



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG570487

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8 August 2011

The Honourable James Wood AO QC
Acting Chairperson
NSW Sentencing Council
GPO Box 6
SYDNEY NSW 2001

Dear Mr Wood,

Suspended sentences

Thank you for the opportunity to comment on the Sentencing Council's consultation paper relating to suspended sentences. The Law Society's Criminal Law Committee (Committee) has considered the questions set out in the consultation paper and provides the following responses:

1. (a) Should partially suspended sentences be introduced as a sentencing option in NSW?

There is no need to reintroduce partially suspended sentences in NSW.

2. (a) Is reform required in relation to the nature of the conditions that may be attached to a suspended sentence?

If the breach and revocation provisions are amended as suggested below, then reform in relation to the nature of the conditions that may be attached to a suspended sentence is not required.

3. Should the term of imprisonment that may be suspended (currently a maximum of 2 years), be either increased or decreased? If yes, please indicate your reasons.

The term of imprisonment that may be suspended should remain at 2 years in the Local Court and should be increased to 3 years for District Court matters. This would allow the District Court a greater flexibility for young and limited record offenders who commit serious offences but may not pose a risk to the community in terms of recidivism.

4. Should the operational period, or the period for which a term of imprisonment may be suspended (currently also a maximum of 2 years), be either increased or decreased?

The operational period should correspond to the maximum sentence that may be suspended; 2 years in the Local Court and, if the Committee's suggestion is adopted, 3 years in the District Court.

5. Should an application for a guideline judgment be made?

No, a guideline judgment is not necessary.

6. Is further legislative guidance required in relation to the factors that make a case inappropriate for suspension?

Further legislative guidance is not required in relation to factors that make a case inappropriate for suspension.

7. Do the current provisions relating to breaches of suspended sentences require reform? If yes, how? Should the discretion available to a court when addressing a breach of a suspended sentence be widened?

Yes, the current lack of flexibility following a breach of a suspended sentence needs to be addressed. Amendments are required to give the Court wider discretion when addressing a breach.

Currently the Court must revoke a suspended sentence if the bond is breached unless the breach was trivial in nature or there are good reasons to excuse the breach (sections 98, 99 *Crimes (Sentencing Procedure) Act 1999*).

The Committee suggests that the reference to 'trivial in nature' is unhelpful in practice and should be deleted.

The Committee submits that 'good reasons for excusing the breach' should be expanded to allow the Court to consider:

- matters that go to the nature of the breach;
- consequences of the breach;
- matters preceding and post-dating the breach;
- the circumstances of the offender, and
- any other subjective matters.

The Committee is of the view that there should be a broad distinction between a breach for non-compliance with a condition of the bond and a breach caused by further offending. A different test should be applied to distinguish between "condition" and "offence" breaches.

- The Court should have the power to deal with a breach of a condition that does not involve further offending by varying, removing or imposing conditions in addition to the option of revocation.
- Although a breach caused by the commission of a further offence is more serious than a "condition" breach, revocation should not be mandatory. The Court should consider the seriousness of the offence, and have the discretion to vary or impose conditions in addition to the option of revocation.

When a bond is revoked, the offender should only be required to serve the portion of the sentence remaining at the time of the breach to account for the

time spent in the community that is offence free. The Court would still have the ability to impose a further custodial sentence if the breach was caused by a fresh offence.

8. **Is there disparity between courts in relation to the availability of, and confidence in, intermediate sentencing options? If yes, please indicate:**

a) the nature of the disparity; and

b) the nature of the reforms that you consider would address this disparity.

Yes, due to the slow roll-out of Intensive Correction Orders and the limited availability of home detention state-wide. The availability of these intermediate sentencing options is dependent on proper resourcing.

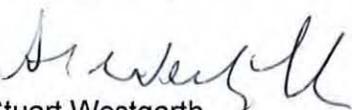
9. **Are reforms required to intermediate sentencing orders?**

No.

10. **Should NSW adopt a similar approach to Victoria in relation to strengthening available intermediate sentencing orders and gradually phasing out suspended sentences?**

No, suspended sentences should not be abolished. The Committee agrees with the comments made by the NSW Law Reform Commission in its report on Sentencing (which recommended the re-introduction of suspended sentences), that suspended sentences are a 'very useful sentencing option in situations where the seriousness of an offence requires the imposition of a custodial sentence, but where there are strong mitigating circumstances to justify the offender's conditional release'¹.

Yours sincerely,


Stuart Westgarth
President

¹ NSWLRC Report 79 (1996), *Sentencing*, para 4.22.