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Sentence Indication Hearings Pilot Scheme

SENTENCING INDICATION HEARINGS PILOT SCHEME

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Disclaimer

I

INTRODUCTION

This paper provides an analysis of and commentary upon the "Sentencing Indication Scheme" which was recently piloted at the Downing Centre Complex of the District Court. The scheme allows accused persons who have been committed for trial to that court to elect at arraignment to divert from the listing process leading to trial, and instead obtain an "indicative sentence" from a District Court judge, to be imposed should the applicant accept that sentence and plead guilty at that time. In the event of the applicant rejecting the indicative sentence, the matter is placed back in the trial list before another judge who is not made aware of the previous sentencing indication proceedings.

The pilot scheme was conducted between 4 June 1993 and 5 November 1993 inclusive. This paper contains a summary of the operation of the scheme, a detailed statistical analysis of the applicants who participated in the pilot scheme and of the outcomes obtained, both within the scheme and in relation to more general sentencing outcomes, and finally a number of preliminary comments about the way in which the pilot scheme has operated, together with some observations about the prospects of the incorporation of this initiative into the existing structure of the criminal courts.

The statistical analysis presented in this paper draws upon extensive empirical research, including a detailed audit of all court files relating to the matters dealt with at the Downing Centre under the Sentence Indication Hearings Pilot Scheme. The extensive audit required to be undertaken for this study also highlights the difficulties that face any on going evaluation or monitoring of the scheme.

The statistical analysis has been undertaken at two distinct levels —

Descriptive Analysis

(1) the number of applications for sentence indication and the size of the potential customer market;
(2) the rate of acceptance and rejection of "indicative sentences";
(3) the types of offenders who requested an "indicative sentence";
(4) the types of charges considered under the scheme.

Evaluation

(1) the scheme's impact on the District Court's trial load in terms of case flow and management;
(2) the average length of indication hearings; and the scheme's contribution to savings in real sitting time;
(3) relationship between the average type and length of such sentences as opposed to equivalent "ordinary" sentences.

Historical Background

Sentence Indication and Notions of Plea Bargaining

The Sentence Indication Scheme developed in New South Wales implicitly offers the accused the benefit of a discount for guilty plea in a tangible and precisely calculated form by providing an estimate of the total quantum of punishment envisaged, without unacceptably encroaching upon the rights of the accused. Among other things, this scheme benefits the accused by removing the uncertainty surrounding the type or duration of the sentence that might otherwise have been imposed upon conviction or guilty plea. The scheme therefore has the formal requirements of an agreement, in so far as the indicative sentence represents an "offer" by the court, there is the possibility of further argument at the formal sentencing stage, and the plea of guilty represents an acceptance of that offer by the accused. This exercise of choice prevents the process from appearing unduly coercive in nature.

In the context of the American justice system, the justification for the acceptance of some form of plea bargaining was eloquently made by the President's Commission on Law Enforcement and Administration of Justice in the following terms —

> "The negotiated plea serves important functions. As a practical matter, many courts could not sustain the burden of having to try all cases coming before them. The quality of justice in all cases would suffer if overloaded courts were faced with a great increase in the number of trials. Tremendous investments of time, talents and money, all of which are in short supply and can be better used elsewhere, would be necessary if all cases were tried. It would be a serious mistake however, to assume that the guilty plea is no more than a means of disposing of criminal cases at minimal cost. It relieves both the defendant and the prosecution of the inevitable risks and uncertainties of trial. It imports a degree of certainty and flexibility into a rigid, yet frequently erratic system ..."[1]

As the Australian Law Reform Commission noted in its report *Sentencing of Federal Offenders*, this justification of plea bargaining was sufficiently influential to result in the United States Supreme Court approving the practice.[2] In that report there is a comprehensive analysis of the dangers and benefits of plea bargaining.

1 United States National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, pp 42–45, cited in: Australian Law Reform Commission, Report No 15, *Sentencing of Federal Offenders*, 1980, p 78.

2 Australian Law Reform Commission, op cit, p 79.

In North America, where informal and institutionalised forms of plea bargaining have been common for a long period of time, plea bargaining usually takes the form of a negotiation between the accused and the prosecution. Where judges are involved, they are not generally principals in the agreement, but rather act more as scrutineers. Secondly, the negotiations — even where judges are involved — typically take place in private rather than in open court. Thirdly, in many North American jurisdictions the subject matter of the negotiation relates more to the nature of the charges to be preferred, rather than the type or duration of penalties (although, again, there are exceptions to this; in any case, the nature of the charges and the type or duration of penalties cannot be entirely separated). Consequently, the common image of plea bargaining envisages a private agreement between prosecution and the accused relating to the nature and/or number of charges to be preferred, in exchange for a plea of guilty. As an American commentator and academic, Richard Uviller, has astutely observed —

> "Practitioners of many jurisdictions will attest that the core of the criminal process as they know it is the guilty plea ... As in civil cases, settlement has become the rule, adjudication by trial the exception ... With some dismay, people are seeing the displacement of images; for the cherished image of the robed judge and solemn jurors seeking truth and imposing judgment 'according to law,' a vision is substituted of 'deals' secretly concluded in dim ante-rooms between lawyers bargaining away the rights of the accused and the public, according to the law of the marketplace."[3]

It has also been noted that the early advent of mandatory legal aid for all persons accused of crime and the pressure of case load on the criminal courts gave plea bargains an early boost in the United States.[4]

In Australia, there has been a traditional reluctance to endorse any mechanism which would unfairly pressure an accused person to plead guilty, because it would stretch justice beyond the bounds of fairness. The need to protect the rights of accused persons receives central recognition within the framework of the Australian criminal justice process and such safeguards will not lightly be interfered with. The right of the accused to be present and be heard during criminal proceedings has mitigated against sentencing negotiations taking place in judge's chambers: *R v Tait and Bartley*.[5] As Sallmann and Willis have observed —

3 HR Uviller, *The Processess of Criminal Justice: Adjudication*, 1975, p 335, cited in: WT Westling, "Plea Bargaining: A Forecast for the Future" (1973–76), 7 *Sydney Law Review*, 424 at p 430.

4 WT Westling, op cit, at p 426.

5 *R v Tait and Bartley* (1979) 24 ALR 473.

> "The essence of any plea bargaining arrangement is a short circuiting of the normal process. As such there are fundamental interests and issues at stake and developments in the area should be monitored and assessed with considerable care."[6]

However, within the common law tradition, there has been open recognition of the desirability of appropriate guilty pleas. The position is clearly explained by Hunt CJ at CL in *R v Winchester*[7] —

> "A plea of guilty is always a matter which must be taken into account when imposing sentence. The degree of leniency to be afforded will depend upon many different factors. The plea may in some cases be an indication of contrition, or of some other quality or attribute, which is regarded as relevant for sentencing purposes independently of the mere fact that the prisoner has pleaded guilty. The extent to which leniency will be afforded upon this ground will depend to a large degree upon whether or not the plea resulted from a recognition of the inevitable: *Shannon* (1979) 21 SASR 442 at 452; *Ellis* (1986) 6 NSWLR 603 at 604. The plea of guilty may also be taken into account as a factor in its own right independently of such contrition, as mitigation for the co-operation in saving the time and cost involved in a trial. Obviously enough, the extent to which leniency will be afforded upon this ground will depend to a large degree upon just when the plea of guilty was entered or indicated (and thus the savings effected): *Beavan* (unreported, Court of Criminal Appeal, NSW, Hunt, Badgery-Parker and Abadee JJ, 22 August 1991), at p 12.
>
> "The important point to be made is that leniency is afforded upon the second ground as a result of purely utilitarian considerations, as with the 'discount' allowed for assistance given to the authorities: *Cartwright* (1989) 17 NSWLR 243; *Gallagher* (1991) 23 NSWLR 220; 53 A Crim R 248. The leniency is afforded in order to encourage early pleas of guilty so that the criminal list is more expeditiously disposed of and so that other cases, in which there is a genuine issue to be determined, will be brought on for hearing without delay.
>
> "Encouragement will be given to early pleas of guilty only if they lead (and are seen to lead) to a substantial reduction in the sentence imposed. That does not mean that the sentencing judge should show a precisely quantified or quantifiable period or percentage as having been allowed. Indeed, it is better that it not be shown; that was the point of this court's decision in *Beavan* at pp 14–15. As was said in that case — discounts for assistance given to the authorities to one side — it is both unnecessary and often unwise for

6 P Sallmann and J Willis, *Criminal Justice in Australia*, 1984, p 99.

7 *R v Winchester* (1992) 58 A Crim R 345, at p 350.

the judge to identify the sentence which he or she regards as appropriate to the particular case without reference to one factor and then to identify the allowance made which is thought to be appropriate to that particular factor."

Section 439 of the *Crimes Act* 1900 (NSW) proclaimed to commence on 1 February 1992, states the common law position —

Guilty plea to be taken into account

439. (1) In passing sentence for an offence on a person who pleaded guilty to the offence, a court must take into account:
(a) the fact that the person pleaded guilty; and
(b) when the person pleaded guilty or indicated an intention to plead guilty, and may accordingly reduce the sentence that it would otherwise have passed.
(2) A court which does not, as a result of this section, reduce the sentence that it passes on a person who pleaded guilty to an offence must state that fact and its reasons for not reducing the sentence when passing sentence.
(3) The failure of a court to comply with this section does not invalidate any sentence imposed by the court.
(4) In this section, a reference to a court includes a reference to a judge and a magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence) but does not include a reference to the Children's Court or a court exercising the jurisdiction of the Children's Court.
(5) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.
(6) This section also applies, and is taken always to have applied, where an order for re-trial has been made or proceedings have been reopened.

It should be noted that section 439(2) — which requires a judge who does not reduce the sentence for a plea of guilty to give reasons as to why the reduction was not made — does add a procedural requirement that did not exist previously.

In a time of pressing court delays, there was scope for a system which is conducted in open court and gives the accused person an opportunity to ascertain what sentence would be imposed should a plea of guilty be entered, without prejudicing the rights of the accused person. The need to allow a faster disposal of matters which ultimately do not proceed to trial was most pressing in the area of indictable matters within the jurisdiction of the District Court. The long delays between committal and trial date have existed within the system for many years. In discussing the prospects of plea bargaining in Australia in the mid 1970s, Westling observed that the need was greatest in the area of indictable offences "because it is there that the potential pressures appear greatest."[8]

The caseload in the criminal jurisdiction of the District Court steadily increased throughout the 1980s. In 1990, before certain procedural reforms were introduced by the Office of the Director of Public Prosecutions (ODPP), the

8 WT Westling, op cit, at p 431.

number of new criminal cases was expected to rise by 8–10 per cent.[9] At this time, the number of new matters listed annually exceeded the annual court processing rate by almost 50 per cent.

Since that high water mark, a number of reforms have been introduced to deal with these problems of backlogs and delays in the District Court of New South Wales. These reforms include the involvement of the ODPP in committal proceedings; changes to listing procedures by the District Court; the introduction of early arraignment hearings; the construction of new courts; and the appointment of additional judges.

The Sentence Indication Scheme as developed in New South Wales varies in a number of important ways from the American-based model of plea bargaining —

(1) The assessment of the indicative sentence and acceptance (or rejection) takes place in open court, not in chambers or some other essentially private forum.
(2) The scheme allows an adjudication as to the type and duration of penalty, rather than to the nature of the charges to be preferred. When accused persons object to the nature of the charges, they must take the matter to trial. In any case, there must be some agreement by the Crown regarding the charges to be taken to the Sentence Indication Hearing, especially where there are several charges in the alternative.
(3) The scheme which involves judicial adjudication rather than judge supervised "negotiation" takes place between the accused and the judge; the Prosecution is not a principal bound by the agreement, and may (and in practice does) appeal against the perceived leniency of accepted indicative sentences.

As a result, although the Sentence Indication Scheme in New South Wales falls within the broad category of "plea bargaining" as defined above, it is substantially different to the common image of "plea bargaining" as found in North America. The Sentence Indication Scheme is to this extent a distinctly Australian scheme, particularly in terms of its explicit legislative underpinning and its universal availability throughout New South Wales as a procedural option. Significantly, it is the first official sanctioning of any notion of plea bargaining in this country.

9 Office of the Director of Public Prosecutions, New South Wales, *1991–1992 Annual Report*, p 7.

The Scheme in Operation

One significant feature of the Sentencing Indication Scheme is that it has been developed in consultation with stakeholders, including the Chief Judge of the District Court, the District Court Criminal Registry, the Office of the Director of Public Prosecutions, the Legal Aid Commission and the Attorney General's Department. In this sense, the Sentencing Indication Scheme has been developed within, and not imposed upon, the criminal justice system. Also its staged introduction has allowed scope for operational flexibility in practice, so that the scheme was not jeopardised by unforeseen difficulties of a procedural nature.

The primary purpose of the sentence indication scheme was to reduce court backlogs and delays by increasing the proportion of guilty pleas and/or attracting earlier pleas of guilty. The Minister's second reading speech states that the object of the scheme was —

> "... to encourage pleas, reduce the number of trials before the District Court, dispose of matters more quickly in the interests of justice, and thereby reduce trial preparation time and costs."[10]

The pilot scheme was introduced by way of a legislative amendment that empowered the District Court itself to implement the scheme on such terms and conditions as it determined appropriate. The court itself was to be the responsible agency. In 1992 the New South Wales Parliament amended the *Criminal Procedure Act* 1986 to establish a sentence indication hearings pilot scheme. Section 52(1) of the Act states —

> "The Chief Judge of the District Court may, by publication of a practice note, give notice of the conduct by the District Court of a sentence indication hearings pilot scheme between 1 February 1993 and 31 January 1995 (both dates inclusive) and may determine the place or places at which and the conditions (if any) subject to which the pilot scheme is to be conducted."

In December 1992, the Chief Judge published Practice Note No 22 authorising the conduct of a sentence indication hearings pilot scheme at Parramatta District Court. In June 1993, Practice Note No 24 extended the pilot scheme to the Sydney District Court, and ultimately, in December 1993, Practice Note No 31 allowed the introduction of the scheme to all District Courts in New South Wales. [Appendix A contains Practice Notes No 22, 24, 25 and 31].

10 NSW Parliamentary Debates (Hansard), Legislative Assembly, 24 November 1992, p 9793.

The Chief Judge, in his practice note announcing the sentence indication pilot scheme at Parramatta District Court, stated that —

> "The purpose of sentence indication is to attract early pleas of guilty in matters committed for trial."

He also outlined the conditions and the procedure for the operation of the pilot scheme.

It should be noted that the pilot scheme at Parramatta only allowed an application for sentence indication to be made by accused persons before or at their first arraignment after they were committed for trial ("new matters"). However, the pilot scheme conducted at the Downing Centre also allowed an application by accused persons still awaiting trial at that centre ("old matters"). The Chief Judge, in Practice Note No 25 regarding applications for sentence indications at Sydney, stated —

> "1. The specification of Sydney in Practice Note No 24 as a place at which sentence indication hearings will be conducted between 4 June and 5 November 1993, is subject to the following conditions—
>
> (a) Applications for a sentence indication hearing in respect of persons committed for trial on or after 5 April 1993 are to be made before or at the arraignment of an accused person.
> (b) In respect of accused persons committed for trial before 5 April 1993, applications for a sentence indication hearing are to be made no later than four (4) weeks before the date fixed for trial."

A version of the scheme was originally piloted on a small scale at Parramatta District Court between 1 January and 31 May 1993. During that time, 30 applicants elected to participate in the pilot from a total arraignment group of 108 eligible accused persons. In addition, four applicants who had already been arraigned sought and obtained sentencing indication hearings. All these matters were dealt with by one judge. The group of applicants involved in this initial pilot in Parramatta represent too small a group of participants to draw any statistically significant findings.

In contrast, by the end of the trial period at the Downing Centre, 230 accused persons had applied for a sentence indication hearing and 191 accepted the indicative sentence. Indeed, since the end of the pilot scheme, the number of requests for sentence indication has increased, which confirms the significance of this scheme for the New South Wales criminal justice system.

It should be noted that the task of the judges involved in the operation of the pilot scheme at the Downing Centre was not an easy one. In the absence of any judicial consideration of the scheme, and given the volume of matters dealt with, the two judges involved in this pilot scheme carried out their task in an efficient and appropriate manner. It is noteworthy that no appeals in relation to matters dealt with in this period raised any allegation of bias or of undue

pressure on the applicant or the Crown. Many of the initial uncertainties were resolved in practice, and considered by the Court of Criminal Appeal in appeals arising directly from cases in this pilot scheme.

The judges who conducted sentencing indication hearings operated on the basis that, following the practice note, the ordinary course of proceedings should be followed, and that a formal record be made of the actual sentencing proceedings, should an indicative sentence be accepted. It was not until the Court of Criminal Appeal case of *R v Davila* that it was confirmed that an indicative sentence binds the judge who formulated it if the facts are the same on subsequent sentence. In formal sentencing, the judge should —

> "... make the appropriate findings, give adequate reasons and, where he has been content to proceed on the basis of material supplied by counsel for an accused, set that out in summary form. This enables the court on appeal to deal with the appeal on adequate materials and, usually, finally."[11]

In another appeal, *R v Warfield*, Hunt CJ at CL clarified the relationship between guilty pleas following the acceptance of an indicative sentence and remorseful guilty pleas at an earlier stage —

> "If it was not previously, it should now be made very clear that, although those who plead guilty following a sentencing indication hearing may expect some discount for that utilitarian benefit, they should not expect as much leniency as those who plead at an earlier stage and who do so as a result of their contrition: cf *R v Winchester* (1992) 58 A Crim R 345 at 350."[12]

Another aspect of initial uncertainty was the scope for both applicants and the Crown to appeal from guilty pleas consequent upon indicative sentences. From the outset, the role of the Prosecution in sentencing indication hearings was a matter of concern. Despite the fact that both the Federal and State prosecuting agencies insisted that the scheme should not erode or undermine the right of the Crown to appeal against an allegedly inadequate sentence resulting from the scheme, there was some argument amongst practitioners that, as a matter of honour, the Crown in participating in the scheme, was precluded from appealing against a sentence imposed consequent upon an indicative sentence. This misconception was resolved in a number of Court of Criminal Appeal matters determined after the pilot scheme, where the right of the Crown to appeal was recognised, and the jurisdiction of the Court of Criminal Appeal to hear a Crown Appeal from a sentence imposed following a sentence indication hearing was upheld.[13]

11 *R v Davila* (unrep, 15/4/94, NSW CCA, per Smart J) at p 5.

12 *R v Warfield* (unrep, 24/6/94, NSW CCA, per Hunt CJ at CL) at p 14.

13 Ibid.

In *R v Warfield*, the Court of Criminal Appeal recognised an additional burden upon a respondent to a Crown appeal following a sentence indication hearing, in so far as the respondent faces both a trial and the possibility of a substantially longer sentence because he did not plead guilty (a so-called "triple jeopardy.")[14]

There is one major unanswered question about the remedies available for an applicant who had been subject to successful Crown appeal. This point was considered but not resolved by the Chief Justice in the recent case of *R v Chait*[15] —

> "The Crown now appeals against that sentence on the ground that it is manifestly inadequate. If the appeal succeeded it would demonstrate one awkward aspect of the sentence indication procedure. It is part of that procedure that the accused person is informed that if the sentence ultimately imposed or intended to be imposed is in excess of that originally indicated, then a plea of guilty following the original indication may be changed to a plea of not guilty. Where, it may be asked, does that leave an unsuccessful respondent to a Crown appeal against the inadequacy of sentence who has pleaded guilty because the judge indicated the sentence that was ultimately imposed?
>
> "Counsel for the Crown on this appeal has pointed out that a person who has been sentenced, following sentencing indication, can always appeal to this court against the severity of sentence, and it is clear that there is nothing to prevent the Crown exercising a right to appeal against the inadequacy of sentence. However, there may be some cases in which, if a Crown appeal were otherwise going to succeed, the respondent ought to be allowed to appeal against the conviction, so as to revert to the practical right to plead not guilty, which was part and parcel of the original sentencing indication proceeding.
>
> "However, I express no concluded view on that matter, and the present does not seem to me to be an appropriate case in which to investigate the issues that may need to be considered in that respect."

This situation was considered in *R v Glass* where Finlay J suggested that if the Court of Criminal Appeal were minded to substitute a higher sentence, it should indicate that fact and the length of the proposed sentence but delay making formal orders until the respondent has considered his or her position, and if desired, be given the opportunity to apply to withdraw his plea of guilty.[16]

14 Ibid at pp 16–17.

15 *R v Chait* (unrep, 17/9/93, NSW CCA).

16 *R v Glass* (unrep, 24/5/94, NSW CCA) at p 11.

Sentencing Indication Procedure

The procedure according to which the applications were to be dealt with and hearings conducted was outlined in the practice note. The procedure to be followed by an applicant to obtain a sentencing indication hearing is as follows —

(1) Sentencing indications are requested by an applicant at or before arraignment. In *Nicolaidis*[17] it was held that "arraignment" means the first arraignment hearing immediately following committal.

(2) The arraignment judge determines whether the application should be granted. If granted, the matter is set down for sentencing indication hearing. That hearing may be held before a designated sentencing indication judge (who is not listed to hear trial matters) or before the arraignment judge at the end of the arraignment list.

(3) At the indication hearing, the matter is heard as if it were an ordinary sentence proceeding. The requirements of procedural fairness and ordinary sentencing principles apply. The format is as follows —

   (i) The prosecution presents a draft indictment or indictments containing the subject charges (to which, if accepted, the accused will be required to plead); the prosecution case on sentence usually comprising a statement of facts, copies of witness statements, a copy of committal transcript, criminal antecedent report, details of the applicant's liberty status and any relevant material in relation to co-offenders.

   (ii) The defence then has an opportunity to present a case in mitigation which may include oral or written evidence by the applicant or other persons.

   (iii) After hearing the evidence and submissions, the judge will provide an indicative sentence in relation to each charge. This may be done at the end of the hearing or stood over to another day. If consideration is being given to the imposition of a community service order or that a custodial sentence be served by way of periodic detention, the hearing may be stood over so that a suitability report can be had and obtained.

   (iv) The sentencing indication judge has a discretion to allow the applicant time to consider his or her position. Time is allowed for the applicant to consult with his or her legal representatives.

   (v) A formal sentencing hearing is then held. The indictment is presented, and the applicant formally arraigned.

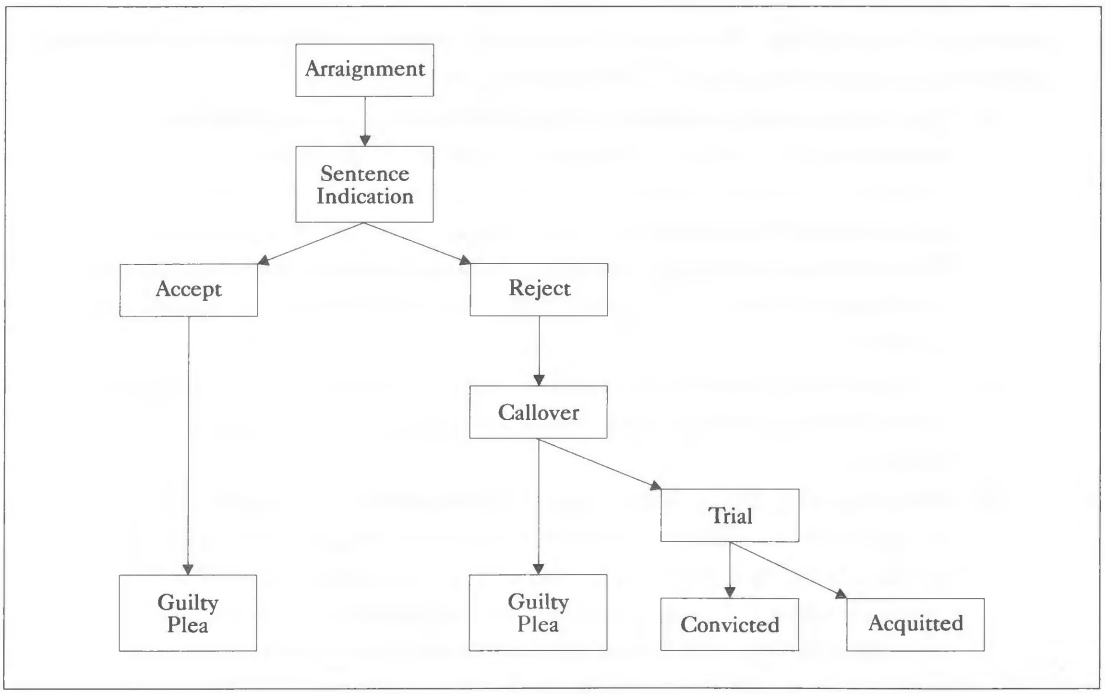
17 *R v Nicolaidis* (unrep, 29/3/94, NSW CCA).

(a) If a plea of guilty is entered in relation to each charge, the offender may be sentenced immediately or the matter can be stood over for later hearing. At the formal sentence hearing, the documents are re-tendered.

(b) If a plea of not guilty is entered in relation to any charge, the matter is listed to a call over for a trial date (before another judge) to be set.

This process can be seen in Figure 1 below. The interaction between the new indication scheme and the existing court listing process is shown in Figure 2.

Figure 1
Procedures and outcomes in the New South Wales Sentence Indication Scheme



It should be noted that although the scheme creates a new wing to the existing structure, it does not create a separate type of court. The tribunal is still a District Court judge who determines the indicative sentence using ordinary sentencing principles. In this important sense the scheme does not fragment the justice process.

Project Constraints

This project involved an analysis of the history and details of the matters dealt with during the pilot scheme. One problem faced by researchers in examining any change to an existing operational system is that it is virtually impossible to view the change in isolation from the general dynamic of the system as a whole.

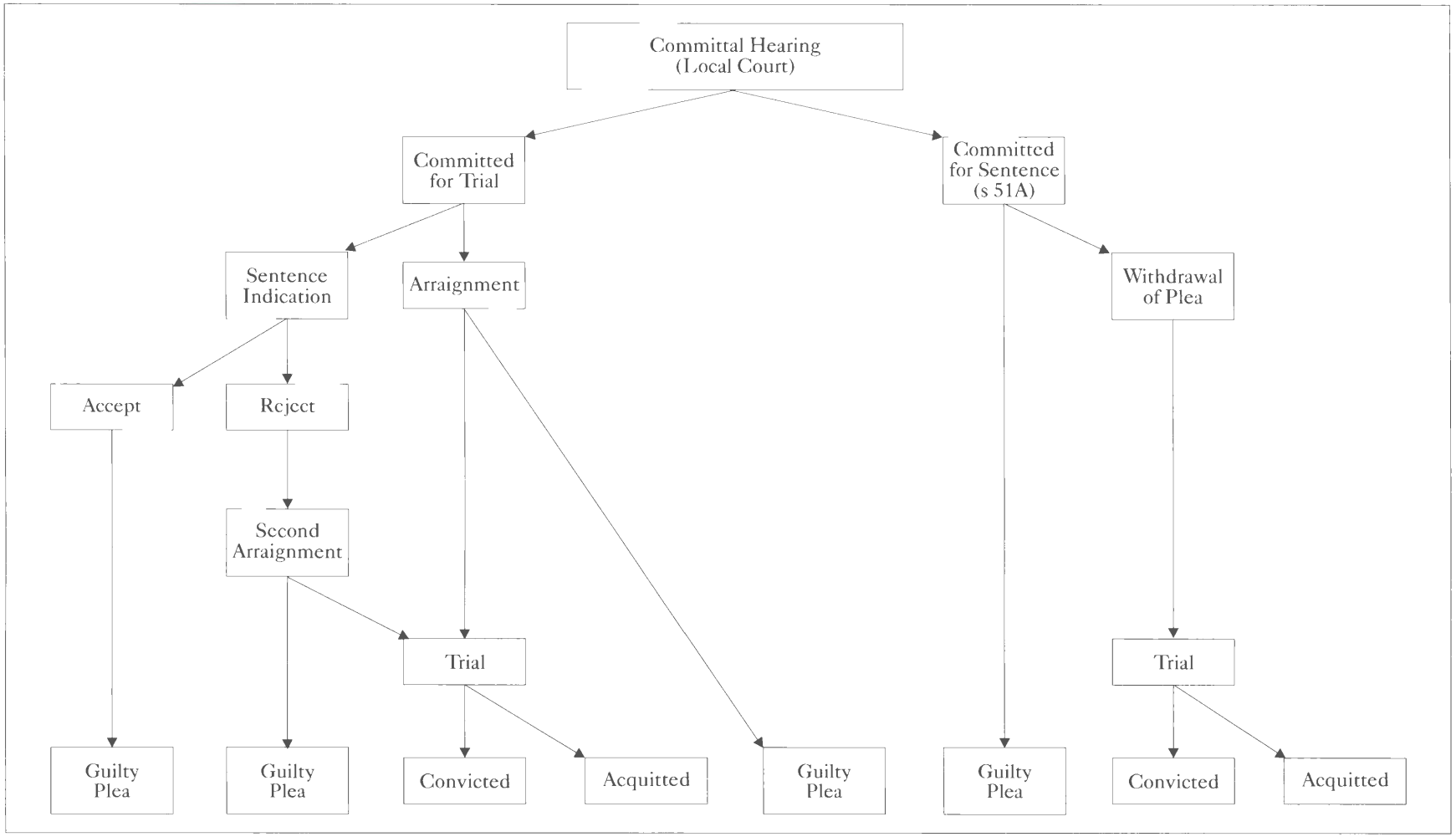
This is particularly so when the real and pressing problem of delay in the running of matters to trial in the District Court, has resulted in a number of different reforms being introduced at the same time.

Another problem is that, by its nature, sentencing is an area in which it is difficult to draw general statistical conclusions, because the judges' sentencing discretion allows a range of possible sentences rather than one answer. Thus it is difficult to pinpoint unjustifiable disparity, significantly where each sentence is permitted, and indeed is required, to turn on its own facts. Those facts may in some cases justify a sentence which is *prima facie* "out of line" with other sentences of a similar offence and offender.

However, even with this caveat it is still possible, given a reasonably large group of individuals (in the present study: all applicants for the sentence indication hearing pilot scheme), to discern common characteristics and assess how their sentences broadly compare to those who could have participated in the scheme but chose not to. Furthermore, it is possible to discern how sentences imposed upon applicants at sentence indication compare to those imposed upon other offenders dealt with by the same judges in the immediately prior period.

The study has also attempted to compare the type and length of sentences imposed during the pilot scheme with all sentences imposed by the Sydney District Court in the immediately preceding period where the offender was committed for trial. However, with this later comparison care should be taken because it is very general in the nature, based only on such variables as sentence type and length. In relation to these comparisons of sentencing practices, the Commission did not have access to any information about the subjective features of the offenders concerned, factors which have the capacity to be, in individual cases, very significant indeed.

Figure 2
Procedures and Outcomes in the New South Wales District Criminal Court



II

RESEARCH METHODOLOGY

Definitions

"applicant" — an accused person who applies for a sentence indication hearing, regardless of whether the person subsequently accepts or rejects the indicative sentence.

"indicative sentence" — a sentence assessed by a judge as the outcome of a sentence indication hearing. The indicative sentence is "the sentence likely to be imposed should a plea of guilty be entered," and "is intended to bind the judge who formulated it" in the absence of any additional relevant material. An indicative sentence, therefore, is only provisional, and is not to be recorded unless the applicant pleads guilty and the sentence is confirmed following a formal arraignment and plea.

Data Collection

In New South Wales, summary data relating to criminal matters committed to the District Court are stored electronically in the Justice Information System (JIS), a computerised database maintained by the Department of Courts Administration. This database is the usual source of official statistics relating to sentences imposed by the higher courts in New South Wales, and data extracted from this source is frequently used in research projects conducted by the Judicial Commission and other organisations, as well as in the Penalty Statistics component of the Sentencing Information System (SIS).

Unfortunately, because sentence indication hearings are a new initiative, no system exists in the JIS for readily distinguishing these matters from other sentence only matters, and hence the data for this study could not be gathered electronically. It was necessary, therefore, to obtain a list of all applications for a sentence indication hearing directly from the District Court Criminal Registry (DCCR);[18] use this list to identify the file numbers for all persons who had requested such a hearing between 4 June 1993 and 5 November 1993 inclusive; and then access the hard copy files held at the ODPP and the DCCR for each accused person. A copy of the coding sheet appears as Appendix B. In general, the information compiled relates to the type of offence, the type of penalty, offender characteristics, the length of proceedings and the estimated length of trial.

18 The Registrar at the DCCR maintains information, such as the file number, name, date indication was requested, date of decision and outcome of indication, for every accused person who makes and application for a sentence indication hearing.

The Bureau of Crime Statistics and Research (BOCSAR) supplied the Judicial Commission with computerised information for each accused person at a finalised court appearance during the period from 1 June 1993 to 31 March 1994. However, many of the relevant sentence indication matters had still to be dealt with. Consequently, in addition to updating existing records with relevant sentence indication data, relevant information about matters not yet finalised was also appended.

In the course of this research project, therefore, it was necessary to examine a wide range of official records in hard copy, including: the court files for each case, DPP files, the daily lists of arraignments, judges' courtbooks, and the DCCR's list of sentence indication matters. It was also necessary to request the assistance of the New South Wales ODPP and the Commonwealth DPP in providing lists of persons arraigned during the period of the pilot scheme, and of persons still awaiting trial and thus eligible for sentence indication. The need to conduct such a widespread examination of manual records not only added to the cost of the current project, but will also hamper future monitoring of sentence indication matters.

III

OVERVIEW OF SENTENCE INDICATION MATTERS

Two hundred and thirty accused persons committed for trial to the Sydney District Court requested a sentence indication hearing between 4 June 1993 and 5 November 1993 inclusive. Of these, the following results were observed —

Who applied?

During the five month pilot scheme, just over half (52.2%) of the applications for a sentence indication hearing were made by accused persons committed for trial on or after 5 April 1993 (new matters) and just under half (47.8%) were made by accused persons committed for trial before 5 April 1993 (old matters).

Table 1
Applications for Sentence Indication

	Old Matters Committal before 5/4/93 *n*	New Matters Committal on or after 5/4/93 *n*	All Matters *n*
Sentence Indication requested **before** Arraignment[(a)]	103	22	125
Sentence Indication requested **at** Arraignment	7	98[(b)]	105
Total requests for Sentence Indication	110	120	230
Offender arraigned — Sentence Indication **not** requested	19	222	241
Total Arraigned	26	320	346

Notes (a) For old matters, requests for sentence indication could be made at any time up until four weeks before the date fixed for trial. As such, many more of the 900 matters pending trial may still be eligible for sentence indication.

(b) Includes one accused who was formally arraigned and pleaded not guilty. However, at a later date he requested a sentence indication hearing. The accused later withdrew his application before the Judge could decline to hear the matter.

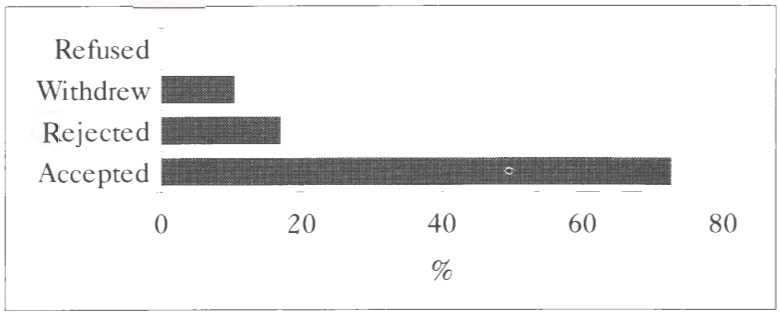
Old Matters

Approximately 900 accused persons who were committed for trial and arraigned prior to the introduction of the pilot scheme at Sydney District Court, were eligible to make an application for a sentence indication hearing. Of these, 110 persons (12.2%) made a request for sentence indication during the study period.

New Matters

Of the 320 new matters arraigned or listed for arraignment during the study period, 98 (30.6%) made an application for a sentence indication hearing. A further 22 accused requested sentence indication prior to their arraignment.

Figure 3
Results of Applications



Of all those who made a request for sentence indication, almost three quarters (72.6%) accepted the indication. A further 17% rejected the indication and 10.4% withdrew their applications. There were no cases where applications for sentence indication were refused to be heard by the judge.

The following sections apply only to those matters where a sentence indication was given.

Type of Offences

The majority (81.6%) of offences dealt with at sentence indication were prosecuted under State law, while 18.4% were prosecuted under Commonwealth law. All offences[19] were then grouped according to the Australian National Classification of Offences (ANCO) and arranged into the following offence groups.

Drug offences accounted for 41.7% of all sentence indication matters — in particular, offences prosecuted under the *Drug Misuse and Trafficking Act* 1985 (30%). Robbery (armed 9.2% and other 6.3%); fraud and misappropriation offences (13.6%) and offences against the person (11.7%) were also commonly dealt with at sentence indication.

19 The term "offence" refers to the principal offence in each case. The principal offence is defined as the offence attracting the most severe penalty.

Table 2
Offences Dealt With at Sentence Indication

Offence Group	*n*	%
Drug Offences	86	41.7
Commonwealth	20	9.7
State[(a)]	66	32.0
Armed and Other Robbery Offences	32	15.5
Fraud and Misappropriation[(b)]	28	13.6
Offences Against the Person[(c)]	24	11.7
Offences Against Good Order[(d)]	16	7.8
Theft and Other Property Offences[(e)]	12	5.8
Sexual Offences	4	1.9
Other Offences	4	1.9

Notes (a) Includes dealing and trafficking in drugs (27.2%); manufacturing and growing drugs (4.4%); and possessing drugs (0.5%).

(b) Includes fraud, forgery and false pretences (10.7%); misappropriation (1.9%); counterfeiting (0.5%); and extortion (0.5%).

(c) Includes assault occasioning grievous bodily harm (6.3%); common assault (3.4%); assault occasioning actual bodily harm (1.5%); and kidnapping (0.5%).

(d) Includes offences against justice procedures (4.4%); unlawful possession, use and/or handling of weapons (1%); offences against government security and operations (0.5%); and other offences against good order (1.9%).

(e) Includes break and enter (2.9%); receiving (1.9%); and other theft (1%).

Indicative Sentences

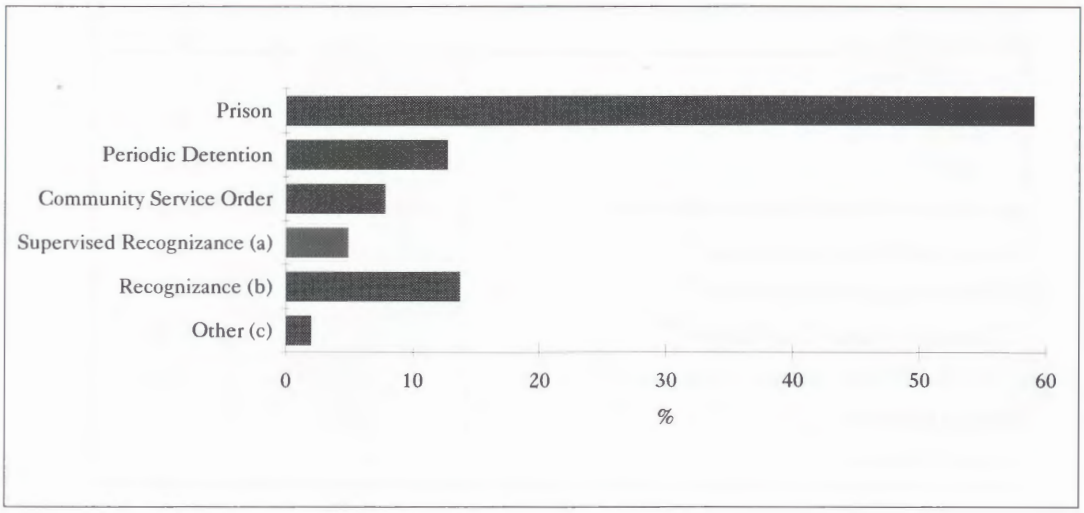
Figure 4 graphically displays the distribution of penalties for all offences where an indicative sentence was given. The median[20] penalty length for each disposition given at sentence indication is shown in Table 3, along with the minimum and maximum penalties imposed.

Fifty nine percent of accused persons were given a full time prison term. The average prison term was 48 months with a range of 4 –144 months, and the average minimum[21] term was 30 months with a range of 4 –108 months.

20 The "median" is the number which lies at the midpoint of the distribution: it is the point at which 50% lie above and 50% below.

21 The term "minimum" refers to the minimum period that the accused must serve in custody. It includes the non-parole period or determinate sentence and the minimum term or fixed term as the case may be.

Figure 4
Sentence Indication Dispositions



Notes (a) Includes Common Law Bond with supervision (4.9%).
(b) Includes s 558 sentence deferred (1%); Common Law Bond (10.7%); and s 20 (Cth) sentence deferred (2%).
(c) Includes fine (0.5%); probation order (0.5%); s 33(b) (*Children (Criminal Proceedings) Act* 1987) sentence deferred (0.5%); and charge dismissed (0.5%).

Table 3
Median Penalty Length by Disposition

Disposition	*n*	Penalty Length	
		Median	*Range*
Prison *Total Sentence*	121	48	4–144
Minimum Term		30	4–108
Periodic Detention	26	18	3–36
Community Service Order	16	450 hrs	100–500 hrs
Recognizance with Supervision	10	36	24–48
Recognizance	28	36	12–60

Alternatives to full time custodial sentences were used in approximately 20% of cases. Periodic detention, with an average term of 18 months and a range of 3–36 months, was handed down to 12.7% of accused persons, while a Community Service Order, with an average of 450 hours and a range of 100–500 hours, was handed down to 7.8% of accused persons.

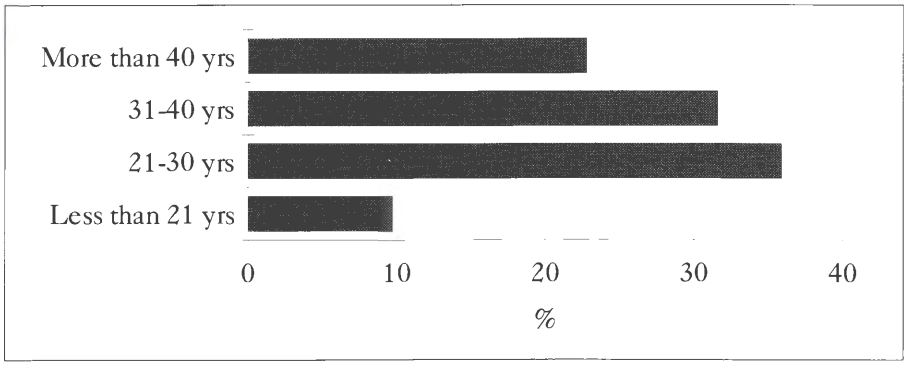
A similar proportion of accused persons received recognizances (18.6% of all cases, made up of 13.7% without supervision and 4.9% with supervision). The average duration for each type of recognizance was 36 months, with a range of 12– 60 months for unsupervised recognizances and 24 – 48 months for supervised recognizances.

A small number of accused, eight (3.9%) also received a secondary penalty — in particular, a fine (five accused).

Characteristics of Applicants

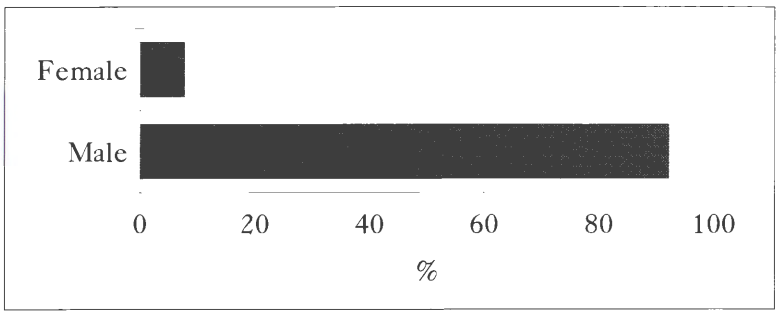
Table 4 shows the characteristics of all persons who applied for a sentence indication hearing under the pilot scheme at Sydney.

Figure 5
Age at Time of Offence



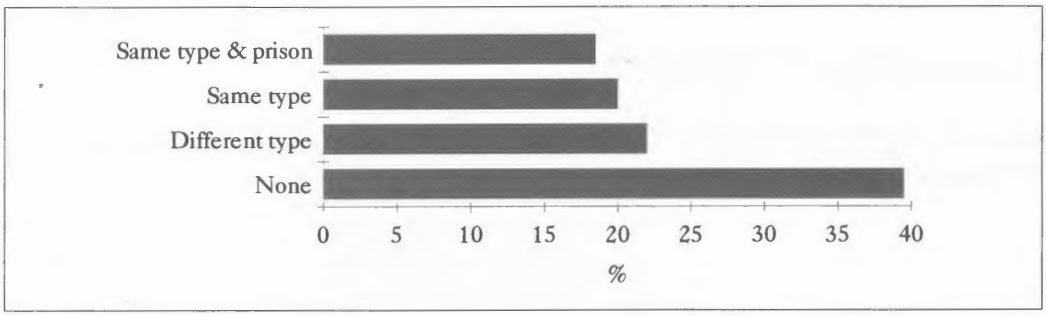
Just over two thirds of the accused (67.5%) who requested a sentence indication were aged between 21 and 40 years.

Figure 6
Sex of Accused



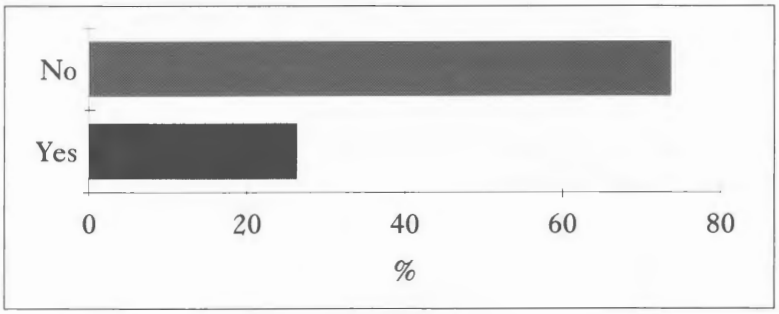
The vast majority of accused (92.2%) were male.

Figure 7
Prior Convictions



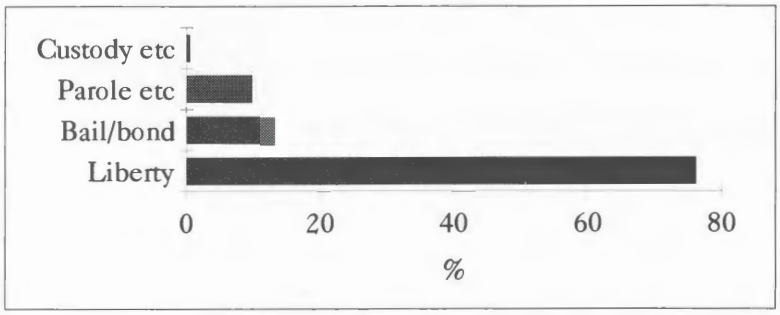
Over half of the accused (60.5%) had prior convictions, made up of 22% with prior convictions but not of the same offence type, 20% with prior convictions of the same offence type, and 18.5% with prior convictions of the same offence type with imprisonment.

Figure 8
Previous Imprisonment



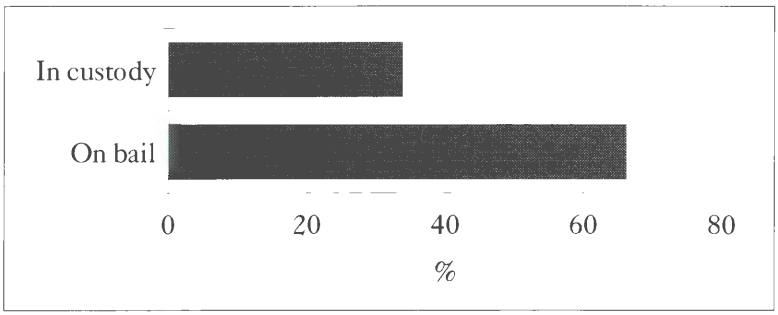
Approximately one quarter of accused (26.3%) had previously been in custody (18.5% for the same offence type and 7.8% for a different offence type). Of these, the median number of terms of imprisonment was two.

Figure 9
Status of Offence



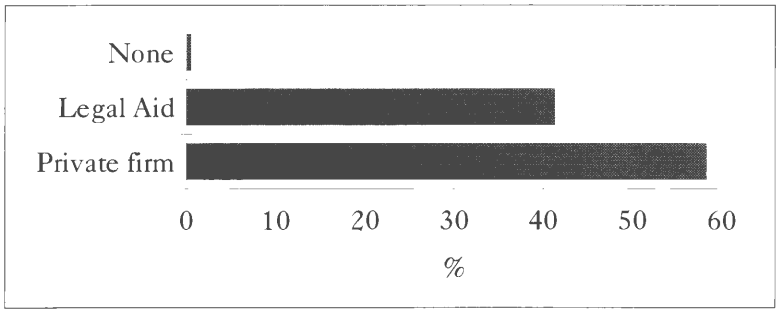
At the time of the offence, over three quarters of the accused (76.1%) were at liberty.
Note "custody" includes periodic detention, and "parole" includes probation.

Figure 10
Status at Sentence Indication



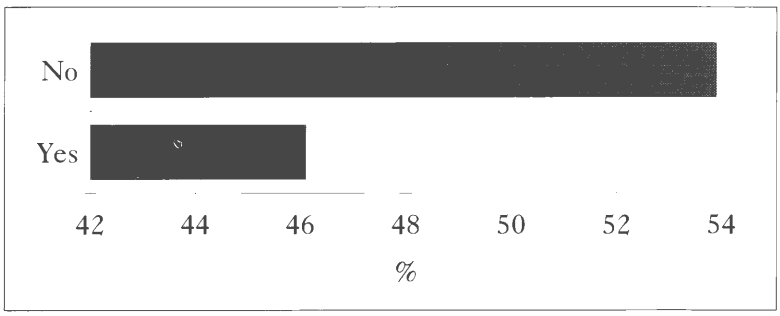
Almost two thirds of the accused (66.2%) were on bail at the time of the sentence indication hearing. About one third (33.8%) were in custody.

Figure 11
Legal Representation



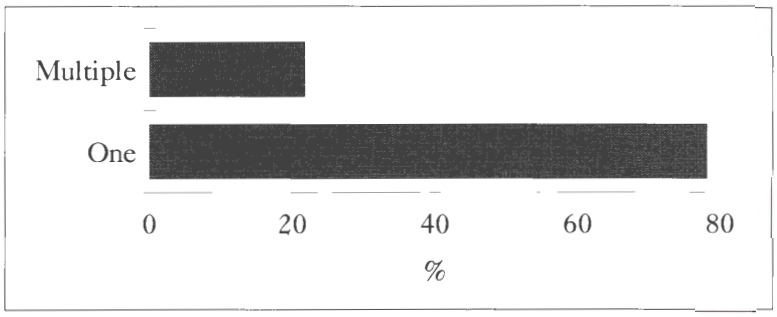
Almost all accused (99.6%) were legally represented at the sentence indication proceedings. A figure of 58.3% were represented by "private" firms and 41.3% were represented by legal aid.

Figure 12
Co-Accused Involved



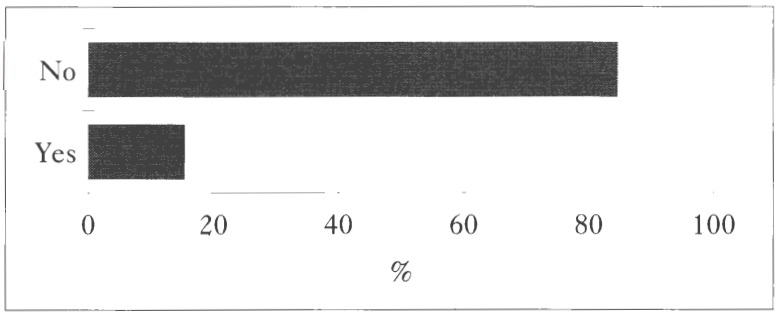
A substantial number (46.1%) of the matters in which an accused applied for a sentence indication hearing involved other accused.

Figure 13
Number of Counts of the Principal Offence



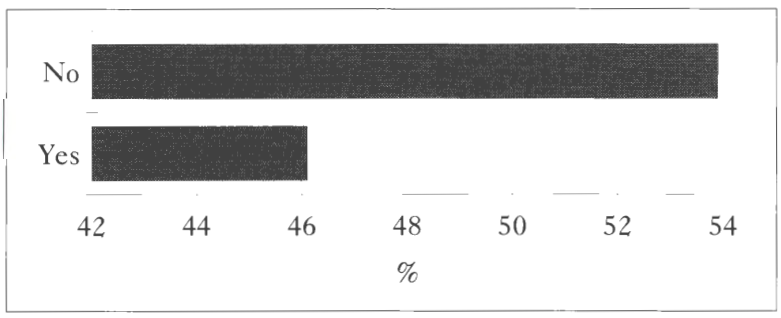
Over three quarters (78.2%) of sentence indication matters had one count of the principal offence.

Figure 14
Other Offences Taken into Account



Relatively few accused (15.4%) had one or more offences listed on a "Form 2" taken into account.

Figure 15
Secondary Offences



Almost one third of the applicants (32%) were given an indication for other offences in addition to the principal offence.

Table 4
Characteristics of Applicants

Characteristic	%
Age	
Less than 21 years	9.7
21–30 years	35.9
31–40 years	31.6
More than 40 years	22.8
Sex	
Male	92.2
Female	7.8
Prior Criminal Record	
No prior convictions	39.5
Prior convictions but not of the same offence type	22.0
Prior convictions of the same offence type	20.0
Prior convictions of the same offence type with imprisonment	18.5
Previous Imprisonment	
Yes	26.3
No	73.7
Status at Offence	
Unconditional liberty	76.1
On bail/bond	13.7
On probation/parole	9.8
In custody/Periodic Detention	0.5
Status at Sentence Indication	
On bail	66.2
In custody	33.8
Legal Representation	
Represented by private firms	58.3
Represented by legal aid	41.3
Unrepresented	0.5
Co-Accused Involved	
Yes	46.1
No	53.9
Number of Counts of the Principal Offence	
One	78.2
More than one	21.8
Other Offences Taken into Account	
Yes	15.4
No	84.6
Other Secondary Offences	
Yes	32.0
No	68.0

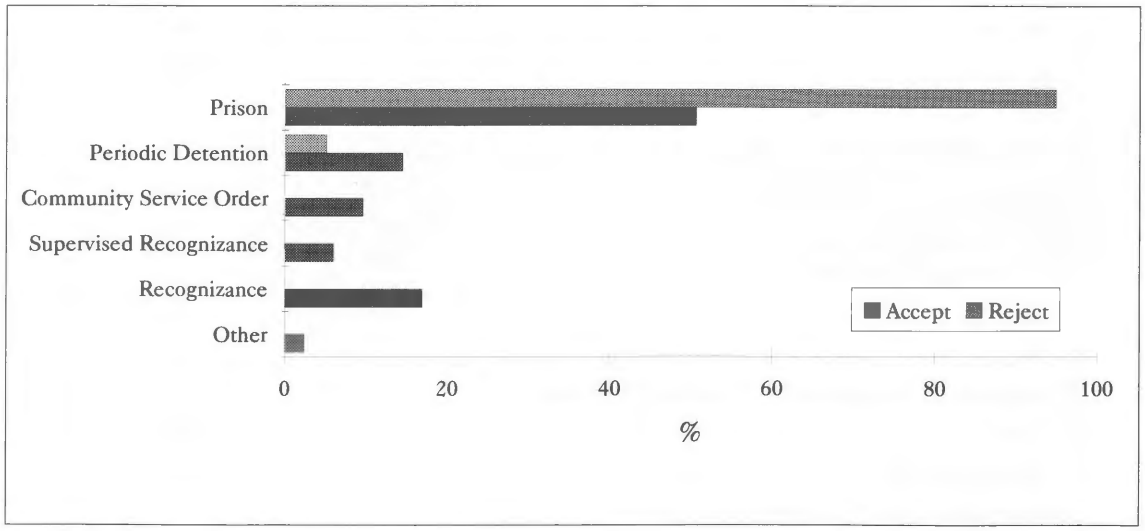
IV

DIFFERENCES BETWEEN ACCEPTING AND REJECTING APPLICANTS

Of the 206 applicants who were given indicative sentences, the majority (167 or 81.1%) accepted the sentence indication handed down by the judge, while 39 (18.9%) rejected the sentence indication. While a statistical analysis of these two groups did not reveal any significant differences in the types of offences and offenders more likely to accept or reject an indicative sentence, significant differences were found in the types of penalties imposed: see Figure 16.

Almost 70% that is (69.4%) of persons given a full time prison term accepted the sentence indication. As would be expected, more severe penalties were imposed on applicants who rejected the indicative sentence and were subsequently convicted or pleaded guilty. Almost all applicants who rejected an indicative sentence had been given a full time custodial sentence (94.9%), whereas only 50.6% of those who accepted the indicative sentence had been given a full time custodial sentence.[22] In addition, applicants who rejected an indicative sentence were more likely to receive a longer total sentence than applicants who accepted an indicative sentence of full time custody (an average of 48 months compared with 44.5 months). Surprisingly though, they tended to receive a shorter minimum term (27 months on average, as compared to an average minimum term of 30 months for those who accepted indicative sentences of full time custody).

Figure 16
Sentence Indication Dispositions



22 Chi-square test, $p < 0.001$

Sentence Indication Rejections

Of the 39 applicants who rejected the indicative sentence, 13 subsequently pleaded guilty (ten at arraignment and three within the trial). A further 25 (64.1%) pleaded not guilty at arraignment and in one case the plea of the accused was unknown.[23]

Differences between Indicative Sentences and Ultimate Sentences

Of the 13 applicants who rejected the indicative sentence and subsequently pleaded guilty, 12 have been sentenced.[24] Of the 25 who pleaded not guilty, only five matters have been finalised.[25] Because of the small number of cases involved and the low representation of matters where the applicant rejected the indication, caution should be exercised when drawing general conclusions from these findings.

Disposition From the matters finalised, 11 accused (64.7%) received the same disposition upon conviction as they did at sentence indication. Four accused (23.5%) were given a more lenient sentence upon conviction. One accused (5.9%) was found not guilty, and another accused (5.9%) had no further proceedings directed by the Crown. Table 5 compares the disposition imposed on the accused at sentence indication with the disposition imposed upon conviction, where the sentences were imposed for the same offences. Table 6 shows the same type of information where accused were ultimately sentenced for different offences than those for which they were given a sentence indication.

Table 5
Disposition Imposed at Sentence Indication and Upon Conviction
Where Sentences were imposed for the Same Offences

Disposition Imposed at Sentence Indication	Disposition Imposed Upon Conviction					
	Prison		PD		CSO	
	n	%	*n*	%	*n*	%
Prison	9	60.0	1	6.7		
Periodic Detention					2	13.3

23 After rejecting the sentence indication, one accused pleaded guilty but later withdrew his plea. The judge declined to vacate the guilty pleas and the matter was stood over for sentence. However, the defence made a submission to vacate the pleas. The judge allowed the matter to be re-canvassed.

24 One offender was still to be sentenced.

25 Eighteen (18) accused were still awaiting trial, one (1) accused failed to appear, and one (1) offender was found guilty by verdict but was still to be sentenced.

Table 6
Disposition Imposed at Sentence Indication and Upon Conviction
Where Sentences were imposed for Different Offences

Disposition Imposed at Sentence Indication	Disposition Imposed Upon Conviction					
	Prison		PD		CSO	
	n	%	*n*	%	*n*	%
Prison	2	13.3	1	6.7	0	0.0

Prison Terms Of the 11 accused (73.3%) who rejected the prison term indicated and upon conviction received the same disposition (Tables 7 and 8), we observed that, on average, they were given a more lenient total sentence (median = 36 months compared with 48 months at sentence indication) and minimum term (median = 27 months compared with 36 months at sentence indication) upon conviction. However, these differences have only occurred in cases where the offences at conviction were not as serious as the offences dealt with at sentence indication.

Table 7
Median Prison Term at Sentence Indication and Upon Conviction
Where Sentences were imposed for the Same Offences

		Penalty Length (mths)			
		Total Sentence		*Minimum Term*	
	n	Median	Range	Median	Range
At Sentence Indication	9	48	24 –108	36	18–8
Upon Conviction	9	48	24 –96	27	12–72

Table 8
Median Prison Term at Sentence Indication and Upon Conviction
Where Sentences were imposed for Different Offences

		Penalty Length (mths)			
		Total Sentence		*Minimum Term*	
	n	Median	Range	Median	Range
At Sentence Indication	2	84	48 –120	57	36–78
Upon Conviction	2	30	24 –36	21	12–30

V

LENGTH OF INDICATION HEARINGS AND PROCEEDINGS

Length of Sentence Indication Hearings

While it is not possible to determine, from the data available, the average length of time an indication hearing takes, the majority (84.9%) of sentence indication hearings took less than one day.[26] Almost all remaining cases were heard over two days (14.5%), while one matter was heard over three days (0.6%).[27]

Length of Proceedings

As already mentioned, 230 applications for a sentence indication hearing were made by accused persons during the five month pilot scheme. These requests took place, on average, 126.5 days after the accused was committed to the District Court for trial. However, if the accused was committed for trial before 5 April 1993, the average number of days before an application for sentence indication was made was 529 days. If the accused was committed for trial on or after 5 April 1993, an application for sentence indication was made, on average, just 57 days after the committal date, and in most cases (81.7%) was made at the arraignment hearing.

Once a request was made, a date was set down for a sentence indication hearing. A substantial number (14.1%) of matters were heard on the same day the indication was sought. However, if the hearing did not commence on the day an indication was requested, a date was set down almost three weeks away for a sentence indication hearing (median = 19 days, range = 1–165 days). These hearings usually took less than one day to be heard.

At the conclusion of the sentence indication hearing, an indicative sentence was given immediately in just over two thirds of the cases (67.5%). In approximately one third of the cases (32.5%), the matter was stood over for consideration and decision, on average, for six days (range 1– 45 days).

Once the indication was handed down by the judge, over three quarters of accused persons (76.2%) either accepted or rejected the indication on the same day. Just under one quarter (23.8%) were given, on average, one week to consider the indication (median = 7 days, range = 1– 48 days).

26 The length of a sentence indication hearing was defined as the time taken to hear the evidence prior to giving an indicative sentence. The analysis is based on 166 records out of 206 hearings since some of the court books could not be obtained.

27 Other matters, not involving sentence indication, could also be listed on the same day.

Once a decision was made by the accused, the indictment was presented and the accused was arraigned and asked to plea. The majority of those who accepted the indication (80.8%) were sentenced immediately. The other 19.2% were sentenced, on average, almost three weeks later (median = 18.5 days, range = 1–135 days).

Table 9
Length of Sentence Indication Proceedings

Period	*n*	Dealt with on the same day *%*	Median *days*[a]	Range *days*[b]
Committal date to request date	230		126.5	7–1713
Old matters[b]	110		529.0	85–1713
New matters[c]	120		57.0	7–178
Request date to withdrawn date	24		35.0	6–129
Request date to hearings start date	206	14.1	19.0	1–165
Hearing start date to hearing end date[d]	166	84.9	26.0	1–42
Hearing end date to date of indication[d]	166	67.5	6.0	1–45
Date of indication to accept/reject date	206	76.2	7.0	1–48
Accept date to sentence date[c]	167	81.4	18.5	1–135
Reject date to sentence date[f]	39		127.0	14–226
Request date to sentence date	206	4.4	34.0	1–346
Accepted indication[e]	167	5.4	32.0	1–346
Rejected indication[f]	39		160.0	16–286
Committal date to sentence date	206		208.0	13–1836
Old matters[g]	100		594.0	102–1836
New matters[h]	106		107.0	13–406

Notes (a) The median and the range for each period of interest, relate to the number of matters *not* dealt with on the same day.

(b) Committed for trial to the District Court *before* 5 April 1993.

(c) Committed for trial to the District Court *on or after* 5 April 1993.

(d) The date the hearing concluded was not known in 40 cases: see footnote 9.

(e) The median and the range excludes two cases where the accused accepted the indication given, but have not yet been sentenced formally.

(f) The median and the range excludes 22 matters not yet finalised and two matters where the accused was either found not guilty or had no further proceedings directed by the Crown.

(g) The median and the range excludes 15 matters not yet finalised.

(h) The median and the range excludes ten matters not yet finalised and one matter where the accused had no further proceedings directed by the Crown.

Other Periods of Interest

Applications for a sentence indication hearing were withdrawn, on average, seven weeks after the indication was sought (range 6–129 days). A small number of accused who accepted the indication (5.4%) had their matters dealt with on the same day they requested a sentence indication. The majority (94.6%), however, were finalised almost five weeks after the application was made (median = 32 days, range = 1–346 days).

VI

SAVINGS — COURT SITTING TIME

Quantifying just how much court sitting time has been saved as a result of the sentence indication hearings pilot scheme is difficult to determine with the available data. At best, the amount of court sitting time saved, if all accused who accepted the sentence indication had alternatively proceeded to trial for their estimated duration, amounted to over 200 weeks (201.8 weeks) or 4.8 judge years.[28] This figure takes into account the estimated reduction in the trial lengths of co-accused: see Table 10.[29]

Table 10
Court Sitting Time Savings

	Weeks	Judge Years
No other co-accused involved	105.8	2.5
Other co-accused involved	96.0	2.3
Total Savings	201.8	4.8

It should be noted that any estimate of court sitting time saved will only be as accurate as the estimate of trial length provided by counsel at the time of arraignment. This study has not attempted to assess whether, on average, trial length estimates accurately reflect actual trial length.

The real amount of court sitting time saved is affected by other factors including the number of applicants accepting the indicative sentence *who would have pleaded guilty in any event* and also the number of applicants rejecting the indicative sentence *who later pleaded guilty*. These factors may be significant when one considers that even before the introduction of this pilot scheme, a considerable number of accused persons pleaded guilty at some stage between their committal and trial date.

In addition, it is possible that sentence indication will reduce the number of appeals, as sentence indication applicants are less likely to appeal against the result of a voluntary process. In general, applicants can reject indicative sentences that appear excessive, and seek a new sentencing hearing from a different judge, without the need to lodge a time consuming and expensive appeal to the Court of Criminal Appeal. However, having accepted an indicative sentence, an offender may complain of unjustified disparity between his or her sentence and that of a co-offender sentenced subsequently: see *R v Walker*.[30]

28 One judge year equals 42 weeks.

29 As a result of an accused accepting the sentence indication, an estimate of the amount of court sitting time saved on the trials of co-accused was obtained from the Registrar of the DCCR.

VII

INDICATIVE SENTENCES AND EQUIVALENT "ORDINARY" SENTENCES

Type of Offender

In order to determine whether certain types of offenders are more likely to ask for sentence indication, data was collected on all accused persons formally arraigned at Sydney District Court between 4 June 1993 and 5 November 1993 inclusive: see Table 1. A comparison was then made between sentence indication applicants (new matters only) and all other accused arraigned during the study period (the "arraigned group") in the Tables below.

Table 11
Type of Offender

Characteristic	Arraigned Group	Sentence Indication Group
	% *n = 223(a)*	% *n = 106*
Prior Criminal Record		
No prior convictions	57.3	28.6
Prior convictions but not of the same offence type	15.3	27.6
Prior convictions of the same offence type	16.9	20.0
Prior convictions of the same offence type with prison	10.5	23.8
Status at Offence		
Unconditional liberty	91.1	69.5
On bail/bond	4.0	13.3
On probation/parole	4.8	16.2
In custody/periodic detention	0.0	1.0
Status at Arraignment/Sentence Indication		
On bail	74.9	61.2
In custody	25.1	38.8

Notes (a) The prior criminal record and the status of the accused at the time of the offence was not known in 99 cases (77 still awaiting trial and 22 have not been processed).

30 *R v Walker* (unrep, 21/2/94, NSW CCA).

Prior Criminal Record

Offenders seeking sentence indication were more likely to have prior convictions (71.4% compared with 42.7% of "arraigned" offenders).[31] In particular, more than twice as many accused with prior convictions of the same offence type with imprisonment were given an indicative sentence (23.8% compared with 10.5% of "arraigned" offenders).

Status at the Time of the Offence

Accused persons seeking sentence indication were less likely to have been at liberty at the time of the offence (69.5% compared with 91.1% of "arraigned" offenders).[32]

Status at the Time of Arraignment/Sentence Indication

Significantly more accused seeking sentence indication were in custody on remand (38.8% compared with 25.1% of "arraigned" offenders).[33]

The profile of sentence indication applicants that emerges from Table 11 is one of an accused person who is familiar with the criminal justice process, having had previous convictions and having spent time in custody, either on remand or as part of a previous sentence. First offenders on bail were less likely to apply for a sentence indication hearing.

Types of Offences

Significant differences were also found between the types of offences considered at sentence indication and the types of offences dealt with at arraignment: Table 12.

31 Chi-square test, $p < 0.001$

32 Chi-square test, $p < 0.001$

33 Chi-square test, $p < 0.018$

Table 12
Types of Offences

Offence Group	Arraigned Group	Sentence Indication Group
	% *n = 223*	% *n = 106*
Drug Offences	26.0	42.5
Commonwealth	3.1	8.5
State	22.9	34.0
Armed and Other Robbery Offences	19.7	20.8
Fraud and Misappropriation	10.3	4.7
Offences Against the Person	16.6	12.3
Offences Against Good Order	7.2	7.5
Theft and Other Property Offences	10.3	6.6
Sexual Offences	8.1	3.8
Other Offences	1.7	1.9

Drug offences were the most common offence type in both groups: they formed a significantly larger share of the sentence indication group (42.5% compared with 26% of the "arraigned group.")[34] On the other hand, persons accused of fraud and misappropriation offences were under represented among the applicants for a sentence indication hearing (4.7% compared with 10.3% of the "arraigned group"); as was the case for the remaining offence groups: offences against the person (12.3% compared with 16.6% of the "arraigned group"); theft and other property offences (6.6% compared with 10.3% of the "arraigned group"); and sexual offences (3.8% compared with 8.1% of the "arraigned group.")

Sentencing Outcomes

Table 13 shows that while proportionately similar penalties were imposed on both groups, for each penalty type, the sentence indication group received the same or longer average terms. This conclusion is consistent with the type of offences and offenders prevalent in the pilot scheme.

34 Chi-square test, $p < 0.097$

Table 13
Median Penalty Terms by Disposition

Penalty Type / Penalty Term	Arraigned Group	Sentence Indication Group
	n = 93[a]	*n* = 96[b]
Prison		
n	50	53
%	53.8	55.2
Total Sentence		
Median (months)	36.0	45.0
Range (months)	1–132	11–144
Minimum or Fixed Term		
Median (months)	16.5	30.0
Range (months)	1–84	7–108
Periodic Detention		
n	7	13
%	7.5	13.5
Median (months)	18.0	18
Range (months)	9–36	3–36
Community Service Order		
n	6	4
%	6.5	4.2
Median (hours)	225.0	500.0
Range (hours)	100–500	500
Recognizance with Supervision		
n	9	8
%	9.7	8.3
Median (months)	36.0	36.0
Range (months)	24–48	24–48
Recognizance		
n	10	14
%	10.8	14.6
Median (months)	30.0	36.0
Range (months)	24–48	24–60

Notes (a) Seventy seven accused were pending trial; 21 accused were found not guilty; 16 matters were no billed; 6 accused failed to appear; 3 matters were determined not appropriate; and 7 records have not been processed.

(b) Eight accused were pending trial; one accused was found not guilty; and one accused failed to appear.

VIII

IMPACT OF SENTENCE INDICATION ON SENTENCING PRACTICE

In order to determine whether sentence indication has affected sentencing outcomes, the types of penalties imposed on offenders who pleaded guilty following sentence indication (Group I in Table 14) were compared with —

(1) those who pleaded guilty at arraignment (Group II in Table 14);
(2) those who changed their plea to guilty (Group III in Table 14); and
(3) those who were convicted at trial (Group IV in Table 14).

Types of Penalty

Applicants who pleaded guilty consequent upon a sentence indication were less likely to receive a prison term than the other comparison groups. Instead, they were more likely to receive a Community Service Order or be sentenced to a term of periodic detention. Also, they were more likely to be given an unsupervised recognizance than a recognizance with supervision.

Table 14
Types of Penalty[a]

Disposition	Plea			
	Guilty Plea following Sentence Indication (I)	Guilty Plea when Arraigned (II)	Guilty Plea (III)	Guilty Verdict (IV)
	% $n = 166$[b]	% $n = 34$[c]	% $n = 69$[d]	% $n = 22$[c]
Prison	50.6	58.8	59.4	77.3
Periodic Detention	14.5	8.8	7.3	4.5
Community Service Order	9.6	2.9	10.1	13.6
Recognizance & Supervision	6.0	17.7	7.3	0.0
Recognizance	16.9	5.9	11.6	4.5
Other	2.4	5.9	4.3	0.0

Notes (a) Of the 471 accused who made an application for sentence indication or were arraigned during the study period, 159 have been excluded from this analysis: 107 accused were pending trial; 23 accused were found not guilty; 18 matters were no billed; 7 accused failed to appear; 3 matters were determined not appropriate; and 1 accused died.

(b) One accused was waiting to be sentenced.

(c) One accused was pending trial; one accused was waiting to be sentenced; and one accused failed to appear for sentencing.

(d) Ten records have not been processed.

(e) Seven records have not been processed.

Types of Offences

While applicants for sentence indication had a lower rate of imprisonment than offenders who pleaded guilty at arraignment or at any other time, these sentences were imposed on a significantly different mix of offences: see Table 15. Drug offences were over represented at sentence indication, while robbery, offences against the person, and sexual offences were under represented.

Table 15
Types of Offences[(a)]

Offence Group	Plea			
	Guilty Plea following Sentence Indication	Guilty Plea when arraigned	Guilty Plea	Guilty Verdict
	% *n = 166*	% *n = 34*	% *n = 69*	% *n = 22*
Drug Offences	44.0	17.6	21.7	18.2
Armed/Other Robbery	14.5	32.4	29.0	18.2
Fraud and Misappropriation	13.3	14.7	13.0	13.6
Against the Person	10.2	14.7	15.9	18.2
Against Good Order	8.4	5.9	4.3	4.5
Theft and other Property	6.0	8.8	8.7	9.1
Sexual Offences	1.8	5.9	7.2	13.6
Other Offences	1.8	0.0	0.0	4.5

Note (a) See Notes to Table 14.

Individual judge practice

The sentencing patterns of the particular judges involved in the pilot scheme were compared with their general sentencing practices in the 17 month period prior to the introduction of the pilot scheme: Table 16. For the purpose of this exercise, pseudonyms (Judge A and Judge B) have been used as there is no necessity to identify individual judicial officers. These two judges, between them, heard between 90–95% of the cases dealt with in the pilot scheme.

Both judges had a higher rate of imprisonment in the pilot scheme than during the previous 17 months: see Table 16. However, this may be due to the pre-eminence of drug matters and the characteristics of the offenders in the pilot scheme: see Table 17.

Table 16
Sentencing Patterns of Judge A and Judge B

Disposition	Judge A		Judge B	
	Sentence Indication	General[(a)]	Sentence Indication	General[(a)]
	% *n = 109*	% *n = 136*	% *n = 86*	% *n = 118*
Prison	58.7	50.0	58.8	36.4
Periodic Detention	12.8	4.4	12.9	1.7
Community Service Order	2.8	10.3	11.8	12.7
Recognizance & Supervision	7.3	12.5	2.4	15.3
Recognizance	15.6	17.6	12.9	28.8
Other	2.8	5.1	1.2	5.1

Note (a) The "General" period covers all matters finalised and sentenced between 1 January 1992 and 31 May 1993.

Table 17
Type of Offences Sentenced by Judge A and Judge B

Offence Group	Judge A		Judge B	
	Sentence Indication	General[(a)]	Sentence Indication	General[(a)]
	% *n = 109*	% *n = 136*	% *n = 86*	% *n = 118*
Drug Offences	42.2	23.5	41.9	23.7
Armed/Other Robbery	21.1	14.0	5.8	6.8
Fraud and Misappropriation	3.7	7.4	26.7	6.8
Against the Person	11.9	18.4	12.8	22.0
Against Good Order	9.2	6.6	5.8	8.5
Theft and Other Property	6.4	14.7	4.7	15.3
Sexual Offences	2.8	8.8	1.2	14.4
Other Offences	2.4	6.6	1.2	2.5

Note (a) The "General" period covers all matters committed for trial and sentenced between 1 January 1992 and 31 May 1993.

Wider Comparisons

In the following Tables, the dispositions and offence types for sentence indication applicants are compared to dispositions and offence types of other identifiable groups from the existing court structure for the previous 17 months. The identified groups are —

(1) offenders who pleaded guilty at committal (s 51A) and were then sentenced in the District Court at Sydney (Group II in Tables 18 and 19);
(2) all offenders who "ordinarily" pleaded guilty at the District Court at Sydney (Group III in Tables 18 and 19);
(3) all offenders sentenced by the District Court at Sydney (Group IV in Tables 18 and 19).

Imprisonment rates are higher overall for offenders who pleaded guilty at committal (s 51A) than for any other group in the Table. It is interesting to note that there is a higher incidence of the use of periodic detention in relation to sentence indication applicants than for the other groups.

Table 18
Type of Penalty[(a)]

Disposition	Plea			
	Guilty Plea following Sentence Indication (I)	s 51A Guilty Plea (II)	Ordinary Guilty Plea (III)	All Offenders (IV)
	% *n = 166*	% *n = 924*	% *n = 1,154*	% *n = 2,388*
Prison	50.6	59.0	48.6	55.1
Periodic Detention	14.5	8.9	8.3	8.8
Community Service Order	9.6	14.1	14.3	13.2
Recognizance & Supervision	6.0	9.6	15.8	12.0
Recognizance	16.9	7.4	10.8	9.3
Other	2.4	1.1	2.2	1.6

A comparison of the offence types found in these four groups (see Table 19) supports the observation made previously that drug offences figure highly in sentence indication matters. It is interesting to note that the proportion of matters involving armed and other types of robbery is very similar across all the groups, while theft and other property offences, along with sexual offences, are under-represented in the sentence indication group.

Table 19
Type of Offences[a]

Offence Group	Plea			
	Guilty Plea following Sentence Indication (I)	s 51A Guilty Plea (II)	Ordinary Guilty Plea (III)	All Offenders (IV)
	% n = 166	*% n = 924*	*% n = 1,154*	*% n = 2,388*
Drug Offences	44.0	37.9	35.9	36.5
Armed/Other Robbery	14.5	14.1	14.0	13.4
Fraud and Misappropriation	13.3	16.9	8.2	11.6
Against the Person	10.2	2.6	12.7	8.8
Against Good Order	8.4	3.4	5.5	4.8
Theft and Other Property	6.0	17.4	17.2	16.6
Sexual Offences	1.8	3.5	3.6	4.6
Other Offences	1.8	4.3	2.9	3.6

IX

DISCUSSION AND CONCLUSIONS

Although the Sentence Indication Scheme was established to reduce delays and costs in the criminal justice system, thereby benefitting all the participants in the system (victims, witnesses, counsel, the courts, etc) the scheme can only accomplish this in the first instance by offering some incentive to accused persons to participate in it. The immediate "client group" of the scheme consists of all accused persons who have been committed for trial.

The pilot scheme conducted at Sydney elicited 230 requests for a sentence indication hearing, including 110 requests from accused persons who had already been arraigned and were awaiting trial ("old matters"). The other 120 cases ("new matters") represented 30% of all eligible new cases during the period of the pilot scheme, which indicates a substantial demand for a scheme of this kind on the part of accused persons. Almost three quarters of the applicants accepted their indicative sentences, of which half involved full time custody. Not surprisingly, almost all of the rejections came from applicants who had been given an indicative sentence of full time custody. In a number of these "rejection" cases, the accused person later went to trial and was convicted of a different offence, typically receiving a less severe penalty than was assessed for the original offence at sentence indication. Overall, then, the scheme appears to have enjoyed a strong degree of support from its potential clients, while allowing applicants the right to question the severity of penalties or the appropriateness of charges.

The Client Group

The applicants were a self selected group which was not entirely representative of all accused persons committed for trial —

(1) applicants were more likely to have been charged with drug offences: Tables 12 and 15;
(2) the pilot scheme seems to attract seasoned customers rather than first offenders: Table 11.
(3) almost all applicants were legally represented.

On the whole, then, the scheme was not used with equal frequency by all its potential clients. It is not possible from the data to determine exactly what factors most strongly influenced the decision to apply for a sentence indication, but the data does give rise to some speculation. It may be that in cases where —

(1) there is a real risk, but not a guarantee, of the imposition of a full time custodial sanction, or
(2) the risk of conviction is not overwhelming, but the risk of full time custody upon conviction is relatively high,

accused persons are particularly likely to make use of sentence indication (eg drug offences). Conversely, accused persons may be less likely to make use of

sentence indication in cases where the risk of imprisonment is low (eg indictable offences with a low maximum penalty) or where a lengthy custodial sentence is inevitable upon conviction (and for whom, consequently, sentence indication has little utility).

Effect on Court Flow and Management

Almost all matters where applicants accepted the indicative sentence were finalised within five weeks of the application being made (which was usually the date the case was listed for arraignment). Overall, for "new matters," the period from committal to application was only about eight weeks. It is worth noting, in relation to "old matters," that the accused had been waiting for trial on average for about one and a half years, before they were able to lodge applications for sentence indication hearings.

At best the amount of court sitting time saved, if all accused who accepted the sentence indication had alternatively proceeded to trial for their estimated duration, amounted to over 200 weeks (201.8) or 4.8 judge years: see page 32. This figure is very similar to the estimates provided in the *District Court Annual Review*, which reported a notional saving of 244 weeks at Sydney during 1993 in relation to 286 applications (covering a greater time frame than the pilot scheme reviewed in this paper). However, this estimate, does not represent the exact amount of court sitting time saved as it does not take into account the fact that many persons committed for trial will, in any event, plead guilty some time after arraignment. A number of other consequential savings and costs have not been taken into account (for instance, effect on number of appeals). It should also be noted that any estimate of court sitting time saved will only be as accurate as the estimates of trial length provided by counsel at the time of arraignment.

One important benefit which it not possible to calculate is the reduction in the lead time to matter finalisation, even where actual sitting time has not been reduced. The emotional and financial benefit to all participants in the criminal justice system of matters being finalised earlier is also a relevant consideration.

This study does not attempt to address the issue of whether the introduction of the scheme will reduce the number of committals for sentence from the Local Court. As a matter of sentencing principle, the two groups are to be treated distinctly: *R v Warfield*.[35] However, given that in order to participate in the Sentence Indication Scheme one must be committed for trial, an accused may be reluctant to preclude this opportunity by pleading guilty too early. Consequently, with the introduction of the scheme across the State, a pattern

35 *R v Warfield* (unrep, 24/6/94, NSW CCA).

may emerge that more accused persons will defer pleading guilty in the Local Court, and thus be in a position to request a sentence indication hearing at arraignment.

Plea Rate and Flow Rate

The principal focus of this study has been analysing who participated in the scheme and how they were dealt with. To this extent, it presents a "snap-shot" of the scheme as it operated in the Downing Centre over a limited period of time. However, the pilot does have wider implications for the criminal justice system as a whole. Due to its limited time frame and number of participants, it would be unwise to treat this pilot as a microcosm of how the scheme will ultimately function.

Clearly, persons who participated in the pilot scheme and accepted the indicative sentence, were dealt with in a prompt manner. On average persons participating in the scheme have been dealt with in about one month from date of application for sentence indication hearing. It may be that for such persons this benefit is sufficient to provide customer satisfaction. It also has advantages for other persons involved in the matters dealt with, such as victims, other witnesses, legal representatives, and police officers.

From a broader policy point of view, one important question this study has not attempted to answer is "has the plea rate changed at arraignment?" Pragmatically, the sentencing indication hearing scheme was designed to encourage early pleas of guilty in matters committed for trial, and for the scheme to be a useful adjunct to the existing system of early arraignment, it needs to be appealing to the people who are currently pleading not guilty at that stage. However, to measure the effect of the scheme on the rate of guilty pleas at all relevant stages of proceedings one would need to gather information about all cases passing through the courts during some period of time when the scheme was not in operation in order to determine precisely when pleas were entered, and then to compare the data with cases passing through the courts under the operation of the pilot scheme. This would be a major undertaking and is beyond the scope of this project. Although the pilot scheme lacks this experimental rigour, it provides some useful insights into potential operation of the scheme.

Level of Sentence

As compared to judges' existing sentencing practice, it was observed that both judges had a higher rate of imprisonment in the pilot scheme than during the previous 17 months: see Table 16. However, this may be due to the pre-eminence of drug matters and the characteristics of the offenders in the pilot scheme: see Table 17.

As compared to the general sentencing practice of other District Court judges in the preceding 17 months, there was a higher imprisonment rate overall for

offenders who pleaded guilty at committal than for any other group. There was a higher incidence of the use of periodic detention in relation to sentence indication applicants than for other groups.

An Evolving Scheme

As the Sentence Indication Hearing Scheme expands and finds its place as a significant component of the criminal justice system as a whole, its character and complexion, and its relationship to the remainder of the criminal justice system, may change. The evolving perceptions of the participants will impact on the way in which the scheme operates: for example, accused persons may realise the scheme's potential for changing the way they conduct their proceedings (which may affect the rate of s 51A committals for sentence among other things); Crown practice may alter, and so forth. As a consequence, it would be unwise to regard the pilot scheme as representative of a fully matured scheme.

Closing Remarks

From a theoretical point of view, the real innovation in the Sentencing Indication Scheme, as developed in New South Wales, is the retention of the primary and impartial role of the judge. The system provides for the maintenance of the judge as an untainted decision maker, acting on behalf of the community interest. This structural feature of the scheme is designed to preserve the cherished image of the Australian justice system by allaying concerns of secret deals done behind closed doors. The popularity of the scheme is one indication that this concern has been allayed, at least in the eyes of those accused persons who applied for sentence indication hearings.

This is an empirical study and it has not — except by way of historical background — attempted to canvass the wider legal and social implications of the introduction of this type of scheme in New South Wales. In particular, it has not critically examined the underlying premise of the sentencing indication scheme that encouraging earlier guilty pleas will enhance the criminal justice system. That work is currently being undertaken by other commentators and academic writers. Rather, the purpose of this project was to provide a detailed analysis and evaluation of the pilot scheme.

In general, the scheme attracted applicants who had previous experience as an offender in the criminal justice system and were consequently in a position to assess, on the basis of their own experience and that of their legal representative, whether the indicative sentence given was acceptable to them. It may be that the courts held less of a mystique for these applicants, and they were prepared to take advantage of a scheme that enabled them to have some choice in the outcome of their cases.

Appendix A

Practice Note No 22
Sentence Indication at Parramatta in 1993

In December 1992, His Honour Judge Staunton, Chief Judge of the District Court, issued the following Practice Note —

The trial of a sentence indication procedure will be conducted at Parramatta District Court commencing in February 1993.

The purpose of sentence indication is to attract early pleas of guilty in matters committed for trial. The arraignment hearing, which takes place approximately two months after committal from the Local Court, is the earliest practicable time for applications to be made.

The person committed for trial to the Parramatta District Court will be permitted, without prejudice to his or her right to trial, to obtain an indication from a judge of the sentence likely to be imposed should a plea of guilty be entered.

An application for a sentence indication hearing may be made once only by an accused person before or at arraignment.

All sentence indication proceedings will be held in open court, but the court may make orders prohibiting publication of those details considered to have the potential to prejudice the fair trial of the matter.

The procedure will be as follows —

The legal representative of an accused person will inform the DPP of the intention to seek a sentence indication. The DPP will advise the Criminal Listing Director of his readiness to have a sentence indication hearing, whereupon the Criminal Listing Director will arrange for the listing of the matter at the convenience of the court and the parties.

If the sentence indication is sought at the time of arraignment, the arraignment judge may hear the matter, if ready, immediately, or arrange a hearing date.

At the sentence indication hearing, the Crown will hand to the judge —

(i) the draft indictment (to which the accused will subsequently be required to plead);
(ii) a statement of the alleged facts of the case, which will have been previously discussed with the defence representative;
(iii) copies of the prosecution witness's statements;
(iv) transcript of the committal proceedings (if available); and
(v) the accused's antecedents.

The accused may have the judge consider statements or other evidentiary material. After hearing submissions from defence counsel the judge will, depending on the circumstances of the case, either assess the indicative sentence immediately, or stand the matter over for consideration and decision.

After the indicative sentence is stated, the accused will be arraigned and requested to plead. If the plea is "guilty," the matter will be stood over for a sentence hearing before the judge who presided at the indication hearing, and any pre-sentence or other reports obtained. The sentence hearing will take the usual form following a plea of guilty. If the plea is "not guilty," the matter will be listed for trial before another judge.

The indicative sentence is intended to bind the judge who formulated it, if the facts and other relevant material adduced for the purpose of the indication hearing are not altered when the case comes up for sentence. Should these be altered on the hearing by reason of different or additional material being adduced at the hearing, the judge may decide to impose a lesser or a greater sentence. In the latter case, the accused would be advised of the new sentence. If he did not wish to accept that sentence, he would be entitled to change his plea to "not guilty," and go to trial before another judge.

Practice Note No 24
Sentence Indication Hearings

1. The *Criminal Procedure (Sentence Indication) Amendment Act* 1992 provides that the Chief Judge of the District Court may, by publication of a practice note, specify the place or places at which and the conditions (if any) subject to which a sentence indication pilot scheme is to be conducted by the District Court between 1 February 1993 and 31 January 1995 (both dates inclusive).

2. Between 4 June 1993 and 5 November 1993 a sentence indication hearings pilot scheme will be conducted at Sydney District Court.

Practice Note No 25
Applications for Sentence Indication Hearings at Sydney

1. The specification of Sydney in Practice Note No 24 as a place at which sentence indication hearings will be conducted between 4 June and 5 November 1993, is subject to the following conditions —

(a) Applications for a sentence indication hearing in respect of persons committed for trial on or after 5 April 1993 are to be made before or at the arraignment of an accused person.

(b) In respect of accused persons committed for trial before 5 April 1993, applications for a sentence indication hearing are to be made no later than four (4) weeks before the date fixed for trial. These applications are to be made in writing to the Criminal Listing Director.
(c) Only one application for a sentence indication hearing may be made by an accused person.

Practice Note No 31
Sentence Indication Hearings

On 20 December 1993, His Honour Judge Staunton, Chief Judge of the District Court, issued the following Practice Note:

1. The *Criminal Procedure (Sentence Indication) Amendment Act* 1992 provides that the Chief Judge of the District Court may, by publication of a practice note, specify the place or places at which and the conditions (if any) subject to which a sentence indication pilot scheme is to be conducted by the District Court between 1 February 1993 and 31 January 1995 (both dates inclusive).

2. Between 31 January 1994 and 31 January 1995 a sentence indication hearings pilot scheme will be conducted at the places mentioned hereunder.

Sydney West and Newcastle

In the Sydney West courts at Parramatta, Penrith, Liverpool and Campbelltown and at Newcastle sentence indications will be subject to the following conditions —

(a) Applications for a sentence indication hearing in respect of a person committed for trial on or after 1 January 1994 are to be made before or at the arraignment of an accused person.
(b) In respect of accused persons committed before 1 January 1994, applications for a sentence indication hearing are to be made no later than four (4) weeks before the date fixed for trial. These applications are to be made in writing to the registry responsible for the listing of trials at the relevant centre.

Woollongong and Gosford

At Woollongong and Gosford sentence indications will be subject to the following conditions —

(a) Applications for a sentence indication hearing in respect of a person committed for trial on or after 1 January 1994 are to be made before or at the arraignment of an accused person.
(b) In respect of accused persons committed before 1 January 1994, applications for a sentence indication hearing are to be made no later than four (4) weeks before the date fixed for trial.
(c) In order to avoid trials not proceeding at the centre at which they were committed if an indication is rejected, sentence indication

hearings originating from Woollongong will in general be listed at Sydney and from Gosford at Newcastle. Where, however, a second court is sitting at either centre then sentence indication hearings may be listed at that centre.

(d) Where an application for a sentence indication hearing is made at arraignment the presiding judge will refer the indication to either Sydney or Newcastle for hearing unless there is a second court sitting.

(e) Otherwise, applications are to be made in writing to the District Court Criminal Registry in Sydney where the location at which the indication is to be heard will be determined.

Other country circuit courts

At all other centres at which the Courts sits on circuit, sentence indications will be subject to the following conditions —

(a) Where an arraignment date is set at committal, an application for a sentence indication hearing in respect of a person committed for trial on or after 1st January, 1994 is to be made before or at the arraignment of the accused.

(b) In respect of accused persons committed before 1st January, 1994, or committed after 1st January, 1994, and no arraignment date has been set, applications for a sentence indication hearing are to be made no later than four (4) weeks before the date fixed for trial.

(c) Where an application for a sentence indication hearing is made at arraignment the presiding judge may either proceed to deal with the application or, on application, refer it to the District Court Criminal Registry in Sydney for listing at a nearby centre.

(d) Otherwise applications, where a trial date has not been set, should be made in writing to the District Court Criminal Registry in Sydney where the location at which the indication is to be heard will be determined and co-ordinated.

(e) Applicants should nominate in the application whether they require the indication to be heard at the centre at which the matter has been committed or at a nearby centre.

(f) Where applicants request the application be heard at the centre at which the matter has been committed they should take into account that there is the potential, if the sentence indication is rejected, that the subsequent trial may have to proceed at a nearby centre if the judge who gave the indication is due to sit at the sittings at which the trial is to be listed. Where possible, however, judicial arrangements will be organised so that the same Judge does not attend consecutive sittings at a circuit court.

Notwithstanding the above arrangements in relation to the location at which an application may be heard, an application may be made at Sydney for a matter pending at any centre.

Appendix B

Coding Frame Used for Abstracting Information From Court Files

File number	
Name	
Sex	
Date of birth	
Offence date	
Arrest date	
Status at offence	
Prior record at offence	
Previous imprisonment at offence	
Other co-accused	
Committal date	
Trial date	
Estimate trial duration	
Sentence indication	
Request date	
Charges (Act/Section)	
Commonwealth/State	
Counts (principal offence)	
Legal representation	
In custody/on bail	
Hearing date	
Date of decision	
Penalty	
Length	
Accept/reject date	
Rejections	
Plea	
Charges (Act/Section)	
Penalty	
Length	
Sentence date	
Form 2	

REFERENCES AND FURTHER READING

Cases

Bruce v R (unreported, 21/5/76, High Ct)

R v Bartley and Tait (1979) 24 ALR 473

R v Brown (1989) 44 A Crim R 385

R v Chait (unreported, 17/9/93, NSW CCA)

R v Davila (unreported, 15/4/94, NSW CCA)

R v Duffield & Dellapatrona (unreported, 1/10/92, NSW CCA)

R v Foster (unreported, 19/3/92, NSW CCA)

R v Glass (unreported, 24/5/94, NSW CCA)

R v Malvaso (1983) 168 CLR 227

R v Marshall [1981] VR 725

R v Nicolaidis (unreported, 29/3/94, NSW CCA)

R v Page [1977] 2 NSWLR 173

R v Pham (unreported, 11/6/93, NSW CCA)

R v Shannon (1980) 21 SASR 442

R v Turner [1970] 2 QB 321

R v Walker (unreported, 21/2/94, NSW CCA)

R v Warby (1983) 9 A Crim R 349

R v Warfield (unreported, 24/6/94, NSW CCA)

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