

**Submission of**

**The University of New South Wales  
Council for Civil Liberties**

**to the**

**New South Wales Sentencing Council**

**on the topic of**

**Abolishing Prison Sentences of Six Months or Less**

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## 1. Introduction

1.1 In New South Wales, over the course of a year, over 60% of all prison receptions are for people serving a sentence of six months or less.<sup>1</sup> On any given day in New South Wales, the number of inmates in prison serving six months or less are:<sup>2</sup>

| sentence | males      |            | females   |             | total      |            |
|----------|------------|------------|-----------|-------------|------------|------------|
|          | #          | %          | #         | %           | #          | %          |
| < 3mths  | 99         | 1.7        | 16        | 4.3         | 115        | 1.9        |
| 3-<6mths | 318        | 5.5        | 32        | 8.6         | 350        | 5.7        |
| <6mths   | <b>417</b> | <b>7.2</b> | <b>48</b> | <b>12.9</b> | <b>465</b> | <b>7.6</b> |
| all      | 5767       | 100        | 373       | 100         | 6140       | 100        |

1.2 The imprisonment of people for such short terms has a major impact on the lives of inmates who have only committed minor offences. These problems include:<sup>3</sup>

- inmates lose their jobs;
- families could lose their only bread winner;
- employment prospects of the offender are damaged;
- inmates are exposed to physical and other dangers; and,
- inmates are exposed to an 'apprenticeship in crime'.

1.3 It is hard to gauge the public's attitude to this reform, but an on-line poll in the *Sydney Morning Herald* asked "Should jail sentences under 6 months be abolished?" There were 3182 responses: 50% said yes; 42% said no; and, 8% were undecided.<sup>4</sup> Those who support reform are in good company, because it would appear that the Lord Chief Justice of England, Lord Wolff, is an advocate of the abolition of short-term sentences.<sup>5</sup>

1.4 As a matter of principle, The University of New South Wales Council for Civil Liberties (UNSWCCL) supports the abolition of prison sentences of six months or less. However, UNSWCCL recommends caution in the implementation of this reform. This reform must be implemented with great care, with community support and with a commitment to provide resources to ensure it is well-funded and, ultimately, a success.

<sup>1</sup> Select Committee on the Increase in Prisoner Population, below n 8, [7.17].

<sup>2</sup> Simon Corben, 'NSW Inmate Census 2001: Summary of Characteristics' (2002) SP23, 57-59, NSW Department of Corrective Services <<http://www.dcs.nsw.gov.au/Documents/census2001.pdf>> at 25 October 2003. NOTE: figures exclude remand and periodic detention.

<sup>3</sup> Select Committee on the Increase in Prisoner Population, below n 8, [7.22].

<sup>4</sup> 'Should jail sentences under 6months be abolished?', *Sydney Morning Herald* (online), 19 June 2003 <<http://www.smh.com.au/articles/2003/06/18/1055828385981.html>> at 23 October 2003.

<sup>5</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 28 November 2002, 3697 (J.A. McGinty, Attorney-General).

- 1.5 Despite the best of intentions, this reform has the potential to see people serving longer prison sentences than they would at the moment. Anecdotal evidence from Western Australia, the only Australian jurisdiction to have abolished short-term sentences, is that prison sentences have increased.<sup>6</sup> It should be carefully monitored in NSW to ensure that it does not have a negative impact here.
- 1.6 It should also be pointed out that this reform comes at the wrong end of the criminal justice system. Reform is required long before the sentencing stage. Maybe scarce resources would be better spent addressing the root causes of people ending up in prison: poverty, disadvantage, prolonged unemployment, etc.
- 1.7 Another concern is that advocates for reform frequently justify this reform by referring to how much money will be saved. It is important that the money saved is used to fund diversionary programs and alternative forms of punishment, rather than simply returning to Consolidated Revenue. **UNSWCCL does not believe that the success of the abolition of prison sentences of six months or less should be measured in dollars saved, but rather in the number of people diverted from prison.**
- 1.8 In the drafting of this reform, UNSWCCL recommends that no term of imprisonment or fines be increased. The only drafting change required is to drop imprisonment terms for minor offences. This is because the purpose of this reform is to divert minor offenders from the criminogenic environment of prisons, not to increase their exposure to harsher sentences or larger fines.
- 1.9 Further, UNSWCCL believes that these reforms should not be permitted to allow imprisonment for any offence that does not attract a prison sentence itself. It is particularly important that these reforms not amount to the introduction of a minimum mandatory sentence of six months for fine defaulters whose original offence is out of all proportion to such a lengthy period of incarceration. Creative alternatives need to be explored.
- 1.10 Finally, UNSWCCL believes that juveniles and inmates currently serving sentences of imprisonment should be exempt from the prohibition of six months or less. This follows the position in Western Australia.<sup>7</sup>

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<sup>6</sup> see “Western Australia” on page 7 ff.

<sup>7</sup> see “History: abolition of 3 month sentences” on page 7.

## 2. Background

### ***Select Committee on the Prisoner Population***

- 2.1 It was the *Final Report* of the NSW Select Committee on the Increase in Prisoner Population in 2001 that first recommended the prohibition on six month sentences in New South Wales.<sup>8</sup> In so doing, it drew heavily on the research and policy development of Professor Tony Vinson and Dr Eileen Baldry.<sup>9</sup>
- 2.2 The Standing Committee's report identified several major reasons for the abolition of short-term sentences:<sup>10</sup>
- most in-prison programs cannot be completed in less than six months, so people in for less than six months will not have access to them;
  - case management plans are reviewed every six months, so short-term offenders never have their cases reviewed;
  - intensive pre-release course, like Alcohol and other drugs courses at Long Bay, only available in last fourteen weeks of a sentence, making them unavailable to some short term inmates; and,
  - most short term inmates are not eligible for Probation and Parole services.
- 2.3 The Select Committee made two recommendations relating to the abolition of short-term sentences:
1. a report should be commissioned to investigate the likely consequences of abolition, and a discussion paper for public consultation should the report support introduction;<sup>11</sup>
  2. a targeted pilot project should be setup for offenders sentenced to three months or less, targeted at women and indigenous prisoners.<sup>12</sup>
- 2.4 To date, a short report on the economic and administrative impact of abolition was commissioned and completed by the NSW Bureau of Crime Statistics and Research (BOCSAR) in 2002.<sup>13</sup> There has, however, been no discussion paper released for public consultation. Nor has any short targeted pilot programme been run and assessed.

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<sup>8</sup> Select Committee on the Increase in Prisoner Population, New South Wales Legislative Council, *Final Report* (2001) Parliamentary Paper No. 924, 13 November 2001.

<sup>9</sup> David Brown, 'Legislative Council Select Committee on the Increase in Prisoner Population' (2002) 14(1) *Current Issues in Criminal Justice* 111, 114-5.

<sup>10</sup> Select Committee on the Increase in Prisoner Population, above n 8, [6.97]-[6.98].

<sup>11</sup> Select Committee on the Increase in Prisoner Population, above n 8, recommendation 16, [7.28].

<sup>12</sup> Select Committee on the Increase in Prisoner Population, above n 8, recommendation 17, [7.29].

<sup>13</sup> see "BOCSAR Report" below on page 4.

## **BOCSAR Report**

2.5 In September 2002, the NSW Bureau of Crime Statistics and Research (BOCSAR) estimated the impact on NSW prisons of the abolition of six-month sentences.<sup>14</sup> It concluded that the:

- number of prison receptions per week would be reduced from 150 to 90;
- overall prison population would drop by 10%; and,
- savings to Correctional Services would be between \$33 million and \$47 million.

2.6 According to BOCSAR,<sup>15</sup> 65% of persons sentenced to imprisonment in NSW in 2001 were sentenced for six months or less. Because some of those people were already in prison, the figure drops to 40% of all prison receptions in 2001. The significance of this figure is that 'the workload of NSW prisons in processing incoming prisoners would reduce by about 40 per cent from about 150 prisoners per week to about 90 prisoners per week'.<sup>16</sup>

2.7 The report also profiled the prisoners who would be affected:<sup>17</sup>

- 9% of the male prisoner population;
- 15% of the female prisoner population;
- 13% of the Indigenous prisoner population.

Significantly, despite the fact that Indigenous people only make up 2% of the NSW population, 20% of prisoners serving six months or less are Indigenous.<sup>18</sup>

2.8 Furthermore, about 90% of the offences for which prisoners served less than six months fall into these four categories:<sup>19</sup>

- theft (excluding robbery) (37%);
- breaches of justice orders (22.1%);
- assault (18.5%); and,
- driving/traffic offences (14.1).<sup>20</sup>

## **Sentencing Council**

2.9 The NSW Sentencing Council was launched in 2003. It is an independent statutory Council, created by the *Crimes (Sentencing Procedure) Act*.<sup>21</sup> It is chaired by Hon. Alan R Abadee.

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<sup>14</sup> Bronwyn Lind and Simon Eyland, 'The impact of abolishing short prison sentences' (2002) 73 *Crime and Justice Bulletin* 1, 5. Available from NSW BOCSAR <[http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/CJB73.pdf/\\$file/CJB73.pdf](http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/CJB73.pdf/$file/CJB73.pdf)> at 25 October 2003.

<sup>15</sup> Lind & Eyland, above n 14, 4.

<sup>16</sup> Lind & Eyland, above n 14, 4.

<sup>17</sup> Lind & Eyland, above n 14, 4.

<sup>18</sup> Don Weatherburn, 'The Impact of Abolishing Short Prison Sentences' (Media Release, 27 October 2002) NSW BOCSAR <<http://www.lawlink.nsw.gov.au/bocsar1.nsf/pages/media271002>> at 25 October 2003.

<sup>19</sup> Lind & Eyland, above n 14, 3.

<sup>20</sup> theft (2001: 39%; 2000: 35%); breaches of justice orders (2001: 19.7%; 2000: 24.5%); assault (2001: 17.4%; 2000: 19.6%); and, diving/traffic offences (2001: 15.4%; 2000: 12.7%).

- 2.10 One of the Sentencing Council's first tasks is to report to the Attorney-General on the topic of abolishing sentences of six months or less. That task was referred to it by the NSW Attorney-General Bob Debus.<sup>22</sup> The Sentencing Council is expected to report and make recommendations to the Attorney-General in early 2004.
- 2.11 In July 2003, the Sentencing Council's Chairman, the Hon. Mr Alan Abadee, said that the inquiry will 'consider a wide variety of issues and in particular':<sup>23</sup>
1. The effect of existing legislation (including sections 5 and 46 of the Act);
  2. The need for legislative reform to give effect to any recommended change;
  3. Whether sentences of imprisonment of 6 months or less should be abolished:
    - generally; or
    - subject to conditions
  4. The development of alternative sentencing options to terms of imprisonment of 6 months or less;
  5. The impact or consequence of abolition of prison sentences of 6 months or less upon:
    - other sentences;
    - rehabilitation of offenders;
    - crime reduction;
    - cost/potential savings to the NSW budget;
    - management of the NSW prison population and correctional centres;
    - other services including probation and parole services and police; and
    - on juveniles and control orders.

Furthermore, the 'Sentencing Council will also have regard to comparable legislation in other Australian jurisdictions and overseas'.<sup>24</sup>

### **Community Response**

- 2.12 The community response in NSW to the abolition of sentences of six months or less has been mixed and hard to predict.
- 2.13 In July 2003, NSW Aboriginal Justice Advisory Council (AJAC) signalled its intention to support the abolition of short prison sentences. It sees the reform as a positive move that would help reduce the over-representation of Indigenous people in NSW prisons.<sup>25</sup> This is in contrast to the reaction of some indigenous communities and organisations in Western Australia.<sup>26</sup>

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<sup>21</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) Part 8B

<sup>22</sup> pursuant to *Crimes (Sentencing Procedure) Act 1999* (NSW) s 100J(1)(d)

<sup>23</sup> Hon. Alan Abadee, 'Address to the Local Courts Conference 2003' (Speech delivered at the Local Courts Conference, Sydney, 2 July 2003)  
<[http://www.lawlink.nsw.gov.au/lawlink/scouncil/scouncil.nsf/pages/local\\_courts\\_conference](http://www.lawlink.nsw.gov.au/lawlink/scouncil/scouncil.nsf/pages/local_courts_conference)> at 23 October 2003.

<sup>24</sup> Abadee, above n 23.

<sup>25</sup> Australian for Native Title and Reconciliation (ANTaR), 'Door ajar for AJAC reforms in juvenile justice and sentencing policy' (July 2003) *Newsletter*, ANTaR <[http://www.antar.org.au/nsw\\_news-ltr\\_7-03.pdf](http://www.antar.org.au/nsw_news-ltr_7-03.pdf)> at 23 October 2003.

<sup>26</sup> see "Recent reform: abolition of 6 month sentencing" on page 8 ff.

- 2.14 Ken Marslew, founder of the victims advocacy group 'Enough is Enough' and also a member of the NSW Sentencing Council, has supported the reform.<sup>27</sup> In fact he has gone further and expressed support for a twelve month prohibition, on the grounds that 'there is nothing done about rehabilitation within a short sentence'<sup>28</sup> and that a 'sentence under twelve months is a waste of time. All a short sentence does is introduce young people, first offenders, into the university of crime'.<sup>29</sup>
- 2.15 Justice Action, a prisoners' advocacy organisation, supports the reform because they consider that imprisonment damages the family and social connections of an inmate.<sup>30</sup>
- 2.16 The NSW Council of Social Service has also supported the reform as a 'step in the right direction'.<sup>31</sup>
- 2.17 The NSW Opposition opposes the changes. Shadow Attorney-General, Mr Andrew Tink, is concerned that custodial sentences would no longer be available for some offences such as prostitution, offensive behaviour, obscene exposure and possession of a spray paint can.<sup>32</sup>
- 2.18 The NSW Young Lawyers Criminal Law Committee also opposes this reform proposal on the grounds *inter alia* that it fetters judicial discretion and offends the principle of proportionality.<sup>33</sup>

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<sup>27</sup> 'Support for plan to scrap jail time', *Illawarra Mercury* (Wollongong), 20 June 2003, 7.

<sup>28</sup> Tanya Nolan, 'Removing six-month jail terms under debate', Australian Broadcasting Corporation, 19 June 2003.

<sup>29</sup> Paola Totaro, 'No-jail plan for minor criminals', *Sydney Morning Herald* (Sydney), 19 June 2003, 1.

<sup>30</sup> Jim Hanna, 'Community groups back sentence review', Australian Associated Press (Sydney), 19 June 2003.

<sup>31</sup> Hanna, above n 30.

<sup>32</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 2 July 2003, 2628 ff. (Andrew Tink).

<sup>33</sup> Letter from NSW Young Lawyers Criminal Law Committee to NSW Sentencing Council (17 September 2003) NSW Young Lawyers  
<[http://www.lawsocnsw.asn.au/uploads/filelibrary/1063842623859\\_0.8221764175243582.pdf](http://www.lawsocnsw.asn.au/uploads/filelibrary/1063842623859_0.8221764175243582.pdf)> at 23 October 2003.



### 3. Western Australia

3.1 Western Australia is the only Australian jurisdiction with a prohibition on short sentences.<sup>34</sup> As a consequence, it is worth taking the time to review the impact of reforms in that State.

#### ***History: abolition of 3 month sentences***

3.2 In 1991 a joint parliamentary committee recommended that sentences of three months or less be abolished, with exceptions for some violent crimes.<sup>35</sup> When the then Liberal government<sup>36</sup> passed the *Sentencing Act* in 1995, WA introduced an abolition of three months or less *without* exceptions.<sup>37</sup> The Second Reading Speech stated that 'such short sentences serve little useful purpose: they fail as a deterrent, fail as a means of protecting the community, and fail as a means of addressing a prisoner's offending behaviour'.<sup>38</sup> It was also seen as addressing the problem of over-representation of Indigenous people in prison and police lockups.<sup>39</sup>

3.3 WA allows prison sentences of less than three months in the following circumstances, when the:

- aggregate of all sentences is more than 3 months;<sup>40</sup>
- offender is currently, or soon to be, in prison;<sup>41</sup>
- offence is an aggravated prison offence;<sup>42</sup>
- offender is a child under 18 years old.<sup>43</sup>

3.4 There has been no evaluation of the impact of the prohibition of three month prison sentences in WA and there is no mechanism for creating these figures retrospectively.<sup>44</sup> However, there is anecdotal evidence that the 1995 reforms have led to an *increase* in sentences, not a decrease.<sup>45</sup> There is also evidence that it has disproportionately affected remote indigenous communities.<sup>46</sup>

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<sup>34</sup> Standing Committee on Legislation, Western Australia Legislative Council, *Report of the Standing Committee on Legislation in relation to the Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentence Administration Bill 2002*, Report 18 (May 2003) [5.11].

<sup>35</sup> Standing Committee on Legislation, above n 34, [5.1].

<sup>36</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 28 November 2002, 3697 (J.A. McGinty, Attorney-General).

<sup>37</sup> Standing Committee on Legislation, above n 34, [5.1].

<sup>38</sup> quoted in Standing Committee on Legislation, above n 34, [5.2].

<sup>39</sup> quoted in Standing Committee on Legislation, above n 34, [5.2].

<sup>40</sup> *Sentencing Act 1995* (WA) s 86(a)

<sup>41</sup> *Sentencing Act 1995* (WA) s 86(b)

<sup>42</sup> *Sentencing Act 1995* (WA) s 86(c)

<sup>43</sup> *Young Offenders Act 1994* (WA) s 118(2)

<sup>44</sup> [5.10]. See also, Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 11 February 2003, 6 (Mr Malcolm Penn, Department of Justice).

<sup>45</sup> Standing Committee on Legislation, above n 34, [5.26] (quoting Dr Neil Morgan, Crime Research Centre, UWA).

<sup>46</sup> see "Ngaanyatjarra response" below on page 10.

### **Recent reform: abolition of 6 month sentencing**

- 3.5 In August 2002 legislation to increase the prohibition on prison sentences from three months or less to six months or less was introduced into the WA Parliament.<sup>47</sup> In his Second Reading Speech, the WA Attorney-General, Mr James McGinty, justified the amendments by saying that the government was of the opinion that ‘short prison sentences serve no useful purpose’.<sup>48</sup>
- 3.6 The Bill was referred to the Standing Committee on Legislation on 19 December 2002. The Committee took oral evidence from six witnesses and also received eleven written submissions.
- 3.7 In May 2003, the Standing Committee reported<sup>49</sup> and recommended *inter alia* that:
- the increase in the prohibition of short prison sentences be proclaimed separately from the rest of the Bill;<sup>50</sup>
  - a review of the increased prohibition be undertaken two years after it commences;<sup>51</sup> and,
  - the term of imprisonment for the offence of racist harassment and incitement to racial hatred,<sup>52</sup> rather than being abolished, should be increased to 12 months.<sup>53</sup>
- 3.8 The *Sentencing Legislation Amendment and Repeal Act* was assented to on 9 July 2003 and proclaimed on 30 August 2003. Part 5, relating to the abolition of sentences of six months or less, cannot come into operation until a further six months have elapsed.<sup>54</sup> As a consequence, the earliest that Part 5 can be proclaimed is March 2004. A review of the operation and effectiveness of the reform is to be carried out after four years of proclamation<sup>55</sup> and a report must be tabled in Parliament within five years of that proclamation.<sup>56</sup>
- 3.9 The government resisted the six-month delay in introducing the abolition of prison sentences of six months or less, but lost the vote in the Upper House.<sup>57</sup> The delay will be used to collect statistical data that will act as a control against which to measure the impact of the reform.<sup>58</sup>

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<sup>47</sup> Sentencing Legislation Amendment and Repeal Bill 2002 (WA) Part 5. Section 33(3) amends *Sentencing Act 1985* (WA) s 86, extending the abolition of short-term sentences from 3 to 6 months.

<sup>48</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 15 August 2002, 178 (J.A. McGinty, Attorney-General).

<sup>49</sup> Standing Committee on Legislation, above n 34.

<sup>50</sup> Standing Committee on Legislation, above n 34, recommendation 17.

<sup>51</sup> Standing Committee on Legislation, above n 34, recommendation 18.

<sup>52</sup> *Criminal Code 1913* (WA) ss 77, 78.

<sup>53</sup> Standing Committee on Legislation, above n 34, recommendation 19.

<sup>54</sup> Sentencing Legislation Amendment and Repeal Bill 2002 (WA) s 2(3).

<sup>55</sup> Sentencing Legislation Amendment and Repeal Bill 2002 (WA) s 107(1).

<sup>56</sup> Sentencing Legislation Amendment and Repeal Bill 2002 (WA) s 107(2).

<sup>57</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 25 June 2003, 9170.

<sup>58</sup> Western Australia, *Parliamentary Debates*, Legislative Council, 25 June 2003, 9169 (Peter Foss).

**general community response**

- 3.10 Dr Neil Morgan,<sup>59</sup> described by the WA Attorney-General as the ‘resident expert on sentencing in Western Australia’,<sup>60</sup> does not support the increase of the prohibition of prison sentences to six months or less.<sup>61</sup> Dr Morgan is concerned that there has been no monitoring or evaluation of the three-month scheme, such that it is impossible to tell whether the three-month abolition had been successful or not.<sup>62</sup> His evidence reported anecdotal evidence of sentences of three-months and one day and four months.<sup>63</sup>
- 3.11 The Law Society of WA supported reform, but only if it did not simply lead to longer sentences.<sup>64</sup>
- 3.12 The Criminal Lawyers Association of WA supported removal of imprisonment for some offences and opposed increase of penalties for other offences.<sup>65</sup> To remedy the anecdotal evidence of increased sentences, the Criminal Lawyers’ Association recommended a provision ‘requiring courts to impose a sentence other than prison where they would have previously imposed a sentence of six months or less’.<sup>66</sup>
- 3.13 Western Australian State Council of ATSIC and the Aboriginal Legal Service of Western Australia (Inc) were concerned that the changes would adversely and disproportionately affect Indigenous people.<sup>67</sup> These organisations did, however, support the increase of maximum prison sentences for racial hatred and restraining orders.<sup>68</sup>
- 3.14 Ian Fletcher, CEO of City of Kalgoorlie-Boulder,<sup>69</sup> was concerned that non-custodial sentences would be detrimental to the city.

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<sup>59</sup> Director of Studies, Crime Research Centre, The University of Western Australia and a member of the Parole Board of Western Australia

<sup>60</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 28 November 2002, 3698 (J.A. McGinty, Attorney-General).

<sup>61</sup> Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 19 March 2003, 2, 17 (Dr Morgan).

<sup>62</sup> Evidence to Standing Committee on Legislation, above n 61, 2 (Dr Morgan).

<sup>63</sup> Evidence to Standing Committee on Legislation, above n 61, 2 (Dr Morgan). See also Neil Morgan, ‘Western Australia’s 2003 Sentencing Legislation: The good, the bad and the pointless’ (Paper to the Judges of the Supreme Court of Western Australia, 25 August 2003) 11.

<sup>64</sup> Standing Committee on Legislation, above n 34, [5.6]

<sup>65</sup> Standing Committee on Legislation, above n 34, [5.6]

<sup>66</sup> Standing Committee on Legislation, above n 34, [5.27]

<sup>67</sup> Standing Committee on Legislation, above n 34, [5.37]-[5.40]

<sup>68</sup> Standing Committee on Legislation, above n 34, [5.51], [5.59]

<sup>69</sup> submission dated 31 January 2003

### **Ngaanyatjarra response**

- 3.15 In July 2002, the remote Indigenous community of the Ngaanyatjarra, located in central-eastern Western Australia and extending into the Northern Territory and South Australia, issued the *Law, Order and Justice Report*.<sup>70</sup> *Inter alia* the report identifies the abolition of three month sentences as ‘a direct cause of increased social instability in their communities’.<sup>71</sup> The remote community has acute problems with alcohol abuse, petrol sniffing and excessive cannabis usage.
- 3.16 Their concern is that community service orders are not appropriate for violent offenders, especially when they return to live with their victims.<sup>72</sup> According to the report, without the deterrence of custodial sentences ‘the maintenance of law, order and a standard of acceptable behaviour as determined by the Communities has become impossible’.<sup>73</sup>
- 3.17 This is not to say that the Ngaanyatjarra want their young people sent to prison.<sup>74</sup> Juveniles who receive custodial sentences are kept far from their communities.<sup>75</sup> But neither do the Ngaanyatjarra want their juveniles disrupting the community. Rather the Ngaanyatjarra want their young people to be given ‘time out’ in substance abuse centres, such as the Kampa Substance Abuse Centre, ‘established by the Warburton Community (Inc) at a remote location within the Ngaanyatjarra Lands, some 130km west of Warburton’.<sup>76</sup>
- 3.18 Under the regime existing prior to the 1995 abolition of three month prison sentences,<sup>77</sup> Indigenous communities in WA had the power to pass by-laws allowing them to send juvenile offenders to Kampa.<sup>78</sup> The purpose of sending violent substance abusers to Kampa was to break the cycle of substance abuse and the success rate was quite high.<sup>79</sup> After 1995, however, only fines were available and they were unsuccessful from deterring substance abusers.<sup>80</sup>
- 3.19 Essentially the Ngaanyatjarra just want juveniles sent away for a week or two – not for six months and a day. They want something similar to a 72-hour restraining order for domestic violence. Currently, it appears that Magistrates are keeping people in remand for one or two weeks and then releasing them without sentence.<sup>81</sup>

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<sup>70</sup> Shire of Ngaanyatjarraku, *Law, Order and Justice Report* (5 July 2002) <<http://www.tjulyuru.com/notices/justicereport.pdf>> at 25 October 2003

<sup>71</sup> Shire of Ngaanyatjarraku, above n 70, iii.

<sup>72</sup> Shire of Ngaanyatjarraku, above n 70, [2.5].

<sup>73</sup> Shire of Ngaanyatjarraku, above n 70, [8.4].

<sup>74</sup> Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 12 March 2003 (Charles Staples, Shire of Ngaanyatjarra) at 4 (Peter Foss speaking).

<sup>75</sup> Shire of Ngaanyatjarraku, above n 70, [8.2].

<sup>76</sup> Shire of Ngaanyatjarraku, above n 70, [8.1].

<sup>77</sup> *Aboriginal Communities Act 1979* (WA)

<sup>78</sup> Shire of Ngaanyatjarraku, above n 70, [8.1].

<sup>79</sup> Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 12 March 2003, 8 (Charles Staples, Shire of Ngaanyatjarra).

<sup>80</sup> similar problems are reported in Pilbara and Kimberley Communities: Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 11 February 2003, 8 (Ms Jacqueline Tang, Department of Justice).

<sup>81</sup> Evidence to Standing Committee on Legislation, Western Australia Legislative Council, Perth, 12 March 2003 (Charles Staples, Shire of Ngaanyatjarra) at 4 (Peter Foss speaking).

- 3.20 Both the WA Criminal Lawyers Association and the Shire of Ngaanyatjarraku have called for the reintroduction of the powers of Indigenous communities to pass by-laws allowing them to impose short sentences for a short “time out” period upon volatile substance abusers.<sup>82</sup> This position has been endorsed by many local authorities in Western Australia.<sup>83</sup>
- 3.21 The Standing Committee on Legislation recommended that Pre-Sentence Orders be altered to allow for timeout periods<sup>84</sup> and an investigation into ways to allow for community sentencing.<sup>85</sup> Both recommendations were rejected by the government and were not included in the final Bill that passed Parliament.<sup>86</sup>

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<sup>82</sup> Standing Committee on Legislation, above n 34, [5.13]-[5.17]

<sup>83</sup> Esperance-Eastern Goldfields Country Zone of the Western Australian Local Government Association (WALGA) meeting on 29 January 2002: quoted in Ian Fletcher, submission to Standing Committee on Legislation, *Sentencing Legislation Amendment and Repeal Bill 2002* (31 January 2003). Also, City of Kalgoorlie-Boulder Council on 25 February 2002: Ian Fletcher, submission to Standing Committee on Legislation, *Sentencing Legislation Amendment and Repeal Bill 2002* (31 January 2003). Also, Shire of Leonora: Shire of Leonora, *Minutes of the Ordinary Council Meeting* (19 February 2002) [9.1] <<http://www.leonora.wa.gov.au/docs/minutes2002feb.pdf>> at 25 October 2003.

<sup>84</sup> Standing Committee on Legislation, above n 34, recommendation 15.

<sup>85</sup> Standing Committee on Legislation, above n 34, recommendation 21.

<sup>86</sup> Jim McGinty, ‘Government response to the Standing Committee on Legislation in relation to the Inquiry into the Sentencing Legislation Amendment and Repeal Bill 2002 and the Sentencing Administration Bill 2002’ (5 June 2003) Department of Justice and Legal Affairs <[http://www.parliament.wa.gov.au/parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/D4577EF77BB0BBEF48256D2F00244D12/\\$file/Government+Response+Report+18.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/(Report+Lookup+by+Com+ID)/D4577EF77BB0BBEF48256D2F00244D12/$file/Government+Response+Report+18.pdf)> at 15 September 2003.

## 4. options for change in NSW

- 4.1 A quick, but incomplete, examination of NSW Acts and Regulations demonstrates that there are over 110 pieces of legislation affected by the proposed abolition of prison sentences of six months or less.<sup>87</sup>
- 4.2 When drafting the changes, there are essentially three ways to alter this legislation to effect this reform:
1. simply remove the penalty of imprisonment, leaving the fine as is;
  2. increase the term of imprisonment to 9 or 12 months; or
  3. remove penalty of imprisonment and increase the fine.

### ***imprisonment terms should be removed***

- 4.3 **UNSWCCL submits that the best option is to remove the imprisonment term and leave the fine amount as is.** This is preferable because the purpose of this reform is to eliminate short term sentences, not to *increase* imprisonment through increased maximums. Nor is it the purpose of this reform to raise revenue through increased fines.

### ***imprisonment terms should not be increased***

- 4.4 **UNSWCCL does not recommend that any prison term be increased as a consequence of this reform.** In WA, it has been pointed out that it is a matter of statutory interpretation that a maximum penalty indicates the severity with which Parliament views the offence & judicial officers will “*steer by the maximum*”.<sup>88</sup>
- 4.5 It should not be forgotten that the purpose of this exercise is to keep people who should not be in prison, out of prison. Increasing the sentence, simply so that a prison term will still be available as an option, could end up incarcerating *more* people for *longer* sentences than they would now receive.
- 4.6 In Western Australia, Jewish and Indigenous groups lobbied to increase penalties for some offences, specifically the offences of racist harassment and incitement to racial hatred.<sup>89</sup> Given that the serious vilification offences under the *Anti-Discrimination Act* in NSW carry maximum penalties of six months,<sup>90</sup> it should be anticipated that similar lobbying will occur in New South Wales. Such lobbying should be resisted. To the best of the knowledge of UNSWCCL, there has never been a prosecution under these vilification offences, let alone a conviction. This would suggest that these offences serve no purpose and can safely be dealt with by way of monetary fines.

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<sup>87</sup> see “Appendix: Affected Acts and Regulations” on page 18.

<sup>88</sup> Standing Committee on Legislation, above n 34, [5.43]

<sup>89</sup> Standing Committee on Legislation, above n 34, [5.47]-[5.53]

<sup>90</sup> *Anti-Discrimination Act 1977* (NSW) ss 20D (serious racial vilification), 38T (serious transgender vilification), 49ZTA (serious homosexual vilification) & 49ZXC (serious AIDS/HIV vilification)

### ***finest should not be increased***

**4.7 UNSWCCL submits that the temptation to increase maximum fines should be resisted because there is no logical justification for such an approach.**

The purpose of this reform is to keep minor offenders out of the criminogenic environment of prison, rather than to increase State revenue or to re-evaluate maximum penalty units for fines.

4.8 In WA, penalties were increased as part of an overhaul of sentencing, including parole reforms and other major reforms, which included a theme of 'getting tough on crime'. So the increases there are not attributable to the abolition of six-month sentences, but rather to a larger law-and-order package that increased penalties overall. Consequently, the recent reforms in Western Australia do not serve as a direct parallel to reforms in New South Wales.

### **finest should not be increased because of the social impact**

4.9 From a technocratic point of view, it is more 'efficient', in the sense of being more cost-effective for the State, to impose a fine than to imprison someone. It is also more 'efficient' to fine someone than to provide the support required for CSOs and other alternatives. UNSWCCL is concerned that the abolition of short term sentences appears at first glance to be cost-effective, but that could potentially have an enormous impact on the *lives* of people who do not have the economic resources to pay the alternative fines.

**4.10 UNSWCCL believes that the success of the abolition of prison sentences of six months or less should not be measured in the amount of money saved in prisons and the number of fines imposed in the Local Courts, but rather in the number of people diverted from prison and who do not re-offend.**

4.11 Another reason why emphasis should not be placed on fines is that mandatory licence disqualification for non-payment of fines can leave people exposed to the cancellation of their driving licence for fine defaulting.<sup>91</sup> The authorities need not inform the driver that their licence has been cancelled.<sup>92</sup> Any driver caught driving with a cancelled licence is liable for 18 months imprisonment.<sup>93</sup> At the best of times, 'fines are inequitable where the poor and the wealthy pay the same amount for the impact is highly unequal'.<sup>94</sup> But when it comes to fine-defaulting, there can be drastic and disproportionate consequences: the rich can afford to stay out of prison, but the poor have fewer economic resources or options to avoid it.

**4.12 UNSWCCL recommends that the *Crimes (Sentencing Procedure) Act* should be amended to ensure that no one can be imprisoned for an offence originally attributable to fine defaulting.** The removal of sentences should not lead to a deferred sentence, especially through fine default.<sup>95</sup>

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<sup>91</sup> *Fines Act 1996* (NSW) s 66 (State Debt Recovery Office may direct RTA to cancel a licence for non-payment of fines)

<sup>92</sup> *Fines Act 1996* (NSW) s 66(4)

<sup>93</sup> *Road Transport (Drivers Licensing) Act 1998* (NSW) s 25A (18 months for first offence; 2 years for subsequent offences)

<sup>94</sup> David Brown, David Farrier, Sandra Egger & Luke McNamara, *Criminal Laws* (3<sup>rd</sup> edition, 2001) 1450.

<sup>95</sup> see also: Standing Committee on Legislation, above n 34, [5.71]

- 4.13 Fine defaulters who have their driving licences suspended and who subsequently drive face a maximum sentence of 18 months in NSW. After the abolition of six month sentences, the *minimum* sentence would be 6 months – for driving while unlicensed. This is particularly harsh on people living in regions that are remote from public transport. Imprisonment should not be an option for offences originating in fine default. Otherwise the six month prohibition will be a farce – the reforms will amount to a delayed prison sentence that is harsher than it would be today.
- 4.14 Alternatively, as in countries such as France, Portugal, Austria, France and Hungary,<sup>96</sup> fines should be levied proportionate to the offender's capacity to pay.<sup>97</sup> The 'Swedish Day Fine' is calculated in terms of a number of units and a unit calculated by a means-test type formula.<sup>98</sup>
- 4.15 Penalty units were introduced into NSW to provide the flexibility of increasing the dollar value of fines across-the-board by simply amending one Act.<sup>99</sup> Unless expressly stated otherwise, the dollar value of a penalty unit is fixed, but this could be changed to reflect the offender's ability to pay. The NSW Law Reform Commission rejected the idea of the 'Swedish Day Fine', but the Australian Law Reform Commission was divided on the subject.

#### **alternatives to fines should be developed and encouraged**

- 4.16 There should not be a culture that the alternative to imprisonment is a fine. In the long run, that will only lead to increased sentences and criminalisation of disadvantaged communities. Instead these reforms need to be coupled with major education of the magistracy, and to a lesser extent the judiciary, of alternative sentencing options. The impact will be felt predominately in the Local Court and appropriate funds should be directed at informing Magistrates of the alternatives.
- 4.17 Significant State resources need to be put into developing diversionary programs, viable alternatives and education. The money saved by Corrective Services should be channelled into this effort, particularly in disadvantaged areas of the country and metropolitan areas.
- 4.18 Increased reliance on alternatives to imprisonment, like CSOs, will mean that more funding will be required for the Probation and Parole Service to supervise increased numbers of orders.

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<sup>96</sup> Tony Vinson, 'Where to begin cutting the New South Wales prison population' (1995) 7(1) *Current Issues in Criminal Justice* 77, 79.

<sup>97</sup> *ibid*

<sup>98</sup> Brown et al, above n 94, 1450. See also Australian Law Reform Commission, *Sentencing of Federal Offenders* (1980) DP 30, [25]; and, Australian Law Reform Commission, *Sentencing* (1988) ALRC 44, [114], [118].

<sup>99</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 17 (one penalty unit=\$110)



- 4.19 Some alternatives, however, should be avoided. Recent proposals by the RTA to introduce licence plate confiscation and vehicle immobilisation programs should be rejected.<sup>100</sup> These suggestions reach far beyond the fine-defaulter to impact on the other users of the vehicle, for example innocent family members. The impact on those from lower socio-economic backgrounds will be disproportionate as well.

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<sup>100</sup> 'NSW Vehicle Sanction Scheme' (September 2003) NSW Roads and Traffic Authority  
<[http://www.rta.nsw.gov.au/newsevents/downloads/nsw\\_vehicle\\_sanction\\_discussion\\_paper.rtf](http://www.rta.nsw.gov.au/newsevents/downloads/nsw_vehicle_sanction_discussion_paper.rtf)> at 23  
October 2003.

## 5. Other recommendations

### *monitoring*

- 5.1 **UNSWCCL recommends that the impact of the abolition of six month sentences be very closely monitored.** This is especially true of indigenous communities, both urban and in country NSW. Given experiences in WA, these communities will be impacted quite significantly by these reforms. If not introduced in an appropriate manner, the prohibition could lead to *increased* sentences and criminalisation of indigenous populations who default on fines.
- 5.2 The impact of reform should be monitored to ensure that an *increased* number of people are not simply being given *increased* sentences. The reform should not simply lead to a deferred sentence, especially through fine default.

### *no proportionality: a mandatory minimum sentencing?*

- 5.3 The Ngaanyatjarra Community of Western Australia view the prohibition of short term prison sentences as a ‘mandatory minimum prison term’, which fetters the discretion of magistrates to take into account mitigating factors and to impose a proportionate sentence.<sup>101</sup> Their concerns are shared by the NSW Young Lawyers Criminal Law Committee.<sup>102</sup>
- 5.4 To illustrate this point, it is important to consider what will happen if an offender fails to meet the conditions of, say, a three-month Community Service Order. It is possible that they could end up with a *minimum* prison sentence of six months – a sentence out of all proportion to the original offence.<sup>103</sup>
- 5.5 In New South Wales imprisonment is a punishment of last resort.<sup>104</sup> However, UNSWCCL is concerned that ‘recalcitrant’ offenders who breach orders or fines for minor non-imprisonable offences will end up in prison for a period of no less than six months if the reforms proceed without any consideration of this problem. **UNSWCCL recommends that the *Crimes (Sentencing Procedure) Act* be amended to ensure that imprisonment does not proceed from a breach of orders or fines originating from offences that do not attract a prison sentence at all.**

### *juveniles should be excluded*

- 5.6 It should be noted that in WA the sentencing of juveniles is exempt from the prohibition on short sentences. A magistrate may impose a sentence of three months or less.<sup>105</sup>

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<sup>101</sup> Shire of Ngaanyatjarraku, above n 70, [3.3].

<sup>102</sup> Letter from NSW Young Lawyers Criminal Law Committee to NSW Sentencing Council (17 September 2003) NSW Young Lawyers  
<[http://www.lawsocnsw.asn.au/uploads/filelibrary/1063842623859\\_0.8221764175243582.pdf](http://www.lawsocnsw.asn.au/uploads/filelibrary/1063842623859_0.8221764175243582.pdf)> at 23 October 2003.

<sup>103</sup> see also: Standing Committee on Legislation, above n 34, [5.24].

<sup>104</sup> *Crimes (Sentencing Procedures) Act 1999* (NSW) s 5(1).

<sup>105</sup> *Young Offenders Act 1994* (WA) s 118(2)

- 5.7 **UNSWCCL recommends that juveniles be exempt from the abolition of sentences of six months or less.** This will ensure that a short-term custodial options remains for youth.

***servng inmates convicted of minor offences***

- 5.8 Offenders already in prison would be unfairly impacted by the abolition of six month sentences because any further custodial sentence will add more than six months to their imprisonment, even if the sentences is out of all proportion to the offence.
- 5.9 **UNSWCCL recommends that inmates either serving, or about to serve, a prison sentence be exempt from the abolition of six month sentences.** A similar exemption applies in WA.<sup>106</sup>

***periodic detention***

- 5.10 Periodic detention is currently not available to anyone who has been previously sentenced for more than six months.<sup>107</sup> **If six months becomes the minimum sentence, then UNSWCCL recommends that periodic detention be made available to anyone who has previously been sentenced to twelve months or less.**

***alternative 3-month trial***

- 5.11 One of the recommendations of the Select Committee on the Increase in Prisoner Population was for a targeted trial of diverting prisoners with sentences of three months or less.<sup>108</sup> This is still a viable option that could be used to determine the impact of the abolition of six month sentences.

***repeal of sections 5 and 46***

- 5.12 Currently a Magistrate is required to provide written reasons for imposing a sentence of six months or less.<sup>109</sup> A similar provision existed in Western Australia from 1992 to 1995, before the abolition of three month sentences.<sup>110</sup> If six month prison sentences are to be abolished, then there is no reason to retain this provision.
- 5.13 A Magistrate is also currently prohibited from setting a non-parole period for sentences of less than six months.<sup>111</sup> These fixed-term sentences should also be abolished if sentences of less than six months are to be prohibited.

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<sup>106</sup> *Sentencing Act 1995* (WA) s 86(b)

<sup>107</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 65A

<sup>108</sup> see "Select Committee on the Prisoner Population" on page 3.

<sup>109</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(2).

<sup>110</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 15 August 2002, 178 (J.A. McGinty, Attorney-General).

<sup>111</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 46.

## 6. Appendix: Affected Acts and Regulations

This is by no means an exhaustive list, but it is an attempt to demonstrate the impact of introducing changes to six month sentences.

| Act   | months | s       | description of offence                               |
|---|--------|---------|--|
| <a href="#">Administrative Decisions Tribunal Act 1997</a>            | 6      | 129     | improper disclosure information                      |
| <a href="#">Anatomy Act 1977</a>                                      | 6      | 8B      | authorise autopsy without coroner's consent          |
|   | 6      | 9       | taking body for autopsy without a valid licence      |
|   | 6      | 14      | performing autopsy without a valid licence           |
| <a href="#">Anti-Discrimination Act 1977</a>                          | 6      | 20D     | serious racial vilification                          |
|   | 6      | 38T     | serious transgender vilification                     |
|   | 6      | 49ZTA   | serious homosexual vilification                      |
|   | 6      | 49ZXC   | serious AID/HIV vilification                         |
| <a href="#">Biological Control Act 1985</a>                           | 6      | 41      | failure of witness to attend Commission hearing      |
|   | 6      | 43      | refusing to be sworn to give evidence                |
| <a href="#">Boxing and Wrestling Control Act 1986</a>                 | 6      | 15      | boxing while unregistered                            |
|   | 6      | 16      | sparring while registered cancelled or suspended     |
|   | 6      | 36      | damaging a medical record book                       |
| <a href="#">Casino Control Regulation 2001</a>                        | 6      | 104A    | failing to comply with order for short-term closure  |
|   | 6      | 121     | unauthorised sale of liquor                          |
|   | 6      | 122     | sale of liquor without licence                       |
| <a href="#">Charitable Fundraising Act 1991</a>                       | 6      | 13      | making of false statements                           |
|   | 6      | 20      | contravening procedure for dealing with appeal funds |
|   | 6      | 30      | hindering an inquiry                                 |
| <a href="#">Civil Liability Act 2002</a>                              | -      | 54      | serious offence'>=6mths, crims not to get damages    |
| <a href="#">Commercial Agents and Private Inquiry Agents Act 1963</a> | 6      | 6       | unlicensed person acting as agent                    |
|   | 6      | 8       | unlicensed person acting as subagent                 |
|   | 6      | 38      | money received by subagents                          |
|   | 3      | 39D     | harassment   |
| <a href="#">Commission for Children and Young People Act 1998</a>     | 6      | 21      | tendering false or misleading documents etc          |
|   | 6      | 42      | unauthorised disclosure                              |
|   | 3      | Sch 1 6 | breach of confidentiality by Committee member        |
| <a href="#">Community Land Management Act 1989</a>                    | 6      | 94      | disobeying summons to appear before Tribunal         |
|   | 6      | 95      | refusing to take oath or giving false evidence       |
|   | 6      | 96      | contempt of Tribunal                                 |
| <a href="#">Confiscation of Proceeds of Crime Act 1989</a>            | 6      | 51      | hindering or obstructing Public Trustee              |
| <a href="#">Conveyancers Licensing Act 2003</a>                       | 6      | 148     | obstruction of authorised officers                   |
|   | 6      | 161     | disclosure of information                            |

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| Act   | months  | s    | description of offence                                   |
|---|---|------|--|
| <a href="#">Co-operatives Act 1992</a>                        | 3   | 157  | failing to notify non-beneficial owner                   |
|   | 3   | 158  | failing to notify after transfer                         |
|   | 3   | 159  | failing to notify registration                           |
|   | 3   | 160  | failure to notify change in shareholding                 |
|   | 6   | 181A | control right to vote                                    |
|   | 3   | 250  | failure to keep registers                                |
|   | 6   | 379  | failing to comply with requirements of inspector         |
|   | 6   | 398  | fraud or misappropriation                                |
|   | 6   | 400  | accepting a commission                                   |
|   | 6   | 401  | false statements in a loan application                   |
| <a href="#">Crimes (Administration of Sentences) Act 1999</a> | 6   | 264  | wearing or possession of correctional officer uniform    |
|   | 6   | 265  | impersonating correctional officer                       |
| <a href="#">Crimes (Sentencing Procedure) Act 1999</a>        | -   | 46   | court not to set non-parole period for <=6mths           |
| <a href="#">Crimes Act 1900</a>                               | 6   | 100E | contravention of non-association & place orders          |
|   | 6   | 353B | possession of razor, razor blade or cutting weapon       |
|   | 6   | 502  | possession of skin of stolen cattle                      |
|   | 6   | 503  | stealing dogs  |
|   | 6   | 505  | stealing animals ordinarily kept in confinement          |
|   | 6   | 507  | possession of stolen animals                             |
|   | 6   | 513  | stealing shrubs  |
|   | 6   | 520  | stealing plants from gardens                             |
|   | 6   | 521A | stealing rocks, stones, gravel & soil                    |
|   | 6   | 522  | possession of shipwrecked goods                          |
|   | 6   | 523  | offering shipwrecked goods for sale                      |
|   | 6   | 527  | fraudulently appropriating property                      |
|   | 6   | 527A | obtaining money by wilful false representation           |
|   | 3   | 527B | framing a false invoice                                  |
|   | 6   | 527C | unlawfully in possession of property (other than a car)  |
|   | 3   | 545A | bogus advertisements                                     |
|   | 6   | 545C | knowingly joining an unlawful assembly                   |
|   | 6   | 546A | consorting with convicted prisoners                      |
|   | 6   | 546B | convicted people found with intent to commit an offence  |
|   | 3   | 547C | peeping and prying                                       |
|   | 6   | 578A | publishing info identifying child sexual assault victim  |
|   | <a href="#">Criminal Assets Recovery Act 1990</a> | 6    | 18   |
| <a href="#">Criminal Records Act 1991</a>                     | 6   | 13   | unlawful disclosure of spent convictions                 |
|   | 6   | 14   | improperly obtaining information about spent convictions |

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| Act  | months  | s     | description of offence  |
|--|---|-------|---|
| <a href="#">District Court Act 1973</a>                        | 6   | 30    | obstruction of sherrif or bailiff                             |
| <a href="#">Electricity Supply Act 1995</a>                    | 6   | 43EG  | divulging protected information                               |
|  | 6   | 43EH  | offences relating to Tribunal                                 |
|  | 6   | 87C   | failure to provide information                                |
|  | 6   | 97HE  | divulging restricted information                              |
|  | 6   | 97JA  | obstruction of Tribunal or Administrator                      |
|  | 6   | 97JB  | false or misleading information                               |
|  | 6   | 148   | disclosure & misuse of information                            |
| <a href="#">Environmental Planning and Assessment Act 1979</a> | 6   | 12    | displaying animals without licence                            |
| <a href="#">Exhibited Animals Protection Act 1986</a>          | 6   | 18    | erecting animal display establishment without a licence       |
|  | 6   | 19    | alteration of animal display establishment without a licence  |
|  | 6   | 22    | unauthorised person exhibiting animals                        |
|  | 6   | 24    | displaying animal without a permit                            |
|  | 6   | 22    | contravening a control order                                  |
|  | 6   | 31    | contravening importation order                                |
|  | 6   | 34    | failing to assist with destruction order                      |
| <a href="#">Exotic Diseases of Animals Act 1991</a>            | 6   | 38    | contravention of quarantine order                             |
|  | 6   | 38A   | failing to comply with a quarantine undertaking               |
|  | 6   | 40    | contravention of disinfection order                           |
|  | 6   | 44    | refusing or failing to provide information                    |
|  | 6   | 46    | failing to comply with a direction                            |
|  | 6   | 50    | obstruction   |
|  | 3   | 65    | making a false claim  |
|  | 6   | 23    | obstruction of officers                                       |
|  | 6   | 16    | disclosure of information                                     |
|  | 6   | 33    | damaging fire brigade equipment (first offence)               |
| <a href="#">Fair Trading Act 1987</a>                          | 1   | 34    | false alarms (first offence)                                  |
| <a href="#">Farm Debt Mediation Act 1994</a>                   | 6   | 14(1) | taking fish in contravention of closure                       |
| <a href="#">Fire Brigades Act 1989</a>                         | 3   | 14(2) | possession of a fish taken in contravention of closure        |
|  | 3   | 16    | selling or possessing prohibited size fish                    |
|  | 3   | 17    | exceeding daily fish take limit                               |
|  | 3   | 18    | possession of fish taken when exceeding daily fish take limit |
|  | 3   | 19    | taking or possessing protected fish                           |
|  | 6   | 20    | taking protected fish by commercial operation                 |
|  | 6   | 24    | unlawful use of nets or traps                                 |
|  | 6   | 25    | possession of illegal fishing gear                            |
|  | 3   | 35    | possessing fish illegally taken                               |
|  | <a href="#">Fisheries Management Act 1994</a> |       |   |

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| Act   | months | s     | description of offence  |
|---|--------|-------|---|
|   | 3      | 117   | unregistered fish receiver                                    |
|   | 3      | 119   | fish receiver failing to supply information                   |
|   | 3      | 124   | false records   |
|   | 3      | 127E  | false or misleading reports from charter boat operator        |
|   | 6      | 197K  | offences against the Act                                      |
|   | 6      | 221IJ | breaching conditions of interim order                         |
|   | 3      | 247   | obstructing or impersonating fisheries officer                |
|   | 3      | 259   | false information   |
| <a href="#">Food Act 1989</a>                     | 6      | 9     | preparation of substandard food                               |
|   | 6      | 10    | sale not complying with purchasers demand                     |
|   | 6      | 11    | tendering of food falsely described                           |
|   | 6      | 12    | sale of food wrongly packed                                   |
|   | 6      | 13    | incorrectly labelled food packages                            |
|   | 6      | 17    | failing to comply with an information request                 |
|   | 6      | 49    | failure to comply with Director-General's directions          |
|   | 6      | 54    | contravention of closure order                                |
|   | 6      | 59    | assaulting an inspector                                       |
|   | 6      | 72    | false warranties  |
|   | 6      | 86    | inspector breaching confidentiality                           |
| <a href="#">Food Production (Safety) Act 1998</a> | 6      | 15B   | private subsidiary corporation breaching confidentiality      |
|   | 6      | 21    | offences relating to food safety schemes                      |
|   | 6      | 26    | failure to comply with notice                                 |
|   | 6      | 27    | interfering with seized items                                 |
|   | 6      | 48    | failure to comply with directions                             |
|   | 6      | 52    | contravention of prohibition order                            |
| <a href="#">Health Administration Act 1982</a>    | 6      | 22    | disclosure of information                                     |
|   | 6      | 23    | disclosure of specially privileged information                |
| <a href="#">Health Care Complaints Act 1993</a>   | 6      | 37    | improper disclosure of information                            |
|   | 3      | 72    | breach of confidentiality                                     |
| <a href="#">Home Building Act 1989</a>            | 6      | 121   | disclosure of information                                     |
| <a href="#">Human Tissue Act 1983</a>             | 6      | 16    | failing to inform designated officer of revocation of consent |
|   | 6      | 17    | failing to inform designated officer of revocation of consent |
|   | 3      | 21R   | obstruction of inspectors                                     |
|   | 6      | 25    | removing tissue without consent of Coroner                    |
|   | 6      | 26    | acting without required certificate                           |
|   | 6      | 30    | authorising post-mortem without consent of Coroner            |
|   | 6      | 32    | contracting to buy or sell human tissue                       |

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| Act  | months | s      | description of offence  |
|--|--------|--------|---|
|  | 6      | 36     | unauthorised removal of human tissue  |
| <a href="#"><u>Human Tissue and Anatomy Legislation Amendment Act 2003</u></a> | 6      | 14     | conducting anatomical examination without licence                               |
|  | 6      | 14     | conducting anatomical examination of child without licence                      |
|  | 6      | 31B    | authorising removal of human tissue without Coroners's consent                  |
|  | 3      | 33H    | hindering etc an inspector  |
| <a href="#"><u>Independent Commission Against Corruption Act 1988</u></a>      | 6      | 34A    | unauthorised removal of tissue from child in care of the State                  |
|  | 3      | 70     | breach of confidentiality   |
|  | 6      | 81     | false complaint of possible corruption  |
|  | 6      | 82     | failing to comply with notice to provide information                            |
|  | 6      | 83     | failing to comply with notice to provide documentation                          |
| <a href="#"><u>Independent Pricing and Regulatory Tribunal Act 1992</u></a>    | 6      | 21     | contravening a direction at a hearing   |
|  | 6      | 23     | offences under the Act (investigation)  |
|  | 6      | 24AC   | offences under the Act (price monitoring)                                       |
|  | 6      | 24AD   | disclosing confidential information   |
|  | 6      | 24FF   | disclosing confidential information   |
|  | 6      | 24GJ   | disclosing confidential information   |
|  | 6      | 24GK   | offences under the Act (complaints)   |
| <a href="#"><u>Industrial Relations Act 1996</u></a>                           | 6      | 180    | contempt of Commission  |
| <a href="#"><u>Lake Illawarra Authority Act 1987</u></a>                       | 6      | 27     | disclosure of information   |
| <a href="#"><u>Legal Aid Commission Act 1979</u></a>                           | 6      | 26     | divulging information   |
|  | 6      | 32     | false application   |
| <a href="#"><u>Legal Profession Act 1987</u></a>                               | 6      | 171P   | improper disclosure of information  |
| <a href="#"><u>Legislation Review Act 1987</u></a>                             | 3      | 12     | breach of confidentiality   |
| <a href="#"><u>Liquor Act 1982</u></a>   | 6      | 104A   | failure to comply with an order for short-term closure                          |
|  | 6      | 104C   | failure to comply with an order for closure                                     |
|  | 6      | 105    | breach of the peace   |
|  | 6      | 121    | unauthorised sale of liquor by licensee   |
|  | 6      | 122    | sale of liquor without a licence  |
|  | 6      | 123    | unlicensed premises   |
| <a href="#"><u>Loan Fund Companies Act 1976</u></a>                            | 6      | 15     | concealing etc record of transfer to loan fund company                          |
|  | 6      | 67     | offences by officers of loan fund companies                                     |
| <a href="#"><u>Local Courts (Civil Claims) Act 1970</u></a>                    | 6      | 79     | obstructing sheriff or bailiff  |
| <a href="#"><u>Lotteries and Art Unions Act 1901</u></a>                       | 6      | 17A    | false statement   |
|  | 6      | 21H    | offences relating to inquiries  |
| <a href="#"><u>Marine Parks Act 1997</u></a>                                   | 6      | 20G(1) | contravention of marine park closure order                                      |
|  | 3      | 20G(2) | possession of an animal etc taken in contravention of marine park closure order |
|  | 3      | 20H    | failure to remove unused property   |



Submission of UNSWCCL to the NSW Sentencing Council

| Act  | months  | s     | description of offence  |
|--|---|-------|---|
| <a href="#">Medical Practice Act 1992</a>                        | 6   | 190   | confidentiality   |
| <a href="#">Mental Health Act 1990</a>                           | 6   | 298   | ill-treatment of patients   |
| <a href="#">Mining Act 1992</a>                                  | 6   | 175A  | unlawful entry to mining claim                                    |
| <a href="#">Motor Accidents Compensation Act 1999</a>            | 6   | 180   | contravening Supreme Court order                                  |
| <a href="#">Motor Dealers Act 1974</a>                           | 6   | 55D   | failing to comply with temporary restraint order                  |
| <a href="#">National Parks and Wildlife Act 1974</a>             | 6   | 45    | harming animal or discharging weapon in a park                    |
|  | 6   | 56    | harming etc or being accompanied by dog in a nature reserve       |
|  | 6   | 57    | destroying etc flora in nature reserve                            |
|  | 6   | 58Q   | harming etc or being accompanied by dog in a karst nature reserve |
|  | 6   | 58R   | destroying etc flora in a karst nature reserve                    |
|  | 6   | 90    | destruction of aboriginal objects or places                       |
|  | 6   | 98    | harming protected fauna   |
|  | 6   | 101   | buying or selling protected fauna                                 |
|  | 6   | 110   | unauthorised poisoning of fauna                                   |
|  | 6   | 117   | picking or possession of protected native plant                   |
|  | 6   | 118   | selling protected native plant                                    |
|  | 6   | 156A  | damaging reserved land  |
|  | 3   | 169   | impersonating etc an officer                                      |
|  | <a href="#">New South Wales Crime Commission Act 1985</a> | 6     | 10  |
| 6  |   | 17    | failure to comply with notice to produce documents                |
| <a href="#">Non-Indigenous Animals Act 1987</a>                  | 6   | 10    | importation of animals without a permit                           |
|  | 6   | 11    | unauthorised keeping of animals                                   |
|  | 6   | 11    | unauthorised movement of animals                                  |
|  | 6   | 13    | unauthorised releasing of animals                                 |
|  | 3   | 31H   | breach of confidentiality   |
| <a href="#">Ombudsman Act 1974</a>                               | 3   | 31H   | breach of confidentiality   |
| <a href="#">Parliamentary Electorates and Elections Act 1912</a> | 6   | 90    | offences by scrutineers   |
|  | 6   | 106   | false declaration of disputed votes                               |
|  | 6   | 111   | removing ballot papers from polling booth                         |
|  | 6   | 114A  | inducing application for postal vote                              |
|  | 6   | 114J  | unlawfully marking a ballot paper                                 |
|  | 6   | 114P  | inducing an application to vote before polling day                |
|  | 6   | 114U  | failure to appoint scrutineers                                    |
|  | 6   | 114ZA | making a false statement to obtain a postal vote                  |
|  | 6   | 114ZT | offences by scrutineers   |
|  | 6   | 115   | false statement when voting absentee                              |
|  | 6   | 122A  | voting informally   |
|  | 6   | 129   | breaking seal   |

Submission of UNSWCCL to the NSW Sentencing Council

| Act  | months | s    | description of offence   |
|--|--------|------|--|
|  | 6      | 151A | printing false information on 'how to vote' card               |
|  | 6      | 151E | failing to include name & address on 'how to vote' card        |
|  | 6      | 151F | distributing unauthorised material on voting day               |
|  | 6      | 176D | making untrue statement in a form                              |
|  | 6      | 176F | forging electoral papers                                       |
|  | 6      | 177  | stuffing a ballot box  |
| <a href="#"><i>Poisons and Therapeutic Goods Act 1966</i></a>      | 6      | 9    | supplying poison for therapeutic use                           |
|  | 6      | 10   | selling poison to public without a licence                     |
|  | 6      | 11   | supplying unauthorised person                                  |
|  | 6      | 12   | false representation to obtain poison                          |
|  | 6      | 18   | failing to comply with condition of licence                    |
| <a href="#"><i>Police Act 1990</i></a>                             | 6      | 202  | failing to disclose previous dismissal                         |
|  | 6      | 203  | wearing or possessing police uniform                           |
|  | 6      | 204  | impersonating a police officer                                 |
|  | 6      | 205  | using police designations (detective, constable, etc)          |
|  | 6      | 211E | disclosing information about Police Board                      |
|  | 6      | 217  | police failure to comply with Ministerial inquiry              |
| <a href="#"><i>Police Department (Transit Police) Act 1989</i></a> | 3      | 12   | failure upon termination to return things given as part of job |
|  | 6      | 35   | impersonating Transit Police                                   |
| <a href="#"><i>Police Integrity Commission Act 1996</i></a>        | 6      | 25   | failure to comply with notice to produce information           |
|  | 6      | 26   | failure to comply with notice to produce documents             |
| <a href="#"><i>Prevention of Cruelty to Animals Act 1979</i></a>   | 6      | 5    | cruelty to animals   |
|  | 6      | 7    | cruel carriage of animals                                      |
|  | 6      | 8    | failure to provide food, drink & shelter                       |
|  | 6      | 9    | failing to exercise a confined animal                          |
|  | 6      | 10   | tethering animal for unreasonable amount of time               |
|  | 6      | 11   | abandoning an animal   |
|  | 6      | 12   | performing prohibited operation on an animal                   |
|  | 6      | 13   | riding a prohibited animal                                     |
|  | 6      | 14   | failing to report an injured animal                            |
|  | 6      | 16   | using prohibited electrical device on an animal                |
|  | 6      | 17   | keeping implements for fighting animals                        |
|  | 6      | 18   | baiting or fighting animals                                    |
|  | 6      | 18A  | bull-fighting prohibited                                       |
|  | 6      | 19   | trap-shooting  |
|  | 6      | 19A  | keeping a game park  |
|  | 6      | 20   | animal-catching sport  |

Submission of UNSWCCL to the NSW Sentencing Council

| Act  | months | s     | description of offence  |
|--|--------|-------|---|
|  | 6      | 21A   | applying hot-wires to an animal   |
|  | 6      | 21B   | tail-nicking  |
|  | 6      | 21C   | steeple and hurdle racing   |
|  | 6      | 21D   | confining a bird by chain   |
|  | 6      | 22    | selling a severely injured animal   |
|  | 6      | 23    | setting a stell-jawed trap  |
| <a href="#">Prices Regulation Act 1948</a>                             | 6      | 61(3) | offences against the Act heard summarily                                  |
| <a href="#">Property (Relationships) Act 1984</a>                      | 6      | 54    | failure to comply with injunction   |
| <a href="#">Property, Stock and Business Agents Act 2002</a>           | 6      | 207   | obstruction of officers   |
|  | 6      | 219   | disclosure of information   |
| <a href="#">Public Finance and Audit Act 1983</a>                      | 3      | 58    | offences relating to evidence to the Committee                            |
| <a href="#">Public Health Act 1991</a>                                 | 6      | 4     | failing to comply with directions during a state of emergency             |
|  | 6      | 5     | failing to comply with public health direction                            |
|  | 6      | 6     | failing to disinfect articles   |
|  | 6      | 8     | failure to comply with closure notice                                     |
|  | 6      | 11    | failing to take precautions to spread medical condition                   |
|  | 6      | 28    | contravening public health order  |
|  | 6      | 34    | unlawful release from detention   |
|  | 6      | 35    | contravening publication restriction order                                |
|  | 6      | 74    | assault officer   |
| <a href="#">Public Sector Employment and Management Act 2002</a>       | 6      | 154   | breaching confidential information  |
|  | 6      | 155   | offences against the Act  |
| <a href="#">Racing Administration Act 1998</a>                         | 6      | 33    | publishing unauthorised race program (second offence)                     |
| <a href="#">Rail Safety (Drug and Alcohol Testing) Regulation 2003</a> | 6      | 5     | employee carrying out safety work with PCA                                |
|  | 6      | 6     | employee carrying out track work under influence of alcohol or other drug |
| <a href="#">Registered Clubs Act 1976</a>                              | 6      | 17AAB | failure to comply with short-term closure order                           |
|  | 6      | 17AAD | failure to comply with closure notice                                     |
| <a href="#">Restricted Premises Act 1943</a>                           | 6      | 8     | owner making false declaration  |
|  | 6      | 9     | occupier making false declaration   |
|  | 6      | 11    | obstructing police  |
|  | 6      | 12C   | failure to comply with short-term closure order                           |
| <a href="#">Road and Rail Transport (Dangerous Goods) Act 1997</a>     | 6      | 22    | failure to comply with directions   |
|  | 6      | 32    | failure to comply with exemption conditions                               |
| <a href="#">Road Obstructions (Special Provisions) Act 1979</a>        | 6      | 5     | hindering etc an officer removing a car obstructing a public road         |
| <a href="#">Road Transport (Vehicle Registration) Act 1997</a>         | 6      | 21A   | altering vehicle engine id numbers  |
| <a href="#">Royal Commission (Police Service) Act 1994</a>             | 6      | 6     | failure to comply with notice to produce information                      |
|  | 6      | 7     | failure to comply with notice to produce documents                        |

Submission of UNSWCCL to the NSW Sentencing Council

| Act  | months | s   | description of offence   |
|--|--------|-----|--|
| <a href="#">Rural Assistance Act 1989</a>                                    | 6      | 56  | breach of confidentiality  |
| <a href="#">Rural Fires Act 1997</a>   | 6      | 64  | failure to notify authorities of fire                                |
| <a href="#">Security Industry Act 1997</a>                                   | 6      | 7   | carrying on unauthorised security activity                           |
| <a href="#">Stamp Duties Act 1920</a>  | 3      | 33  | making a false claim   |
| <a href="#">Stock Diseases Act 1923</a>                                      | 6      | 20  | illegal introduction of stock  |
| <a href="#">Summary Offences Act 1988</a>                                    | 3      | 4   | offensive conduct  |
|  | 6      | 6   | obscene exposure   |
|  | 3      | 8A  | climbing on or jumping from buildings                                |
|  | 6      | 10A | damage to property by spray paint                                    |
|  | 3      | 10B | possession of spray paint  |
|  | 6      | 11A | violent disorder   |
|  | 6      | 16  | prostitution or soliciting in massage parlour                        |
|  | 3      | 18  | advertising premises used for prostitution                           |
|  | 3      | 18A | advertising for prostitutes  |
|  | 3      | 19  | soliciting clients for prostitutes                                   |
|  | 3      | 19A | soliciting of prostitutes by clients                                 |
|  | 6      | 20  | public acts of prostitution  |
|  | 6      | 27B | trafficking fermented liquor   |
|  | 6      | 27E | loitering  |
| <a href="#">Sydney Harbour Foreshore Authority Act 1998</a>                  | 6      | 37  | disclosure of information  |
| <a href="#">Sydney Olympic Park Authority Act 2001</a>                       | 6      | 70  | disclosure of information  |
| <a href="#">Telecommunications (Interception) (New South Wales) Act 1987</a> | 6      | 22  | obstruct etc an inspection   |
| <a href="#">Totalizator Act 1997</a>   | 6      | 9   | unlawful conduct of totalizator                                      |
| <a href="#">Tow Truck Industry Act 1998</a>                                  | 6      | 23  | operating an unlicensed tow truck                                    |
|  | 6      | 36  | false or misleading statement  |
|  | 6      | 58  | contravening conditions of licence                                   |
|  | 6      | 62  | obtaining authority to repair  |
|  | 6      | 72  | holding out as a licensed operator                                   |
|  | 6      | 75  | impersonating an officer   |
|  | 6      | 85  | offences under the Act   |
|  | 6      | 99  | disclosure of information  |
| <a href="#">Transport Administration (Staff) Regulation 2000</a>             | -      |     | serious criminal offence' (>=6 month leading to disciplinary action) |
| <a href="#">Unlawful Gambling Act 1998</a>                                   | 6      | 21  | defacing etc an interim notice                                       |
|  | 6      | 27  | defacing etc a final notice  |
| <a href="#">Valuation of Land Amendment (Valuer-General) Act 2003</a>        | 3      | 92  | breach of confidentiality  |
| <a href="#">Valuers Act 2003</a>   | 6      | 34  | obstruction of authorised officer                                    |
|  | 6      | 38  | disclosure of information  |

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| <b>Act</b>   | <b>months</b> | <b>s</b> | <b>description of offence</b>               |
|--|---------------|----------|---|
| <a href="#"><u>Water Act 1912</u></a>                | 6             | 22       | interfering with marks                      |
|  | 3             | 23       | obstructing person in performance of duties |
| <a href="#"><u>Witness Protection Act 1995</u></a>   | 6             | 20       | marrying without authority                  |
| <a href="#"><u>Workers Compensation Act 1987</u></a> | 6             | 155      | failing to be compulsorily insured          |