



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref:CLC: CBcd230623

23 June 2023

The Hon. Michael Daley MP  
Attorney General  
GPO Box 5341  
SYDNEY NSW 2001

Dear Attorney,

### **Criminal Legislation Amendment (Knife Crimes) Bill 2023**

We write to express concerns about the introduction of the Criminal Legislation Amendment (Knife Crimes) Bill 2023 (**Bill**) before the Sentencing Council has published its Review of firearms, knives and other weapons offences (**Review**).

The Law Society is strongly of the view that thorough and considered consultation, including with legal experts, is more likely to result in reforms that are more effective because they are evidence-based, and are designed to minimise unintended consequences. In addition to other key legal stakeholders, the Law Society regularly engages in consultation processes to support Government to develop the best possible reforms, including criminal justice reforms.

The Law Society considers that, in introducing the Bill before the Sentencing Council publishes the Review, the Government has missed a critical opportunity to implement effective criminal justice reform that is informed by legal experts. This is particularly concerning, as the changes proposed in the Bill are not minor.

#### **Implications of the Bill**

As you know, the Bill will double the maximum penalty from two to four years imprisonment for offences of possessing or wielding a knife in a public place or school, currently under sections 11C and 11E of the *Summary Offences Act 1988* (NSW). We suggest that a maximum penalty of four years is not appropriate for the conduct captured by these provisions, and that these offences are currently correctly categorised as summary offences.

The proposed increase in the maximum penalty is significant, and in our view, disproportionate to the relatively minor conduct that can be captured by the provisions. We note that these offences do not involve any injury or wounding. In fact, conduct captured under section 11C involves possession only, which can include circumstances where a blade (including scissors) may be kept in the glove box of a car or at the bottom a bag. We note that, while a “reasonable excuse” defence is available for these offences, the onus of proof is reversed, with the defendant having to prove that they had a reasonable excuse for possession.

If implemented, this proposal will exacerbate the Law Society’s pre-existing concern that, as some knives offences, including under section 11C of the *Summary Offences Act 1988*, capture a broad range of offending behaviour, lower-level offenders will face disproportionately

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Law Council  
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high maximum penalties. This concern was raised for the consideration of the Review in the **attached** submission.

Critically, we are also concerned that the Bill, if passed, will have a disproportionate and detrimental impact on vulnerable groups, including children and people experiencing homelessness, instead of the intended deterrent effect. While we appreciate that existing diversionary options for children will continue to be available for these offences, we note that not all children will be subject to those diversionary options. Indeed there are often barriers to accessing diversionary options, particularly in regional, rural and remote areas. Under the proposed reform, children who are not diverted and are instead prosecuted for these offences will be charged, tried and/or sentenced for an offence that is considered higher in objective seriousness, due to the increased maximum penalty, increasing the risk of incarceration. For other vulnerable groups, including adults experiencing homelessness and poverty, youth diversionary options are not available, and they may face longer periods of incarceration.

The proposed reforms may also have resourcing implications, as these offences may now be prosecuted on indictment in the District Court, and defendants may be more inclined to defend charges that carry a higher maximum penalty.

We suggest that the Sentencing Council should have been permitted to complete its review, and its reported findings be considered in the drafting of legislation in this regard. We now suggest that the legislative process could be improved if the Bill is referred for inquiry by the Legislative Council's Law and Justice Committee.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: [claudia.daly@lawsociety.com.au](mailto:claudia.daly@lawsociety.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CBanks', written in a cursive style.

Cassandra Banks  
**President**

**Encl.**



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: CLC:CBcd010323

1 March 2023

Hon Peter McClellan AM KC  
Chairperson  
NSW Sentencing Council  
GPO Box 31  
Sydney NSW 2001

By email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)

Dear Mr McClellan,

### **Review of sentencing law for firearms, knives and other weapons offences**

Thank you for the opportunity to provide a preliminary submission on issues relevant to the Terms of Reference for the Sentencing Council's Review of the law of sentencing for firearms, knives and other weapons offences (**Review**). The Law Society's Criminal Law Committee contributed to this submission.

The Law Society welcomes the Review and supports the comprehensive consideration of sentencing offences for firearms, knives and other weapons offences in NSW, including consideration of appropriate measures to improve sentencing in these matters. In our view, there is scope for addressing aspects of sentencing for these offences to achieve, among other things, greater consistency and proportionality in outcomes. We offer the following comments relevant to the Terms of Reference for the NSW Sentencing Council's consideration in conducting the Review.

#### **Standard non-parole periods**

The Law Society welcomes a review of standard non-parole periods for firearms, knives and other weapons offences in NSW and supports measures to ensure that standard non-parole periods are appropriate and consistent, with reference to both the maximum penalty for the offence and the objective seriousness of the conduct captured by the charge. This would be a welcome continuation of previous work undertaken by the NSW Sentencing Council and the NSW Law Reform Commission on standard non-parole periods.<sup>1</sup>

We note that, currently, there are discrepancies between the standard non-parole period and the maximum penalty for some firearms, knives and other weapons offences. For example, an offence against section 7(1) of the *Firearms Act 1996*, which carries a maximum penalty of 14 years imprisonment, has a four-year standard non-parole period, while an offence under

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<sup>1</sup> NSW Sentencing Council, *Standard Non-parole Periods: A background report by the NSW Sentencing Council* (November 2011); NSW Law Reform Commission, *Report 134: Sentencing: Interim report on standard minimum non-parole periods* (May 2012); NSW Law Reform Commission, *Report 139: Sentencing* (July 2013).

section 51(1A) of the *Firearms Act 1996*, which also carries a maximum penalty of 14 years imprisonment, has a ten-year standard non-parole period.

The Law Society suggests that the Review may wish to consider such disparities, including whether they may be affecting sentence outcomes for these offences, in assessing the appropriateness of standard non-parole periods for firearms, knives and other weapons offences. Any proposed reform would need to be informed by a nuanced investigation, including consideration of the appropriateness of maximum penalties for each offence, the range of conduct that can be captured under the offence provision, and whether sentencing patterns indicate that a standard non-parole period is necessary, and not simply by raising standard non-parole periods that currently sit proportionally lower by comparison to the maximum penalty.

We would be grateful for the opportunity to provide feedback on any suggested reforms to improve and clarify standard non-parole periods in these matters.

### **Maximum penalties**

The Law Society supports investigation into the operation and appropriateness of maximum penalties for firearms, knives and other weapons offences in NSW, including with reference to relevant standard non-parole periods and to maximum penalties in other jurisdictions.

In conducting this investigation, the Review may wish to consider the appropriateness of maximum penalties with reference to their interaction with laws and offences for firearms, knives and other weapons offences in other Australian jurisdictions. We note that, for example, a person in possession of gel-blasters, which are classified as toys in Queensland, in NSW can face maximum penalties of 14 and 20 years imprisonment under sections 7 and 51D of the *Firearms Prohibition Act 1996* respectively. We suggest that it would be of benefit for the Review to consider potential sentencing issues and injustice arising, particularly in border locations, from the disparity in laws around firearms, knives and other weapons offences across jurisdictions.

We also note that, currently, some offence provisions for firearms, knives and other weapons offences in NSW capture a particularly broad range of offending behaviour, which can have the effect of leaving lower-level offenders open to facing disproportionately higher maximum penalties. For example, under section 11C of the *Summary Offences Act 1988*, a person who in public possesses a blade, which can include ordinary items such as household scissors, can face the same maximum penalty as a person who possesses a machete in a school, being two years imprisonment. As such we suggest that the Review may wish to consider the appropriateness of maximum penalties in view of the particularly broad range of conduct that can fall under a single firearms, knives or other weapons offence provision.

### **Other relevant matters**

In conducting the Review, the Sentencing Council may also wish to consider how sentencing for firearms, knives and weapons offences interacts with, or may be impacted by, the operation of weapons and firearms prohibition orders (**FPOs**) in NSW, including the length of FPOs and the extensive police powers to search in connection with FPOs.

The Law Society would also support investigation into the broader legislative structure of provisions that relate to firearms, knives and other weapons offences as a whole, and consideration of how a clearer and more accessible legislative scheme may be achieved. We note that the current complexity of the offence provisions for these matters can result in complex charging practices and in turn, create unduly complex sentence proceedings and would support investigation of appropriate measures to address these issues.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: [claudia.daly@lawsociety.com.au](mailto:claudia.daly@lawsociety.com.au).

Yours sincerely,

A handwritten signature in black ink that reads "C Banks". The letters are cursive and fluid, with the first letter 'C' being particularly large and stylized.

Cassandra Banks  
**President**