



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC:JBjf031225

3 December 2025

The Hon Peter McClellan AM KC
NSW Sentencing Council
GPO Box 31
SYDNEY NSW 2001

By email: sentencingcouncil@dcj.nsw.gov.au

Dear Mr McClellan AM KC,

CONSECUTIVE SENTENCES IMPOSED BY THE LOCAL COURT

The Law Society is grateful for the opportunity to provide a preliminary submission to the NSW Sentencing Council for its review of section 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (**section 58**). This submission is informed by the Law Society's Criminal Law and Indigenous Issues Committees.

The Law Society's position

Section 58 plays an important and necessary role in ensuring there is a limit to the cumulative effect of consecutive sentences of imprisonment that may be imposed in the Local Court, consistent with the Local Court's jurisdictional limit on sentence.¹ Section 58 appropriately ensures that consecutive sentences of imprisonment imposed in the Local Court are not crushing,² and that lengthy and unbroken terms of imprisonment can only be imposed by a higher court.

The Law Society acknowledges concerns that section 58 can, in some matters, operate to restrict the Local Court's sentencing discretion and contribute to sentencing outcomes that appear inconsistent with community expectations of punishment and statutory sentencing principles. We recognise that these concerns have likely increased following the 2016 and 2018 reforms to Table 1 and 2 of Schedule 1 of the *Criminal Procedure Act 1986* (NSW) (**Table offences**), resulting in more serious criminal matters able to be finalised in the Local Court.

As a matter of principle, the Law Society does not support simply increasing the Local Court's sentencing scope to address these concerns. Given the Local Court's significant caseload and its limited time to hear and determine each matter, we consider it important that the Local Court remain a court of limited jurisdiction and its sentencing jurisdiction be appropriately constrained.

As a starting point, we suggest that the focus of this review prioritise legislative clarification about the proper scope and application of section 58, and consider ways in which the election process could be improved. We suggest that legislative clarification of section 58, alongside timely and considered elections in matters

¹ *Crimes (Sentencing Procedure) Act 1999* (NSW), s 53B.

² See: *R v MAK* [2006] NSWCCA 381 at [17].



involving Table offences, will go some way to addressing these concerns and ensure more serious offending is appropriately dealt with in the District Court.

Legislative clarification

As noted above, section 58 is widely considered a technical, complex provision, and is vulnerable to inconsistent or incorrect interpretation. We suggest that section 58 may benefit from legislative amendment, including:

- clarification as to whether intensive correction orders, under Part 5 of the *Crimes (Sentencing Procedure) Act 1999* (NSW), are considered consecutive sentences under section 58;
- codification of the decisions in *R v Perrin* [2022] NSWCCA 170 and *Stoneham v DPP (NSW)* [2021] NSWSC 735 in relation to whether there is an applicable 'existing sentence'; and
- clarification in relation to the impact of backdating of sentences on the operation of section 58.

In our view, legislative clarification of these key issues may assist in ensuring section 58 is properly understood and accurately applied.

Elections

Noting the complexity of the provision and its inconsistent interpretation, our members advise that, in practice, prosecutors sometimes have difficulty calculating whether section 58 is applicable when reviewing the offender's record in a busy Local Court. Members also report that when prosecutors do refer a matter to the Office of the Director of Public Prosecutions (**ODPP**) for election, there can sometimes be considerable delay before a decision is made. Concerningly, our members also report instances where the prosecutor has identified the section 58 issue after the time to elect has passed but before the proceedings have been finalised, and the ODPP has then filed an ex officio indictment.

In our view, these issues demonstrate how the operation of section 58 could be significantly improved by legislative clarification, alongside targeted education and training of prosecutors to ensure matters appropriate for election are accurately identified and referred to the ODPP in a timely manner for consideration.

The operation of section 58 gives rise to complex, often competing, considerations which will benefit from in-depth stakeholder consultation. The Law Society remains available for further consultation on these issues. Inquiries in the first instance may be directed to Jade Fodera, Policy Lawyer, at (02) 9926 0218 or Jade.Fodera@lawsociety.com.au.

Yours sincerely,

Jennifer Ball
President