SECTION 10; ITS USE,MISUSE, NON-USE AND OVER USE

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1. INTRODUCTION.

It has been suggested that Section 10 of the Crimes (Sentencing Procedure) Act 1999 is the most mentioned/requested/submitted/argued section of any Act in our criminal justice system.

Hence the title of this paper being its use, misuse, overuse and non use.

Its mention in whatever form can elicit different responses.

From the whole hearted embrace from the usually young, keen but inexperienced practitioner to sighs of exasperation or outright disdain from the Bench.

I think we can agree that its mention is at least extensive, especially in the Local Court. It should be stressed however that the title of this paper is not meant to suggest that it is actually being overused or misused. I am merely suggesting that practitioners, especially those younger and less experienced that some of us here tonight, need to be aware of what the

law is, how it is applied and, most importantly in my view, when it is appropriate to ask for the section to be utilised.

My comments are mainly directed towards the Local Court because that is where I practice and that is where its use is usually argued. I do make some mention of its use in the Land and Environment Court and the Industrial Relations Commission and in that regard I thank Olga Stoutchilina and Daniel McIlgorm, both law students from the University of Wollongong for their assistance.

Can I begin by providing you with a quote that I feel succinctly summarises where Section 10 sits in our criminal justice system.

In the CCA in 1997 in *R v Ingrassia (1997) 41 NSWLR 447 at 449* then Gleeson CJ, with the agreement of the other members of the CCA, said this about the then Section 556A of the Crimes Act (the predecessor to the current Section 10);

"The essence of s556A is that empowers a court which considers that a charge has been proved, in certain circumstances, to take steps 'without proceeding to a conviction'. The legal and social consequences of being convicted of an offence often extend beyond any penalty imposed by a court. As Windeyer J said in Cobiac v Liddy [1969]HCA26;(1969)119CLR257 at 269 'a capacity in special circumstance to avoid the rigidity of inexorable law is of the very essence of justice' ".

2. THE SECTION AND ITS HISTORY.

A full history of Section 10 would involve an examination of its predecessor (Section 556A) but I do not intend to do this. Enough has happened since its introduction in 1999.

The Crimes (Sentencing Procedure) Act 1999 commenced on 3rd April 2000 and the section has been amended a number of times since then.

It presently reads as follows;

10 Dismissal of charges and conditional discharge of offender

(1) Without proceeding to conviction, a court that finds a person guilty of an offence may make any one of the following orders:
(a) an order directing that the relevant charge be dismissed,
(b) an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years,

(c) an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.

(2) An order referred to in subsection (1) (b) may be made if the court is satisfied:
(a) that it is inexpedient to inflict any punishment (other than nominal punishment) on the person, or
(b) that it is expedient to release the person on a good behaviour bond.

(2A) An order referred to in subsection (1) (c) may be made if the court is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person.

(2B) Subsection (1) (c) is subject to Part 8C.

(3) In deciding whether to make an order referred to in subsection (1), the court is to have regard to the following factors:
(a) the person's character, antecedents, age, health and mental condition,
(b) the trivial nature of the offence,

(c) the extenuating circumstances in which the offence was committed,

(d) any other matter that the court thinks proper to consider.

(4) An order under this section has the same effect as a conviction:
(a) for the purposes of any law with respect to the revesting or restoring of stolen property, and
(b) for the purpose of enabling a court to give directions for compensation under Part 4 of the *Victims Compensation Act 1996* , and

(c) for the purpose of enabling a court to give orders with respect to the restitution or delivery of property or the payment of money in connection with the restitution or delivery of property.

(5) A person with respect to whom an order under this section is made has the same right to appeal on the ground that the person is not guilty of the offence as the person would have had if the person had been convicted of the offence.

An amendment in 2000 added the 2 year limitation for section 10(1)(b) bonds and an amendment in 2002 inserted sub-sections 2A and 2B relating to intervention programs.

I recently saw a District Court judge (in dealing with a severity appeal) ask a lawyer what part of section 10 he was relying upon in seeking its implementation. The words of the section should not be forgotten and it is incumbent upon practitioners to be able to point to that part of the section being relied upon if asked.

Soon after its introduction in 2000 the *CCA* in NSW had cause to examine the section and its usage. The main cases from then were *R v Paris [2001]NSWCCA 83* and *R v Piccin (No 2) [2001]NSWCCA323* . *Paris* involved a serious siege situation and *Piccin* malicious wounding.

It has been argued that *Piccin* held that the offence needed to be trivial (as per section 10(3)(c)) in order for the section to be invoked but *Paris* held that the

section 10(3) factors were intended to be disjunctive and nonexhaustive.

However it was made clear in the *High Range PCA Guideline Judgment (2004) 61 NSWLR 305* by Howie J at para 132 that the Court must have regard to all of the criteria in section 10(3) in determining whether a dismissal is appropriate. He said that

".....where the offence committed is objectively a serious one and where general deterrence and denunciation are important factors in sentencing for that offence, the scope for the operation of the section decreases".

In otherwords, the offence does not have to be trivial but the more serious the offence the more unlikely it is that the section will be utilised.

Before turning to the more recent cases can I summarise for you a number of cases where persons had been sentenced in the District Court and on appeal to the CCA section 10 was involved;

(a) *R V DJS[2001]NSWCCA189(14 May 2001)* where a Section 558 bond was replaced by the *CCA* with a section 10(1)(a) dismissal for an historical indecent assault.

(b) *R v Lord [2001]NSWCCA533(4 December 2001)* where a section 10(1)(b) bond for an aggravated break, enter and steal was replaced by the *CCA* with an 18 months suspended sentence (section 12 bond).

(c) *R v Goh [2002]NSWCCA234(14 June 2002)* where a section 10 dismissal for affray was upheld by the *CCA*.

(d) *R v KNL[2005]NSWCCA260(29 July 2005)* where a section 10(1)(b) bond for sexual intercourse with a child aged between 10 and 16 was replaced by the *CCA* with a section 9 bond.

3. CURRENT POSITION.

The more recent cases in the Supreme Court and the Court of Appeal have also had cause to examine section 10 and its operation.

In 2008 in *Matheson v DPP[2008]NSWSC550* the Supreme Court had the opportunity to reject any suggestion that section 10 was not available after a plea of not guilty. It followed a conviction having been entered against the defendant for using an unregistered vehicle. The Supreme Court came to the conclusion that the Local Court had excluded consideration of section 10 solely because the defendant had defended the matter and that there was "no discount available".

Johnson J said at para 65

"*There is no statutory or common law principle which excludes an order under s.10 in circumstances where a defended hearing has taken place. In many cases, of which this case may be an example, the defended hearing may disclose extenuating circumstances in*

which the offence was committed to which the court should have regard in determining whether to apply the section: s10(3)(c).”

More recently, in *Hoffenberg v The District Court of New South Wales[2010]NSWCA142*; the Court of Appeal had cause to examine the words used in section 10. Mr Hoffenberg had been convicted and released on a section 9 bond in the Local Court for damaging property. His severity appeal to the District Court was heard and dismissed by the Chief Judge Blanch J. It should be noted that in the Local Court the defendant had had two other charges dealt with under section 10.

The Court of Appeal held that Blanch CJ had approached the sentencing task properly and had given proper consideration to those matters the Court is required to take into account. In dismissing the appeal to the Court of Appeal McClellan CJ at CL said that Blanch CJ

"*…..took the view, as he was entitled to do, that a deliberate act of vandalism placed the nature of the*

offence beyond the trivial and may, depending on all the circumstances, deny an offender the benefit of an order pursuant to s 10."

The appellant had argued that Blanch CJ had approached his task in reverse order, first finding that the behavior was deliberate and then, and for that reason alone, deciding that section 10 was not available. This was rejected by the Court of Appeal and they found that the District Court had considered the appellant's relevant personal circumstances, the impact of a conviction as well as the deliberate act of vandalism.

It should be noted that Mr Hoffenberg was obviously pretty determined to try and obtain a s.10. On 6 April 2011 his application to the High Court for special leave to appeal was dismissed by Heydon and Bell JJ.

Morse(Office of State Revenue) v Chan and Anor[2010]NSWSC1290(26 November 2010) is an interesting case because it involves an appeal by the prosecutor from a decision of the Local Court

directly to the Supreme Court and not only involves section 10 but that other favourite, section 32 of the Mental Health (Forensic Provisions) Act 1990.

The defendants in the Local Court had been prosecuted for making false statements in relation to the first home owner's scheme and had been given section 10 bonds by Magistrate Curran at the Downing Centre. Their initial application in the Local Court was for the matters to be dealt with under section 32 but this had been rejected.

The prosecutor in the Local Court, not surprisingly, had opposed the matters being dealt with under section 10 and then brought proceedings in the Supreme Court alleging an error of law (which was required to have the Supreme Court intervene).

The prosecutor argued that the penalties were manifestly inadequate, that not sufficient regard had been given to section 21A(2)(n) of the Crimes (Sentencing Procedure) Act and that the Court failed to have sufficient regard to the principle of totality.

The argument regarding manifest inadequacy was the only one considered by the Court in any detail and ultimately rejected as a mixed question of law and fact.

Schmidt J had examined section 21A and section 10 and said at para 42

"*The exercise of the s10 discretion is always likely to involve a departure from a sentencing range, given the very nature of the discretion."*

The Court, in holding that there was no question of law to be determined, went on to comment about the alleged manifest inadequacy of a section 10 bond for 8 offences over 4 months involving a deal of planning.

The Court said that at para 96

"*…that there may be circumstances where a just and proper exercise of the instinctive synthesis involved in the sentencing exercise, will result in the conclusion that while an application brought under s32…..has not been made out, the exercise of a discretion under s10….is properly available. As well as*

all of the other matters which must be considered in the sentencing exercise, that will necessarily require a consideration of the evidence as to the nature of the offence, the defendant's mental illness and its consequences, both at the time of the offence and at sentencing, as well as other matters referred to in s10(3).....[para 97] it is a consideration of those matters in light of the objective seriousness of the offences in question, which may bring a s10 bond into the range of sentences properly available for a particular offence."

The Court went on to find that it could not be said that the section 10 bonds that were imposed were manifestly inadequate.

4.LAND AND ENVIRONMENT COURT.

One of the differences in the use of section 10 in the Land and Environment Court was identified in *Sidhom v Robinson* [2007] NSWLEC 408. It was held that after being convicted in the Local Court following a plea of

guilty, an appellant cannot appeal as of right against the sentence (ie severity appeal) but rather only with leave on a ground involving a question of law.

This of course is contrasted with what occurs in appeals to the District Court where such an appeal is dealt with as a simple severity appeal rather than a conviction appeal.

This is important to bear in mind when advising clients on whether to appeal to the Land and Environment Court in circumstances where your client seeks a s.10.

In *Thorneloe v Filipowski* [2001] NSWCCA 213 the Court of Criminal Appeal noted that section 10 is applicable in environmental offences and the court should not presume that only in rare cases will s10 apply to environmental offences.

Section 10(3)(b) differs in its usual interpretation due to the nature of the offences. It has been noted that no pollution event can be regarded as trivial; *Environment Protection Authority v Virotec International Limited* [2002] NSWLEC 110, 32. Submissions usually attempt to persuade culpability to be trivial, rather then the actual act

It was noted in *Axer Pty Limited v Environment Protection Authority* (1993) *113 LGERA 357, 359* that a stern policy against pollution was adopted by the community. The penalties imposed by the legislative scheme show the seriousness of the offence.

Another element of interest in the Land and Environment Court is whether section 10 should have any application to offences of strict liability. The purpose of strict liability is to promote greater vigilance. It has been stated that it is unusual to receive the benefit of s10 in the case of strict liability offences and conviction and penalty need to ensure they reflect general deterrence and reinforce obligations of citizens; *Mosman Municipal Council v Menai Excavations Pty Ltd* [2002] NSWLEC 132, 35.

5. INDUSTRIAL RELATIONS COMMISSION.

The general approach can be best described as '*extraordinary and highly exceptional'; Workcover*

Authority v Profab Industries Pty Ltd(2000)49NSWLR700 AT 710.

The discretion appears to be only legitimately exercised when it maintains a reasonably proportionality between the sentence and the circumstances of the offence.

Statutory offences tend to be based in absolute terms and the purpose of the legislation being for the benefit of workers by preventing unsafe work places by punishment, specific and general deterrence narrows the allowable discretion because the seriousness is indicated in the nature of the particular offence and the statutory matrix.

Some examples;

(i) *Farrell v Partridge Plumbing Pty Ltd [2003]NSWIRComm354; where a* failed valve in plumbing system had lead to a fatality due to burns. The defendants' ability to reasonably foresee the injury was low, but since death had occurred it reflected that the offence was serious due to gravity of the injury. The court noted that the defendant had

immediately remedied the defects and had raised awareness of the fault in the valve to the industry. A s.10 was requested but denied because of the failure to notify user, failure to detect or express concern in previous maintenance of the valve and the need to regularly monitor and record temperatures could not be seen as 'trivial' or 'exceptional'

(ii)Workcover Authority (NSW) v Abigroup Contractors Pty Ltd [2003] NSWIRComm 201; where the gravity of the offence involved two fatalities arising from a charged gas supply line causing burns. The Court accepted that the defendant was a highly respected industry professional by reference to character, reputation, age and experience but the offence was not trivial nor were there any extenuating circumstances. A s.10 was declined..

6. THE COMMONWEALTH EQUIVALENT.

CRIMES ACT 1914 - SECT 19B

Discharge of offenders without proceeding to conviction

(1) Where:

(a) a person is charged before a court with a federal offence or federal offences; and

(b) the court is satisfied, in respect of that charge or more than one of those charges, that the charge is proved, but is of the opinion, having regard to:

(i) the character, antecedents, age, health or mental condition of the person;

(ii) the extent (if any) to which the offence is of a trivial nature; or

(iii) the extent (if any) to which the offence was committed under extenuating circumstances;

that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation;

the court may, by order:

(c) dismiss the charge or charges in respect of which the court is so satisfied; or

(d) discharge the person, without proceeding to conviction in respect of any charge referred to in paragraph (c), upon his or her giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the court, that he or she will comply with the following conditions:

(i) that he or she will be of good behaviour for such period, not exceeding 3 years, as the court specifies in the order;

(ii) that he or she will make such reparation or restitution, or pay such compensation, in respect of the offence or offences concerned (if any), or pay such costs in respect of his or her prosecution for the offence or offences concerned (if any), as the court specifies in the order (being reparation, restitution, compensation or costs that the court is empowered to require the person to make or pay):

(A) on or before a date specified in the order; or

(B) in the case of reparation or restitution by way of money payment or in the case of the payment of compensation or an amount of costs--by specified instalments as provided in the order; and (iii) that he or she will, during a period, not exceeding 2 years, that is specified in the order in accordance with subparagraph (i), comply

with such other conditions (if any) as the court thinks fit to specify in the order, which conditions may include the condition that the person will, during the period so specified, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed.

(1A) However, the court must not take into account under subsection (1) any form of customary law or cultural practice as a reason for:

(a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or

(b) aggravating the seriousness of the criminal behaviour to which the offence relates.

(1B) In subsection (1A):

***"criminal behaviour"** includes:*

(a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and

(b) any fault element relating to such a physical element.

(2) Where a court proposes to discharge a person in pursuance of an order made under subsection (1), it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by him or her:

(a) the purpose and effect of the proposed order;

(b) the consequences that may follow if he or she fails, without reasonable cause or excuse, to comply with the conditions of the proposed order; and

(c) that any recognizance given in accordance with the order may be discharged or varied under section 20AA.

(2A) A person is not to be imprisoned for a failure to pay an amount required to be paid under an order made under this section.

(3) Where a charge or charges against a person is or are dismissed, or a person is discharged, in pursuance of an order made under subsection (1):

(a) the person shall have such rights of appeal on the ground that he or she was not guilty of the offence or offences concerned with which he or she was charged as he or she would have had if the court had convicted him or her of the offence or offences concerned; and

(b) there shall be such rights of appeal in respect of the manner in which the person is dealt with for the offence or offences concerned as there would have been if:

(i) the court had, immediately before so dealing with him or her, convicted him or her of the offence or offences concerned; and

(ii) the manner in which he or she is dealt with had been a sentence or sentences passed upon that conviction.
(4) Where a person is discharged in pursuance of an order made under subsection (1), the court shall, as soon as practicable, cause the order to be reduced to writing and a copy of the order to be given to, or served on, the person.

The section arises in the Local Court when dealing with the full range of Commonwealth offences prosecuted summarily, from social security through to taxation and customs.

The CCA in *Commissioner of Taxation v Baffsky[2001]NSWCCA332(7 September 2001)* held that section 19B involved a two stage process.

The first stage is the identification of a factor or factors of the character identified in section 19B(1)(b). The second stage is the determination that, having regard to the factor or factors so identified, it "is inexpedient to inflict any punishment" or to reach the other conclusions for which s.19B provides. It is at the second stage that the matters in section 16A(2) must be taken into account.

Baffsky arose after the barrister defendant was not given the benefit of s.19B in the Local Court but an appeal to the District Court was successful. The District Court stated a number of questions to the CCA.

In relation to s.19B the following may be of assistance when urging the Court to apply its provisions. In *Uznanski v Searle(1981)52FLR83* the Court said that;

"….magistrates are to be encouraged to exercise such powers with compassion and imagination as well as with wisdom and prudence."

7. RESTRICTIONS AND OTHER SPECIFIC PROVISIONS re S.10.

Some of you may remember the days of licence appeals for full licence holders when they had accrued too many demerit points, as an alternative to the good behaviour licence that is now offered.

As a result of a number of cases in 2002, 2003 and 2004 *(RTA v Hillyard[2002]NSWSC213; RTA v Wilson[2003]NSWCA279;RTA v Weir[2004] NSWSC154)* this ceased being the case and it was also held that demerit points would still accrue even if a matter had been dealt with pursuant to s10.

As a result of an amendment late last year to the Road Transport (Driver Licensing) Act demerit points are now only recorded if a person is convicted of an offence. This means that traffic matters that carry demerit points can be "Court elected" and if the Court sees fit to exercise its discretion pursuant to s.10 then no demerit points will accrue. A new ss(3A) to s14 of the RT(DL)Act makes specific reference to s.10.

This was something that the Law Society had campaigned for strongly for many years and was always opposed by the RTA. Commonsense finally prevailed.

Section 187 of the Road Transport (General) Act 2005 provides for disqualification of drivers licences and the relevant periods are set out in s.188.

Section 187(6) provides that s.10 is not available for certain offences (mainly major offences) if a person has been given the benefit of s.10 in the previous 5 years. In other words you cannot obtain two orders

under s.10 for certain offences within 5 years of each other.

Interestingly, when calculating the relevant disqualification period under s.188 for major offences within 5 years it is done by reference to previous convictions. This means that matters dealt with under s.10 are not counted. The same applies in the calculation of second offences under s.25A of the Road Transport (Driver Licensing) Act 1998.(ie drive whilst disqualified, drive whilst suspended etc).

Section 198(1) of the RT (General) Act defines those offences that are counted for the purpose of habitual traffic offender declarations (ie 3 offences within 5 years). Section 198(2) provides that offences dealt with under s.10 are counted as convictions for the purpose of calculating the 3 offences within 5 years.

8. BREACH.

Sections 98 and 99 of the Crimes (Sentencing Procedure) Act 1999 govern how breaches of s.10 bonds are dealt with.

The Court is not constrained in the way it is in dealing with breaches of s.12 bonds when it comes to dealing with s.10 breaches.

However, it is clear that since *R v Cooke; Cooke v R[2007]NSWCCA184 and DPP v Nouata &Ors[2009]NSWSC72* that the potential breach of a s.10 bond, if possible, needs to be considered by the Court prior to dealing with the offence that creates the breach.

In other words, you should expect the Court to at least obtain the Court papers for the s.10 matter so dealing with the breach can be properly considered.

Even if the s.10 matter is from another court somewhere else in the state then the papers will be obtained and placed before the court.

The legislation provides, pursuant to s.98(2), for the Court, if satisfied that the bond has not been complied with, to either take no action, vary the conditions or revoke the bond.

If the s.10 bond is revoked then pursuant to s. 99(1)(b) the Court may convict and sentence the offender for the offence to which the breach relates.

It should be noted that s.99(5) preserves an offenders right of appeal if the bond is revoked and then convicted and sentenced.

It should also be noted that s.98(1)(c) allows a Court of superior jurisdiction, with the offender's consent, to call up an offender for breaching a bond. In other words the District Court can deal with a breach of a bond from the Local Court but not vice versa.

Also, if there was any doubt, it should pointed out that *Frigiani v R[2007]NSWCCA81(30 March 2007)*is authority for the proposition that a Court is not prohibited from taking into account prior conduct that has been dealt with under s.10. Mr Frigiani had

been released on a s.10 bond for a domestic assault on 23 November and on 7 December committed a further offence on the same victim which led him to being charged with malicious wounding with intent to inflict gbh. Having been sentenced to 5 years and 6 months imprisonment he attempted to argue that the sentencing Court was not permitted to take into account the facts of the s.10 matter because to do so would be to deprive him of the benefit of the dismissal under s.10. This argument was rejected by the CCA and his appeal was dismissed.

9. ITS USE IN THE DISTRICT COURT AND SUPREME COURT

It is probably trite to observe but many appeals from the Local Court to the District Court deal with arguments relating to the use s.10. We saw this in the case involving Mr Hoffenberg referred to above who has availed himself of every court in the NSW

system of criminal justice (including the High Court) in his attempt to obtain the benefit of the section.

I have not obtained any figures on the use of s.10 in Severity Appeals or District Court sentence matters but I set out below some reported District Court decisions which may give some insight;

(a) *R v Sung Goo Jin[2008]NSWDC374*; where a s.10 for MPCA was refused.

(b) *R v John Tomkins[2009]NSWDC95*; where a s.10 bond was imposed for a number of firearm matters.

(c) *Peter Johnson v R[2008]NSWDC376*; where a s.10 for driving in a manner dangerous was refused.

(d) *R v Jodie Moore[2009]NSWDC196*; where a s.10 dismissal was granted for enter dwelling house with intent and take person without consent and with intent to obtain an advantage.

(e) *Youlang Chan v R[2009]NSWDC242*; where a disqualification imposed for driving whilst

suspended was quashed after the Local Court had dismissed the matter under s.10.

(f) *Scott Hayman v R[2011]NSWDC109*; where a s.10 dismissal was granted for breach of AVO in circumstances where the offender had been invited back to the house after having been given a suspended sentence in the Local Court.

In relation to the Supreme Court I note the following cases in its orginal jurisdiction where s.10 arose;

(a) Commissioner for Fair Trading v Taukeiaho and Anor[2005]NSWSC722(20 July 2005);where a s.10 bond was imposed on a defendant who pleaded guilty to a breach of the Cooperatives Act

(b) R v Adam Newbold[2008]NSWSC942(10 September 2008); where a s.10 bond was imposed for conceal serious offence for an offender who had been originally indicted for murder (and a s.10A for A.O.A.B.H).

(c) Commissioner for Fair Trading v Armond Shoostovian[2009]NSWSC713(28 July 2009); where breaches of the Consumer Credit Administration Act Act were dealt with by way of a combination of fines and s.10 bonds by Howie J in circumstances where he could not use s.9 because the offences only carried fines as a penalty and the Court wanted to ensure that the offender was placed under the supervision of the Court some type.

(d) Alafaci v Mangano(No2)[2009]NSWSC1366(10 December 2009); where 4 defendants were given s.10 bonds for civil contempt.

(e) *DPP v Fordham;DPP V Byrne[2010]NSWSC 958 (27 August 2010);* where breaches of the Listening Devices Act were dealt with by s.10 dismissals.

10.CONCLUSION.

JIRS statistics show that s.10 is used in the Local Court. Some suggest too often, some suggest not consistently and some suggest that it's use is urged too frequently.

In a paper delivered to a Young Lawyers seminar in August this year on Current Issues in Sentencing in the Local Court I said this regarding s.10;

"…Section 10 is a valuable part of the armoury available to lawyers in the Local Court sentencing process. But I am a big believer in only seeking its use when appropriate. I know some practitioners take the "if you don't ask you don't get" view of section 10 but I do not feel that this appropriate. Section 10 is there for a reason and in the proper case should be, and is, used. It is not there to be bowled up in every 2nd plea and it should be obvious to competent and/or experienced practitioners when it is appropriate to seek its application.

I am of the strong view that section 10 can and is used effectively and properly. It has an important role to play in the administration of criminal justice and any attempts to limit its usage should be resisted.

Brett Thomas

Willis and Bowring

30 November 2011.