



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBG583189

15 February 2012

The Hon Nicola Roxon MP
Attorney-General
M1.21
Parliament House
CANBERRA ACT 2600

Dear Attorney-General,

The impact of mandatory sentencing provisions on the NSW court system

The Law Society's Criminal Law Committee (Committee) has asked that I write to you in relation to the mandatory sentencing provisions that apply to people smuggling offences and the impact on the New South Wales court system.

Under the *Migration Act 1958* a person who is convicted of one of four specified offences faces a mandatory minimum period of imprisonment of five years with a three year non-parole period.

The Committee is opposed to mandatory sentencing because it removes sentencing discretion from the courts that hear and examine all of the relevant circumstances of a particular case. Mandatory sentencing can produce disproportionately harsh sentences and result in inconsistent and disproportionate outcomes. Further, there is no evidence that the harsher penalties provided by mandatory sentencing have any deterrent value.

As you will be aware, trial judges have been speaking out about the injustice of the mandatory sentencing regime and the removal of judicial discretion to pass proportionate sentences.¹ The Chief Judge of the District Court of New South Wales commented that "[t]he people being tried are in fact farmers and fishermen. None of these people are organisers of people smuggling."²

The practical implications for the New South Wales court system are of great concern. The mandatory sentencing provisions remove any incentive for an accused to plead guilty, because the sentence upon a finding of guilt after trial would be no greater than the sentence on a plea of guilty, while a trial offers the chance of acquittal. This has resulted in a large number of matters before the District Court, which has placed a

¹ See for instance: *The Queen v Tahir and Beny*, unreported, Supreme Court of the Northern Territory, Mildren J; *The Queen v Mahendra*, Supreme Court of the Northern Territory, Transcript of sentencing proceedings, Blokland J, 1 September 2011.

² 'People smugglers swamping the courts', Sydney Morning Herald, 27 December 2011.

considerable strain on the resources of the courts, Legal Aid NSW and the Office of the Commonwealth Director of Public Prosecutions. There are over 30 people smuggler cases listed from January to early July 2012, and the delay between committal and trial has increased from 13-14 weeks to 19 weeks. A shortage of interpreters and difficulties in obtaining evidence of proof of age for those claiming to be minors has also contributed to delays.

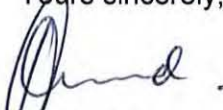
In addition to the issues for the courts and publicly funded agencies responsible for providing resources to these cases is the significant cost of incarcerating people in correctional centres for a minimum of three years.

The view that mandatory sentences for people smugglers should be abolished is one that is universally shared by the prosecution, defence and judiciary.

The Committee supports the *Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012*, which is currently before the Senate. The Committee urges you to support the Bill that seeks to remove the mandatory minimum sentencing provisions that apply to certain people smuggling offences.

I look forward to your response.

Yours sincerely,



Justin Dowd
President