



Children's Court of New South Wales

11 August 2011

The Hon Jerrold Cripps QC
Chairperson
New South Wales Sentencing Council
GPO Box 6
Sydney NSW 2001

Dear Mr Cripps,

RE: Consultation Paper – Suspended Sentences

Thank you for the opportunity to make a submission on the Sentencing Council's Consultation Paper concerning suspended sentences.

The Children's Court submits that any recommendation made by the Council in relation to suspended sentences should consider the potential impact of the imposition of suspended sentences on juveniles.

When sentencing juveniles greater weight is usually placed upon individual rehabilitation through the imposition of community based sentencing options. Under the *Children (Criminal Proceedings) Act 1987* a control order may only be imposed if the court is satisfied that it would be "wholly inappropriate" to deal with the young person other than by way of a control order (s 33 (2)). Suspended sentences are not commonly imposed in the Children's Court as the court seeks to place greater emphasis on community-based sentences other than a suspended control order. For example, in 2010 the Children's Court imposed a suspended control order for a principal offence in 367 cases, representing 5% of all cases finalised in the Children's Court.

Whilst it is accepted that there should be provision in the children's legislation for suspension of a control order, the court notes that the imposition of a suspended control order on a juvenile may have far more serious consequences for a juvenile than an adult. With respect to an adult, in the event that a good behaviour bond attached to a suspended sentence is terminated, there are alternatives available whereby the sentence of imprisonment may be served, namely, by way of home detention or by way of an Intensive Correction Order. However, those alternatives are not available to juveniles.

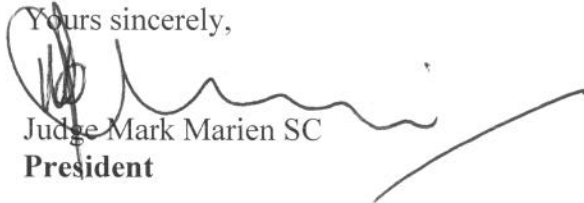
The Court submits that there should be alternatives available for juveniles to serve a

control order (other than by way of full time custody) in the event that a good behaviour bond attached to a suspended control order is terminated. The Court supports the availability of an alternative similar to an Intensive Correction Order but which is tailored to the special needs of juveniles.

Further, the Court recommends that with respect to juveniles, wider considerations should be able to be taken into account by the court when determining whether there are "good reasons" for excusing the person's failure to comply with the condition of a bond (s 41A (2) (b)). At present those considerations cannot extend to the subjective circumstances of the offender at the time of the breach proceedings nor the consequences of revoking the bond: *DPP v Cooke* [2007] NSWCA 2. The Court recommends that with respect to juveniles, those considerations should be able to be taken into account by the court when determining whether there are good reasons for excusing the failure to comply with a bond.

The Children's Court also recommends that there be a requirement that the Attorney-General provide a Children's Impact Statement with respect to any proposed criminal law legislation which may impact on children and young people. This would then require Parliament to consider the impact of any proposed criminal legislation on children and young people and to ensure that any such concerns are dealt with appropriately in the legislation.

Yours sincerely,



Judge Mark Marien SC
President