The Chief Judge
District Court of NSW

The Hon Jerrold Cripps QC
Chairperson
Sentencing Council
GPO Box 6
SYDNEY 2001

28 July, 2011

Dear Chairperson,

Sentencing Serious Violent Offenders Consultation Paper, May 2011

The fundamental question is whether a form of preventive detention should be adopted in New South Wales for serious violent offenders. In my view, it is neither appropriate nor necessary. As the Paper points out, the High Court has characterised such provisions as highly exceptional and I agree with the various criticisms of any form of preventive detention set out at paragraph 4.10 of the Consultation Paper.

I note that the audit by Corrective Services identified only 14 offenders who met the criteria. I am not aware of who those offenders were but they might well include offenders who are already serving the term of their natural life in prison. In any event, it is a small category.

I also note that predicting dangerousness is a significantly difficult exercise. The Paper suggests an actuarial method be adopted rather than clinical opinion. It is said that clinical opinions have a probability of only 50% accuracy. It is said the actuarial model is valid in seven or eight cases out of ten. That, of course, means that two or three persons out of ten are wrongly identified and punished accordingly.

Generally speaking persons likely to be identified as violent offenders are subject to sentences longer than three years such that the Parole Board has a discretion to refuse release to parole. I would expect in some cases the period of parole would be significant and that allows monitoring in the community. No parole system is perfect but I believe our parole system provides an adequate means of dealing with violent offenders.

Yours faithfully,

The Hon Justice R O Blanch
CHIEF JUDGE

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