



Crown
Solicitor's
Office

CLE Seminar Series 2019

Inquiries & Criminal Law

16 October 2019

The seminar will start at 3.30pm

Welcome and introduction



Naomi Malhotra
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Sentencing in the Local Court

A panel discussion with the Criminal Law practice group



Brett Thomson
Special Counsel



Cameron Gardiner
Solicitor Advocate



Sophie Williams
Solicitor Advocate

Sentencing in the Local Court



Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW)

- **9 How to work out the relevant mass for a towing vehicle without a GCM**
- (1) For the purposes of section 8(3), if the towing vehicle of a combination does not have a GCM and is fitted with a single-drive axle, single-drive tandem axle group or dual-drive tandem axle group, the mass, in kilograms, is worked out by using the following formula—

$$M = \frac{K \times TR \times R \times T}{16}$$

- (2) In the formula under subsection (1)—
- (a) M means mass in kilograms; and
- (b) K means the following—
- (i) if the towing vehicle is fitted with a single-drive axle—0.055;
- (ii) if the towing vehicle is fitted with a single-drive tandem axle group—0.053;
- (iii) if the towing vehicle is fitted with a dual-drive tandem axle group—0.051; and
- (c) TR means the number of tyre revolutions per kilometre, stated by the manufacturer, of the tyres fitted to the towing vehicle's driving axles; and
- (d) R means the overall gear reduction between the towing vehicle's engine and the wheels on the vehicle's driving axles; and
- (e) T means the towing vehicle's maximum engine net torque in newton-metres.

- *"what is required is that the sentencer must take into account all relevant considerations ... in forming the conclusion reached. As has now been pointed out more than once, **there is no single correct sentence.**"*
- *Markarian v The Queen (2005) 79 ALJR 1048 at [27]*

- Sentencing is described as involving the exercise of 'instinctive synthesis'
- *Markarian* (2005) and *Muldrock* (2011)

“Guideposts that point in opposite directions”



Fisheries Management Act 1994

- 3 Objects of Act
- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

Children (Education and Care Services) National Law (NSW)

3 Objectives and guiding principles

- (1) The objective of this Law is to establish a national education and care services quality framework for the delivery of education and care services to children.
- (2) The objectives of the national education and care services quality framework are—
 - (a) to ensure the safety, health and wellbeing of children attending education and care services;
 - (b) to improve the educational and developmental outcomes for children attending education and care services;

Children (Education and Care Services) National Law (NSW) cont.

- (c) to promote continuous improvement in the provision of quality education and care services;
- (d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;
- (e) to improve public knowledge, and access to information, about the quality of education and care services;
- (f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

Children (Education and Care Services) National Law (NSW) cont.

- (3) The guiding principles of the national education and care services quality framework are as follows—
 - (a) that the rights and best interests of the child are paramount;
 - ...

Heavy Vehicle National Law (NSW)

3 Object of Law

- The object of this Law is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—
 - (a) promotes public safety; and
 - (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
 - (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
 - (d) encourages and promotes productive, efficient, innovative and safe business practices.

Sentence considerations

- Present
- Past
- Future



Sentencing consideration

- Present – Direct circumstances of offending
- Past – Prior history, good character, background etc.
- Future – Prospects for rehabilitation, deterrence

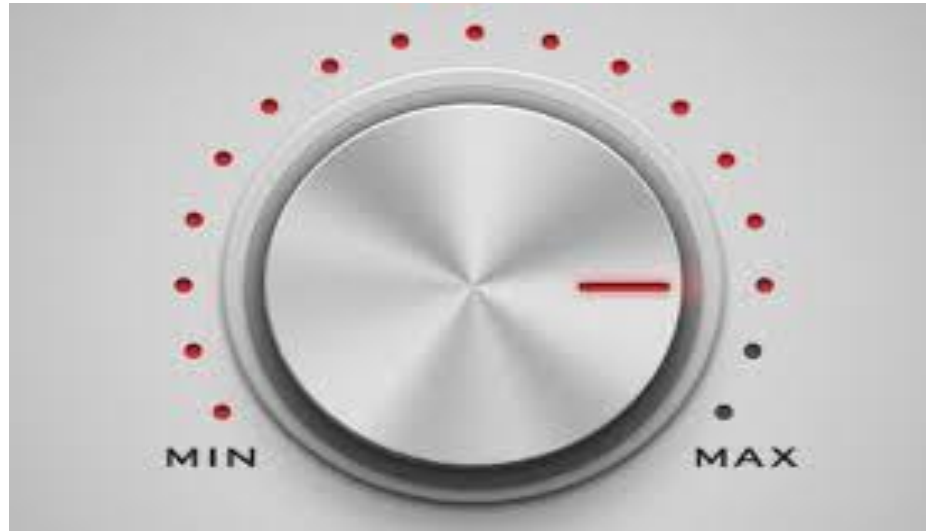
Objective seriousness

- Assisting the court with assessment of objective seriousness imperative
- In regulatory matters this can be more significant given relative rarity of offence types
- Linking objective seriousness to object of regulatory regime
- Clarity around what makes out offence

Some points to consider

- Delay and limitation periods
- Process – always be ready for sentence!
- Statements of facts
- Responding to subjective cases

Maximum penalties



Crimes (Sentencing Procedure) Act 1999

5 Penalties of imprisonment

- (1) A court must not sentence an offender to imprisonment unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate.
- (2) A court that sentences an offender to imprisonment for 6 months or less must indicate to the offender, and make a record of, its reasons for doing so, including—
 - (a) its reasons for deciding that no penalty other than imprisonment is appropriate, and
 - (b) its reasons for deciding not to make an order allowing the offender to participate in an intervention program or other program for treatment or rehabilitation (if the offender has not previously participated in such a program in respect of the offence for which the court is sentencing the offender)....

Barbaro v The Queen; Zirilli v The Queen (2014) 88 ALJR 372



“The setting of bounds to the available range of sentences in a particular case must, however, be distinguished from the proper and ordinary use of sentencing statistics and other material indicating what sentences have been imposed in other (more or less) comparable cases. Consistency of sentencing is important. But the consistency that is sought is consistency in the application of relevant legal principles, not numerical equivalence.”

Barbaro v The Queen; Zirilli v The Queen (2014) 88 ALJR 372

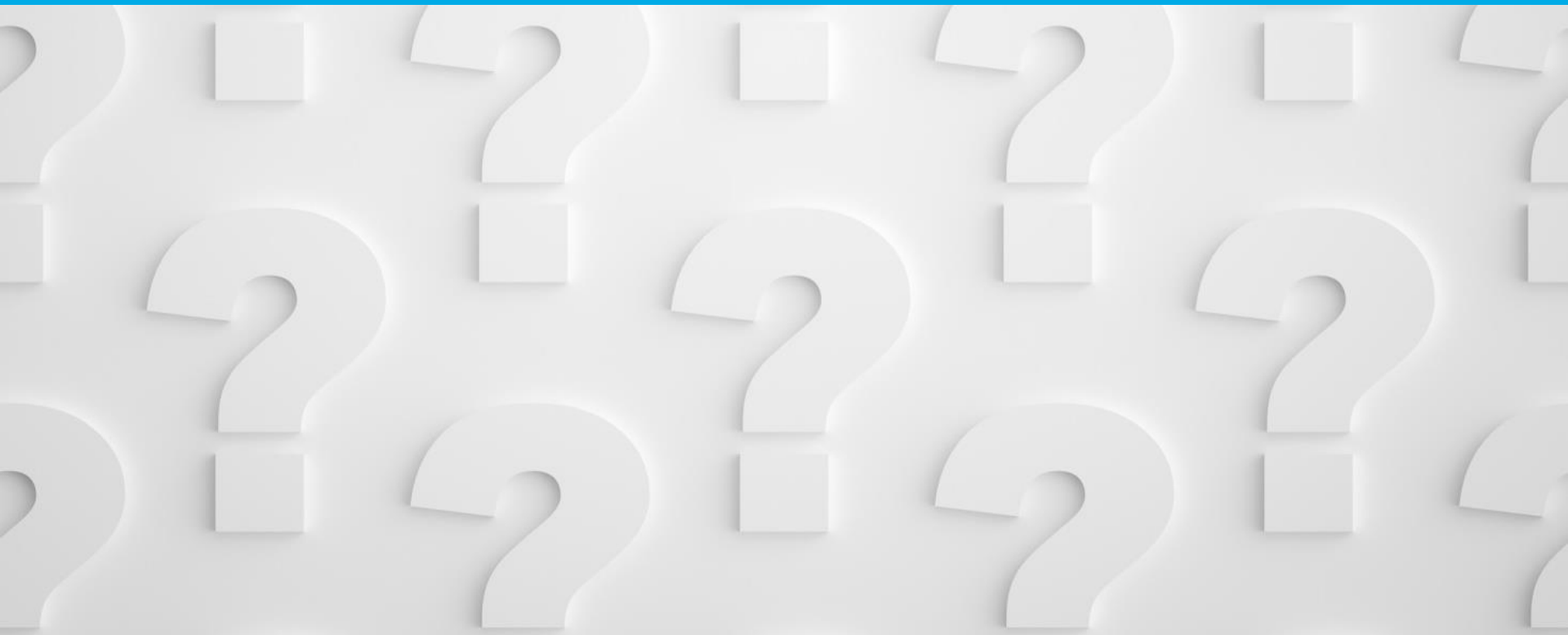


“If a sentencing judge is properly informed about the parties' submissions about what facts should be found, the relevant sentencing principles and comparable sentences, the judge will have all the information which is necessary to decide what sentence should be passed without any need for the prosecution to proffer its view about available range.”

Checklist

- What are the objects of the legislative scheme?
- Evidence that supports harm/damage/seriousness of offence?
- Statement explaining particular scheme/policy
- Prevalence of offence/difficulty of detection
- Clear, useful and comprehensive Statement of Facts
- Antecedents of the offender (particularly repeat offences of similar type)
- Table of comparable cases
- Schedule of professional costs (just and reasonable)

Questions?





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