The Shopfront

YOUTH LEGAL CENTRE

NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

31 October 2011

Dear Sir/Madam

Sentencing: preliminary submission from the Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre welcomes the opportunity to make a submission to this review.

About the Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under.

Established in 1993 and based in Darlinghurst in inner-city Sydney, the Shopfront is a joint project of Mission Australia, the Salvation Army and the law firm Freehills.

The Shopfront employs 4 solicitors (3.1 full-time equivalent), 2 legal assistants, a paralegal (0.4 full-time equivalent) and a social worker. We are also assisted by a number of volunteers. Two of our solicitors are accredited specialists in criminal law; one is also a specialist accredited in children's law.

The Shopfront represents young people in criminal matters, mainly in the Local, Children's and District Courts. We prioritise those young people who are the most vulnerable, including those in need of more intensive support and continuity of representation than the Legal Aid system can provide.

The Shopfront also assists clients to pursue victims' compensation claims and deal with unpaid fines. We also provide advice and referrals on a range of legal issues including family law, child welfare, administrative and civil matters.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem.

Scope of this submission

This is a preliminary submission only and as such it will be brief.

Although the Shopfront is a youth legal service, and has expertise in children's matters, the majority of our clients are in fact young adults in the 18 to 25 year age group. We therefore have an extensive working knowledge of the *Crimes (Sentencing Procedure) Act* 1999.

We note that the Act was introduced following a comprehensive reference on sentencing conducted by the NSWLRC. In general, we are of the view that the Act is well-drafted and works well in practice.

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Our main concerns are about provisions that have been added to the Act since it was originally enacted, including section 21A and the standard non-parole period provisions. We also have some concerns about suspended sentences.

We attach copies of our submissions to the NSW Sentencing Council on the following issues:

- Non-conviction orders and good behaviour bonds (August 2009)
- Suspended sentences (July 2011)

We also refer to our recent submissions to the NSWLRC about:

- Penalty notices (March 2009 and December 2010)
- People with cognitive and mental health impairments in the criminal justice system (June 2010)
- Young people with cognitive and mental health impairments in the criminal justice system (March 2011)
- Bail (July 2011)

Although none of the above submissions to the NSWLRC relates to sentencing *per se*, they have relevance insofar as they discuss the difficulties faced in achieving appropriate sentencing outcomes for people with cognitive and mental health impairments, the negative impact of fines on disadvantaged people, and the interaction between bail and sentencing.

Further comments

We would welcome the opportunity to make further comments or to attend consultations if you consider this would be helpful. In this regard, please do not hesitate to contact me, preferably by email at jane.sanders@freehills.com.

Yours sincerely

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1 The ways in which sentencing law as a whole can be simplified and made more transparent and consistent

1.1 Simplification

It is of course desirable that sentencing law be clear and easy for sentencing judges to apply. It should be readily understood by the parties (especially the accused), other affected people (especially victims) and the public at large.

However, sentencing can be a complex process involving balancing a number of often competing factors. We would therefore caution against attempts to over-simplify or "dumb down" sentencing laws.

We are of the view that the *Crimes (Sentencing Procedure) Act* is, in general, a well-drafted and easily understood piece of legislation.

However, sentencing has been overly complicated by provisions such as standard non-parole periods, the requirement for an artificial two-stage process in some cases, and requirements to specify sentence discounts in mathematical terms. A return to the "instinctive synthesis" approach would be preferable (as endorsed by the High Court in *Makarian v The Queen* (2005) 228 CLR 357).

We also suggest that section 21A has unnecessarily complicated the sentencing process, without bringing any real benefits. Most of the factors listed in s21A were already well-established by the common law, and generally well-understood by advocates and judicial officers. Appeal judgments relating to s21A tend to show that the section has created confusion and double-counting in both aggravating and mitigating factors.

1.2 Transparency

We understand "transparency" to mean that judicial officers' sentencing decisions are readily understood, not only by the affected parties but by the public at large. This would include the provision of clearly-expressed reasons, which would be made available to the public in appropriate cases. Public education about criminal justice and sentencing is also important .

Unfortunately the aim of transparency, in terms of reasons for sentencing decisions being made clear to the general public, can be somewhat undermined by inaccurate and sensationalist media reporting.

Public Confidence in the NSW Criminal Justice System (August 2008), a bulletin published by the NSW Bureau of Crime Statistics and Research (BOCSAR), expressed the view that the media are largely responsible for misconceptions about crime in large sections of the public.

This was further identified in a BOCSAR media release accompanying the release of its *Sentencing Snapshots* (25 September 2011) stating that "the courts are much tougher on offenders than people think".

The Director of the Bureau, Dr Don Weatherburn attributes the misconceptions of the public to "sensationalist media reporting" which influences the public to form the view that the courts are lenient towards serious offenders. He further comments that "some journalists make no distinction between minor and serious forms of a particular offence and/or pay no attention whatsoever to whether the sentence is for a first-time or a repeat offender."

1.3 Consistency

Firstly, what is meant by "consistency"?

It does not mean treating everyone in the same manner. Such a practice would be offensive to many first principles of sentencing. A general pursuit towards "consistency" is desirable in so far as like offenders are treated in a like manner, but the legislature and

the judiciary must exercise caution against espousing principles that would encourage or even permit unlike offenders to be treated alike.

In our view, a desirable level of consistency is best achieved through a robust appeal process, and the provision of resources to assist judicial officers in reaching decisions (for example, JIRS statistics, and widely-available judgments and case summaries).

Mandatory sentencing

Mandatory sentencing is sometimes said to promote consistency, but it may in fact do the opposite by requiring *unlike* offenders and offences to be treated in a like manner. It offends against the principle that "if justice is not individual, it is nothing" as referred to in *Kable v DPP* (1995) 36 NSWLR 374 at 394 by Mahoney JA.

Guideline judgments

It appears that by and large, some degree of consistency between like offenders is achieved through guideline judgments. Our concern, however, is that the cost of this consistency may be too high, as sentence tariffs have been pushed up and there is perhaps less scope for extending leniency to those who deserve it.

A report from the Judicial Commission of New South Wales, *Sentencing Trends for Armed Robbery and Robbery in Company: The Impact of the Guideline* in *R v Henry [1999] NSWCCA 111* (February 2003) includes among its findings:

- The rate for full-time custodial sentences increased by 4.2% from pre *Henry* to post *Henry* (from 81% to 85.2%).
- The proportion of offenders who received other types of custodial penalties rose by 2.6% from pre *Henry* to post *Henry* (from 7.2% to 9.8%).
- The increase in some form of custodial penalty was at the cost of a reduction in non-custodial penalties, such as the use of community service orders (from 7.2% pre *Henry* to 2.8% post *Henry*), and bonds/recognisances (from 4.3% pre *Henry* to 2.1% post *Henry*).
- In terms of the range of sentences imposed, 'when the cases clustering around the 80% range were examined, a narrowing of the bandwidth for both head sentences and non-parole periods was evident. Head sentences went from 24-78 months pre *Henry* to 32-72 months post *Henry*, while non-parole periods went from 9-48 months pre *Henry* to 12-45 months post *Henry*'. This suggests that sentences became more "consistent" after Henry.

A shift to harsher penalties resulting from guideline judgments is further exemplified for High Range Prescribed Concentration of Alcohol (HRPCA) offences when a guideline judgment was delivered on 8 September 2004 by the NSW Court of Criminal Appeal.

A study assessing the impact of the guideline judgment on sentencing patterns was published by the Judicial Commission of NSW *'Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW'* (September 2005). The findings of the study were that there was a significant increase in the severity of penalties after the guideline judgment was delivered.

The main findings in relation to the severity of penalties included:

- The use of s10 orders significantly decreased from 10.3% in the equivalent time period in 2003 to 5.6% pre-guideline to 2.2% post-guideline.
- Overall, there was a substantial fall in less severe penalties including s 9 and s 10 orders and fines, while there was a significant increase in more severe penalties.
- The application of community service orders increased from 4.4% in the equivalent time period in 2003 to 5.4% pre-guideline to 10.5% post-guideline. Similarly, the application of s12 suspended sentence also increased from 3.8% in the equivalent time period in 2003 to 4.2% pre-guideline to 10.4% post-guideline.

- Sentences of full-time custody increased from 2.2% in the equivalent time period in 2003 to 2.9% pre-guideline to 6% post-guideline.

Standard non-parole periods

Standard non-parole periods were apparently introduced in an attempt to achieve consistency, but there is no evidence that they have achieved this purpose. Instead there has been a general increase in sentencing tariffs for most standard non-parole period offences. It also appears that there has been a raft of appeals due to the fact that the provisions are complex and often misapplied.

A study undertaken by the Judicial Commission NSW '*The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales*' (Monograph 33, May 2010) compared patterns of sentencing before and after the standard non-parole period legislation was introduced on 1 February 2003.

Overall, the study found that while standard non-parole periods have had the effect of creating greater uniformity and consistency in sentencing, they have also increased sentencing tariffs in relation to the severity of penalties imposed and length of sentences for custodial sentences. The study also found the rate of severity appeals for a first instance sentence has risen for some offences and decreased for other offences.

The recent High Court decision of *Muldrock v The Queen* [2011] HCA 39 is said to have resolved some of the problems with the application of standard non-parole periods, but to our mind it is also evidence of the confusion and error which the scheme has caused.

It would be our submission that the standard non-parole period scheme be abolished.

2 The priority issues in sentencing law that require investigation and reform

2.1 Reducing rates of full-time imprisonment

It is now widely accepted that the rate of imprisonment in NSW is unacceptably high, and that prisons have to some extent have become a dumping ground for vulnerable people who are inadequately cared for in the community. Priority should be given to ensuring that imprisonment is reserved for those cases where it is really necessary in the interests of community protection, rehabilitation or (possibly) deterrence.

It is well known that recidivism rates among former prisoners are very high. In a study by Eileen Baldry et al in 2003, it was found that 36% of the NSW and Victorian prisoners surveyed were back in custody within 9 months of their release[1]. This is hardly surprising, given the rates of homelessness and other social problems that confront prisoners upon release[2].

According to a 2010 article by the Australian Prisons Project, *Key moments in Penal Culture in NSW 1970 – present*[3], the Australian Institute of Criminology in 2008 found that the national average recidivism rate (measured by the percentage of prisoners released in 2002-03 who returned to prison within two years) was 38.4%, compared with a rate of 43.5% for NSW.

As a service working with young adults who are homeless (and who typically suffer from mental health problems, unresolved trauma, intellectual disabilities and/ or substance abuse problems) we have observed at first hand the problem of the "revolving door".

We accept that the provision of adequate housing, health and social support services is beyond the Commission's terms of reference. However, the provision of realistic,

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[1] Baldry, E., & Maplestone, P. (2003) *Prisoners' post-release homelessness and lack of social integration*, Current Issues in Criminal Justice15(2): 155-169.

[2] These issues are also examined at length in Baldry's research, ibid. See also, for example, *Recidivism and the role of social factors post-release* at http://www.sydneyshove.org/Social_Factors_Post_Release.pdf

[3] http://www.app.unsw.edu.au/section-2-major-themes-decade-0#2000s; see also Payne, J: *Recidivism in Australia : findings and future research*, Australian institute of Criminology, Research and Public Policy Series No. 80 (2007), http://www.aic.gov.au/documents/0/6/B/%7B06BA8B79-E747-413E-A263-72FA37E42F6F%7Drpp80.pdf

accessible and effective sentencing options, and the relegation of prison so that it is *truly* a last resort, is within the scope of this reference.

In our view, for our client group at least, increased rates of imprisonment are partly due to a knock-on effect from increased rates of bail refusal. If bail is refused, it is more difficult to access appropriate support services and to demonstrate capacity for rehabilitation. For those who are refused bail, a custodial sentence is often seen as the only realistic option. We are hopeful that the Commission's current reference on bail will assist in dealing with this problem.

2.2 Purposes and principles of sentencing

The stated purposes of sentencing are currently set out in s3A of the *Crimes (Sentencing Procedure) Act*. Although these purposes have their origins in long-established common law tradition, and ought not to be discarded lightly, we believe it is time for a robust debate about whether these purposes are still serving the community well, and about how these purposes should be given practical effect.

We believe it is useful for the Act to spell out the purposes of sentencing. However, it may be necessary to provide some legislative guidance as to how these purposes are to be achieved. There may also be need for guidance on the relative weight to be given to each of these purposes.

Old assumptions, for example that harsh sentences are necessary and effective in achieving general deterrence, must be questioned.

Questioning general deterrence

In our view, there is a need to explode the myth that imprisonment is effective in achieving specific and general deterrence. If general deterrence is to continue to be given significant weight, and if imprisonment is thought to achieve this objective, this should be supported by evidence that prison is an effective general deterrent. Current evidence suggests that it may not be.

The NSW Law Reform Commission's *Discussion Paper 33 (1996) – Sentencing*, in section 3 entitled 'Purposes and Principles of Sentencing Law' states that the justification for deterrence has been questioned on four grounds:

1. There is doubt about the extent to which, empirically, punishment actually prevents the commission of future offences.
2. Assuming that punishment does deter, it is argued that it is the threat of detection and resulting punishment (in some form), rather than the level of punishment, which deters the offender. If so, then it follows that a positive deterrent response (for example, by setting higher penalties) achieves little or nothing in terms of the incidence of crime.
3. Accounting for deterrence, particularly general deterrence, in setting punishment can be seen as unjustly punishing the offender for what others might do, as opposed to what the offender has in fact done ("scapegoating").
4. There is considerable doubt as to the efficacy of the communication of the penalties to the wider audience upon which the general deterrence depends.

His Honour Judge John Nicholson SC, in a recent paper entitled *Sentencing – Good Bad Indifferent*[4], states that in order for general deterrence to be effective "the deterrent message must reach the would-be offender. He must know about it". Nicholson SC further explains that the courts' promotion of the policy "do not commit a crime or you will

[4] Paper presented by District Court Judge John Nicholson SC at a recent CLE conference (18 September 2011) – Available online at http://criminalcle.net.au/attachments/Sentencing_Good_Bad__Indifferent.pdf.

be punished" by using the weighting of general deterrence in sentencing is a "media disaster" and "unfair".[5]

In Nicholson's view, the principles of general and specific deterrence have "been incorporated into sentencing dogma without a skerrick of evidence or research". It is, in our view, an unusual theory that potential offenders have either knowledge of sentencing trends or the time to coolly contemplate those judgments, when undertaking a decision to commit a crime.

Ultimately, as Nicholson suggests, general deterrence competes with the notion that justice is individual and can lead to disproportionate sentences.

The questionable effectiveness of general deterrence has been acknowledged by judicial officers in superior courts[6]. However, in *R v Wong* (1999) 48 NSWLR 340 at [127], Spigelman CJ (as he then was) said:

> "There are significant differences of opinion as to the deterrent effect of sentences, particularly, the deterrent effect of marginal changes in sentence. Nevertheless, the fact that penalties operate as a deterrent is a structural assumption of our criminal justice system. Legislation would be required to change the traditional approach of the courts to this matter."

In our submission it is timely that this "structural assumption" be challenged and that legislation be enacted to change the traditional approach to general deterrence.

Rehabilitation and young offenders

The tension between rehabilitation and general deterrence is particularly apparent in cases of young offenders (by this we mean children and young adults) who commit serious offences.

While the *Children (Criminal Proceedings) Act* is not within the Commission's terms of reference, this reference does encompass children dealt with "according to law" under the *Crimes (Sentencing Procedure) Act.*

Traditionally, rehabilitation has been of primary importance when sentencing young offenders, particularly children but also young adults.

The case most often cited in support of the primacy of rehabilitation is *R v GDP* (1991) 53 A Crim R 112. In this case, the Court of Criminal Appeal adopted the approach taken in previous cases and held that the sentencing principles to be applied to children are different from those to be applied to adults. The court reiterated the importance of rehabilitation while saying that general deterrence should not be completely ignored.

Many subsequent cases have followed this approach[7]. Some authorities have made it clear that the consideration of rehabilitation is no less important where a very serious crime has been committed, and that the rehabilitation principle is not restricted to non-violent crimes[8].

However, more recently, a line of authority has emerged to the effect that where children "behave as adults" or engage in "grave adult behaviour", specific and general deterrence will carry considerable weight and may prevail over rehabilitation.

We acknowledge that, where an offence has involved significant planning or other hallmarks of adult cognitive development, a young person may lose some of the leniency to which they might otherwise be entitled. However, we are concerned that the concept of

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[5] D. Brown, 'The Limited Benefit of Prison in Controlling Crime', Contemporary Comment, *Current Issues in Criminal Justice*, Vol 22 No 1, July 2010, 461-473

[6] See, for example, commentary in NSW Judicial Commission *Sentencing Bench Book* at para [2-240]

[7] For example, *R v XYJ* (unreported, NSWCCA, 15 June 1992), *R v DAR* (unreported, NSWCCA, 2 November 1997), *R v LO* [1999] NSWCCA 291, *R v Hearne* (2001) 124 A Crim R 451, *R v TVC* [2002] NSWCCA 325, *R v JDB* [2005] NSWCCA 102, *R v GS* [2006] NSWCCA 410.

[8] See *R v Whitfield* [2001] NSWSC 876, *R v SK; R v OZ* [2001] NSWCCA 492.

"adult offences" or "adult behaviour" has been inappropriately extended to refer to serious or violent offences in general, even those which bear the hallmarks of impulsive adolescent-type behaviour.

In our view, this reasoning can lead to outcomes that are unjust and even absurd. For example, in *R v KT* [2007] NSWSC 83 the sentencing judge held that, while throwing rocks at a car was juvenile behaviour, what followed (hitting the victim, causing him to fall and incur a fatal head injury) could not be categorised as such and was conduct that called for a strong element of punishment and general deterrence. KT's severity appeal was dismissed by the Court of Criminal Appeal (see *KT v R* [2008] NSWCCA 51). The majority held that the sentencing judge did not err in his approach. However, McClellan CJ at CL, in dissent (with whom we respectfully agree) remarked that it was difficult to dissociate the act of throwing eggs and the subsequent assault of the victim, and that both could be categorised of the acts of an immature person.

The paper *Youth as a mitigating factor: to what extent does the principle survive?* (2007) by Dina Yehia SC of the Public Defenders contains a good discussion of the divergent lines of authority. There is also some relevant discussion in the paper *Children and the High and Supreme Courts* 2007 – 2008 (2008) by Andrew Haesler SC (as he then was)[9].

In our view, there is a need for legislative action to strengthen the principle of rehabilitation as it applies to young people. Although all courts (not just the Children's Court) must have regard to the principles of s6 of the *Children (Criminal Proceedings) Act*, there may be a need to strengthen these principles, and perhaps to provide a more explicit statement as to the primacy of rehabilitation and the limited role of general and specific deterrence. We also see a need for a strong statement of principle in the *Crimes (Sentencing Procedure) Act* so that rehabilitation is also given appropriate weight for young adult offenders.

2.3 Maintaining judicial discretion

In our view, judicial discretion is key to ensuring just and appropriate sentencing outcomes.

It is of course appropriate for judicial officers to be guided in the exercise of their discretion, by legislative principle and case law (possibly including guideline judgments).

Priority should be given to resisting any attempt to fetter judicial discretion, and to restoring judicial discretion in areas where it has been removed or restricted.

From our perspective, one of the most troubling restrictions on judicial discretion lies in the ancillary orders that may be made following conviction for traffic offences. The existing regime of mandatory disqualifications, especially in relation to offences of driving while unlicensed, suspended, cancelled or disqualified, leads to harsh and often absurd results. It is not uncommon for disadvantaged people, especially those in Aboriginal communities, to accumulate disqualifications of 20 years or more, and to lose hope of ever obtaining a driving licence[10]. Although this regime is set out in the *Road Transport* legislation and not in the *Crimes (Sentencing Procedure) Act*, we urge the Commission to consider this issue if possible. The lack of discretion in respect of disqualifications can distort the sentencing process: for example, it causes some magistrates to resort to the use of section 10 in situations where it is not otherwise warranted.

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[9] Both papers are available on the Public Defenders' website at http://www.lawlink.nsw.gov.au/lawlink/pdo/ll_pdo.nsf/pages/PDO_papersbypublicdefenders

[10] For further discussion of the impact of licence disqualifications, please refer to our submissions to the NSWLRC on *Penalty Notices*, particularly our preliminary submission (March 2009).

3 Any sentencing options in addition to those that currently exist that could be provided as an alternative to imprisonment, either generally, or in relation to particular categories of offenders

The *Crimes (Sentencing Procedure) Act* offers a number of alternatives to imprisonment. We do not see a compelling need for *new* sentencing options, but there is definitely a need for existing options to be made more available.

Eligibility criteria

The availability of some non-custodial options is limited by factors such as:

- offence type (e.g. certain types of offences disqualify an offender from home detention, intensive correction orders or forum sentencing; violent offences render an offender ineligible for the adult Drug Court program);
- criminal history;
- sentence length (suspended sentences and ICOs can only be imposed in relation to sentences of 2 years or less, home detention in relation to sentences of 18 months or less);
- the offender's place of residence (e.g. the Drug Court catchment areas are very limited; sentencing options such as home detention and ICOs are not available in certain regional areas).

We would support a review of these eligibility criteria which, in our view, are too restrictive. Of course there will be cost implications, but this must of course be considered in the light of the high costs (both financial and social) of full-time imprisonment. We acknowledge that there are also political reasons for certain types of offenders being excluded from some sentencing options; we suggest some strong leadership may be required to overcome these obstacles.

Practical availability of sentencing options

There is also a problem with the practical availability of non-custodial options, especially in regional areas and for disadvantaged populations[11]. While options such as bonds and community service are theoretically available all over the state, in practice there is a lack of support services, supervision and community work in some areas, which makes these sentencing options either unavailable in a practical sense or doomed to fail due to lack of adequate support or supervision.

Additionally, access to non-custodial sentencing options is often denied to the most vulnerable offenders, for example those who are homeless, or those who have an intellectual disability or a mental illness. This is especially so in the case of intensive correction orders, which were introduced with the aim of providing offenders with intensive support to assist with their rehabilitation. In our short experience of the ICO scheme, it appears that the people who could most benefit from an ICO are the least likely to be assessed as suitable.

Instability, whether it be homelessness, mental illness or substance dependence, will often render an offender unsuitable for an ICO. We understand that this is partly because an offender on an ICO must be able to perform community service work; we understand that Corrective Services is giving this issue some serious consideration, with a view to modifying the ICO scheme so that the community service requirements can be deferred for offenders who are in need of intensive rehabilitation.

The ICO assessment process is very rigorous and imposes what we regard to be unreasonable obligations on vulnerable people. For example, one of our clients who has mental health problems was required by the officer performing the ICO assessment to

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[11] For a discussion of these problems and possible solutions, see final report of NSW Legislative Council Standing Committee on Law an Justice Inquiry into *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006

obtain his own psychiatric assessment report – something that is not easy to do, given that community mental health services do not generally provide forensic assessment reports, and the cost of independent psychiatric assessments is very high. From what we hear, this is a systemic problem and not an isolated example.

Many offenders will be sentenced to imprisonment largely because they have no stable accommodation and support in the community. This is especially likely to be the case for offenders with a mental illness, a cognitive impairment or a substance abuse problem. Priority should be given to funding more programs like Biyani, which is a residential program for dual diagnosis women who would otherwise receive a custodial sentence.

Suspended sentences

Suspended sentences have been the subject of some debate over the years, and have indeed been abolished and re-introduced.

With some reservations, we favour the retention of suspended sentences as an alternative to full-time custody. However, we have some concerns about the way suspended sentences currently operate. Please see the attached copy of our recent submission to the Sentencing Council.

Drug Court and diversionary programs

We support the roll-out of the adult Drug Court to all parts of NSW.

We also suggest that consideration be given to extending the eligibility criteria to those who have committed certain types of violent offences (e.g. certain types of robberies; less serious assaults) and those who are dependent on alcohol. We note that the Youth Drug and Alcohol Court program includes these categories of offenders.

We also support the expansion of diversionary programs such as MERIT and CREDIT. Our experience with MERIT is quite extensive and generally very positive. Many of our clients have availed themselves of the MERIT program (and a smaller number have participated in CREDIT, which is still a pilot program) and have gained access to rehabilitation and support services which are not always readily accessible within the community.

Although MERIT and CREDIT are not sentencing options, as they are generally offered before a plea is entered, they generally enhance an offender's rehabilitation prospects, reduce the risk of recidivism, and help provide the Local Court with a realistic alternative to full-time imprisonment.

We also refer the Commission to our submissions on *People with cognitive and mental health impairments in the criminal justice system* (June 2010) and *Young people with cognitive and mental health impairments in the criminal justice system* (March 2011), in which we recommended the establishment of a MERIT or CREDIT type program for persons with cognitive and mental health impairments.

4 Operation of the standard minimum non-parole period scheme.

Please see the above comments about the standard non-parole period scheme.

The Shopfront Youth Legal Centre
October 2011