

Consecutive sentences imposed by the Local Court

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The NSW Young Lawyers Criminal Law Sub-Committee (**Sub-Committee**) makes the following submission in response to a request from the Attorney General of NSW to the NSW Sentencing Council for a review of section 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), specifically:

- the operation of section 58 in sentencing proceedings generally, including the interaction of the provision with other sentencing principles;
- whether the provision, in its current form, is fit-for-purpose, equitable in its operation and appropriate to achieve its policy objectives;
- the utility of the section 58 limitation within the context of the sentencing jurisdictions more generally;
- whether there are reform options for section 58 that would more effectively and clearly achieve the underlying policy objectives while balancing community expectations around sentencing, the rights of the accused and the public interest in the efficient administration of justice; and
- any other matter the Council considers relevant.

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its multiple sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The Criminal Law Sub-Committee is a diverse group of early career solicitors and students from across NSW who share an interest in criminal law. The Sub-Committee aims to educate the legal profession and the wider community about criminal law developments and issues. The Sub-

Committee also facilitates seminars and programs that help to develop the careers of aspiring criminal lawyers, with the aim of providing a peer support network and a forum for early career solicitors to discuss issues of concern

What is section 58?

Section 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) imposes a constraint on the Local Court's power to accumulate consecutive (or partly consecutive) terms of imprisonment with an existing sentence, if the new term ends more than five years after the commencement of the existing term.

This ensures a ceiling on the cumulative sentence exposure that an offender sentenced in the Local Court may face, which operates to prevent the risk of indefinite or excessively long incarceration through multiple consecutive terms. However, while the current draft of section 58 includes exceptions, i.e. offences involving escape, assaults on correctional or juvenile justice officers, it has its own rigidity. The origin of the provision was intended to promote certainty and limit the possibility of sentences resembling those ordinarily reserved for the District Court to be imposed in the Local Court, ensuring that offenders sentenced for numerous minor matters were not exposed to excessive aggregate incarceration. Over time, however, changes in offending patterns, complexities of the EAGP scheme, an overhaul of the sentencing structure in 2019, and the expansion of Local Court sentencing power, highlight the tensions between the purposes of section 58 and its practical impact.

The Sub-Committee submits that the effect of the current drafting of section 58 unduly restricts the Local Court's ability to impose proportionate and just sentences when community safety or the offender's culpability calls for a more nuanced approach.

Legislative History

Section 58 has undergone four major amendments since the enactment of the *Crimes (Sentencing and Procedure) Act 1999* (**CSPA**). The Sub-Committee notes that each amendment has progressively relaxed the operation of section 58 in two aspects, including by allowing lower courts to impose longer consecutive sentences and by broadening the range of prescribed offences that

are exempt from section 58. The legislative intent behind these changes appears to reflect a policy preference for greater flexibility in sentencing and a stronger deterrent response to certain categories of offences.

Below is a table outlining the legislative amendments to section 58 (**Table 1**):

CSPA version	Relevant bill	Summary of changes
13 Jan 2003	Crimes Legislation Amendment Bill 2002	<ul style="list-style-type: none"> Amended (3)(a) to expand the exception to section 58 to include assaults and other offences against correctional or juvenile officers. Inserted (3)(b) to enable LC or CC to impose consecutive sentences up to 3 years and 6 months for certain serious offences. Inserted (4) to extend section 58 to apply to juvenile detention periods.
14 Feb 2004	Crimes Legislation Further Amendment Bill 2003	<ul style="list-style-type: none"> Amended (1) and deleted (1)(a), (1)(b) <ul style="list-style-type: none"> to enable LC to impose a new consecutive sentence even if old sentence is already consecutive with another. to enable LC to impose consecutive sentences up to 5 years (from 3 years) and replace 'old sentence' with the word 'existing sentence'. Amended (3)(a) to expand the exception to section 58 to include offences involving an escape from lawful custody. Amended (3)(b) to enable LC or CC to impose consecutive sentences up to 5 years and 6 months (from 3 years and 6 months) for certain serious offences. Amended (4) to introduce and clarify definitions for 'existing sentence' and 'sentence of imprisonment'.
6 Jul 2009	Miscellaneous Acts (Local Court) Amendment Bill 2007	The changes were purely formatting, replacing the words 'a Local Court' to 'the Local Court'.
6 Dec 2017	Terrorism (High Risk Offenders) Bill 2017	<ul style="list-style-type: none"> Inserted (3A) to expand the exception to section 58 to offences under CASA involving introducing/supplying drugs, alcohol, syringes, weapons, or mobile devices into a place of detention.
29 Jul 2022	Mandatory Disease Testing Bill 2020	<ul style="list-style-type: none"> Inserted (3B) to expand the exception to section 58 to include an offence under <i>Mandatory Disease Testing Act</i>.

These changes enable magistrates to properly sentence offenders who offend while in custody.¹

These amendments also provide flexibility that, to some degree, mitigates the so-called 'section

¹ See, e.g., *Riad Taha v R* [2017] NSWDC 180 [14]-[15] (Colefax SC DCJ). See also below the second reading speech for the *Crimes Legislation Further Amendment Bill 2003* (NSW):

The impetus for this amendment was a submission from the Chief Magistrate that the *restrictions contained in section 58 have prevented magistrates from imposing effective sentences* on offenders for discrete offences in the Local Court... Although an election may be made by the prosecution to have such matters dealt with in the District Court (where there are no statutory limitations on the power to accumulate sentences), if an election is not made, the magistrate's hands are tied.

58' issue, in which magistrates and prosecutors are systemically incentivised to seek further adjournments or make a late election to avoid the operation of section 58.²

Section 58 was introduced specifically to limit the Local Court's sentencing power in relation to offenders who are already serving terms of imprisonment.³ It would therefore be appropriate for the Sentencing Council to provide further guidance on this broader issue in the forthcoming Consultation Paper on section 58. However, the Sub-Committee is aware that Qld, WA, and SA do not impose maximum consecutive terms,⁴ and does not endorse such an approach to cumulative sentences given the utility of section 58 offers.

Although greater sentencing flexibility may improve efficiency and the user experience of the court system, expanding the Local Court's jurisdiction also carries risks. As the NSW Sentencing Council has observed, these risks include:⁵

- an increased workload for the Local Court, with a corresponding reduction for the District Court;
- a likely decrease in trials by jury in the District Court, particularly for Table 2 offences where prosecutors may elect to proceed summarily;

New South Wales, [Parliamentary Debates](#), Legislative Council, 20 November 2003, 5427 (Tony Kelly, Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister Assisting the Minister for Natural Resources).

² See Joseph Healy, '[Section 58 Issues on Sentence in the Local Court](#)' (CPD Papers, Criminal CPD, October 2021); Scott Fraser, '[Limitations on the power of a Local Court to accumulate sentences and the \(sometimes associated\) problem of late elections by the prosecution](#)' (CPD Papers, Public Defenders Chambers, 4 December 2024).

³ See below the second reading speech for the *Crimes Bill 1900* (NSW):

Current section 444 [predecessor of s 58] of the *Crimes Act* deals with the power of magistrates to impose cumulative sentences. *Generally, it provides a limit on that power*, but not with regard to sentences for assaults on correctional officers committed whilst inmates are in custody serving sentences...The bill, in part 4 division 2, contains a clearer and more practical redraft of section 444 and other related provisions concerning concurrent and consecutive sentences.

New South Wales, [Parliamentary Debates](#), Legislative Assembly, 28 October 1999, 2327 (Robert John Debus, Minister for the Environment, Minister for Emergency Services, Minister for Corrective Services, and Minister Assisting the Premier on the Arts).

⁴ *Penalties and Sentences Act 1992* (Qld) s 155; *Sentencing Act 1995* (WA) s 88(3)(c); *iv*.

⁵ NSW Sentencing Council, [An examination of the sentencing powers of the Local Court of NSW](#) (Report, 25 January 2011) 39-40. See also Law Society of NSW, [Submission No SE07 to NSW Law Reform Commission](#), *Sentencing* (6 October 2012).

- a likely increase in appeals to the District Court, along with higher associated proceeding costs;
- an increased workload for Police Prosecutors and the ODPP, who would be required to manage more serious matters in the Local Court;
- a likely increased workload for Corrective Services NSW and the NSW State Parole Authority, due to potential sentence creep;
- an increased workload for Legal Aid, given the rise in matters heard in the Local Court.

Furthermore, any amendments to section 58 that increase the length of consecutive sentences would inevitably affect the rights of the accused and the remand population, subsequently placing a strain on the resources of correctional facilities.

From a victim-survivor's perspective, proceedings can still be prolonged whether section 58 is avoided or applied. If section 58 limits the magistrate's ability to impose a meaningful sentence, a victim-survivor may be prompted to appeal. Conversely, when magistrates or prosecutors attempt to avoid section 58 through adjournments or late elections, the proceeding is delayed. The accused may still appeal, adding another layer of delay.

Existing prescribed offences exempted from section 58 are predominantly designed to protect frontline public-sector workers rather than serving the interest of victim-survivors.⁶

Section 263(2) should be considered together with section 58, as late elections to avoid the operation of section 58 is a major factor contributing to the issues associated with section 58.

Issues with delays in Committal Proceedings

One of the original intentions of EAGP protocols was to focus on victim rights, aiming to streamline sentencing times and decrease the impact on victims by expediting criminal charges. This involved charges being certified within 6 months, and matters being committed shortly thereafter. However,

⁶ See Table 1 on page 4 of this submission.

as noted in many news examples, such as Beau Lamar-Condon⁷, and Daniel Billings⁸, these proceedings can continue in the committal phase for more than 18 months. While these are examples of homicides, they highlight the delays and the distress such unavoidable delays cause to the families of victims.

The court experience can be lengthy, and the ability for Local Court Magistrates to aggregate sentences and apply sentencing discounts may diminish the perceived impact on victims and their families.

The length of time spent in negotiations between the DPP and the defence just on a plea of guilty can create disillusionment with the idea of a speedy trial. For instance, the death of Molly Ticehurst resulted in sweeping changes to the *Bail Act 2013* (NSW), demonstrating the need for victims of domestic violence to be protected and have matters dealt with as effectively and as efficiently as possible.

Practitioners have informed the Sub-Committee that section 58 has, at times, contributed to delays in committal proceedings. One consequence is that the District Court occasionally hears matters of insufficient seriousness that would ordinarily be finalised in the Local Court. Although infrequent, this influx increases the District Court's workload and produces two main effects.

First, the accused awaiting sentence hearings committed from the Local Court face undue delays. For offenders in custody whose matters are of low objective seriousness, this can result in them remaining in custody longer than the sentence they are ultimately likely to receive. Second, the increased workload impacts the District Court's own caseload. Matters that should be committed to the District Court because of their seriousness, including trials and subsequent sentence hearings, are also delayed. This can lead to situations where an accused who pleads guilty or is found guilty must wait an additional four to six months to be sentenced.

⁷ Beau Lamarre-Condon pleads not guilty to murdering Sydney couple Jesse Baird and Luke Davies
<https://www.abc.net.au/news/2025-08-26/beau-lamarre-condon-pleads-not-guilty-over-alleged-double-murder/105697242>

accessed 24 November 2025.

⁸Father of Molly Ticehurst frustrated by court delays in murder case

<https://www.abc.net.au/news/2025-11-03/daniel-billings-molly-ticehurst-court-delays/105074740>

accessed 24 November 2025

Issues with remand

Section 58 contributes to extended delays in sentencing where matters that could be finalised in the Local Court are instead committed to the District Court due to the five-year limitation on consecutive sentencing. Although issues arise due to some people who are subject to terms of imprisonment on a full-time basis or parole, the unpredictability of when the Parole Authority revokes parole or not leads to some individuals serving periods of parole on remand.

This procedural escalation often results in significant time spent on remand, during which individuals are typically ineligible for essential rehabilitation programs. The consequence is a systemic bottleneck that delays not only the administration of justice but also meaningful rehabilitative intervention. In NSW, approximately 44% of the prison population is held on remand⁹, and nearly 73% of prison entrants report illicit drug use in the 12 months prior to incarceration. With 77% of police detainees testing positive for at least one type of drug, the most detected drugs being amphetamine-type stimulants (52%) and cannabis (45%)¹⁰. Despite this evident need, most remand prisoners are excluded from structured programs addressing substance use, mental health, and behavioural issues, as participation commonly requires a custodial sentence to have been imposed. This interruption in service access not only undermines rehabilitation but also reduces the efficacy of the correctional system in addressing recidivism. While there are some schemes being proposed to provide such treatment to people on remand, there is no such assistance available at the time of writing this submission.

⁹ NSW Bureau of Crime Statistics and Research, NSW Custody Statistics Quarterly update June 2025
14 August 2025

<https://bocsar.nsw.gov.au/research-evaluations/2025/nsw-custody-statistics-quarterly-update-jun-2025.html> accessed 20 November 2025

¹⁰ Alcohol, tobacco & other drugs in Australia: People in contact with the criminal justice system
17 June 2025

<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/people-in-contact-with-the-criminal-justice-system> accessed 20 November 2025

General Comments

Over the years, section 58 has caused issues for both the Court and legislators, resulting in changes to exclude certain custodial offences from the ambit of the legislation. This issue remains persistent and requires ongoing attention.

For example, for Domestic Violence offences being prosecuted in the Local Court, the overarching principle is that these matters must be dealt with as quickly and efficiently as possible. It is not in the interests of justice, or in the interests of the complainant or the accused, for such matters to be subject to lengthy EAGP proceedings in the Local Court before being committed to the District Court, especially if the accused wishes to plead guilty to the offence.

The need for matters to proceed on indictment due to section 58 further occupies the already stretched resources of the Local Court, District Court, ODPP, Police, Legal Aid and the profession.

The Courts¹¹ and families of victims¹² have already expressed disappointment and distress at delays that occur in EAGP proceedings where the accused ultimately pleads guilty at the end of proceedings, which can take 11 to 18 months before being committed.

These delays lead to people being held on remand and potentially subject to parole, which is designed to be served and to facilitate rehabilitation in the community. There is no chance to rehabilitate while on remand.

There is no clarity as to whether an Intensive Corrections Order is as an “existing sentence”. There is a difference of opinion among Local Court Magistrates, based on shared experiences among practitioners, as to whether ICOs are included. For instance, under section 16 of the *Bail Act 2013* (NSW), offences committed while on an Intensive Corrections Order do not trigger the reverse “Show Cause” onus. Furthermore, section 22B of the *Bail Act 2013* (NSW) does not apply where an Intensive Corrections Order is a possible sentencing outcome, as the definition under section 22B refers to full-time imprisonment.

A sentence that has expired but overlaps with an existing sentence is taken to further extend the overall length of existing sentences.

¹¹ R v Cridland [2024] NSWDC 408 per Tupman DCJ at [2]-[6]

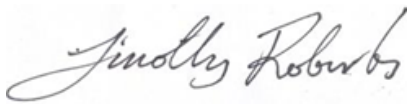
¹² Father of Molly Ticehurst frustrated by court delays in murder case

<https://www.abc.net.au/news/2025-11-03/daniel-billings-molly-ticehurst-court-delays/105074740> accessed 24 November 2025

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

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