

New South Wales Sentencing Council
GPO Box 31
Sydney, NSW 2000

Sent by email: sentencingcouncil@agd.nsw.gov.au

Dear Council Members

Submission – Review of sentencing for murder and manslaughter

I urge the New South Wales Sentencing Council to recommend reform of the sentencing law in New South Wales so that it complies with the principle of proportionality. So that we may have good – rather than bad – laws in New South Wales.

The principal of proportionality underlies all judicial sentencing. In the context of the criminal law, the principle of proportionality determines that the punishment must fit the crime. It must also fit the purpose for the punishment. The purpose of criminal sentencing is compound. No criminal punishment has a single purpose. It spans all of retribution or revenge; deterrence/public education; incapacitation; and rehabilitation.

Murder is indisputably a most serious crime and warrants a most serious sentence. The particular nature and form and severity of that criminal sentence in New South Wales is rightfully determined by either the judiciary or the legislature or both. However, imposing an indeterminate sentence on a murderer – even a dangerous one - without the possibility of review offends the principle of proportionality. It is bad law. It disproportionately exacts revenge, deterrence and incapacitation at the expense of rehabilitation.

To manage high risk criminal offenders by good laws requires that every criminal sentence imposed by law must always be subject to review that allows for the possibility and prospect of rehabilitation. In this way a serious offender who becomes a model prisoner, for example, may carry the consequences of all his actions: present and past. The courts have traditionally had number of means at their disposal to undertake such reviews. The judiciary in New South Wales does not lack the expertise required to carry out this duty.

As the President of the Truth and Reconciliation Commission of South Africa once observed: The test of a democratic system is not only how we treat the weakest but also how we treat the worst amongst us.

Sincerely

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