



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG629865

12 July 2012

Director
Criminal Law Review
NSW Department of Attorney General and Justice
GPO Box 6
SYDNEY NSW 2001

Dear Director,

Review of Table offences

I refer to the letter from the Attorney General seeking the Law Society's views on the review of offences under Tables 1 and 2 of Schedule 1 of the *Criminal Procedure Act 1986* (Table offences).

The Criminal Law Committee (Committee) has reviewed the questions in the Attorney's correspondence and has responded below.

- 1. Some Australian jurisdictions do not use a Table system and instead classify the offences that can be dealt with summarily by reference to catch-all criteria such as the indictable maximum penalty or the value of property stolen. Assuming that New South Wales retains a system for summary disposal of indictable offences, should a catch-all theme be implemented or should the Table system be retained?**

The Committee supports the retention of the Table system.

The Committee sees no benefit in introducing a system based on catch-all criteria while maximum penalties lack consistency. The Government would need to undertake a comprehensive and far reaching review to achieve consistency in maximum penalties.

- 2. If catch-all criteria for determining which offences are capable of summary disposal were implemented, what should they be?**

If catch-all criteria were implemented, then the criteria should be based on maximum penalties subject to a comprehensive review and logical calibration of maximum penalties.

3. If retention of the Table system is supported:

- a. should the two Tables be combined into one, and if so, who should have the power to make an election in relation to offences in a combined Table?**

Yes, the two Tables should be combined into one. Either party should be able to make an election, as is the case with current Table 1 offences.

- b. if the retention of two Tables is supported, who should have the power to make an election in relation to offences in the Tables?**

The Committee supports the merging of the two Tables. If the two Tables are retained, then the Committee is of the view that either party should be able to make an election.

- c. should there be any movement of offences from one Table to the other?**

The Committee is of the view that the two Tables should be merged.

- d. are there any offences that should be removed from the Table/s and made strictly indictable?**

No.

- e. are there any offences that are currently strictly indictable that should be inserted into the Table/s and thereby be capable of summary disposal?**

Yes. There are a number of strictly indictable offences that often receive Local Court type penalties.

The following are examples of offences that should be capable of being dealt with summarily:

- Section 60E(3) – wound or cause grievous bodily harm to a school student or member of staff.
- Section 94 - robbery.
- Section 112 - aggravated break and enter and commit a serious indictable offence, particularly when the offence is malicious damage or stealing and the aggravating factor is "in company".
- There are a number of offences under the *Drug Misuse and Trafficking Act 1985* that should be capable of being dealt with summarily. Various amendments to Schedule 1 have perverted the legislative intention of the Act.

An analysis of Judicial Commission sentencing statistics shows a significant number of persons sentenced for these offences in the District Court receive a sentence that is well within the jurisdictional limit of the Local Court.

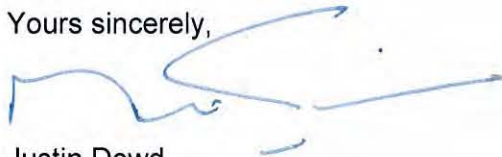
In more serious cases the prosecution will elect.

- f. **should Table offences carrying an indictable maximum penalty of two years imprisonment or less be kept in the Tables or made strictly summary?**

This would not be an appropriate measure to implement until a comprehensive review of maximum penalties has taken place. Following such a review, and subsequent reform, it may well be appropriate for offences carrying a maximum penalty of two years imprisonment or less to be made strictly summary.

The Committee would appreciate the opportunity to meet with representatives from the Legislation, Policy and Criminal Law Review Division to discuss the questions further.

Yours sincerely,



Justin Dowd
President

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