

Review of the Sentence Reduction Scheme - Part 2 Division 2

Subdivision 4 of the *Sentencing Act 2017* (SA)

Final Report to the Attorney-General

Hon Brian Ross Martin AO QC

13 September 2019

Introduction

[1] In June 2019, I presented an interim report to the Attorney-General following my review of the Sentence Reduction Scheme. The terms of reference included reporting to the Attorney-General as to whether, in comparison to the 2013 Scheme, the Current Scheme has “improved the operation and effectiveness of the South Australian criminal justice system ...”. That question was asked in the context of the changes to the 2013 Scheme introduced in conjunction with the Major Indictable Reforms which commenced in March 2018. As I was subsequently appointed to review the Major Indictable Reforms, and that review had commenced prior to providing my report in June 2019, I presented my report as an interim report on the understanding that at the completion of my review of the Major Indictable Reforms, I would supplement the interim report.

Impact of Major Indictable Reforms

[2] My Report concerning the Major Indictable Reforms is dated 13 September 2019. In that Report, I concluded that those reforms interrupted the flow of cases from the Magistrates Court to both the Supreme and District Courts. However, as I explained in that Report, in my view that interruption was an inevitable consequence of the reforms and does not indicate a flaw in the reforms. Unfortunately, the fact of the interruption means it is impossible to obtain useful statistics to be used as a basis for a comparison between the 2013 Sentence Reduction Scheme and the Current Scheme. Significantly more time is needed.

[3] In my Report concerning the Sentence Reduction Scheme [350] - [351], I observed that as presently advised I tend to doubt that the current scheme has “improved the [overall] operation and effectiveness” of the criminal justice system. However, for

what it is worth, it is my impression that once the flow of cases has built to the normal level, it will be seen that the reforms have had little impact on the efficacy of the Sentence Reduction Scheme.

[4] It is unfortunate that I am unable to draw any conclusions concerning the impact of the Major Indictable Reforms on the Sentence Reduction Scheme. In addition, not only is significant additional time required as the law presently stands, but if my suggestions for amendments to the Sentence Reduction Scheme, and/or to the Major Indictable Reforms, are accepted and acted upon, significant additional time will be required after the adjustments come into operation before the impact of the scheme and reforms, as adjusted, can reliably be assessed. Twelve months after the adjustments have been made will be insufficient.

Supreme Court

[5] In the 2015 Report, and the Interim Report of June 2019, I did not deal with the statistics relating to the Supreme Court. Annexed is a report, Stage 3, of June 2019 concerning the Supreme Court from Justice Policy and Analytics, Policy and Community Division (JPD).

[6] JPD's summary of the key findings is as follows:

- Just under one in five (18.6%) criminal defendants finalised in the Supreme Court from 1 July 2014 to 31 December 2018 had matters relating to a question of guilt. This equates to an average of 45 finalised criminal defendants per year.
- There was a reduction in the mean number of hearings to finalisation for Supreme Court criminal matters post 2014/15, however, it should be noted this figure is subject to skewing by especially long (or short) matters. The median figures do not show any particular pattern that could potentially be attributed to

the guilty pleas reduction schemes, therefore, it is unclear whether the sentencing reduction schemes have had an impact on the number of hearings to finalisation in the Supreme Court.

- The median number of weeks to finalise criminal matters in the Supreme Court increased in the 2018/19 year (first six months), due to 15 out of 26 finalised defendants' cases taking more than 52 weeks to finalise. Given the seriousness of the criminal matters dealt with in the Supreme Court, this may simply be due to a number of complex matters being finalised during that time period. It is therefore not possible to identify any specific trends in time to finalisation in the Supreme Court.
- The number of criminal matters in the Supreme Court pending finalisation showed an increase in matters that were between 12 and 24 months old in 2017/18 (from four in 2016/17 to 11 in 2017/18), this figure dropped down to three in 2018/19 (at 31 December 2018). This is consistent with the increase in the number of matters older than 52 weeks being finalised in the first six months of the 2018/19 year. Again, no conclusions can be drawn in relation to the guilty pleas scheme based on this information.
- The number of major indictable matters committed for trial to the Supreme Court with a subsequent guilty plea entered increased from zero in 2014/15 to 10 in 2015/16. Of the defendants that pled guilty from 2015/16 to 2017/18 (inclusive), the majority entered their plea in the first four weeks. It is unknown whether the guilty pleas legislation impacted upon the *timing* of the defendant's pleas. Given the complexity and seriousness of the matters in the Supreme Court, it is likely the *incentive* to plead guilty is, at least in part, dependent on the defendant's prospect of acquittal based on the information laid in court.

In summary, due to the small number of criminal matters in the Supreme Court that involve questions of guilt each year it is not possible to determine whether and efficiencies have been gained from the guilty pleas legislation.

Concealing a Crime

[7] In the Interim Report I discussed the issue of concealing a crime [339] and [340]. I recommended an amendment to s 40(5) to include, as a relevant factor, the fact that an offender concealed the commission of the crime and the period during which the concealment occurred.

[8] I have been asked whether I had in mind including conduct such as mere silence. The answer to that particular question is 'no'.

[9] I should have been more specific. I had in mind active concealment that a crime has been committed; for example burying a body and actively diverting investigators by claiming that the deceased must have travelled interstate. The nature and intent of the active concealment would obviously be relevant in considering the impact of the concealment on a claim for a sentence reduction by reason of a plea of guilty.

Conclusion

[10] Having completed my Review of the Major Indictable Reforms, I do not have any additional recommendations. Contrary to a submission to that Review, I adhere to the view that the gradations in maximum reductions are appropriately linked to various stages of the court processes.

Date 13 September 2019



Hon Brian Ross Martin AO QC

