*. For example, under the current system, in order to pursue the maximum sentence for receiving stolen tools, the matter must proceed by way of indictment. The proposal would remove the checks and balances concomitant in the jury process.

It is not really possible to predict the outcome for guilty pleas. It may well be that fewer persons will plead guilty, by reason of being more concerned about the potential maximum sentence. This would lead to increased pressure on the Local Court, Legal Aid, Community Legal Centres and the Aboriginal Legal Service.

On the other hand, experience of the confusion common at Local Court waiting rooms, suggests that many people will still plead guilty (even when they may have viable defences) because of a perception of 'getting it over with', not realizing the potential maximum sentences. Those persons are also not likely to properly have any matters to be

---

<sup>1</sup> District Court of New South Wales Annual Report, 2008.

put in mitigation organized or ready to present as admissible evidence. Duty solicitors in particular will come under increased pressure to obtain full and complete instructions on mitigation from clients they have just met. The opportunity for a proper conference to take place is of great value to the efficiency of the Local Court and in guilty pleas, to the correctional system. By increasing only the consequences and not the safeguards, the proposal is more likely to see people less experienced in the criminal justice system getting custodial sentences when they should not and for unfair periods.

### **5. The likely effect on rural, remote and Aboriginal communities**

Indigenous communities benefit from the diversionary programs of the Local Court. These diversionary programs include Circle Sentencing Courts, the Magistrate's Early Referral into Treatment Program (MERIT), and the Mental Health Liaison Service. These services are most relevant to our clients at the RLC. Many of the matters we deal with involve Aboriginal persons, drug & alcohol and mental health issues. The success of these programs relies on the intensive participation of the Court.

We fear that an increase in the Local Court's jurisdiction will negatively impact the success and possible expansion of these programs. Matters more appropriately dealt with in the District Court should not be allowed to absorb the Local Court's resources to the point that diversionary programs are prevented from dealing with the underlying causes of crime.

For the reasons discussed above, we consider the proposal to increase the sentencing powers of the Local Court to be without merit and contrary to the public interest.

If you have any queries or require further information please contact Joanna Shulman, Executive Officer, Redfern Legal Centre, on (02) 9698 7277 or [joanna@rlc.org.au](mailto:joanna@rlc.org.au).

Yours sincerely

**REDFERN LEGAL CENTRE**

David Porter  
Solicitor

Elizabeth Morley  
Principal Solicitor

Joanna Shulman  
Chief Executive Officer