



Aboriginal Legal Service of Western Australia Limited

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Statutory Review of section 9AA of the *Sentencing Act 1995*
Strategic Policy
Department of Justice
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By email: clare.harvey@justice.wa.gov.au

6 September 2018

Dear Ms Harvey

Re: Statutory Review of Section 9AA of the *Sentencing Act 1995*

We refer to the letter from Dr Adam Tomison dated 11 July 2018 seeking further submissions for the Statutory Review of Section 9AA of the *Sentencing Act 1995*.

ALSWA maintains its views as provided in its original submission to the Statutory Review in August 2017.

In response to the two proposals put forward in the letter, ALSWA submits that:

Proposal 1: Repeal section 9AA and replace it with the former s 8(2) of the *Sentencing Act*

Proposal 1 is ALSWA's preferred option because the former provisions enabled the judiciary to determine the appropriate discount in any particular case after weighing up all of the relevant factors. ALSWA also supports the repeal of the maximum allowable discount of 25% noting that, in some other Australian jurisdictions, the maximum discount is between 30% and 40%.¹

Proposal 2

Proposal 2.1 is to retain s 9AA but with amendments to:

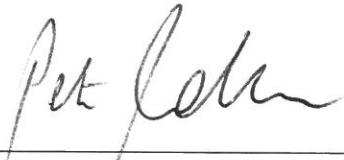
¹ Tasmanian Sentencing Advisory Council, *Statutory Sentencing Discounts for Pleas of Guilty: Consultation Paper* (March 2018) 42-44. The average discount in Victoria is between 25-33%; in South Australia the maximum is 40% (legislatively prescribed); and in Queensland the maximum is 30%.

- require the head sentence to be stated in court;
- retain the 25% maximum discount; and
- state that the strength of the prosecution case is not be taken into account when considering the benefits of a plea

As noted above, ALSWA supports Proposal 1; however, if Proposal 2 is adopted, ALSWA agrees that the head sentence should be stated in court as set out in its original submission. Likewise, ALSWA supports an amendment to ensure that the strength of the prosecution case is not taken into account when assessing the utilitarian benefits of a plea because the savings to the state and the benefits for victims occur irrespective of the strength of the case. However, if s 9AA is retained, ALSWA urges consideration of increasing the maximum discount allowable to reflect the typical discounts prior to the enactment of section 9AA.

Finally, while ALSWA remains strongly opposed to any form of mandatory sentencing, consideration should be given to enabling a sentencing discount for mandatory minimum sentences. This would encourage pleas of guilty for offences that carry a mandatory minimum term instead of the present situation where there is no incentive to plead guilty if the accused is unlikely to receive a sentence in excess of the mandatory minimum sentence.

Yours Faithfully



Peter Collins
Director, Legal Services
Aboriginal Legal Service of Western Australia Limited